

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 824

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO CHILD CUSTODY; PROVIDING LEGISLATIVE FINDINGS AND INTENT;
2 AMENDING SECTION 32-717, IDAHO CODE, TO REVISE PROVISIONS REGARDING
3 CHILD CUSTODY; REPEALING SECTION 32-717A, IDAHO CODE, RELATING TO PAR-
4 ENTS' ACCESS TO RECORDS AND INFORMATION; AMENDING CHAPTER 7, TITLE
5 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-717A, IDAHO CODE,
6 TO ESTABLISH PROVISIONS REGARDING PARENTS' ACCESS TO RECORDS AND IN-
7 FORMATION; REPEALING SECTION 32-717B, IDAHO CODE, RELATING TO JOINT
8 CUSTODY; AMENDING CHAPTER 7, TITLE 32, IDAHO CODE, BY THE ADDITION OF
9 A NEW SECTION 32-717B, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING
10 CHILD CUSTODY, PARENTING TIME ORDERS, EVIDENTIARY HEARINGS, AND COURT
11 FINDINGS AND ORDERS; AMENDING SECTION 32-717C, IDAHO CODE, TO REVISE
12 PROVISIONS REGARDING ALLEGATIONS OF ABUSE AND INVESTIGATIONS; AMEND-
13 ING CHAPTER 7, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
14 32-717F, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING TEMPORARY AND EX
15 PARTE ORDERS; AMENDING CHAPTER 7, TITLE 32, IDAHO CODE, BY THE ADDITION
16 OF A NEW SECTION 32-717G, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING
17 RESTORATION OF LOST PARENTING TIME; AMENDING CHAPTER 7, TITLE 32, IDAHO
18 CODE, BY THE ADDITION OF A NEW SECTION 32-717H, IDAHO CODE, TO ESTABLISH
19 PROVISIONS REGARDING COURT-APPOINTED PROFESSIONALS; AMENDING CHAP-
20 TER 7, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-717I,
21 IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING SUPERVISED VISITATION;
22 AMENDING CHAPTER 7, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
23 TION 32-721, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 7, TITLE
24 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-722, IDAHO CODE,
25 TO ESTABLISH PROVISIONS REGARDING VIOLATION OF PARENTAL RIGHTS OR DUE
26 PROCESS AND REMEDIES; AMENDING SECTION 7-1126, IDAHO CODE, TO PROVIDE
27 A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
28 SECTION 32-1704, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND
29 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 32-1705, IDAHO CODE,
30 TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS;
31 AMENDING SECTION 39-6306, IDAHO CODE, TO PROVIDE A CORRECT CODE REFER-
32 ENCE AND TO MAKE TECHNICAL CORRECTIONS; PROVIDING APPLICABILITY; AND
33 PROVIDING AN EFFECTIVE DATE.
34

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

36 SECTION 1. LEGISLATIVE FINDINGS AND INTENT. (1) The Legislature finds
37 that:

38 (a) Parenthood is a natural and fundamental relationship from which
39 inherent parental rights and responsibilities arise, protected by the
40 United States Constitution and the Constitution of the State of Idaho;

41 (b) A parent has the right, obligation, responsibility, and authority
42 to raise, manage, train, educate, provide for, and reasonably disci-
43 pline the parent's child;

1 (c) The role of the state is secondary and supportive to the primary
2 role of a parent;

3 (d) A parent's fundamental rights may be restricted only upon a judi-
4 cial finding of unfitness or necessity, supported by clear and convinc-
5 ing evidence; and

6 (e) The interests of the state favor preservation and not severance of
7 natural familial bonds in circumstances where a positive, nurturing
8 parent-child relationship can exist, including extended family associ-
9 ation and support. The procedural safeguards contained in this act are
10 essential to the best interests of the child.

11 (2) The Legislature declares that family court proceedings affecting
12 the custody, care, or visitation of a child implicate fundamental liberty
13 interests.

14 (3) It is the intent of the Legislature to:

15 (a) Protect children by preserving stable relationships with fit par-
16 ents;

17 (b) Ensure that restrictions on parental rights are narrowly tailored,
18 based on clear and convincing evidence, and are the least restrictive
19 means available;

20 (c) Promote transparency, accountability, and timely judicial action
21 in all custody matters; and

22 (d) Promote stability, reduce unnecessary litigation, and support
23 the child's meaningful relationship with fit parents by establishing
24 clear, uniform standards for custody determinations.

