

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 522

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO JUVENILE PROCEEDINGS; AMENDING SECTION 16-1504, IDAHO CODE, TO  
2 PROVIDE THAT CONSENT TO ADOPTION IS REQUIRED FROM CERTAIN COURTS AND TO  
3 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 16-1616, IDAHO CODE, TO  
4 PROVIDE CERTAIN NOTICE AND REPORTING REQUIREMENTS; AMENDING CHAPTER  
5 16, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1616A,  
6 IDAHO CODE, TO PROVIDE REQUIREMENTS REGARDING NOTIFICATION TO RELA-  
7 TIVES; AMENDING SECTION 16-1619, IDAHO CODE, TO PROVIDE FOR JUDICIAL  
8 APPROVAL OF ALL MATTERS REGARDING THE CUSTODY OF CERTAIN CHILDREN,  
9 INCLUDING THE PLACEMENT AND CHANGE IN PLACEMENT OF SUCH CHILDREN;  
10 AMENDING SECTION 16-1621, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIRE-  
11 MENTS REGARDING CASE PLANS; AMENDING SECTION 16-1624, IDAHO CODE, TO  
12 PROVIDE THAT CERTAIN ADOPTIONS MUST BE SANCTIONED BY THE COURT; AMEND-  
13 ING SECTION 16-1629, IDAHO CODE, TO PROVIDE FOR JUDICIAL APPROVAL OF  
14 CERTAIN DETERMINATIONS AND TO REVISE AND ESTABLISH PROVISIONS REGARD-  
15 ING THE PLACEMENT PRIORITY AND CONSIDERATIONS FOR CERTAIN CHILDREN;  
16 AMENDING SECTION 16-2010, IDAHO CODE, TO PROVIDE THAT CERTAIN ADOPTIONS  
17 MUST BE SANCTIONED BY THE COURT; AMENDING SECTION 39-1221, IDAHO CODE,  
18 TO ESTABLISH PROVISIONS REGARDING A REMOVAL AND CHANGE IN FOSTER HOME  
19 PLACEMENT; AND DECLARING AN EMERGENCY.  
20

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

22 SECTION 1. That Section 16-1504, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 16-1504. NECESSARY CONSENT TO ADOPTION. (1) Consent to adoption is re-  
25 quired from:

26 (a) The adoptee, if he is more than twelve (12) years of age, unless he  
27 does not have the mental capacity to consent;

28 (b) Both parents or the surviving parent of an adoptee who was conceived  
29 or born within a marriage, unless the adoptee is eighteen (18) years of  
30 age or older;

31 (c) The mother of an adoptee born outside of marriage;

32 (d) Any biological parent who has been adjudicated to be the child's  
33 biological father by a court of competent jurisdiction prior to the  
34 mother's execution of consent;

35 (e) An unmarried biological father of an adoptee only if the require-  
36 ments and conditions of subsection (2) (a) or (b) of this section have  
37 been proven;

38 (f) A court that had jurisdiction over the adoptee pursuant to chapter  
39 16, title 16, Idaho Code;

40 (g) Any legally appointed custodian or guardian of the adoptee;

41 (h) The guardian or conservator of an incapacitated adult, if one has  
42 been appointed;

1       (~~h~~i) The adoptee's spouse, if any;

2       (~~i~~j) An unmarried biological father who has filed a voluntary acknowl-  
3       edgment of paternity with the vital statistics unit of the department of  
4       health and welfare pursuant to section 7-1106, Idaho Code; and

5       (~~j~~k) The father of an illegitimate child who has adopted the child by  
6       acknowledgment.

7       (2) In accordance with subsection (1) of this section, the consent of  
8       an unmarried biological father is necessary only if the father has strictly  
9       complied with all requirements of this section.

10      (a) (i) With regard to a child who is placed with adoptive parents more  
11         than six (6) months after birth, an unmarried biological father  
12         shall have developed a substantial relationship with the child,  
13         taken some measure of responsibility for the child and the child's  
14         future, and demonstrated a full commitment to the responsibili-  
15         ties of parenthood by financial support of the child, of a fair and  
16         reasonable sum and in accordance with the father's ability, when  
17         not prevented from doing so by the person or authorized agency hav-  
18         ing lawful custody of the child, and either:

19             1. Visiting the child at least monthly when physically and  
20             financially able to do so, and when not prevented from doing  
21             so by the person or authorized agency having lawful custody  
22             of the child; or

23             2. ~~Have~~ Having regular communication with the child or with  
24             the person or agency having the care or custody of the child,  
25             when physically and financially unable to visit the child,  
26             and when not prevented from doing so by the person or autho-  
27             rized agency having lawful custody of the child.

