

IN THE SENATE

SENATE BILL NO. 1182

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO CHILDREN; AMENDING SECTION 16-1602, IDAHO CODE, TO REVISE A DEFINITION; AND AMENDING SECTION 16-1627, IDAHO CODE, TO REVISE A PROVISION REGARDING TREATMENT BY PRAYER THROUGH SPIRITUAL MEANS.

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, 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,
14 for the purposes of this section, includes any conduct described
15 in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101
16 or 18-6608, 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 to authorize surgery if the surgery is deemed by two (2) physicians li-
17 censed 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~~ the child's well-be-
26 ing because of the conduct or omission of his parents, guardian or other
27 custodian ~~or their neglect or refusal to provide them; however, no child~~
28 ~~whose parent or guardian chooses for such child treatment by prayers~~
29 ~~through spiritual means alone in lieu of medical treatment shall be~~
30 ~~deemed for that reason alone to be neglected or lack parental care nec-~~
31 ~~essary for his health and well-being, but this subsection shall not pre-~~
32 ~~vent the court from acting pursuant to section 16-1627, Idaho Code; or~~

33 (b) Whose parents, guardian or other custodian neglect or refuse to
34 provide for the child; or

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

39 (ed) Who has been placed for care or adoption in violation of law; or

40 (de) Who is without proper education because of the failure to comply
41 with section 33-202, Idaho Code.

42 For purposes of determining whether a child has been neglected pursuant to
43 paragraph (a) of this subsection, a parent, guardian or other custodian
44 who chooses for such child, or supports such child in their choice to pur-
45 sue, treatment by prayers through spiritual means alone or in part in lieu
46 of medical treatment is engaged in the free exercise of religion, which is
47 a fundamental right that applies to all such decisions in this state, and
48 except as provided in section 73-402(3), Idaho Code, government shall not
49 substantially burden a parent, guardian or other custodian's exercise of re-
50 ligion even if the burden results from a rule of general applicability. When

1 a parent, guardian or other custodian chooses for such child, or supports
2 such child in their choice to pursue, treatment by prayers through spiritual
3 means alone or in part in lieu of medical treatment, such child shall not be
4 deemed to be neglected unless the failure to receive medical treatment is
5 likely to result in serious permanent injury or death, and in determining
6 whether such child has been neglected, the court shall consider the wishes
7 of the child.

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

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

13 (34) "Protective order" means an order issued by the court in a child
14 protection case, prior to the adjudicatory hearing, to enable the child to
15 remain in the home pursuant to section 16-1615(5)(f), Idaho Code. Such an
16 order shall be in the same form and have the same effect as a domestic vio-
17 lence protection order issued pursuant to chapter 63, title 39, Idaho Code.
18 A protective order shall be for a period not to exceed three (3) months unless
19 otherwise stated in the order.

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

24 (36) "Psychotropic medication" means a drug prescribed to affect psy-
25 chological functioning, perception, behavior or mood. Psychotropic medi-
26 cations include, but are not limited to, antidepressants, mood stabilizers,
27 antipsychotics, anti-anxiety medications, sedatives and stimulants.

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

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

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

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

46 (41) "Supportive services," as used in this chapter, shall mean ser-
47 vices which assist parents with a disability to compensate for those aspects
48 of their disability which affect their ability to care for their child and
49 which will enable them to discharge their parental responsibilities. The
50 term includes specialized or adapted training, evaluations or assistance

1 with effectively using adaptive equipment and accommodations which allow
2 parents with a disability to benefit from other services including, but not
3 limited to, Braille texts or sign language interpreters.

4 SECTION 2. That Section 16-1627, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 16-1627. AUTHORIZATION OF EMERGENCY MEDICAL TREATMENT. (1) At any
7 time whether or not a child is under the authority of the court, the court may
8 authorize medical or surgical care for a child when:

9 (a) A parent, legal guardian or custodian is not immediately available
10 and cannot be found after reasonable effort in the circumstances of the
11 case; or

12 (b) A physician informs the court orally or in writing that in his pro-
13 fessional opinion, the life of the child would be greatly endangered
14 without certain treatment and the parent, guardian or other custodian
15 refuses or fails to consent.

16 (2) If time allows in a situation under subsection (1) (b) of this sec-
17 tion, the court shall cause every effort to be made to grant each of the par-
18 ents or legal guardian or custodian an immediate informal hearing, but this
19 hearing shall not be allowed to further jeopardize the child's life.

20 (3) In making its order under subsection (1) of this section, the court
21 shall take into consideration any treatment being given the child by prayer
22 through spiritual means alone, ~~if the child or his.~~ A parent, guardian or
23 legal other custodian are adherents of a bona fide religious denomination
24 that relies exclusively on this form of treatment in lieu of medical treat-
25 ment who chooses for his child treatment by prayer through spiritual means
26 alone or in part in lieu of medical treatment is engaged in the free exercise
27 of religion, which is a fundamental right that applies to all parenting deci-
28 sions in this state, and except as provided in section 73-402 (3), Idaho Code,
29 government shall not substantially burden a parent's exercise of religion
30 even if the burden results from a rule of general applicability.

31 (4) After entering any authorization under subsection (1) of this sec-
32 tion, the court shall reduce the circumstances, finding and authorization to
33 writing and enter it in the records of the court and shall cause a copy of the
34 authorization to be given to the physician or hospital, or both, that was in-
35 volved.

36 (5) Oral authorization by the court is sufficient for care or treatment
37 to be given by and shall be accepted by any physician or hospital. No physi-
38 cian or hospital nor any nurse, technician or other person under the direc-
39 tion of such physician or hospital shall be subject to criminal or civil lia-
40 bility for performance of care or treatment in reliance on the court's autho-
41 rization, and any function performed thereunder shall be regarded as if it
42 were performed with the child's and the parent's authorization.