25 SECTION 2. That Section 32-717, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 32-717. CUSTODY OF CHILDREN -- BEST INTEREST. (1) ~~In an action for di-~~
28 ~~voorce~~ When parents cannot reach an agreement regarding custody or parenting
29 time of a minor child, the court may, before and after judgment, give such di-
30 rection for the custody, care and education of the children of the marriage
31 as may seem necessary or proper in the best interests of the children. The
32 court shall consider all relevant factors which may include:

33 (a) The wishes of the child's parent or parents as to his or her custody;

34 (b) The wishes of the child as to his or her custodian;

35 (c) The interaction and interrelationship of the child with his or her
36 parent or parents, and his or her siblings;

37 (d) The child's adjustment to his or her home, school, and community;
38 and

39 (e) ~~The character and~~ circumstances of all individuals involved;

40 ~~(f) The need to promote continuity and stability in the life of the~~
41 ~~child; and~~

42 ~~(g) Domestic violence as defined in section 39-6303, Idaho Code,~~
43 ~~whether or not in the presence of the child.~~

44 (2) If a parent is found, by clear and convincing evidence and supported
45 by written findings of fact, to have committed domestic violence as defined
46 in section 39-6303, Idaho Code, such finding shall rebut the presumption
47 that substantially equal parenting time is in the best interests of the
48 child.

1 (3) Absent a showing by clear and convincing evidence of real harm or
 2 substantiated potential harm to the minor child, substantially equal par-
 3 enting time shall be presumed to be in the best interest of the child, includ-
 4 ing:

5 (a) Frequent, meaningful, and continuing access to each parent follow-
 6 ing separation, divorce, paternity, or custody action; and

7 (b) Active involvement of both parents in parenting the minor child.

8 ~~(2)~~ (4) If the parent has a disability as defined in this section
 9 32-721, Idaho Code, the parent shall have the right to provide evidence and
 10 information regarding the manner in which the use of adaptive equipment or
 11 supportive services will enable the parent to carry out the responsibilities
 12 of parenting the child. The court shall advise the parent of such right.
 13 Evaluations of parental fitness shall take into account the use of adaptive
 14 equipment and supportive services for parents with disabilities and shall be
 15 conducted by, or with the assistance of, a person who has expertise concern-
 16 ing such equipment and services. Nothing in this section shall be construed
 17 to create any new or additional obligations on state or local governments to
 18 purchase or provide adaptive equipment or supportive services for parents
 19 with disabilities.

20 ~~(3)~~ (5) In any case where the child is actually residing with a grand-
 21 parent in a stable relationship, the court may recognize the grandparent as
 22 having the same standing as a parent for evaluating what custody arrange-
 23 ments are in the best interests of the child. purposes of presenting evi-
 24 dence regarding the child's best interests, but not for purposes of dimin-
 25 ishing, supplanting, or rebutting the fundamental parental rights or pre-
 26 sumptions established pursuant to this chapter. Nothing in this subsection
 27 shall create a presumption in favor of a de facto custodian over a fit parent.

28 ~~(4) As used in this chapter:~~

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

32 ~~(b) "Disability" means, with respect to an individual, any mental or~~
 33 ~~physical impairment which substantially limits one (1) or more ma-~~
 34 ~~ior life activities of the individual including, but not limited to,~~
 35 ~~self-care, manual tasks, walking, seeing, hearing, speaking, learn-~~
 36 ~~ing or working, or a record of such an impairment, or being regarded as~~
 37 ~~having such an impairment. Disability shall not include transvestism,~~
 38 ~~transsexualism, pedophilia, exhibitionism, voyeurism, other sexual~~
 39 ~~behavior disorders, substance use disorders, compulsive gambling,~~
 40 ~~kleptomania or pyromania. Sexual preference or orientation is not~~
 41 ~~considered an impairment or disability. Whether an impairment sub-~~
 42 ~~stantially limits a major life activity shall be determined without~~
 43 ~~consideration of the effect of corrective or mitigating measures used~~
 44 ~~to reduce the effects of the impairment.~~

45 ~~(c) "Supportive services" means services which assist a parent with a~~
 46 ~~disability to compensate for those aspects of their disability which~~
 47 ~~affect their ability to care for their child and which will enable~~
 48 ~~them to discharge their parental responsibilities. The term includes~~
 49 ~~specialized or adapted training, evaluations, or assistance with ef-~~
 50 ~~fective use of adaptive equipment, and accommodations which allow a~~

1 ~~parent with a disability to benefit from other services, such as braille~~
 2 ~~texts or sign language interpreters.~~

3 ~~(5) Nothing in this chapter shall be construed to allow discrimination~~
 4 ~~on the basis of disability. In any case where the disability of a parent is~~
 5 ~~found by the court to be relevant to an award of custody of a child, the court~~
 6 ~~shall make specific findings concerning the disability and what effect, if~~
 7 ~~any, the court finds the disability has on the best interests of the child.~~

8 (6) With reference to this section, when an active member of the Idaho
 9 national guard has been ordered or called to duty as defined in section
 10 46-409, Idaho Code, or when a member of the military reserve is ordered to
 11 active federal service under title 10, United States Code, such military
 12 service thereunder shall not be a substantial or material and permanent
 13 change in circumstance to modify by reducing the member's previously decreed
 14 child custody and visitation privileges.

