

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 256

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE CHILD PROTECTIVE ACT; AMENDING SECTION 16-1602, IDAHO CODE,
2 TO DEFINE A TERM AND TO REVISE DEFINITIONS; AMENDING SECTION 16-1610,
3 IDAHO CODE, TO REVISE REQUIREMENTS RELATING TO A CERTAIN PETITION AND
4 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1619, IDAHO CODE,
5 TO PROVIDE THAT UPON ENTERING A CERTAIN DECREE, THE COURT SHALL PLACE
6 A CHILD UNDER THE PROTECTIVE SUPERVISION OF THE DEPARTMENT OF HEALTH
7 AND WELFARE AND TO REVISE PROVISIONS RELATING TO CERTAIN WRITTEN FIND-
8 INGS REQUIRED OF THE COURT; AMENDING SECTION 16-1620, IDAHO CODE, TO
9 ESTABLISH PROVISIONS RELATING TO A FINDING OF AGGRAVATED CIRCUMSTANCES
10 AND TO REVISE PROVISIONS RELATING TO A PERMANENCY PLAN AND HEARING;
11 AMENDING SECTION 16-1621, IDAHO CODE, TO REVISE PROVISIONS RELATING TO
12 CASE PLAN HEARINGS AND TO ESTABLISH PROVISIONS RELATING TO NO FINDING OF
13 AGGRAVATED CIRCUMSTANCES; AMENDING SECTION 16-1622, IDAHO CODE, TO RE-
14 VISE PROVISIONS RELATING TO REVIEW HEARINGS AND TO ESTABLISH PROVISIONS
15 RELATING TO ANNUAL PERMANENCY HEARINGS; AMENDING SECTION 16-1623,
16 IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE TIME WITHIN WHICH A
17 CERTAIN HEARING MUST BE HELD; AMENDING SECTION 16-1624, IDAHO CODE, TO
18 REVISE PROVISIONS RELATING TO THE TERMINATION OF A PARENT-CHILD RE-
19 LATIONSHIP, TO PROVIDE THAT A CERTAIN PETITION SHALL BE FILED WITHIN
20 A CERTAIN TIME FRAME AND TO PROVIDE THAT THE COURT MAY AUTHORIZE THE
21 DEPARTMENT OF HEALTH AND WELFARE TO SUSPEND FURTHER EFFORTS TO REUNIFY
22 A CHILD WITH THE CHILD'S PARENT UNDER CERTAIN CIRCUMSTANCES; AMENDING
23 SECTION 16-1625, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO A PARENT
24 SUBJECTING A CHILD TO AGGRAVATED CIRCUMSTANCES AND TO REMOVE A CODE
25 REFERENCE; AMENDING SECTION 16-1629, IDAHO CODE, TO REVISE PROVISIONS
26 RELATING TO CERTAIN POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH AND
27 WELFARE; AMENDING SECTION 16-2002, IDAHO CODE, TO REVISE A DEFINITION;
28 AND AMENDING SECTION 16-2005, IDAHO CODE, TO REVISE PROVISIONS RELAT-
29 ING TO THE COURT'S AUTHORITY TO REBUTTABLY PRESUME THAT TERMINATION OF
30 PARENTAL RIGHTS IS IN THE BEST INTERESTS OF THE CHILD.
31

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

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

35 16-1602. DEFINITIONS. For purposes of this chapter:

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

37 (a) Conduct or omission resulting in skin bruising, bleeding, malnu-
38 trition, burns, fracture of any bone, subdural hematoma, soft tissue
39 swelling, failure to thrive or death, and such condition or death is not
40 justifiably explained, or where the history given concerning such condi-
41 tion or death is at variance with the degree or type of such condition

1 or death, or the circumstances indicate that such condition or death may
2 not be the product of an accidental occurrence; or

3 (b) Sexual conduct, including rape, molestation, incest, prostitu-
4 tion, obscene or pornographic photographing, filming or depiction for
5 commercial purposes, or other similar forms of sexual exploitation
6 harming or threatening the child's health or welfare or mental injury to
7 the child.

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

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

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

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

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

23 ~~(c) Whether aggravated circumstances as defined in section 16-1619,~~
24 ~~Idaho Code, exist.~~

25 (5) "Aggravated circumstances" include, but are not limited to:

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

28 (i) Abandonment, chronic abuse or chronic neglect of the child.
29 Chronic neglect or chronic abuse of a child shall consist of abuse
30 or neglect that is so extreme or repetitious as to indicate that
31 return of the child to the home would result in unacceptable risk
32 to the health and welfare of the child.

33 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
34 the purposes of this section, includes any conduct described in
35 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
36 18-6108 or 18-6608, Idaho Code.

