

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 707

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO CHILD PROTECTION; AMENDING SECTION 16-1602, IDAHO CODE, TO RE-
2 VISE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
3 16-1609, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND WEL-
4 FARE SHALL HAVE THE RIGHT TO AUTHORIZE EVALUATION AND TREATMENT OF CHIL-
5 DREN TAKEN INTO SHELTER CARE; AND AMENDING SECTION 16-1629, IDAHO CODE,
6 TO REVISE PROVISIONS REGARDING POWERS AND DUTIES OF THE DEPARTMENT OF
7 HEALTH AND WELFARE.
8

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

10 SECTION 1. That Section 16-1602, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 16-1602. DEFINITIONS. For purposes of this chapter:

13 (1) "Abused" means any case in which a child has been the victim of:

14 (a) Conduct or omission resulting in skin bruising, bleeding, malnu-
15 trition, burns, fracture of any bone, subdural hematoma, soft tissue
16 swelling, failure to thrive or death, and such condition or death is not
17 justifiably explained, or where the history given concerning such con-
18 dition or death is at variance with the degree or type of such condition
19 or death, or the circumstances indicate that such condition or death may
20 not be the product of an accidental occurrence; or

21 (b) Sexual conduct, including rape, molestation, incest, prostitu-
22 tion, obscene or pornographic photographing, filming or depiction for
23 commercial purposes, human trafficking as defined in section 18-8602,
24 Idaho Code, or other similar forms of sexual exploitation harming or
25 threatening the child's health or welfare or mental injury to the child.

26 (2) "Abandoned" means the failure of the parent to maintain a normal
27 parental relationship with his child including, but not limited to, reason-
28 able support or regular personal contact. Failure to maintain this rela-
29 tionship without just cause for a period of one (1) year shall constitute
30 prima facie evidence of abandonment.

31 (3) "Adaptive equipment" means any piece of equipment or any item that
32 is used to increase, maintain or improve the parenting capabilities of a par-
33 ent with a disability.

34 (4) "Adjudicatory hearing" means a hearing to determine:

35 (a) Whether the child comes under the jurisdiction of the court pur-
36 suant to the provisions of this chapter;

37 (b) Whether continuation of the child in the home would be contrary to
38 the child's welfare and whether the best interest of the child requires
39 protective supervision or vesting legal custody of the child in an au-
40 thorized agency.

41 (5) "Age of developmentally appropriate" means:

1 (a) Activities that are generally accepted as suitable for children of
2 the same chronological age or level of maturity or that are determined
3 to be developmentally appropriate for a child, based on the development
4 of cognitive, emotional, physical and behavioral capacities that are
5 typical for an age or age group; and

6 (b) In the case of a specific child, activities or items that are suit-
7 able for the child based on the developmental stages attained by the
8 child with respect to the cognitive, emotional, physical and behavioral
9 capacities of the child.

10 (6) "Aggravated circumstances" includes, but is not limited to:

11 (a) Circumstances in which the parent has engaged in any of the follow-
12 ing:

13 (i) Abandonment, chronic abuse or chronic neglect of the child.
14 Chronic neglect or chronic abuse of a child shall consist of abuse
15 or neglect that is so extreme or repetitious as to indicate that
16 return of the child to the home would result in unacceptable risk
17 to the health and welfare of the child.

18 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
19 the purposes of this section, includes any conduct described in
20 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
21 18-6608 or 18-8602, Idaho Code.

22 (iii) Torture of a child; any conduct described in the code sec-
23 tions listed in section 18-8303(1), Idaho Code; battery or an
24 injury to a child that results in serious or great bodily in-
25 jury to a child; voluntary manslaughter of a child, or aiding or
26 abetting such voluntary manslaughter, soliciting such voluntary
27 manslaughter or attempting or conspiring to commit such voluntary
28 manslaughter;

29 (b) The parent has committed murder, aided or abetted a murder, so-
30 licited a murder or attempted or conspired to commit murder; or

31 (c) The parental rights of the parent to another child have been termi-
32 nated involuntarily.