28      (ii) The subjective intent of an unmarried biological father,  
29         whether expressed or otherwise, unsupported by evidence of acts  
30         specified in this subsection shall not preclude a determination  
31         that the father failed to meet any one (1) or more of the require-  
32         ments of this subsection.

33      (iii) An unmarried biological father who openly lived with the  
34         child for a period of six (6) months within the one (1) year period  
35         after the birth of the child and immediately preceding placement  
36         of the child with adoptive parents, and who openly held himself out  
37         to be the father of the child during that period, shall be deemed  
38         to have developed a substantial relationship with the child and to  
39         have otherwise met all of the requirements of this subsection.

40      (b) With regard to a child who is under six (6) months of age at the  
41         time he is placed with adoptive parents, an unmarried biological father  
42         shall have manifested a full commitment to his parental responsibil-  
43         ities by performing all of the acts described in this subsection and  
44         prior to the date of the filing of any proceeding to terminate the  
45         parental rights of the birth mother; the filing of any proceeding to  
46         adopt the child; or the execution of a consent to terminate the birth  
47         mother's parental rights under the provisions of section 16-2005(4),  
48         Idaho Code, whichever occurs first. The father shall have strictly com-  
49         plied with all of the requirements of this subsection by:

1 (i) Filing proceedings to establish paternity under section  
2 7-1111, Idaho Code, and filing with that court a sworn affidavit  
3 stating that he is fully able and willing to have full custody of  
4 the child, setting forth his plans for the care of the child, and  
5 agreeing to a court order of child support and the payment of ex-  
6 penses incurred in connection with the mother's pregnancy and the  
7 child's birth;

8 (ii) Filing a notice of the proceedings to establish his pater-  
9 nity of the child with the vital statistics unit of the department  
10 of health and welfare pursuant to section 16-1513, Idaho Code; and

11 (iii) If he had actual knowledge of the pregnancy, paying a fair  
12 and reasonable amount of the expenses incurred in connection with  
13 the mother's pregnancy and the child's birth, in accordance with  
14 his means, and when not prevented from doing so by the person or  
15 authorized agency having lawful custody of the child.

16 (3) An unmarried biological father whose consent is required under sub-  
17 section (1) or (2) of this section may nevertheless lose his right to consent  
18 if the court determines, in accordance with the requirements and procedures  
19 of the termination of parent and child relationship act, sections 16-2001  
20 through 16-2015, Idaho Code, that his rights should be terminated, based on  
21 the petition of any party as set forth in section 16-2004, Idaho Code.

22 (4) In any adoption proceeding pertaining to a child born out of wed-  
23 lock, if there is no showing that an unmarried biological father has con-  
24 sented to or waived his rights regarding a proposed adoption, the petitioner  
25 shall file with the court a certificate from the vital statistics unit of the  
26 department of health and welfare, signed by the state registrar of vital sta-  
27 tistics, stating that a diligent search has been made of the registry of no-  
28 tices from putative fathers, of a child born out of wedlock, and that the pu-  
29 tative father involved has not filed notice of the proceedings to establish  
30 his paternity, or if a filing is found, stating the name of the putative fa-  
31 ther and the time and date of filing. That certificate shall be filed with  
32 the court prior to the entrance of the final decree of adoption.

33 (5) An unmarried biological father who does not fully and strictly com-  
34 pply with each of the conditions provided in this section is deemed to have  
35 waived and surrendered any right in relation to the child, including the  
36 right to notice of any judicial proceeding in connection with the adoption of  
37 the child, or for termination of parental rights and his consent to the adop-  
38 tion of the child is not required unless he proves, by clear and convincing  
39 evidence, all of the following:

40 (a) It was not possible for him, prior to the filing of a proceeding to  
41 terminate parental rights of the birth mother; the filing of any pro-  
42 ceeding to adopt the child; or the execution of a consent to terminate  
43 the birth mother's parental rights under the provisions of section  
44 16-2005(4), Idaho Code, whichever occurs first, to:

45 (i) Commence proceedings to establish paternity of his child in  
46 accordance with section 7-1111, Idaho Code; and

47 (ii) File notice of the filing of proceedings to establish his  
48 paternity of the child with the vital statistics unit of the de-  
49 partment of health and welfare in accordance with section 16-1513,  
50 Idaho Code;

1 (b) His failure to timely file notice of the filing of proceedings to  
2 establish his paternity of the child with the vital statistics unit  
3 of the department of health and welfare in accordance with section  
4 16-1513, Idaho Code, and his failure to commence timely proceedings to  
5 establish paternity of his child in accordance with section 7-1111,  
6 Idaho Code, was through no fault of his own; and

7 (c) He filed notice of the filing of proceedings to establish pater-  
8 nity of his child in accordance with section 7-1111, Idaho Code, with  
9 the vital statistics unit of the department of health and welfare in ac-  
10 cordance with section 16-1513, Idaho Code, and filed proceedings to es-  
11 tablish his paternity of the child within ten (10) days after the birth  
12 of the child. Lack of knowledge of the pregnancy is not an acceptable  
13 reason for his failure to timely file notice of the commencement of pro-  
14 ceedings or for his failure to commence timely proceedings.