37 (iii) Torture of a child; any conduct described in the code sec-
38 tions listed in section 18-8303(1), Idaho Code; battery or an
39 injury to a child that results in serious or great bodily in-
40 jury to a child; voluntary manslaughter of a child, or aiding or
41 abetting such voluntary manslaughter, soliciting such voluntary
42 manslaughter or attempting or conspiring to commit such voluntary
43 manslaughter;

44 (b) The parent has committed murder, aided or abetted a murder, so-
45 lolicited a murder or attempted or conspired to commit murder; or

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

48 (6) "Authorized agency" means the department, a local agency, a person,
49 an organization, corporation, benevolent society or association licensed

1 or approved by the department or the court to receive children for control,
2 care, maintenance or placement.

3 (67) "Case plan hearing" means a hearing to:

4 ~~(a) Review, approve, modify or reject the case plan; and~~

5 ~~(b) Review reasonable efforts being made to rehabilitate the family;~~
6 and

7 ~~(c) Review reasonable efforts being made to reunify the children with a~~
8 ~~parent or guardian~~ approve, modify or reject the case plan as provided
9 in section 16-1621, Idaho Code.

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

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

14 (910) "Commit" means to transfer legal and physical custody.

15 (101) "Concurrent planning" means a planning model that prepares for
16 and implements different outcomes at the same time.

17 (112) "Court" means district court or magistrate's division thereof, or
18 if the context requires, a magistrate or judge thereof.

19 (123) "Custodian" means a person, other than a parent or legal guardian,
20 to whom legal or joint legal custody of the child has been given by court or-
21 der.

22 (134) "Department" means the department of health and welfare and its
23 authorized representatives.

24 (145) "Disability" means, with respect to an individual, any mental or
25 physical impairment which substantially limits one (1) or more major life
26 activity of the individual including, but not limited to, self-care, man-
27 ual tasks, walking, seeing, hearing, speaking, learning or working, or a
28 record of such an impairment, or being regarded as having such an impairment.
29 Disability shall not include transvestism, transsexualism, pedophilia,
30 exhibitionism, voyeurism, other sexual behavior disorders, or substance use
31 disorders, compulsive gambling, kleptomania or pyromania. Sexual prefer-
32 ence or orientation is not considered an impairment or disability. Whether
33 an impairment substantially limits a major life activity shall be determined
34 without consideration of the effect of corrective or mitigating measures
35 used to reduce the effects of the impairment.

36 (156) "Family or household member" shall have the same meaning as in
37 section 39-6303(6), Idaho Code.

38 (167) "Foster care" means twenty-four (24) hour substitute parental
39 care for children placed away from their parents or guardians by persons who
40 may or may not be related to the children and for whom the state agency has
41 placement and care responsibility.

42 (178) "Grant administrator" means the supreme court or any organization
43 or agency as may be designated by the supreme court in accordance with such
44 procedures as may be adopted by the supreme court. The grant administrator
45 shall administer funds from the guardian ad litem account in accordance with
46 the provisions of this chapter.

47 (189) "Guardian ad litem" means a person appointed by the court pursuant
48 to a guardian ad litem volunteer program to act as special advocate for a
49 child under this chapter.

1 ~~(1920)~~ "Guardian ad litem coordinator" means a person or entity receiv-
2 ing moneys from the grant administrator for the purpose of carrying out any
3 of the duties set forth in section 16-1632, Idaho Code.

4 ~~(201)~~ "Guardian ad litem program" means the program to recruit, train
5 and coordinate volunteer persons to serve as guardians ad litem for abused,
6 neglected or abandoned children.

7 ~~(212)~~ "Homeless," as used in this chapter, shall mean that the child is
8 without adequate shelter or other living facilities, and the lack of such
9 shelter or other living facilities poses a threat to the health, safety or
10 well-being of the child.

11 ~~(223)~~ "Law enforcement agency" means a city police department, the
12 prosecuting attorney of any county, state law enforcement officers, or the
13 office of a sheriff of any county.

14 ~~(234)~~ "Legal custody" means a relationship created by court order,
15 which vests in a custodian the following rights and responsibilities:

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

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

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

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

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

28 ~~(245)~~ "Mental injury" means a substantial impairment in the intellec-
29 tual or psychological ability of a child to function within a normal range of
30 performance and/or behavior, for short or long terms.

31 ~~(256)~~ "Neglected" means a child:

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

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

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

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

48 ~~(267)~~ "Permanency hearing" means a hearing to review, approve, reject
49 or modify the permanency plan of the department, and review reasonable ef-
50 forts in accomplishing the permanency plan.

1 (278) "Permanency plan" means a plan for a continuous residence and
2 maintenance of nurturing relationships during the child's minority.