33 (7) "Authorized agency" means the department, a local agency, a person,
34 an organization, corporation, benevolent society or association licensed
35 or approved by the department or the court to receive children for control,
36 care, maintenance or placement.

37 (8) "Caregiver" means a foster parent with whom a child in foster care
38 has been placed or a designated official for a child care institution in
39 which a child in foster care has been placed.

40 (9) "Case plan hearing" means a hearing to approve, modify or reject the
41 case plan as provided in section 16-1621, Idaho Code.

42 (10) "Child" means an individual who is under the age of eighteen (18)
43 years.

44 (11) "Child advocacy center" or "CAC" means an organization that ad-
45 heres to national best practice standards established by the national
46 membership and accrediting body for children's advocacy centers and that
47 promotes a comprehensive and coordinated multidisciplinary team response to
48 allegations of child abuse by maintaining a child-friendly facility at which
49 appropriate services are provided. These services may include forensic in-

1 interviews, forensic medical examinations, mental health services and other
2 related victim services.

3 (12) "Circumstances of the child" includes, but is not limited to, the
4 joint legal custody or joint physical custody of the child.

5 (13) "Commit" means to transfer legal and physical custody.

6 (14) "Concurrent planning" means a planning model that prepares for and
7 implements different outcomes at the same time.

8 (15) "Court" means district court or magistrate's division thereof, or
9 if the context requires, a magistrate or judge thereof.

10 (16) "Custodian" means a person, other than a parent or legal guardian,
11 to whom legal or joint legal custody of the child has been given by court or-
12 der.

13 (17) "Department" means the department of health and welfare and its au-
14 thorized representatives.

15 (18) "Disability" means, with respect to an individual, any mental or
16 physical impairment ~~which~~ that substantially limits one (1) or more major
17 life activity of the individual including, but not limited to, self-care,
18 manual tasks, walking, seeing, hearing, speaking, learning or working, or a
19 record of such an impairment, or being regarded as having such an impairment.
20 Disability shall not include transvestism, transsexualism, pedophilia,
21 exhibitionism, voyeurism, other sexual behavior disorders, or substance use
22 disorders, compulsive gambling, kleptomania or pyromania. Sexual prefer-
23 ence or orientation is not considered an impairment or disability. Whether
24 an impairment substantially limits a major life activity shall be determined
25 without consideration of the effect of corrective or mitigating measures
26 used to reduce the effects of the impairment.

27 (19) "Family or household member" shall have the same meaning as in sec-
28 tion 39-6303(6), Idaho Code.

29 (20) "Foster care" means twenty-four (24) hour substitute parental care
30 for children placed away from their parents or guardians by persons who may
31 or may not be related to the children and for whom the state agency has place-
32 ment and care responsibility.

33 (21) "Foster parent" means a person or persons licensed to provide fos-
34 ter care.

35 (22) "Grant administrator" means the supreme court or any organization
36 or agency as may be designated by the supreme court in accordance with such
37 procedures as may be adopted by the supreme court. The grant administrator
38 shall administer funds from the guardian ad litem account in accordance with
39 the provisions of this chapter.

40 (23) "Guardian ad litem" means a person appointed by the court pursuant
41 to a guardian ad litem volunteer program to act as special advocate for a
42 child under this chapter.

43 (24) "Guardian ad litem coordinator" means a person or entity receiving
44 moneys from the grant administrator for the purpose of carrying out any of
45 the duties set forth in section 16-1632, Idaho Code.

46 (25) "Guardian ad litem program" means the program to recruit, train and
47 coordinate volunteer persons to serve as guardians ad litem for abused, ne-
48 glected or abandoned children.

49 (26) "Homeless," as used in this chapter, shall mean that the child is
50 without adequate shelter or other living facilities, and the lack of such

1 shelter or other living facilities poses a threat to the health, safety or
2 well-being of the child.

3 (27) "Idaho network of children's advocacy centers" means an organiza-
4 tion that provides education and technical assistance to child advocacy cen-
5 ters and to interagency multidisciplinary teams developed pursuant to sec-
6 tion 16-1617, Idaho Code.