15 (7) For purposes of civil proceedings in which custody and parenting
 16 time of a minor child is at issue, any restriction, suspension, condition, or
 17 diminution of a parent's legal custody, physical custody, parenting time, or
 18 decision-making authority shall be permissible only upon written findings
 19 of fact supported by clear and convincing evidence that the restriction is
 20 necessary to prevent a specific and clearly demonstrated risk of substantial
 21 harm to the child and is narrowly tailored using the least restrictive means
 22 available.

23 SECTION 3. That Section [32-717A](#), Idaho Code, be, and the same is hereby
 24 repealed.

25 SECTION 4. That Chapter 7, Title 32, Idaho Code, be, and the same is
 26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 27 ignated as Section 32-717A, Idaho Code, and to read as follows:

28 32-717A. PARENTS' ACCESS TO RECORDS AND INFORMATION. (1) Consistent
 29 with section 32-1015, Idaho Code, and notwithstanding any other provisions
 30 of law, each parent shall have equal access to all records relating to the
 31 parent's minor child, including medical, educational, childcare, law en-
 32 forcement, and court records, regardless of custodial status. Upon written
 33 request, a records custodian shall provide copies within fourteen (14) cal-
 34 endar days unless a shorter period is required by law.

35 (2) Access may be restricted only by court order with written findings
 36 that the restriction is necessary to prevent substantial harm to the child.
 37 Nothing in this section shall require disclosure in violation of federal
 38 law.

39 SECTION 5. That Section [32-717B](#), Idaho Code, be, and the same is hereby
 40 repealed.

41 SECTION 6. That Chapter 7, Title 32, Idaho Code, be, and the same is
 42 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 43 ignated as Section 32-717B, Idaho Code, and to read as follows:

44 32-717B. CHILD CUSTODY ORDERS -- EVIDENTIARY HEARING. (1) In any con-
 45 tested custody or parenting time determination in which the parties have not

1 entered a knowing and voluntary written stipulation resolving all issues,
2 the court shall hold an evidentiary hearing with notice and a meaningful op-
3 portunity for both parents to be heard if the court is imposing any restric-
4 tion, suspension, supervision, or diminution of parental rights. This sub-
5 section shall not apply to stipulated agreements or uncontested matters in
6 which both parents knowingly and voluntarily consent to the proposed order.

7 (2) The court may restrict a parent's custody or parenting time only
8 upon clear and convincing evidence showing a specific and clearly demon-
9 strated risk of substantial harm to the child or where equal parenting
10 time is impracticable due to significant geographic distance or other ob-
11 jective logistical barriers. Uncorroborated or speculative allegations,
12 extra-statutory theories, or findings that allegations are unproven or in-
13 conclusive shall not be used to restrict parental rights. The court shall
14 state on the record the facts relied upon to restrict a parent's custody or
15 parenting time and why the restriction is necessary.

16 (3) Within fourteen (14) calendar days after the evidentiary hearing,
17 the court shall issue a written order with specific findings of fact and con-
18 clusions of law, unless extended for good cause stated on the record. The
19 written order shall identify the statutory basis, the evidence relied on,
20 the party bearing the burden of proof, how the clear and convincing standard
21 was met, why less restrictive alternatives were insufficient, the scope and
22 duration of any restriction, and the clear, objective conditions required
23 for modification.

24 (4) No police report or medical documentation may serve as the sole
25 basis for a custody or parenting time restriction beyond fourteen (14) cal-
26 endar days absent cross-examination and written findings supported by clear
27 and convincing evidence, and these standards shall apply equally to both
28 parents.

29 (5) Absent an adjudicated finding sufficient to overcome the presump-
30 tion of substantially equal parenting time, the court may deviate from equal
31 parenting time only upon time-limited conditions supported by specific
32 findings of fact and shall include in the custody order a restoration plan,
33 as defined in section 32-721, Idaho Code, providing for automatic return to
34 equal parenting time or a lawful final custody order upon resolution of the
35 stated conditions.

36 (a) The restoration plan shall be incorporated into the order at entry
37 and shall be self-executing upon satisfaction of clearly defined, ob-
38 jectively verifiable conditions set forth in the order, without further
39 court action unless a party files a timely motion.

40 (b) The order shall specify the objective criteria and method of writ-
41 ten verification required to establish satisfaction of the conditions,
42 and upon filing of certification, the court shall review the certifi-
43 cation and enter the next phase absent written objection filed within
44 seven (7) days.

45 (c) A party opposing implementation of the restoration plan shall bear
46 the burden of filing a motion supported by sworn evidence demonstrating
47 either that a condition has not occurred or that implementation would
48 create a specific and clearly demonstrated risk of substantial harm to
49 the child. Upon satisfaction of the restoration conditions, the burden

1 shall be upon the party that believes that continued deviation remains
2 necessary, which shall be proven by clear and convincing evidence.

3 (6) Emergency orders may be issued as otherwise authorized by law but
4 shall not nullify or suspend a restoration plan absent compliance with this
5 subsection. Emergency orders shall not remain in effect beyond fourteen
6 (14) calendar days without written findings supported by clear and convinc-
7 ing evidence of newly arisen facts demonstrating a specific and clearly
8 demonstrated risk of substantial harm to the child and shall not be renewed
9 or reissued to avoid operation of a restoration plan.

