

IN THE SENATE

SENATE BILL NO. 1005

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO CHILD PROTECTION; AMENDING SECTION 16-1602, IDAHO CODE, TO RE-
VISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 16-1602, Idaho Code, be, and the same is hereby
amended to read as follows:

16-1602. DEFINITIONS. For purposes of this chapter:

(1) "Abused" means any case in which a child has been the victim of:

(a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(b) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, human trafficking as defined in section 18-8602, Idaho Code, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(2) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

(3) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(4) "Adjudicatory hearing" means a hearing to determine:

(a) Whether the child comes under the jurisdiction of the court pursuant to the provisions of this chapter;

(b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interest of the child requires protective supervision or vesting legal custody of the child in an authorized agency.

(5) "Age of developmentally appropriate" means:

(a) Activities that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical and behavioral capacities that are typical for an age or age group; and

1 (b) In the case of a specific child, activities or items that are suit-
 2 able for the child based on the developmental stages attained by the
 3 child with respect to the cognitive, emotional, physical and behavioral
 4 capacities of the child.

5 (6) "Aggravated circumstances" includes, but is not limited to:

6 (a) Circumstances in which the parent has engaged in any of the follow-
 7 ing:

8 (i) Abandonment, chronic abuse or chronic neglect of the child.
 9 Chronic neglect or chronic abuse of a child shall consist of abuse
 10 or neglect that is so extreme or repetitious as to indicate that
 11 return of the child to the home would result in unacceptable risk
 12 to the health and welfare of the child.

13 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
 14 the purposes of this section, includes any conduct described in
 15 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
 16 ~~or 18-6608~~ or 18-8602, Idaho Code.

17 (iii) Torture of a child; any conduct described in the code sec-
 18 tions listed in section 18-8303(1), Idaho Code; battery or an
 19 injury to a child that results in serious or great bodily in-
 20 jury to a child; voluntary manslaughter of a child, or aiding or
 21 abetting such voluntary manslaughter, soliciting such voluntary
 22 manslaughter or attempting or conspiring to commit such voluntary
 23 manslaughter;

24 (b) The parent has committed murder, aided or abetted a murder, so-
 25 licited a murder or attempted or conspired to commit murder; or

26 (c) The parental rights of the parent to another child have been termi-
 27 nated involuntarily.

28 (7) "Authorized agency" means the department, a local agency, a person,
 29 an organization, corporation, benevolent society or association licensed
 30 or approved by the department or the court to receive children for control,
 31 care, maintenance or placement.

32 (8) "Caregiver" means a foster parent with whom a child in foster care
 33 has been placed or a designated official for a child care institution in
 34 which a child in foster care has been placed.

35 (9) "Case plan hearing" means a hearing to approve, modify or reject the
 36 case plan as provided in section 16-1621, Idaho Code.

37 (10) "Child" means an individual who is under the age of eighteen (18)
 38 years.

39 (11) "Child advocacy center" or "CAC" means an organization that ad-
 40 heres to national best practice standards established by the national
 41 membership and accrediting body for children's advocacy centers and that
 42 promotes a comprehensive and coordinated multidisciplinary team response to
 43 allegations of child abuse by maintaining a child-friendly facility at which
 44 appropriate services are provided. These services may include forensic in-
 45 terviews, forensic medical examinations, mental health services and other
 46 related victim services.

47 (12) "Circumstances of the child" includes, but is not limited to, the
 48 joint legal custody or joint physical custody of the child.

49 (13) "Commit" means to transfer legal and physical custody.

1 (14) "Concurrent planning" means a planning model that prepares for and
2 implements different outcomes at the same time.

3 (15) "Court" means district court or magistrate's division thereof, or
4 if the context requires, a magistrate or judge thereof.

5 (16) "Custodian" means a person, other than a parent or legal guardian,
6 to whom legal or joint legal custody of the child has been given by court or-
7 der.

8 (17) "Department" means the department of health and welfare and its au-
9 thorized representatives.

10 (18) "Disability" means, with respect to an individual, any mental or
11 physical impairment which substantially limits one (1) or more major life
12 activity of the individual including, but not limited to, self-care, man-
13 ual tasks, walking, seeing, hearing, speaking, learning or working, or a
14 record of such an impairment, or being regarded as having such an impairment.
15 Disability shall not include transvestism, transsexualism, pedophilia,
16 exhibitionism, voyeurism, other sexual behavior disorders, or substance use
17 disorders, compulsive gambling, kleptomania or pyromania. Sexual prefer-
18 ence or orientation is not considered an impairment or disability. Whether
19 an impairment substantially limits a major life activity shall be determined
20 without consideration of the effect of corrective or mitigating measures
21 used to reduce the effects of the impairment.

22 (19) "Family or household member" shall have the same meaning as in sec-
23 tion 39-6303(6), Idaho Code.

24 (20) "Foster care" means twenty-four (24) hour substitute parental care
25 for children placed away from their parents or guardians by persons who may
26 or may not be related to the children and for whom the state agency has place-
27 ment and care responsibility.

28 (21) "Foster parent" means a person or persons licensed to provide fos-
29 ter care.

30 (22) "Grant administrator" means the supreme court or any organization
31 or agency as may be designated by the supreme court in accordance with such
32 procedures as may be adopted by the supreme court. The grant administrator
33 shall administer funds from the guardian ad litem account in accordance with
34 the provisions of this chapter.

35 (23) "Guardian ad litem" means a person appointed by the court pursuant
36 to a guardian ad litem volunteer program to act as special advocate for a
37 child under this chapter.