15 (6) A minor parent has the power to consent to the adoption of his or her  
16 child. That consent is valid and has the same force and effect as a consent  
17 executed by an adult parent. A minor parent, having executed a consent, can-  
18 not revoke that consent upon reaching the age of majority or otherwise becom-  
19 ing emancipated.

20 (7) No consent shall be required of, nor notice given to, any person  
21 whose parental relationship to such child shall have been terminated in  
22 accordance with the provisions of either chapter 16 or 20, title 16, Idaho  
23 Code, or by a court of competent jurisdiction of a sister state under like  
24 proceedings; or in any other manner authorized by the laws of a sister state.  
25 Where a voluntary child placement agency licensed by the state in which it  
26 does business is authorized to place a child for adoption and to consent  
27 to such child's adoption under the laws of such state, the consent of such  
28 agency to the adoption of such child in a proceeding within the state of Idaho  
29 shall be valid and no further consents or notices shall be required.

30 (8) The legislature finds that an unmarried biological father who re-  
31 sides in another state may not, in every circumstance, be reasonably pre-  
32 sumed to know of, and strictly comply with, the requirements of this chapter.  
33 Therefore, when all of the following requirements have been met, that unmar-  
34 ried biological father may contest an adoption prior to finalization of the  
35 decree of adoption and assert his interest in the child:

36 (a) The unmarried biological father resides and has resided in another  
37 state where the unmarried mother was also located or resided;

38 (b) The mother left that state without notifying or informing the un-  
39 married biological father that she could be located in the state of  
40 Idaho;

41 (c) The unmarried biological father has, through every reasonable  
42 means, attempted to locate the mother but does not know or have reason to  
43 know that the mother is residing in the state of Idaho; and

44 (d) The unmarried biological father has complied with the most strin-  
45 gent and complete requirements of the state where the mother previously  
46 resided or was located in order to protect and preserve his parental in-  
47 terest and rights in the child in cases of adoption.

48 (9) An unmarried biological father may, under the provisions of section  
49 7-1107, Idaho Code, file a proceeding to establish his paternity prior to the  
50 birth of the child; however, such paternity proceeding must be filed prior to

1 the date of the filing of any proceeding to terminate parental rights of the  
2 birth mother; the filing of any proceeding to adopt the child; or the execu-  
3 tion of a consent to terminate the birth mother's parental rights under the  
4 provisions of section 16-2005(4), Idaho Code, whichever occurs first.

5 SECTION 2. That Section 16-1616, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 16-1616. INVESTIGATION. (1) After a petition has been filed, the de-  
8 partment shall investigate the circumstances of the child and his family and  
9 prepare a written report to the court.

10 (2) Within thirty (30) days of the child's removal, the department  
11 shall notify all of the child's adult relatives who are known or who become  
12 known after a diligent search by the department. Such notice shall include,  
13 but need not be limited to, a clear statement of the relatives' options to  
14 become a placement source for the child if need be, a clear statement that  
15 the relative has forty-five (45) days to respond to the notice and a clear  
16 explanation of the provisions of section 16-1616A, Idaho Code.

17 (3) The report shall be delivered to the court with copies to each of  
18 the parties prior to the pretrial conference for the adjudicatory hearing.  
19 If delivered by mail the report must be received by the court and the parties  
20 prior to the pretrial conference for the adjudicatory hearing.

21 (4) The report shall contain a social evaluation of the child and the  
22 parents or other legal custodian, a list of the child's adult relatives and a  
23 description of the contact or attempted contact made with such relatives and  
24 such other information as the court shall require.

25 (35) The report shall not be considered by the court for purposes of  
26 determining whether the child comes within the jurisdiction of the act. The  
27 report may be admitted into evidence at the adjudicatory hearing for other  
28 purposes.

29 SECTION 3. That Chapter 16, Title 16, 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 16-1616A, Idaho Code, and to read as follows:

32 16-1616A. NOTIFICATION TO RELATIVES. (1) A relative who was sent no-  
33 tice from the department pursuant to section 16-1616, Idaho Code, shall have  
34 forty-five (45) days to reply to such notice.

35 (2) If a relative timely replies to the notice indicating that he or she  
36 is willing to provide placement for the child, then the department shall com-  
37 plete an assessment of such relative's fitness to provide placement for the  
38 child within ninety (90) days from the date the department receives such re-  
39 ply. If, based on the assessment, the department determines that a relative  
40 is unfit to provide placement for the child, then it shall provide written  
41 notice to such relative that sets forth the reasons for the determination  
42 and clearly states that the department shall not be required to reassess such  
43 relative in the temporary or permanent placement of the child.