10 SECTION 7. That Section 32-717C, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 32-717C. ALLEGATIONS OF ABUSE -- INVESTIGATION. ~~(1) When, in any di-~~
13 ~~orce proceeding or upon request for modification of a divorce decree, an in~~
14 ~~any proceeding affecting child custody or parenting time, a credible alle-~~
15 ~~gation of child abuse or child sexual abuse, neglect, or other criminal acts~~
16 ~~is made, implicating either party, the court shall order by a written notice~~
17 ~~and request that an investigation be conducted by the department of health~~
18 ~~and welfare, or by the appropriate law enforcement agency, if applicable. A~~
19 ~~final award of custody, parenting time, or visitation may shall not be ren-~~
20 ~~dered until a written report on that investigation is received by the court.~~
21 ~~That investigation shall be conducted by the department within thirty (30)-~~
22 ~~days of the court's notice and request for investigation. The investigating~~
23 ~~agency shall make reasonable efforts to complete the investigation and sub-~~
24 ~~mit a written report within forty-two (42) calendar days unless extended by~~
25 ~~the court upon documented reasonable cause.~~

26 (2) If an investigation extends beyond forty-two (42) calendar days,
27 the investigating agency shall provide written status updates to the court
28 every fourteen (14) calendar days. Upon receipt of the investigative re-
29 port, the court shall review whether continued restriction meets the clear
30 and convincing standard set forth in section 32-717B , Idaho Code.

31 (3) During the investigation, the court may issue temporary protective
32 measures only for good cause and in compliance with sections 32-717B and
33 32-717F, Idaho Code. Any ex parte or temporary order shall state an expira-
34 tion date and create no presumption for or against either parent.

35 (4) Findings regarding allegations shall not be based solely on the
36 opinions or recommendations of guardians ad litem, evaluators, or other
37 court-appointed professionals.

38 (5) A safety plan recommended by law enforcement or child protective
39 services, and a parent's compliance with it, shall not be used as evidence of
40 fault, unfitness, restriction, or risk of harm in any custody or parenting
41 time proceeding.

42 (6) A parent acting in good faith to protect a child from credible harm,
43 including compliance with law enforcement direction that conflicts with an
44 existing order, shall not be penalized, presumed in contempt, or deemed to
45 have interfered with custody, and such conduct shall be considered solely as
46 protective in nature.

1 SECTION 8. That Chapter 7, Title 32, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 32-717F, Idaho Code, and to read as follows:

4 32-717F. TEMPORARY AND EX PARTE ORDERS. (1) A court may enter a tem-
5 porary custody or parenting time order prior to the evidentiary hearing re-
6 quired by section 32-717B, Idaho Code, but such order shall not remain in ef-
7 fect longer than forty-nine (49) calendar days, shall create no presumption
8 regarding the child's best interests, and shall not operate as a de facto
9 permanent modification.

10 (2) Any temporary restriction shall expire on the forty-ninth calendar
11 day unless continued by written findings supported by clear and convincing
12 evidence consistent with section 32-717B. Nothing in this subsection shall
13 require repeated evidentiary hearings where the parties stipulate to con-
14 tinuation or where no party seeks modification.

15 (3) An ex parte order restricting custody, parenting time, or contact
16 may be issued only upon sworn admissible evidence establishing probable
17 cause of imminent physical danger to the child or a parent. Speculation,
18 generalized fear, or uncorroborated assertions are insufficient. The court
19 shall consider known inculpatory and exculpatory evidence.

20 (4) An ex parte order shall expire fourteen (14) calendar days from is-
21 suance, shall state on its face the date and time of expiration, and shall not
22 be extended or converted into a temporary order without a full evidentiary
23 hearing and written findings consistent with section 32-717B, Idaho Code.

24 (5) A court shall not delay resolution of a custody matter such that a
25 temporary or ex parte order functions as a long-term deprivation of parental
26 rights.

27 SECTION 9. That Chapter 7, Title 32, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 32-717G, Idaho Code, and to read as follows:

30 32-717G. RESTORATION OF LOST PARENTING TIME. (1) If a parent's cus-
31 tody or parenting time is restricted, suspended, or supervised due to an
32 allegation of abuse that is adjudicated by the court and found to be un-
33 substantiated or insufficient to meet the clear and convincing evidence
34 standard required for restriction under section 32-717B, the court shall
35 order restoration of the lost parenting time. Willful interference with
36 a restoration order shall result in enforceable remedies, including con-
37 tempt and compensatory parenting time, and the court shall refer apparent
38 violations of title 18, Idaho Code, relating to custody interference to the
39 appropriate prosecuting attorney.

40 (2) A restoration plan, as defined in section 32-721, Idaho Code, shall
41 provide for prompt recovery of equivalent parenting time in a manner that
42 minimizes disruption to the child and preserves stability and continuity,
43 including comparable time for missed holidays, school breaks, or special pe-
44 riods.

