

TITLE 32
DOMESTIC RELATIONS

CHAPTER 10
PARENT AND CHILD

32-1001. ALLOWANCE TO PARENT FOR SUPPORT OF CHILD. The proper court may direct an allowance to be made to the parent of a child, out of its property for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

[(32-1001) R.S., sec. 2530; reen. R.C. & C.L., sec. 2694; C.S., sec. 4675; I.C.A., sec. 31-1001.]

32-1003. LIABILITY OF PARENT FOR CHILD'S NECESSARIES. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent.

[(32-1003) R.S., sec. 2532; reen. R.C. & C.L., sec. 2696; C.S., sec. 4677; I.C.A., sec. 31-1003.]

32-1004. WAGES OF MINORS. The wages of a minor employed in service may be paid to him, unless, within thirty (30) days after the commencement of the service the parent or guardian entitled thereto gives the employer notice that he claims such wages.

[(32-1004) R.S., sec. 2533; reen. R.C. & C.L., sec. 2697; C.S., sec. 4678; I.C.A., sec. 31-1004.]

32-1005. CUSTODY OF CHILDREN AFTER SEPARATION OF PARENTS. (1) When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the welfare of the child.

(2) As used in this chapter:

(a) "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.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the affect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as braille texts or sign language interpreters.

(3) Nothing in this chapter shall be construed to allow discrimination on the basis of disability. If a parent has a disability as defined in this chapter the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. In any case where the disability of a parent is found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what affect, if any, the court finds the disability has on the best interests of the child.

[(32-1005) R.S., sec. 2534; reen. R.C. & C.L., sec. 2698; C.S., sec. 4679; I.C.A., sec. 31-1005; am. 2002, ch. 232, sec. 2, p. 665.]

32-1006. LEGITIMATION OF ISSUE BY MARRIAGE. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

[(32-1006) 1876, p. 24, sec. 21; R.S., sec. 2535; reen. R.C. & C.L., sec. 2699; C.S., sec. 4680; I.C.A., sec. 31-1006.]

32-1007. RIGHTS OF PARENTS OVER CHILDREN. The father and mother of a legitimate unmarried minor child are equally entitled to its custody, services and earnings. If either the father or mother be dead or be unable or refuse to take the custody or has abandoned his or her family, the other is entitled to the child's custody, services and earnings.

[(32-1007) R.C., sec. 2699a, as added by 1915, ch. 120, sec. 1, p. 265; compiled and reen. C.L., sec. 2699a; C.S., sec. 4681; I.C.A., sec. 31-1007.]

32-1009. PATERNITY FRAUD -- CHILD SUPPORT RESTITUTION. Notwithstanding any other provision of law to the contrary, a court shall vacate a child support order if the court finds, by clear and convincing evidence, that the moving party is not the biological father of the child who is the subject of the support order, and that the obligee knowingly and intentionally misrepresented the paternity of the child to the obligor. The obligor shall file the motion to vacate the order within two (2) years of discovery of evidence that he is not the biological father of the child. If the order is vacated, the obligor may bring an action in court against the obligee or the true biological father of the child to obtain restitution for child support previously paid pursuant to the order.

[32-1009, added 2004, ch. 274, sec. 1, p. 764.]

32-1010. INTENT OF THE LEGISLATURE -- PARENTAL RIGHTS. (1) The interests and role of parents in the care, custody and control of their children are both implicit in the concept of ordered liberty and deeply rooted in our nation's history and tradition. They are also among the unalienable rights retained by the people under the ninth amendment to the constitution of the United States.

(2) The interests of the parents includes the high duty and right to nurture and direct their children's destiny, including their upbringing and education.

(3) The state of Idaho has independent authority to protect its parents' fundamental right to nurture and direct their children's destiny, upbringing and education.

(4) The protections and rights recognized in sections [32-1011](#) through [32-1013](#), Idaho Code, are rooted in the due process of law guaranteed pursuant to section 13, article I, of the constitution of the state of Idaho.

(5) Governmental efforts that restrict or interfere with these fundamental rights are only permitted if that restriction or interference satisfies the strict scrutiny standard provided in section [32-1013](#), Idaho Code.

(6) Nothing in this act shall be construed as altering the established presumption in favor of the constitutionality of statutes and regulations.

[32-1010, added 2015, ch. 219, sec. 1, p. 681.]

32-1011. PARENTAL RIGHT TO THE CARE, CUSTODY AND CONTROL OF CHILDREN. Parents who have legal custody of any minor child or children have the fundamental right to make decisions concerning their care, custody and control.

[32-1011, added 2015, ch. 219, sec. 2, p. 681.]

32-1012. PARENTAL RIGHT TO DIRECT THE EDUCATION OF CHILDREN. Parents who have legal custody of any minor child or children have the fundamental right and duty to make decisions concerning their education, including the right to cause the child to be educated in any manner authorized under section [33-202](#), Idaho Code, and section 9, article IX, of the constitution of the state of Idaho.

[32-1012, added 2015, ch. 219, sec. 3, p. 681.]

32-1013. INTERFERENCE WITH FUNDAMENTAL PARENTAL RIGHTS RESTRICTED. (1) Neither the state of Idaho, nor any political subdivision thereof, may violate a parent's fundamental and established rights protected by this act, and any restriction of or interference with such rights shall not be upheld unless it demonstrates by clear and convincing evidence that the restriction or interference is both:

- (a) Essential to further a compelling governmental interest; and
- (b) The least restrictive means available for the furthering of that compelling governmental interest.

(2) The foregoing principles apply to any interference whether now existing or hereafter enacted.

(3) Nothing in this act shall be construed as invalidating the provisions of the child protective act in [chapter 16, title 16](#), Idaho Code, or modify the burden of proof at any stage of proceedings under the child protective act.

(4) When a parent's fundamental rights protected by this act are violated, a parent may assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against the governmental entity.

(5) If a parent prevails in a civil action against the state, or a political subdivision thereof, as provided in subsection (4) of this section, the parent is entitled to reasonable attorney's fees and costs.

[32-1013, added 2015, ch. 219, sec. 4, p. 681.]