44 (3) If a relative timely replies to the notice indicating that he or  
45 she is unwilling to provide placement for the child, then the department  
46 shall not be required to reconsider such relative for temporary or permanent  
47 placement of the child.

1 (4) At the initial six (6) month review hearing held pursuant to section  
2 16-1622, Idaho Code, the department shall report its complete investigation  
3 of relatives to the court. The court shall determine whether the department  
4 has made reasonable and ongoing efforts to notify all adult relatives as re-  
5 quired by section 16-1616, Idaho Code, and to assess relatives as required  
6 by this section. If the court determines that the department has made such  
7 efforts and assessments, then the court may authorize the department to sus-  
8 pend further efforts to contact the child's relatives.

9 SECTION 4. That Section 16-1619, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 16-1619. ADJUDICATORY HEARING -- CONDUCT OF HEARING -- CONSOLIDA-  
12 TION. (1) When a petition has been filed, the court shall set an adjudicatory  
13 hearing to be held no later than thirty (30) days after the filing of the  
14 petition.

15 (2) A pretrial conference shall be held outside the presence of the  
16 court within three (3) to five (5) days before the adjudicatory hearing.  
17 Investigative reports required under section 16-1616, Idaho Code, shall be  
18 delivered to the court with copies to each of the parents and other legal cus-  
19 todians, guardian ad litem and attorney for the child prior to the pretrial  
20 conference.

21 (3) At the adjudicatory hearing, parents or guardians with disabil-  
22 ities shall have the right to introduce admissible evidence regarding how  
23 use of adaptive equipment or supportive services may enable the parent or  
24 guardian to carry out the responsibilities of parenting the child by ad-  
25 dressing the reason for the removal of the child.

26 (4) If a preponderance of the evidence at the adjudicatory hearing  
27 shows that the child comes within the court's jurisdiction under this chap-  
28 ter upon the grounds set forth in section 16-1603, Idaho Code, the court  
29 shall so decree and in its decree shall make a finding on the record of the  
30 facts and conclusions of law upon which it exercises jurisdiction over the  
31 child.

32 (5) Upon entering its decree the court shall consider any information  
33 relevant to the disposition of the child but in any event shall:

34 (a) Place the child under the protective supervision of the department  
35 for an indeterminate period not to exceed the child's eighteenth birth-  
36 day; or

37 (b) Vest legal custody in the department or other authorized agency  
38 subject to residual parental rights and subject to full judicial ~~review~~  
39 approval by the court of all matters relating to the custody of the child  
40 by the department or other authorized agency including, but not limited  
41 to, the temporary and permanent placement of the child and any changes  
42 in the placement of the child.

43 (6) If the court vests legal custody in the department or other autho-  
44 rized agency, the court shall make detailed written findings based on facts  
45 in the record, that, in addition to the findings required in subsection (4)  
46 of this section, continuation of residence in the home would be contrary to  
47 the welfare of the child and that vesting legal custody with the department  
48 or other authorized agency would be in the best interests of the child. In  
49 addition the court shall make detailed written findings based on facts in the

1 record as to whether the department made reasonable efforts to prevent the  
2 placement of the child in foster care, including findings, when appropriate,  
3 that:

4 (a) Reasonable efforts were made but were not successful in eliminating  
5 the need for foster care placement of the child;

6 (b) The department made reasonable efforts to prevent removal but was  
7 not able to safely provide preventive services;

8 (c) Reasonable efforts to temporarily place the child with related per-  
9 sons were made but were not successful; or

10 (d) Reasonable efforts to reunify the child with one (1) or both parents  
11 were not required because aggravated circumstances were present. If  
12 aggravated circumstances are found, a permanency hearing for the child  
13 shall be held within thirty (30) days of the determination of aggravated  
14 circumstances.

15 (7) A decree vesting legal custody in the department shall be binding  
16 upon the department and may continue until the child's eighteenth birthday.

17 (8) A decree vesting legal custody in an authorized agency other than  
18 the department shall be for a period of time not to exceed the child's eigh-  
19 teenth birthday, and on such other terms as the court shall state in its de-  
20 cree to be in the best interests of the child and which the court finds to be  
21 acceptable to such authorized agency.

22 (9) In order to preserve the unity of the family system and to ensure the  
23 best interests of the child whether issuing an order of protective supervi-  
24 sion or an order of legal custody, the court may consider extending or initi-  
25 ating a protective order as part of the decree. The protective order shall be  
26 determined as in the best interests of the child and upon a showing of contin-  
27 uing danger to the child. The conditions and terms of the protective order  
28 shall be clearly stated in the decree.