45 (3) Restoration of lost parenting time shall occur without undue de-
46 lay and in compliance with section 32-717B, Idaho Code. When a parent know-
47 ingly denies court-ordered custody or parenting time without lawful justi-
48 fication, the court shall award compensatory parenting time equal in type

1 and duration to the time denied. Such compensatory parenting time shall be
2 exercised as soon as reasonably practicable, unless clear and convincing ev-
3 idence establishes that immediate restoration would pose a risk of substan-
4 tial harm to the child.

5 SECTION 10. That Chapter 7, Title 32, Idaho Code, be, and the same is
6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
7 ignated as Section 32-717H, Idaho Code, and to read as follows:

8 32-717H. COURT-APPOINTED PROFESSIONALS. Court-appointed profes-
9 sionals shall serve in an advisory capacity only. Final determinations
10 regarding custody, parenting time, and decision-making authority shall re-
11 main with the court. Any report relied on by the court shall be disclosed to
12 both parents, and the author must be made available for cross-examination
13 upon request.

14 SECTION 11. That Chapter 7, Title 32, Idaho Code, be, and the same is
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
16 ignated as Section 32-717I, Idaho Code, and to read as follows:

17 32-717I. SUPERVISED VISITATION -- CHILD CUSTODY. (1) Supervised vis-
18 itation may be ordered in proceedings between parents in which custody and
19 parenting time of a minor child is at issue only upon a judicial finding
20 of probable cause, supported by credible facts, that unsupervised contact
21 poses an immediate risk of physical harm or abuse to the child and that su-
22 pervision is the least restrictive means to protect the child. The court
23 shall not impose conditions that function as supervised visitation without
24 complying with the procedural safeguards of section 32-717B, Idaho Code.

25 (2) Supervision shall not be based solely on allegations, parental con-
26 flict, or lawful parenting disagreements, and the court shall consider all
27 known exculpatory evidence.

28 (3) Supervised visitation shall be reviewed within forty-nine (49)
29 calendar days and may be continued upon written findings supported by clear
30 and convincing evidence of a specific and articulable risk of substantial
31 harm.

32 (4) A continuation of supervised visitation may occur upon written
33 findings based on a review hearing or stipulations. A full evidentiary hear-
34 ing shall not be required unless requested by a party.

35 (5) All supervised visitation orders shall include clear, objective
36 conditions for transition to unsupervised parenting time and periodic re-
37 view at intervals not to exceed ninety (90) days unless otherwise ordered by
38 the court for good cause.

39 (6) Preference shall be given to unpaid supervisors agreed upon by the
40 parties. Professional supervision may be ordered only if no suitable un-
41 paid supervisor is reasonably available, and costs shall be allocated by the
42 court and reviewable upon motion.

43 (7) A parent's legitimate inability to attend supervised visitation
44 shall not be deemed a voluntary relinquishment of time.

45 (8) Compensated supervised access providers shall complete finger-
46 print-based statewide and federal criminal history and abuse registry
47 checks.

1 (9) Nothing in this section shall be construed to permit the use of
2 supervised visitation as a punitive measure, leverage, or a substitute for
3 proof of unfitness, nor construed to shift the burden of proof away from the
4 party seeking restriction.

5 (10) This section applies only to custody and parenting time determina-
6 tions between parents and does not modify, limit, or supersede proceedings
7 under chapter 16, title 16, Idaho Code.

8 SECTION 12. That Chapter 7, Title 32, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 32-721, Idaho Code, and to read as follows:

11 32-721. DEFINITIONS. For the purpose of this chapter:

12 (1) "Adaptive equipment" means equipment used to enhance the parenting
13 capabilities of a parent with a disability.

14 (2) "Custodial parent" means a parent awarded more than substantially
15 equal physical custody of the parent's child, or, if no order exists, the
16 parent providing the child's principal residence more than fifty-five per-
17 cent (55%) of the time.

18 (3) "Custodian" means a parent or other adult recognized by the court
19 as having standing to exercise care, supervision, or custody of a child, in-
20 cluding grandparents in stable, ongoing caregiving arrangements.

21 (4) "Custody" means responsibility for a child, including legal, phys-
22 ical, joint, or sole custody.

23 (5) "Disability" means a mental or physical impairment substantially
24 limiting a major life activity. "Disability" does not include sexual orien-
25 tation, sexual behavior disorders, substance use disorders, compulsive gam-
26 bling, kleptomania, or pyromania.

27 (6) "Equal parental responsibility" means both parents retain full and
28 equal rights to custody, care, control, supervision, education, and deci-
29 sion-making for the child, with the child spending substantially equal time
30 with each parent.

31 (7) "Joint legal custody" means substantially equal and independent
32 decision-making authority unless otherwise specified in a court order.

33 (8) "Joint physical custody" means equal periods of residence or su-
34 pervision, except for temporary deviations for events such as documented
35 travel, military deployment, temporary relocation, or medical conditions.

