

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 402

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CHILD PROTECTION; AMENDING SECTION 16-1629, IDAHO CODE, TO RE-
2 VISE PROVISIONS REGARDING POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH
3 AND WELFARE.
4

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

6 SECTION 1. That Section 16-1629, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 16-1629. POWERS AND DUTIES OF THE DEPARTMENT. The department, working
9 in conjunction with the court and other public and private agencies and per-
10 sons, shall have the primary responsibility to implement the purpose of this
11 chapter. To this end, the department is empowered and shall have the duty to
12 do all things reasonably necessary to carry out the purpose of this chapter,
13 including, but not limited to, the following:

14 (1) The department shall administer treatment programs for the protec-
15 tion and care of neglected, abused and abandoned children, and in so doing
16 may place in foster care, shelter care, or other diagnostic, treatment, or
17 care centers or facilities children of whom it has been given custody. The
18 department is to be governed by the standards found in chapter 12, title 39,
19 Idaho Code.

20 (2) On December 1, the department shall make an annual statistical
21 report to the governor covering the preceding fiscal year showing the num-
22 ber and status of persons in its custody and including such other data as
23 will provide sufficient facts for sound planning in the conservation of
24 children and youth. All officials and employees of the state and of every
25 county and city shall furnish the department, upon request, such information
26 within their knowledge and control as the department deems necessary. Lo-
27 cal agencies shall report in such uniform format as may be required by the
28 department.

29 (3) The department shall be required to maintain a central registry for
30 the reporting of child neglect, abuse and abandonment information. Provided
31 however, that the department shall not retain any information for this pur-
32 pose relating to a child, or parent of a child, abandoned pursuant to chapter
33 82, title 39, Idaho Code.

34 (4) The department shall make periodic evaluation of all persons in its
35 custody or under its protective supervision for the purpose of determining
36 whether existing orders and dispositions in individual cases shall be modi-
37 fied or continued in force. Evaluations may be made as frequently as the de-
38 partment considers desirable and shall be made with respect to every person
39 at intervals not exceeding six (6) months. Reports of evaluation made pur-
40 suant to this section shall be filed with the court that has jurisdiction.
41 Reports of evaluation shall be provided to persons having full or partial le-
42 gal or physical custody of a child. Failure of the department to evaluate a

1 person or to reevaluate him within six (6) months of a previous examination
2 shall not of itself entitle the person to a change in disposition but shall
3 entitle him, his parent, guardian or custodian or his counsel to petition the
4 court pursuant to section 16-1622, Idaho Code.

5 (5) In a consultive capacity, the department shall assist communities
6 in the development of constructive programs for the protection, ~~prevention~~
7 and care of children and youth.

8 (6) The department shall keep written records of investigations, eval-
9 uations, prognoses and all orders concerning disposition or treatment of ev-
10 ery person over whom it has legal custody or under its protective supervi-
11 sion. Department records shall be subject to disclosure according to chap-
12 ter 1, title 74, Idaho Code, unless otherwise ordered by the court, the per-
13 son consents to the disclosure, or disclosure is necessary for the delivery
14 of services to the person. Notwithstanding the provisions restricting dis-
15 closure or the exemptions from disclosure provided in chapter 1, title 74,
16 Idaho Code, all records pertaining to investigations, the rehabilitation of
17 youth, the protection of children, evaluation, treatment and/or disposi-
18 tion records pertaining to the statutory responsibilities of the department
19 shall be disclosed to any duly elected state official carrying out his offi-
20 cial functions.

21 (7) The department shall establish appropriate administrative proce-
22 dures for the processing of complaints of child neglect, abuse, and abandon-
23 ment received and for the implementation of the protection, treatment and
24 care of children formally or informally placed in the custody of the depart-
25 ment or under its protective supervision under this chapter including, but
26 not limited to:

27 (a) Department employees whose job duties are related to the child pro-
28 tective services system under this chapter shall first be trained as to
29 their obligations under this chapter regarding the protection of chil-
30 dren whose health and safety may be endangered. The curriculum shall
31 include information regarding their legal duties, how to conduct their
32 work in conformity with the requirements of this chapter, information
33 regarding applicable federal and state laws with regard to the rights
34 of the child, parent and others who may be under investigation under the
35 child protective services system, and the applicable legal and consti-
36 tutional parameters within which they are to conduct their work.