29 (10) If the court does not find that the child comes within the jurisdic-  
30 tion of this chapter pursuant to subsection (4) of this section it shall dis-  
31 miss the petition.

32 SECTION 5. That Section 16-1621, Idaho Code, be, and the same is hereby  
33 amended to read as follows:

34 16-1621. CASE PLAN HEARING -- NO FINDING OF AGGRAVATED CIRCUM-  
35 STANCES. (1) In every case in which the child is determined to be within the  
36 jurisdiction of the court, and there is no judicial determination that ag-  
37 gravated circumstances were present, the department shall prepare a written  
38 case plan, including cases in which the parent (s) is incarcerated. The court  
39 shall schedule a case plan hearing to be held within thirty (30) days after  
40 the adjudicatory hearing. The case plan shall be filed with the court no  
41 later than five (5) days prior to the case plan hearing. Copies of the case  
42 plan shall be delivered to the parents and other legal guardians, the prose-  
43 cuting attorney or deputy attorney general, the foster parents, the guardian  
44 ad litem and attorney for the child. The court shall hold a case plan hearing  
45 to determine whether the best interest of the child is served by adopting,  
46 rejecting or modifying the case plan proposed by the department.

47 (2) Notice of the case plan hearing shall be provided to the parents,  
48 and other legal guardians, the prosecuting attorney or deputing attorney  
49 general, guardian ad litem, attorney for the child, the department and fos-

1 ter parents. Although foster parents are provided notice of this hearing,  
2 they are not parties to the child protective act action.

3 (3) If the child is placed in the legal custody of the department, the  
4 case plan filed by the department shall set forth reasonable efforts that  
5 will be made to make it possible for the child to return home. The case plan  
6 shall also:

7 (a) Identify the services to be provided to the child, including ser-  
8 vices to identify and meet any special educational, emotional, physical  
9 or developmental needs the child may have, to assist the child in ad-  
10 justing to the placement or to ensure the stability of the placement.

11 (b) Address options for maintaining the child's connection to the com-  
12 munity, including individuals with a significant relationship to the  
13 child, and organizations or community activities with which the child  
14 has a significant connection.

15 (c) Include a goal of reunification and a plan for achieving that  
16 goal. The reunification plan shall identify all issues that need to  
17 be addressed before the child can safely be returned home without de-  
18 partment supervision. The court may specifically identify issues to  
19 be addressed by the plan. The reunification plan shall specifically  
20 identify the tasks to be completed by the department, each parent or  
21 others to address each issue, including services to be made available  
22 by the department to the parents and in which the parents are required  
23 to participate, and deadlines for completion of each task. The case  
24 plan shall state with specificity the role of the department toward each  
25 parent. When appropriate, the reunification plan should identify terms  
26 for visitation, supervision of visitation and child support.

27 (d) Include a concurrent permanency goal and a plan for achieving that  
28 goal in the event the primary goal of reunification fails or is deter-  
29 mined by the court to no longer be appropriate. The concurrent perma-  
30 nency goal may be one (1) of the following: termination of parental  
31 rights and adoption, guardianship or another planned permanent living  
32 arrangement. The concurrent permanency plan shall:

33 (i) Address all options for permanent placement of the child,  
34 including consideration of options for in-state and out-of-state  
35 placement of the child;

36 (ii) Address the advantages and disadvantages of each option and  
37 include a recommendation as to which option is in the child's best  
38 interest;

39 (iii) Specifically identify the actions necessary to implement  
40 the recommended option;

41 (iv) Specifically set forth a schedule for accomplishing the ac-  
42 tions necessary to implement the concurrent permanency goal;

43 (v) Address options for maintaining the child's connection to the  
44 community, including individuals with a significant relationship  
45 to the child, and organizations or community activities with which  
46 the child has a significant connection;

47 (vi) In the case of a child who has attained the age of sixteen (16)  
48 years, include the services needed to assist the child to make the  
49 transition from foster care to independent living; and



1 (vii) Identify further investigation necessary to identify or as-  
2 sess other options for permanent placement, to identify actions  
3 necessary to implement the recommended placement or to identify  
4 options for maintaining the child's significant connections.

5 (4) If the child has been placed under protective supervision of the de-  
6 partment, the case plan, filed by the department, shall:

7 (a) Identify the services to be provided to the child, including ser-  
8 vices to identify and meet any special educational, emotional, physi-  
9 cal or developmental needs the child may have, to assist the child in  
10 adjusting to the placement or to ensure the stability of the placement.  
11 The plan shall also address options for maintaining the child's connec-  
12 tion to the community, including individuals with a significant rela-  
13 tionship to the child, and organizations or community activities with  
14 which the child has a significant connection.