36 (9) "Legal custody" means the right and responsibility to make major
37 decisions regarding the child's upbringing, including health, education,
38 and welfare.

39 (10) "Non-custodial parent" means a parent with less than forty-five
40 percent (45%) physical custody of the parent's child.

41 (11) "Parent" means a biological or adoptive mother or father whose
42 parental rights are not terminated. "Parent" does not include persons
43 serving in loco parentis, de facto caregivers, temporary guardians, or
44 court-ordered visitation-only persons.

45 (12) "Parentage" means the legal recognition of a person as a parent
46 through birth, adoption, acknowledgment, or adjudication.

47 (13) "Parental fitness" means the ability to provide for the child's
48 health, safety, education, and welfare, including consistent parenting.

1 (14) "Parenthood" means the natural, legal, and fundamental relation-
2 ship from which inherent parental rights arise, existing independently of
3 government creation.

4 (15) "Parenting time" means periods of time during which a parent exer-
5 cises care of and interaction with the child. Parenting time reflects inher-
6 ent parental rights and may be structured by court order.

7 (16) "Physical custody" means the legal allocation of day-to-day care
8 of the child.

9 (17) "Restoration plan" means a written plan or schedule that sets forth
10 the timing, conditions, and process for the restoration or progression of
11 a parent's custody or parenting time to a parent's lawful entitlement under
12 the default custody framework established by law or an otherwise lawful fi-
13 nal custody order.

14 (18) "Safety plan" means a nonbinding, nonadjudicative, temporary pro-
15 posal initiated by a governmental entity or government-affiliated actor.

16 (19) "Sole legal custody" means the exclusive authority to make major
17 decisions regarding the child's upbringing, including health, education,
18 and welfare.

19 (20) "Sole physical custody" means the exclusive right and responsibil-
20 ity for primary residence and daily care of the child, subject to parenting
21 time rights of the other parent.

22 (21) "State" includes the legislative, executive, and judicial
23 branches of government.

24 (22) "Substantially equal parenting time" means both parents have
25 nearly equal physical custody of the child, with each parent having physical
26 custody of the child at least forty-five percent (45%) of the time.

27 (23) "Supportive services" means services that aid a parent with a dis-
28 ability in fulfilling parental responsibilities.

29 SECTION 13. That Chapter 7, Title 32, Idaho Code, be, and the same is
30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
31 ignated as Section 32-722, Idaho Code, and to read as follows:

32 32-722. VIOLATION OF PARENTAL RIGHTS -- REMEDIES. (1) Any custody,
33 parenting time, or visitation order entered in violation of sections 32-717
34 through 32-717I, Idaho Code, including failure to issue required written
35 findings, constitutes reversible error.

36 (2) Upon reversal or other appropriate review, the court shall restore
37 parental rights and parenting time consistent with this chapter and enter a
38 restoration plan pursuant to section 32-717G, Idaho Code, as necessary.

39 (3) The provisions of sections 32-717 through 32-717I, Idaho Code,
40 shall be applied consistently with applicable rules of the court and shall
41 not be diminished through procedural technicalities inconsistent with
42 statutory protections.

43 SECTION 14. That Section 7-1126, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 7-1126. CUSTODY OF CHILDREN -- BEST ~~INTEREST~~ INTERESTS. In any pro-
46 ceeding to determine custody under the provisions of this chapter, the court
47 shall apply sections 32-717 through ~~32-717E~~ 32-717I, Idaho Code. However,

1 the court shall not consider whether or not the mother or father did or did
2 not voluntarily consent to the adoption of the child or to the relinquishment
3 of parental rights in determining the best interest interests of the child.

4 SECTION 15. That Section 32-1704, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 32-1704. COMMENCEMENT OF PROCEEDINGS. (1) A child custody proceeding
7 may be initiated in any court of this state with jurisdiction to determine
8 child custody matters, by an individual:

9 (a) Filing a petition seeking a determination that he or she is a de
10 facto custodian pursuant to section 32-1703, Idaho Code, and seeking
11 custody of a child; or

12 (b) Filing a motion seeking permissive intervention pursuant to rule 24
13 of the Idaho rules of civil procedure, in a pending custody proceeding
14 seeking a determination that he or she is a de facto custodian pursuant
15 to section 32-1703, Idaho Code, and seeking custody of a child.