37 (b) Department employees whose job duties are related to the child pro-
38 tective services system shall advise the individual of the complaints
39 or allegations made against the individual at the time of the initial
40 contact, consistent with protecting the identity of the referent.

41 (c) Department employees whose job duties are related to the child
42 protective services system shall be trained as to the constitutional
43 rights retained by the child, parent, and others who may be under inves-
44 tigation. The training shall include but not be limited to instruction
45 that those under investigation may:

46 (i) Refuse entry to their home or other premises unless there is a
47 warrant of a court of competent jurisdiction permitting entry;

48 (ii) Refuse interviews and refuse to answer questions;

1 (iii) Refuse interviews and examinations of minor children in
2 their legal care and custody unless there is a warrant of a court
3 requiring particular examinations; and

4 (iv) Hire an attorney at their own expense and have that attorney
5 represent them during all interactions with the department.

6 (8) The department, having been granted legal custody of a child,
7 shall have the right to determine where and with whom the child shall live,
8 provided that the child shall not be placed outside the state without the
9 court's consent. The court shall retain jurisdiction over the child, which
10 jurisdiction shall be entered on any order or petition granting legal cus-
11 tody to the department, and the court shall have jurisdiction over all
12 matters relating to the child. The department shall not place the child in
13 the home from which the court ordered the child removed without first ob-
14 taining the approval of the court. Notwithstanding the provisions of this
15 subsection, all other determinations relating to where and with whom the
16 child shall live shall be subject to judicial review by the court and, when
17 contested by any party, judicial approval.

18 (9) The department shall give to the court any information concerning
19 the child that the court may at any time require, but in any event shall re-
20 port the progress of the child under its custody or under its protective su-
21 pervision at intervals of not to exceed six (6) months. The department shall
22 file with the court at least five (5) days prior to the permanency hearing ei-
23 ther under section 16-1622, Idaho Code, or, in the case of a finding of aggra-
24 vated circumstances, section 16-1620, Idaho Code, the permanency plan and
25 recommendations of the department.

26 (10) The department shall establish appropriate administrative proce-
27 dures for the conduct of administrative reviews and hearings as required by
28 federal statute for all children committed to the department and placed in
29 out-of-the-home care.

30 (11) At any time the department is considering a placement pursuant to
31 this chapter, the department shall make a reasonable effort to place the
32 child in the least restrictive environment to the child and in so doing shall
33 consider, consistent with the best interest and special needs of the child,
34 placement priority of the child in the following order:

35 (a) A fit and willing relative;

36 (b) A fit and willing nonrelative with a significant relationship with
37 the child;

38 (c) Foster parents and other persons licensed in accordance with chap-
39 ter 12, title 39, Idaho Code, with a significant relationship with the
40 child;

41 (d) Foster parents and other persons licensed in accordance with chap-
42 ter 12, title 39, Idaho Code.

43 (12) If the caseworker assigned to a foster care case recommends re-
44 moving the child from a foster home in which the child has been placed for
45 sixty (60) or more days, for placement in another foster home, then the case
46 worker's supervisor shall conduct a review of the foster care case and must
47 approve such recommendation before a change in foster home placement occurs.
48 The supervisor shall consider the best interests and special needs of the
49 child, including:

50 (a) The clearly stated reasons for the recommended change in placement;

1 (b) The number of times the child's placement has been changed since re-
2 moval from the child's home and the reasons for each change;

3 (c) Whether the child will change schools as a result of the change in
4 placement; and

5 (d) Whether the change in placement will separate or reunite siblings
6 or affect sibling visitation.

7 (13) If the supervisor determines that the recommended change in fos-
8 ter care placement is in the best interests of the child, then the department
9 may change the placement of the child; provided that, the department shall
10 give the foster parents and the court written notice of the planned change at
11 least seven (7) days before the change in placement.

12 (14) If the caseworker determines that there is abuse or neglect or a
13 substantial risk of abuse or neglect in the foster home, then the department
14 may change the placement of the child without a supervisor's review; pro-
15 vided that, the department shall give the foster parents and the court writ-
16 ten notice of the unplanned change within seven (7) days after the change in
17 placement.

18 (15) In its written notice of a planned or unplanned change required
19 under this section, the department shall clearly state the reasons for the
20 change in placement of the child.