38 (24) "Guardian ad litem coordinator" means a person or entity receiving
39 moneys from the grant administrator for the purpose of carrying out any of
40 the duties set forth in section 16-1632, Idaho Code.

41 (25) "Guardian ad litem program" means the program to recruit, train and
42 coordinate volunteer persons to serve as guardians ad litem for abused, ne-
43 glected or abandoned children.

44 (26) "Homeless," as used in this chapter, shall mean that the child is
45 without adequate shelter or other living facilities, and the lack of such
46 shelter or other living facilities poses a threat to the health, safety or
47 well-being of the child.

48 (27) "Idaho network of children's advocacy centers" means an organiza-
49 tion that provides education and technical assistance to child advocacy cen-

1 ters and to interagency multidisciplinary teams developed pursuant to sec-
2 tion 16-1617, Idaho Code.

3 (28) "Law enforcement agency" means a city police department, the pros-
4 ecuting attorney of any county, state law enforcement officers, or the of-
5 fice of a sheriff of any county.

6 (29) "Legal custody" means a relationship created by court order, which
7 vests in a custodian the following rights and responsibilities:

8 (a) To have physical custody and control of the child, and to determine
9 where and with whom the child shall live.

10 (b) To supply the child with food, clothing, shelter and incidental ne-
11 cessities.

12 (c) To provide the child with care, education and discipline.

13 (d) To authorize ordinary medical, dental, psychiatric, psychologi-
14 cal, or other remedial care and treatment for the child, including care
15 and treatment in a facility with a program of services for children, and
16 and to authorize surgery if the surgery is deemed by two (2) physicians
17 licensed to practice in this state to be necessary for the child.

18 (e) Where the parents share legal custody, the custodian may be vested
19 with the custody previously held by either or both parents.

20 (30) "Mental injury" means a substantial impairment in the intellectual
21 or psychological ability of a child to function within a normal range of per-
22 formance and/or behavior, for short or long terms.

23 (31) "Neglected" means a child:

24 (a) Who is without proper parental care and control, or subsistence,
25 medical or other care or control necessary for his well-being because of
26 the conduct or omission of his parents, guardian or other custodian or
27 their neglect or refusal to provide them; however, no child whose parent
28 or guardian chooses for such child treatment by prayers through spiri-
29 tual means alone in lieu of medical treatment shall be deemed for that
30 reason alone to be neglected or lack parental care necessary for his
31 health and well-being, but this subsection shall not prevent the court
32 from acting pursuant to section 16-1627, Idaho Code; or

33 (b) Whose parents, guardian or other custodian are unable to discharge
34 their responsibilities to and for the child and, as a result of such
35 inability, the child lacks the parental care necessary for his health,
36 safety or well-being; or

37 (c) Who has been placed for care or adoption in violation of law; or

38 (d) Who is without proper education because of the failure to comply
39 with section 33-202, Idaho Code.

40 (32) "Permanency hearing" means a hearing to review, approve, reject or
41 modify the permanency plan of the department, and review reasonable efforts
42 in accomplishing the permanency plan.

43 (33) "Permanency plan" means a plan for a continuous residence and main-
44 tenance of nurturing relationships during the child's minority.

45 (34) "Protective order" means an order issued by the court in a child
46 protection case, prior to the adjudicatory hearing, to enable the child to
47 remain in the home pursuant to section 16-1615(5)(f), Idaho Code. Such an
48 order shall be in the same form and have the same effect as a domestic vio-
49 lence protection order issued pursuant to chapter 63, title 39, Idaho Code.

1 A protective order shall be for a period not to exceed three (3) months unless
2 otherwise stated in the order.

3 (35) "Protective supervision" is a legal status created by court order
4 in a child protective case whereby the child is in the legal custody of his or
5 her parent(s), guardian(s) or other legal custodian(s), subject to supervi-
6 sion by the department.

7 (36) "Psychotropic medication" means a drug prescribed to affect psy-
8 chological functioning, perception, behavior or mood. Psychotropic medi-
9 cations include, but are not limited to, antidepressants, mood stabilizers,
10 antipsychotics, ~~anti-anxiety~~ antianxiety medications, sedatives and stimu-
11 lants.

12 (37) "Reasonable and prudent parent standard" means the standard of
13 care characterized by careful and sensible parental decisions that main-
14 tain the health, safety and best interests of a child while simultaneously
15 encouraging the emotional and developmental growth of the child, that a
16 caregiver shall use when determining whether to allow a child in foster care
17 under the responsibility of the state to participate in extracurricular,
18 enrichment, cultural or social activities.

19 (38) "Relative" means a child's grandparent, great grandparent, aunt,
20 great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
21 cousin, sibling and half-sibling.

22 (39) "Residual parental rights and responsibilities" means those
23 rights and responsibilities remaining with the parents after the transfer of
24 legal custody including, but not necessarily limited to, the right of visi-
25 tation, the right to consent to adoption, the right to determine religious
26 affiliation, the right to family counseling when beneficial, and the respon-
27 sibility for support.

28 (40) "Shelter care" means places designated by the department for tem-
29 porary care of children pending court disposition or placement.

30 (41) "Supportive services," as used in this chapter, shall mean ser-
31 vices ~~which~~ that assist parents with a disability to compensate for those
32 aspects of their disability ~~which~~ that affect their ability to care for their
33 child and ~~which~~ that will enable them to discharge their parental responsi-
34 bilities. The term includes specialized or adapted training, evaluations
35 or assistance with effectively using adaptive equipment and accommodations
36 ~~which~~ that allow parents with a disability to benefit from other services
37 including, but not limited to, Braille texts or sign language interpreters.