15 (b) Identify all issues that need to be addressed to allow the child to  
16 remain at home without department supervision. The court may specifi-  
17 cally identify issues to be addressed by the plan. The case plan shall  
18 specifically identify the tasks to be completed by the department, the  
19 parents or others to address each issue, including services to be made  
20 available by the department to the parents and in which the parents are  
21 required to participate, and deadlines for completion of each task. The  
22 plan shall state with specificity the role of the department toward each  
23 parent.

24 (5) The case plan, as approved by the court, shall be entered into the  
25 record as an order of the court. The court shall not approve any case plan  
26 that does not contain a concurrent permanency plan. The order may include  
27 interim and final deadlines for implementing the case plan and finalizing  
28 the permanency goal. The court's order shall provide that reasonable ef-  
29 forts shall be made to reunify the family in a timely manner in accordance  
30 with the case plan. Unless the child has been placed under the protective  
31 supervision of the department, the court's order shall also require the de-  
32 partment to simultaneously take steps to accomplish the goal of reunifica-  
33 tion and the concurrent permanency goal.

34 (6) If the primary reunification plan contained in the case plan fails  
35 or is determined by the court to no longer be appropriate, then the concu-  
36 rent permanency plan contained in the case plan shall become the primary  
37 plan. If the department seeks to make any changes to the concurrent perma-  
38 nency plan after it has become the primary plan, then the department shall  
39 first file with the court an amended permanency plan setting forth all of  
40 the information required in subsection (3) (d) of this section. The court  
41 shall schedule an amended permanency plan hearing to be held within thirty  
42 (30) days after the filing. Copies of the amended permanency plan shall be  
43 delivered to the parents and other legal guardians, the prosecuting attor-  
44 ney or deputy attorney general, the foster parents, the guardian ad litem  
45 and attorney for the child. The court shall hold an amended permanency plan  
46 hearing to determine whether the best interests of the child are served by  
47 adopting, rejecting or modifying the amended permanency plan proposed by the  
48 department.

49 SECTION 6. That Section 16-1624, Idaho Code, be, and the same is hereby  
50 amended to read as follows:

1 16-1624. TERMINATION OF PARENT-CHILD RELATIONSHIP. (1) If the child  
2 has been placed in the legal custody of the department or under its protec-  
3 tive supervision pursuant to section 16-1619, Idaho Code, the department may  
4 petition the court for termination of the parent and child relationship in  
5 accordance with chapter 20, title 16, Idaho Code. A petition to terminate  
6 parental rights shall be filed in the child protective act case.

7 (2) A petition to terminate parental rights shall be filed within  
8 thirty (30) days of an order approving a permanency plan with a permanency  
9 goal of termination of parental rights and adoption.

10 (3) Unless there are compelling reasons it would not be in the best in-  
11 terest of the child, the department shall be required to file a petition to  
12 terminate parental rights within thirty (30) days of a judicial determina-  
13 tion that an infant has been abandoned or that reasonable efforts are not re-  
14 quired because aggravated circumstances were present.

15 (4) The department shall join as a party to the petition if such a peti-  
16 tion to terminate is filed by another party; as well as to concurrently iden-  
17 tify, recruit, process and approve a qualified family for adoption unless  
18 it is determined that such actions would not be in the best interest of the  
19 child, or the child is placed with a fit and willing relative.

20 (5) If termination of parental rights is granted and the child is placed  
21 in the guardianship or legal custody of the department, the court, upon pe-  
22 tition, shall conduct a hearing as to the future status of the child within  
23 twelve (12) months of the order of termination of parental rights, and every  
24 twelve (12) months subsequently until the child is adopted as sanctioned by  
25 the court or is in a placement sanctioned by the court.

26 (6) The court may authorize the department to suspend further efforts  
27 to reunify the child with the child's parent, pending further order of the  
28 court, when a petition to terminate parental rights has been filed with re-  
29 gard to the child.

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

32 16-1629. POWERS AND DUTIES OF THE DEPARTMENT. The department, working  
33 in conjunction with the court and other public and private agencies and per-  
34 sons, shall have the primary responsibility to implement the purpose of this  
35 chapter. To this end, the department is empowered and shall have the duty to  
36 do all things reasonably necessary to carry out the purpose of this chapter,  
37 including, but not limited to, the following:

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

44 (2) On December 1, the department shall make an annual statistical  
45 report to the governor covering the preceding fiscal year showing the num-  
46 ber and status of persons in its custody and including such other data as  
47 will provide sufficient facts for sound planning in the conservation of  
48 children and youth. All officials and employees of the state and of every  
49 county and city shall furnish the department, upon request, such information

1 within their knowledge and control as the department deems necessary. Local  
2 agencies shall report in such uniform format as may be required by the  
3 department.