16 (2) A petition for custody or a motion to intervene based on the peti-
17 tioners or intervenors alleged status as a de facto custodian, filed ~~under~~
18 pursuant to this section, must state and allege:

19 (a) The name and address of the petitioner or intervenor and any prior
20 or other name used by the petitioner or intervenor;

21 (b) The name of the respondent mother and father or guardian(s) and any
22 prior or other name used by the respondent(s) and known to the peti-
23 tioner or intervenor;

24 (c) The name and date of birth of each child for whom custody is sought;

25 (d) The relationship of the petitioner or intervenor to each child for
26 whom custody is sought;

27 (e) The basis for jurisdiction asserted by the petitioner or inter-
28 venor;

29 (f) The current legal and physical custodial status of each child for
30 whom custody is sought, whether a proceeding involving custody of the
31 child, including a proceeding for an order or protection pursuant to
32 section 39-6304, Idaho Code, is pending in a court in this state or else-
33 where, and a list of all prior orders of custody, including temporary
34 orders, if known to the petitioner or intervenor;

35 (g) Whether either parent is a member of the armed services, if known to
36 the petitioner or intervenor;

37 (h) The length of time each child has resided with the petitioner or in-
38 tervenor and the nature of the ~~petitioners~~ petitioner's or ~~intervenors~~
39 intervenor's role in caring for each child for whom custody is sought;

40 (i) The financial support provided by the petitioner or intervenor for
41 each child for whom custody is sought;

42 (j) Whether physical and/or legal custody should be granted to and/or
43 shared with the respondent(s); and

44 (k) The basis ~~upon~~ on which the petitioner or intervenor is claiming
45 that it is in the best interests of the child that the petitioner or in-
46 tervenor have custody of the child.

47 (3) The petition or motion must be verified by the petitioner or inter-
48 venor.

1 (4) Written notice of a hearing on a petition or motion to intervene for
2 custody of a child by a de facto custodian must be given to:

3 (a) The parent(s) of the child, as defined in section 16-2002(11) and
4 (12), Idaho Code; ~~and~~

5 (b) The guardian or legal custodian, if any, of the child; and

6 (c) The child's tribe, pursuant to federal law, if the child is an In-
7 dian child as defined in the Indian child welfare act, 25 U.S.C. 1901, et
8 seq.

9 (5) Written notice of a hearing on a petition for custody of a child by
10 a de facto custodian must be given to the Idaho department of health and wel-
11 fare if the petitioner has reason to believe that either parent receives pub-
12 lic assistance, the petitioner receives public assistance on behalf of the
13 child, or either parent receives child support enforcement services from the
14 Idaho department of health and welfare or applies for such public assistance
15 or child support enforcement services after a petition under this section is
16 filed. Notice to the Idaho department of health and welfare must include a
17 copy of the petition.

18 (6) In an action for custody of a child by a de facto custodian, the par-
19 ties must stipulate to, or the court must find, facts establishing by clear
20 and convincing evidence that the petitioner or intervenor is a de facto cus-
21 todian pursuant to the requirements of section 32-1703, Idaho Code, before
22 the court considers whether custody with the de facto custodian is in the
23 best interests of the child.

24 (7) Once a court has found facts supporting the qualification of the pe-
25 titioner or intervenor as the de facto custodian of a child, the petitioner
26 or intervenor must prove, by a preponderance of the evidence, that it is in
27 the best interests of the child to be in the custody of the de facto custo-
28 dian. In determining the best interests of the child, the court shall ap-
29 ply the standards as provided in ~~section 32-717(1)~~ sections 32-717 through
30 32-717I, Idaho Code.

31 (8) In determining whether the petitioner or intervenor has estab-
32 lished that it is in the best interests of the child to be in the custody of
33 the de facto custodian, the court may also consider:

34 (a) The circumstances under which the child was allowed to remain in the
35 care of the de facto custodian, including whether the child was placed
36 with the de facto custodian to allow the parent to seek work or to attend
37 school; and

38 (b) Whether the child is currently residing with the de facto custodian
39 and, if not, the length of time since the petitioner or intervenor last
40 functioned as the child's de facto custodian.

41 SECTION 16. That Section 32-1705, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 32-1705. NATURE OF DE FACTO CUSTODIAN ORDER -- ACCESS TO RECORDS --
44 TERMINATION OF DE FACTO CUSTODIANSHIP. (1) A court may enter an order grant-
45 ing a de facto custodian sole or joint legal and/or physical custody, as
46 defined in section ~~32-717B(1), (2) and (3)~~ 32-721, Idaho Code, in the same
47 manner as it would grant such custody to a parent.

48 (2) An order granting custody to a de facto custodian is subject to the
49 continuing jurisdiction of the court and is modifiable in the same manner as

1 an order establishing parental custody pursuant to ~~section 32-717~~ sections
2 32-717 through 32-717I, Idaho Code, or a similar provision.

3 (3) A de facto custodian who has been granted sole or joint legal cus-
4 tody of a child shall have access to records pertaining to the child who is
5 the subject of the de facto custodianship to the same extent as a parent would
6 have such access pursuant to an order of legal custody.

7 (4) Any party to the proceeding granting custody to a de facto custodian
8 may move for the termination of the custody order. A de facto custodian may
9 move for permission to resign as de facto custodian.

10 (a) A party moving for termination of the de facto custodian-child re-
11 lationship must show, by a preponderance of the evidence, that termina-
12 tion of the relationship would be in the best interests of the child.

13 (b) A motion for termination or for resignation may, but need not, in-
14 clude a proposal for the continuing custody of the child.