7 (28) "Law enforcement agency" means a city police department, the pros-
8 ecuting attorney of any county, state law enforcement officers, or the of-
9 fice of a sheriff of any county.

10 (29) "Legal custody" means a relationship created by court order, which
11 vests in a custodian the following rights and responsibilities:

12 (a) To have physical custody and control of the child, and to determine
13 where and with whom the child shall live.

14 (b) To supply the child with food, clothing, shelter and incidental ne-
15 cessities.

16 (c) To provide the child with care, education and discipline.

17 ~~(d) To authorize ordinary medical, dental, psychiatric, psychologi-~~
18 ~~cal, or other remedial care and treatment for the child, including care~~
19 ~~and treatment in a facility with a program of services for children, and~~
20 ~~to authorize surgery if the surgery is deemed by two (2) physicians li-~~
21 ~~icensed to practice in this state to be necessary for the child.~~

22 ~~(e) Where the parents share legal custody, the custodian may be vested~~
23 ~~with the custody previously held by either or both parents.~~

24 (30) "Mental injury" means a substantial impairment in the intellectual
25 or psychological ability of a child to function within a normal range of per-
26 formance and/or behavior, for short or long terms.

27 (31) "Neglected" means a child:

28 (a) Who is without proper parental care and control, or subsistence,
29 medical or other care or control necessary for his well-being because of
30 the conduct or omission of his parents, guardian or other custodian or
31 their neglect or refusal to provide them; however, no child whose parent
32 or guardian chooses for such child treatment by prayers through spiri-
33 tual means alone in lieu of medical treatment shall be deemed for that
34 reason alone to be neglected or lack parental care necessary for his
35 health and well-being, but this subsection shall not prevent the court
36 from acting pursuant to section 16-1627, Idaho Code; or

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

41 (c) Who has been placed for care or adoption in violation of law; or

42 (d) Who is without proper education because of the failure to comply
43 with section 33-202, Idaho Code.

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

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

49 (34) "Protective order" means an order issued by the court in a child
50 protection case, prior to the adjudicatory hearing, to enable the child to

1 remain in the home pursuant to section 16-1615(8), Idaho Code, or following
 2 an adjudicatory hearing to preserve the unity of the family and to ensure the
 3 best interests of the child, pursuant to section 16-1619(10), Idaho Code.
 4 Such an order shall be in the same form and have the same effect as a domes-
 5 tic violence protection order issued pursuant to chapter 63, title 39, Idaho
 6 Code. A protective order shall be for a period not to exceed three (3) months
 7 unless otherwise stated in the order.

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

12 (36) "Psychotropic medication" means a drug prescribed to affect psy-
 13 chological functioning, perception, behavior or mood. Psychotropic medi-
 14 cations include, but are not limited to, antidepressants, mood stabilizers,
 15 antipsychotics, antianxiety medications, sedatives and stimulants.

16 (37) "Reasonable and prudent parent standard" means the standard of
 17 care characterized by careful and sensible parental decisions that main-
 18 tain the health, safety and best interests of a child while simultaneously
 19 encouraging the emotional and developmental growth of the child that a care-
 20 giver shall use when determining whether to allow a child in foster care
 21 under the responsibility of the state to participate in extracurricular,
 22 enrichment, cultural or social activities.

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

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

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

34 (41) "Supportive services," as used in this chapter, shall mean ser-
 35 vices that assist parents with a disability to compensate for those aspects
 36 of their disability that affect their ability to care for their child and
 37 that will enable them to discharge their parental responsibilities. The
 38 term includes specialized or adapted training, evaluations or assistance
 39 with effectively using adaptive equipment and accommodations that allow
 40 parents with a disability to benefit from other services including, but not
 41 limited to, Braille texts or sign language interpreters.