4 (3) The department shall be required to maintain a central registry for  
5 the reporting of child neglect, abuse and abandonment information. Provided  
6 however, that the department shall not retain any information for this pur-  
7 pose relating to a child, or parent of a child, abandoned pursuant to chapter  
8 82, title 39, Idaho Code.

9 (4) The department shall make periodic evaluation of all persons in its  
10 custody or under its protective supervision for the purpose of determining  
11 whether existing orders and dispositions in individual cases shall be modi-  
12 fied or continued in force. Evaluations may be made as frequently as the de-  
13 partment considers desirable and shall be made with respect to every person  
14 at intervals not exceeding six (6) months. Reports of evaluation made pur-  
15 suant to this section shall be filed with the court that has jurisdiction.  
16 Reports of evaluation shall be provided to persons having full or partial le-  
17 gal or physical custody of a child. Failure of the department to evaluate a  
18 person or to reevaluate him within six (6) months of a previous examination  
19 shall not of itself entitle the person to a change in disposition but shall  
20 entitle him, his parent, guardian or custodian or his counsel to petition the  
21 court pursuant to section 16-1622, Idaho Code.

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

25 (6) The department shall keep written records of investigations, eval-  
26 uations, prognoses and all orders concerning disposition or treatment of ev-  
27 ery person over whom it has legal custody or under its protective supervi-  
28 sion. Department records shall be subject to disclosure according to chap-  
29 ter 1, title 74, Idaho Code, unless otherwise ordered by the court, the per-  
30 son consents to the disclosure, or disclosure is necessary for the delivery  
31 of services to the person. Notwithstanding the provisions restricting dis-  
32 closure or the exemptions from disclosure provided in chapter 1, title 74,  
33 Idaho Code, all records pertaining to investigations, the rehabilitation of  
34 youth, the protection of children, evaluation, treatment and/or disposi-  
35 tion records pertaining to the statutory responsibilities of the department  
36 shall be disclosed to any duly elected state official carrying out his offi-  
37 cial functions.

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

44 (a) Department employees whose job duties are related to the child pro-  
45 tective services system under this chapter shall first be trained as to  
46 their obligations under this chapter regarding the protection of chil-  
47 dren whose health and safety may be endangered. The curriculum shall  
48 include information regarding their legal duties, how to conduct their  
49 work in conformity with the requirements of this chapter, information  
50 regarding applicable federal and state laws with regard to the rights

1 of the child, parent and others who may be under investigation under the  
2 child protective services system, and the applicable legal and consti-  
3 tutional parameters within which they are to conduct their work.

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

8 (8) The department having been granted legal custody of a child, ~~sub-~~  
9 ~~ject to the judicial review provisions of this subsection,~~ shall have the  
10 right to determine where and with whom the child shall live, ~~provided that~~  
11 ~~the child shall not be placed outside the state without the court's consent~~  
12 subject to judicial approval. ~~Provided however, that t~~The court shall re-  
13 tain jurisdiction over the child, which jurisdiction shall be entered on any  
14 order or petition granting legal custody to the department, and the court  
15 shall have jurisdiction over all matters relating to the child. The depart-  
16 ment shall not place the child in the home from which the court ordered the  
17 child removed without first obtaining the approval of the court.

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  
31 to 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.~~  
33 Subject to the provisions of subsection (12) of this section, the department  
34 shall consider, consistent with the best interest and special needs of the  
35 child, placement priority of the child in the following order:

36 (a) A fit and willing relative.

37 (b) A fit and willing nonrelative with a significant relationship with  
38 the child.

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

41 (12) The placement priority set forth in subsection (11) of this sec-  
42 tion shall not apply to the department's consideration of the permanency  
43 plan and permanent placement if the child has been placed in one (1) tempo-  
44 rary placement for a period of six (6) months or longer. In such case, the  
45 department shall make a reasonable effort to place the child in the least  
46 restrictive environment to the child and in so doing shall consider the best  
47 interests and special needs of the child as paramount, including the child's  
48 attachments to the caregivers formed during such temporary placement.

49 SECTION 8. That Section 16-2010, Idaho Code, be, and the same is hereby  
50 amended to read as follows:

1 16-2010. DECREE. (1) Every order of the court terminating the parent  
2 and child relationship or transferring legal custody or guardianship of the  
3 person of the child shall be in writing and shall recite the findings upon  
4 which such order is based, including findings pertaining to the court's ju-  
5 risdiction.

6 (2) (a) If the court finds sufficient grounds exist for the termination  
7 of the parent and child relationship, it shall so decree and:

8 (i) Appoint an individual as guardian of the child's person, or

9 (ii) Appoint an individual as guardian of the child's person  
10 and vest legal custody in another individual or in an authorized  
11 agency, or

12 (iii) Appoint an authorized agency as guardian of the child's per-  
13 son and vest legal custody in such agency.

