

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 77

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO CHILD PROTECTION; AMENDING SECTION 16-1602, IDAHO CODE, TO RE-
VISE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS.

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

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

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

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

(a) Conduct or omission resulting in skin bruising, bleeding, mal-
nutrition, burns, fracture of any bone, head injury, soft tissue
swelling, failure to thrive or death, and such condition or death is not
justifiably explained, or where the history given concerning such con-
dition or death is at variance with the degree or type of such condition
or death, or the circumstances indicate that such condition or death may
not be the product of an accidental occurrence; or

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

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

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

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

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

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

(5) "Age of developmentally appropriate" means:

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

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

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

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

8 (i) Abandonment, chronic abuse or chronic neglect of the child.
9 Chronic neglect or chronic abuse of a child shall consist of abuse
10 or neglect that is so extreme or repetitious as to indicate that
11 return of the child to the home would result in unacceptable risk
12 to the health and welfare of the child.

13 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
14 the purposes of this section, includes any conduct described in
15 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
16 18-6608 or 18-8602, Idaho Code.

17 (iii) Torture of a child; any conduct listed in section
18 18-8303(1), Idaho Code; battery or an injury to a child that
19 results in serious or great bodily injury to a child; voluntary
20 manslaughter of a child, or aiding or abetting such voluntary
21 manslaughter, soliciting such voluntary manslaughter or attempt-
22 ing or conspiring to commit such voluntary manslaughter;

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

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

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

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

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

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

38 (11) "Child advocacy center" or "CAC" means an organization that ad-
39 heres to national best practice standards established by the national
40 membership and accrediting body for children's advocacy centers and that
41 promotes a comprehensive and coordinated multidisciplinary team response to
42 allegations of child abuse by maintaining a child-friendly facility at which
43 appropriate services are provided. These services may include forensic in-
44 terviews, forensic medical examinations, mental health services and other
45 related victim services.

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

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

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

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

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

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

8 (18) "Disability" means, with respect to an individual, any mental
9 or physical impairment that substantially limits one (1) or more major
10 life ~~activity~~ activities of the individual including, but not limited to,
11 self-care, manual tasks, walking, seeing, hearing, speaking, learning or
12 working, or a record of such an impairment, or being regarded as having such
13 an impairment. Disability shall not include transvestism, transsexualism,
14 pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or
15 substance use disorders, compulsive gambling, kleptomania or pyromania.
16 Sexual preference or orientation is not considered an impairment or disabili-
17 ty. Whether an impairment substantially limits a major life activity shall
18 be determined without consideration of the effect of corrective or mitigat-
19 ing measures used to reduce the effects of the impairment.

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

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

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

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

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

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

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

42 (26) "Homeless," as used in this chapter, shall mean that the child is
43 without adequate shelter or other living facilities, and the lack of such
44 shelter or other living facilities poses a threat to the health, safety or
45 well-being of the child.

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

1 (28) "Law enforcement agency" means a city police department, the prosecuting attorney of any county, state law enforcement officers, or the office of a sheriff of any county.

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

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

6 (b) To supply the child with food, clothing, shelter and incidental necessities.

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

8 (d) To authorize ordinary medical, dental, psychiatric, psychological,
9 or other remedial care and treatment for the child, including care
10 and treatment in a facility with a program of services for children, and
11 to authorize surgery if the surgery is deemed by two (2) physicians licensed to practice in this state to be necessary for the child.

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

14 (30) "Mental injury" means a substantial impairment in the intellectual
15 or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.

16 (31) "Neglected" means a child:

17 (a) Who is without ~~proper~~ necessary parental care and control, or
18 subsistence, medical or other care or control necessary for his ~~well-being~~
19 because of the conduct or omission of health and safety or who is placed
20 in an obviously dangerous situation given the child's level of maturity,
21 physical condition, or mental abilities due to the conscious disregard
22 of obvious needs or obvious dangers to the child by his parents,
23 guardian or other custodian or their neglect or refusal to provide them
24 and that action or omission results in bodily injury or a substantial
25 risk of bodily injury or a substantial risk of immediate and grave harm
26 to the child due to the conscious disregard of parental or caretaker
27 responsibilities; however, no child whose parent or guardian chooses for
28 such child treatment by prayers through spiritual means alone in lieu of
29 medical treatment shall be deemed for that reason alone to be neglected
30 or lack parental care necessary for his health and well-being, but this
31 subsection shall not prevent the court from acting pursuant to section
32 16-1627, Idaho Code; nor shall any child who is of sufficient age and
33 maturity to avoid harm or unreasonable risk of harm be considered
34 neglected by virtue of engaging in independent activities, including but
35 not limited to:

36 (i) Traveling to and from school, including by walking, running,
37 or bicycling;

38 (ii) Traveling to and from nearby commercial or recreational facilities;

39 (iii) Engaging in outdoor play;

40 (iv) Remaining at home unattended for a reasonable amount of time;

41 (v) Remaining in a vehicle if the temperature inside the vehicle
42 is not or will not become dangerously hot or cold; or

43 (vi) Engaging in other independent activities; or
44
45
46
47
48
49

1 (b) Whose parents, guardian, or other custodian ~~are~~ is unable to dis-
2 charge ~~their~~ his responsibilities to and for the child and, as a result
3 of such inability, the child lacks the parental care necessary for his
4 health, safety or well-being; or

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

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

8 (32) "Permanency hearing" means a hearing to review, approve, reject or
9 modify the permanency plan of the department, ~~and~~ to review reasonable ef-
10 forts in accomplishing the permanency plan.

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

13 (34) "Protective order" means an order issued by the court in a child
14 protection case, prior to the adjudicatory hearing, to enable the child to
15 remain in the home pursuant to section 16-1615(8), Idaho Code, or following
16 an adjudicatory hearing to preserve the unity of the family and to ensure the
17 best interests of the child, ~~pursuant to section 16-1619(10), Idaho Code.~~
18 Such an order shall be in the same form and have the same effect as a domes-
19 tic violence protection order issued pursuant to chapter 63, title 39, Idaho
20 Code. A protective order shall be for a period not to exceed three (3) months
21 unless otherwise stated in the order.

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

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

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

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

40 (39) "Residual parental rights and responsibilities" means those
41 rights and responsibilities remaining with the parents after the transfer of
42 legal custody including, but not necessarily limited to, the right of visi-
43 tation, the right to consent to adoption, the right to determine religious
44 affiliation, the right to family counseling when beneficial, and the respon-
45 sibility for support.

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

48 (41) "Supportive services," as used in this chapter, shall mean ser-
49 vices that assist parents with a disability to compensate for those aspects
50 of their disability that affect their ability to care for their child and

1 that will enable them to discharge their parental responsibilities. The
2 term includes specialized or adapted training, evaluations or assistance
3 with effectively using adaptive equipment and accommodations that allow
4 parents with a disability to benefit from other services including, but not
5 limited to, Braille texts or sign language interpreters.