42 SECTION 2. That Section 16-1609, Idaho Code, be, and the same is hereby
 43 amended to read as follows:

44 16-1609. EMERGENCY REMOVAL -- NOTICE. (1) A peace officer who takes
 45 a child into shelter care under section 16-1608, Idaho Code, shall immedi-
 46 ately:

- 47 (a) Take the child to a place of shelter; and
- 48 (b) Notify the court of the action taken and the place to which the child
- 49 was taken; and

1 (c) With the exception of a child abandoned pursuant to the provi-
 2 sions of chapter 82, title 39, Idaho Code, notify each of the parents,
 3 guardian or other legal custodian that the child has been taken into
 4 shelter care, the type and nature of shelter care, and that the child may
 5 be held for a maximum of forty-eight (48) hours, excluding Saturdays,
 6 Sundays and holidays, within which time there must be a shelter care
 7 hearing.

8 (2) After a child has been taken into shelter care pursuant to this
 9 section, the department shall have the right to authorize a medical or mental
 10 health evaluation of the child. If, after the evaluation, a certified or
 11 licensed professional recommends treatment, the department shall attempt to
 12 obtain parental consent by one (1) parent. If the parent denies consent or
 13 is unable to be contacted, the department shall have the right to authorize
 14 treatment. The department shall give notice to the child's parent within
 15 forty-eight (48) hours after authorization of a medical or mental health
 16 evaluation and/or treatment. If a parent cannot be contacted, efforts to
 17 contact the parent shall be documented in the child's record.

18 (3) A peace officer who takes a child into shelter care under section
 19 16-1608, Idaho Code, shall not be held liable either criminally or civilly
 20 unless the action of taking the child was exercised in bad faith and/or the
 21 requirements of subsection (1) of this section are not complied with.

22 SECTION 3. That Section 16-1629, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 16-1629. POWERS AND DUTIES OF THE DEPARTMENT. The department, working
 25 in conjunction with the court and other public and private agencies and per-
 26 sons, shall have the primary responsibility to implement the purpose of this
 27 chapter. To this end, the department is empowered and shall have the duty to
 28 do all things reasonably necessary to carry out the purpose of this chapter,
 29 including, but not limited to, the following:

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

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

45 (3) The department shall be required to maintain a central registry for
 46 the reporting of child neglect, abuse and abandonment information. Provided
 47 however, that the department shall not retain any information for this pur-
 48 pose relating to a child, or parent of a child, abandoned pursuant to chapter
 49 82, title 39, Idaho Code.

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

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

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

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

36 (a) Department employees whose job duties are related to the child pro-
37 tective services system under this chapter shall first be trained as to
38 their obligations under this chapter regarding the protection of chil-
39 dren whose health and safety may be endangered. The curriculum shall
40 include information regarding their legal duties, how to conduct their
41 work in conformity with the requirements of this chapter, information
42 regarding applicable federal and state laws with regard to the rights
43 of the child, parent and others who may be under investigation under the
44 child protective services system, and the applicable legal and consti-
45 tutional parameters within which they are to conduct their work.

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

1 (8) If granted temporary legal or legal custody of a child pursuant to
 2 this chapter, the department shall have the right to authorize ordinary med-
 3 ical, dental, psychiatric, psychological or other remedial care and treat-
 4 ment for the child, including care and treatment in a facility with a program
 5 of services for children, and to authorize surgery if the surgery is deemed
 6 by two (2) physicians licensed to practice in this state to be necessary for
 7 the child.

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

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

28 (101) The department shall establish appropriate administrative proce-
 29 dures for the conduct of administrative reviews and hearings as required by
 30 federal statute for all children committed to the department and placed in
 31 out_of_the_home care.

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

37 (a) A fit and willing relative.

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

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

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

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

1 The supervisor shall consider the best interests and special needs of the
2 child, including:

- 3 (a) The clearly stated reasons for the recommended change in placement;
4 (b) The number of times the child's placement has been changed since re-
5 moval from ~~their~~ the child's home and the reasons for each change;
6 (c) Whether the child will change schools as a result of the change in
7 placement; and
8 (d) Whether the change in placement will separate or reunite siblings
9 or affect sibling visitation.

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

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

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