14 (b) The court shall also make an order fixing responsibility for the  
15 child's support. The parent and child relationship may be terminated  
16 with respect to one (1) parent without affecting the relationship be-  
17 tween the child and the other parent.

18 (3) Where the court does not order termination of the parent and child  
19 relationship, it shall dismiss the petition; provided however, that where  
20 the court finds that the best interest of the child requires substitution  
21 or supplementation of parental care and supervision, it shall make an order  
22 placing the child under protective supervision, or vesting temporary legal  
23 custody in an authorized agency, fixing responsibility for temporary child  
24 support, and designating the period of time during which the order shall re-  
25 main in effect.

26 (4) If termination of parental rights is granted and the child is placed  
27 in the guardianship or legal custody of the department of health and welfare,  
28 the court, upon petition, shall conduct a hearing as to the future status of  
29 the child within twelve (12) months of the order of termination of parental  
30 rights, and every twelve (12) months subsequently until the child is adopted  
31 as sanctioned by the court or is in a placement sanctioned by the court.

32 SECTION 9. That Section 39-1221, Idaho Code, be, and the same is hereby  
33 amended to read as follows:

34 39-1221. REMOVAL OF CHILDREN -- CHANGE IN PLACEMENT. (1) Any child or  
35 children receiving child care in a children's residential care facility or  
36 children's therapeutic outdoor program found to be operating without a li-  
37 cense may be removed from such home, agency or institution upon order of the  
38 magistrate court of the county in which the child is receiving care and re-  
39 turned to the child's own home, or placed in the custody of the department if  
40 the child's custodial parent is not available. The prosecuting attorneys of  
41 the several counties shall represent the department at all stages of the pro-  
42 ceedings before the magistrate court. The magistrate court shall retain ju-  
43 risdiction relative to child custody pursuant to the provisions of this sec-  
44 tion. In the event that the prosecuting attorney in the county where the al-  
45 leged violation occurred fails or refuses to act within sixty (60) days of  
46 notification of the violation, the attorney general is authorized to prose-  
47 cute violations under this chapter.

1       (2) A child who is placed in a foster home may not be removed from such  
2 home by the department to be placed in another foster home or to be placed in  
3 any other temporary placement unless:

4       (a) The department has reason to believe the child has been abused or  
5 neglected or there is a substantial risk of abuse or neglect to the child  
6 in the foster home;

7       (b) The court orders removal and change in placement of the child;

8       (c) The removal and change in placement occurs less than thirty (30)  
9 days after the child's placement in the foster home;

10       (d) The removal and change in placement occurs less than ninety (90)  
11 days after the child's placement in the foster home and the new place-  
12 ment is with a relative, provided that the department shall give the  
13 foster parents notice of such change at least five (5) days before the  
14 change; or

15       (e) The person providing foster care requests or agrees to the removal.

16       (3) If the department seeks to remove a child from a foster home for  
17 placement in another foster home or other temporary placement for any rea-  
18 son other than a reason set forth in subsection (2) of this section, then the  
19 department shall petition and obtain from the court an order of removal and  
20 change in placement. Such petition shall include the following information:

21       (a) Clearly stated reasons for the change in placement;

22       (b) The number of times the child's placement has been changed since re-  
23 moval from his or her home and the reasons for each change;

24       (c) Whether the child will change schools as a result of the change in  
25 placement;

26       (d) Whether the change in placement will separate or reunite siblings  
27 or affect sibling visitation; and

28       (e) Any other information required or requested by the court.

29       (4) No later than five (5) days after filing the petition, the depart-  
30 ment shall deliver a copy of the petition to the child's foster parents,  
31 guardian ad litem and attorney along with a clear statement that each such  
32 person has a right to be heard at the removal hearing.

33       (5) When a petition has been filed, the court shall schedule a hearing  
34 to be held no later than thirty (30) days after the filing of the petition.  
35 The court shall provide notice of the hearing to the department and prosecut-  
36 ing attorney, if the prosecuting attorney has appeared in the case, and to  
37 the child's foster parents, guardian ad litem and attorney, who shall all be  
38 given an opportunity to be heard at the hearing.

39       (6) Based on the testimony given at the hearing and any evidence bearing  
40 on the proposed removal and change in placement, the court shall determine  
41 whether a removal and change in placement is in the child's best interests  
42 and shall order either the continuation of placement in the child's current  
43 foster home or an order granting the petition to remove and change placement.  
44 The court shall set forth its reasons for its decision in the order.

45       (7) The provisions of section 39-1212, Idaho Code, shall not apply to  
46 subsections (2) through (6) of this section.

47       SECTION 10. An emergency existing therefor, which emergency is hereby  
48 declared to exist, this act shall be in full force and effect on and after its  
49 passage and approval.