15 (c) After notice and hearing on a motion for termination or resigna-
16 tion, the court may terminate the custody of the de facto custodian and
17 may make any further orders that may be appropriate in the best inter-
18 ests of the child.

19 SECTION 17. That Section 39-6306, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 39-6306. HEARING ON PETITION FOR PROTECTION ORDER -- RELIEF PROVIDED
22 AND REALIGNMENT OF DESIGNATION OF PARTIES. (1) Upon filing of a petition
23 based ~~upon~~ on a sworn affidavit for a protection order, the court shall hold
24 a hearing to determine whether the relief sought shall be granted within
25 fourteen (14) days. If either party is represented by counsel at a hearing
26 seeking entry of a protection order, the court shall permit a continuance,
27 if requested, of the proceedings so that counsel may be obtained by the other
28 party. If the court finds that it is necessary for both parties to be repre-
29 sented by counsel, the court shall enter appropriate orders to ensure that
30 counsel is retained. The order entered may require either the petitioner or
31 respondent, or both, to pay for costs of counsel. Upon a showing that there
32 is an immediate and present danger of domestic violence to the petitioner the
33 court may, if requested, order for a period not to exceed one (1) year that:

34 (a) Temporary custody of the minor children of the petitioner or of the
35 parties be awarded to the petitioner or respondent if exercise of such
36 jurisdiction is consistent with the provisions of section 32-11-204,
37 Idaho Code, and consistent with prior custody orders entered by a court
38 of competent jurisdiction, unless grounds exist pursuant to ~~section~~
39 32-717 sections 32-717 through 32-717I, Idaho Code;

40 (b) A party be restrained from committing acts of domestic violence;

41 (c) Exclude the respondent from the dwelling which the parties share or
42 from the residence of the petitioner;

43 (d) The respondent be ordered to participate in treatment or counsel-
44 ing services. The council on domestic violence, in recognition of the
45 particular treatment requirements for batterers, shall develop minimal
46 program and treatment standards to be used as guidelines for recommend-
47 ing approval of batterer programs to the court;

1 (e) Other relief be ordered as the court deems necessary for the protec-
2 tion of a family or household member, including orders or directives to
3 a peace officer, as allowed under this chapter;

4 (f) The respondent be required to pay service fees, and to reimburse the
5 petitioner for costs incurred in bringing the action, including a rea-
6 sonable attorney's fee;

7 (g) The respondent be restrained from harassing, annoying, disturbing
8 the peace of, telephoning, contacting, or otherwise communicating,
9 directly or indirectly, with the petitioner and any designated family
10 member or specifically designated person of the respondent's house-
11 hold, including the minor children whose custody is awarded to the
12 petitioner;

13 (h) The respondent be restrained from entering any premises when it
14 appears to the court that such restraint is necessary to prevent the
15 respondent from contacting, harassing, annoying, disturbing the peace
16 of, or telephoning the petitioner or the minor children whose custody is
17 awarded to the petitioner; and/or

18 (i) The respondent be restrained from coming within one thousand five
19 hundred (1,500) feet or other appropriate distance of the petitioner,
20 the petitioner's residence, the school or place of employment of the pe-
21 titioner, or any specified place frequented by the petitioner and by any
22 other designated family member or specifically designated person of the
23 respondent's household, including the minor children whose custody is
24 awarded to the petitioner.

25 (2) Immediate and present danger under this section includes, but is
26 not limited to, situations in which the respondent has recently threatened
27 the petitioner with bodily harm or engaged in domestic violence against the
28 petitioner or where there is reasonable cause to believe bodily harm may re-
29 sult.

30 (3) No order made under pursuant to this chapter shall in any manner af-
31 fect title to real property.

32 (4) Relief shall not be denied because petitioner used reasonable force
33 in self-defense against respondent, or because petitioner or respondent was
34 a minor at the time of the incident of domestic violence.

35 (5) Any relief granted by the protection order, other than a judgment
36 for costs, shall be for a fixed period not to exceed one (1) year; provided,
37 that an order obtained pursuant to this chapter may, upon motion and upon
38 good cause shown, continue for an appropriate time period as directed by the
39 court or be made permanent if the requirements of this chapter are met, pro-
40 vided the order may be terminated or modified by further order of the court
41 either on written stipulation filed with the court or on the motion of a party
42 and after a hearing on the motion. The motion to renew an order may be granted
43 without a hearing, if not timely objected to by the party against whom the or-
44 der was entered.

45 (6) In providing relief under pursuant to this chapter, the court may
46 realign the designation of the parties as "petitioner" and "respondent"
47 where the court finds that the original petitioner is the abuser and the
48 original respondent is the victim of domestic violence.

1 SECTION 18. APPLICABILITY. The provisions of this act shall apply to
2 court orders regarding child custody, parenting time, or visitation deter-
3 minations first entered or modified on and after January 1, 2027.

4 SECTION 19. This act shall be in full force and effect on and after Jan-
5 uary 1, 2027.