3 (289) "Protective order" means an order ~~created~~ issued by the court
4 ~~granting relief as delineated in section 39-6306, Idaho Code, and in a child~~
5 ~~protection case, prior to the adjudicatory hearing, to enable the child to~~
6 ~~remain in the home pursuant to section 16-1615(5) (f), Idaho Code. Such an~~
7 ~~order shall be in the same form and have the same effect as a domestic vio-~~
8 ~~lence protection order issued pursuant to chapter 63, title 39, Idaho Code.~~
9 ~~A protective order shall be for a period not to exceed three (3) months unless~~
10 ~~otherwise stated herein. Failure to comply with the order shall be a misde-~~
11 ~~meanor in the order.~~

12 (2930) "Protective supervision" ~~means~~ is a legal status created by
13 court order in ~~neglect and abuse cases~~ a child protective case whereby the
14 child is ~~permitted to remain in his home under~~ in the legal custody of his or
15 her parent(s), guardian(s) or other legal custodian(s), subject to supervi-
16 sion by the department.

17 (301) "Relative" means a child's grandparent, great grandparent,
18 aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
19 cousin, sibling and half-sibling.

20 (312) "Residual parental rights and responsibilities" means those
21 rights and responsibilities remaining with the parents after the transfer of
22 legal custody including, but not necessarily limited to, the right of visi-
23 tation, the right to consent to adoption, the right to determine religious
24 affiliation, the right to family counseling when beneficial, and the respon-
25 sibility for support.

26 (323) "Shelter care" means places designated by the department for tem-
27 porary care of children pending court disposition or placement.

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

36 SECTION 2. That Section 16-1610, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 16-1610. PETITION. (1) A petition invoking the jurisdiction of the
39 court under this chapter shall be filed in the manner provided in this sec-
40 tion:

41 (a) A petition must be signed by the prosecutor or deputy attorney gen-
42 eral before being filed with the court.

43 (b) Any person or governmental body of this state having evidence of
44 abuse, abandonment, neglect or homelessness of a child may request the
45 attorney general or prosecuting attorney to file a petition. The pros-
46 ecuting attorney or the attorney general may file a petition on behalf
47 of any child whose parent, guardian, or custodian has been accused in a
48 criminal complaint of the crime of cruel treatment or neglect as defined
49 in section 18-1501, Idaho Code.

1 (2) Petitions shall be entitled "In the Matter of, a
2 child under the age of eighteen (18) years" and shall be verified and set
3 forth with specificity:

4 (a) The facts which bring the child within the jurisdiction of the court
5 upon the grounds set forth in section 16-1603, Idaho Code, with the ac-
6 tions of each parent described therein;

7 (b) The name, ~~birthdate~~ birth date, sex, and residence address of the
8 child;

9 (c) The name, ~~birthdate~~ birth date, sex, and residence address of all
10 other children living at or having custodial visitation at the home
11 where the injury to the subject child occurred;

12 (d) The names and residence addresses of both the mother and father,
13 guardian or other custodian. If neither of his parents, guardian or
14 other custodian resides or can be found within the state, or if their
15 residence addresses are unknown, the name of any known adult relative
16 residing within the state;

17 (e) The names and residence addresses of each person having sole or
18 joint legal custody of the children described in this section;

19 (f) Whether or not there exists a legal document including, but not lim-
20 ited to, a divorce decree, stipulation or parenting agreement control-
21 ling the custodial status of the children described in this section;

22 (g) Whether the child is in shelter care, and, if so, the type and nature
23 of the shelter care, the circumstances necessitating such care and the
24 date and time he was placed in such care;

25 (h) When any of the facts required by this section cannot be determined,
26 the petition shall so state. The petition may be based on information
27 and belief but in such case the petition shall state the basis of such
28 information and belief;

29 (i) If the child has been or will be removed from the home, the petition
30 shall state that:

31 (i) Remaining in the home was contrary to the welfare of the
32 child; and

33 (ii) Vesting legal custody of the child in the department or other
34 authorized agency is in the best interests of the child; and

35 (iii) Reasonable efforts have been made prior to the placement of
36 the child in care to prevent the removal of the child from his home
37 or, if such efforts were not provided, that reasonable efforts to
38 prevent placement were not required ~~as the parent subjected the~~
39 ~~child to~~ because aggravated circumstances were found;

40 (j) The petition shall state with specificity whether a parent with
41 joint legal custody or a noncustodial parent has been notified of place-
42 ment;

43 (k) The petition shall state whether a court has adjudicated the cus-
44 todial rights of the parents and shall set forth the custodial status of
45 the child;

46 (l) The court may combine petitions and hearings where multiple peti-
47 tions have been filed involving related children, parents or guardians.

48 SECTION 3. That Section 16-1619, Idaho Code, be, and the same is hereby
49 amended to read as follows:

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

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

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

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

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

24 (a) Place the child under the protective supervision ~~in his own home~~
25 ~~of the department~~ for an indeterminate period not to exceed the child's
26 eighteenth birthday; or

27 (b) Vest legal custody in the department or other authorized agency
28 subject to residual parental rights and subject to full judicial review
29 by the court of all matters relating to the custody of the child by the
30 department or other authorized agency.

31 (6) If the court vests legal custody in the department or other autho-
32 rized agency, the court shall make detailed written findings based on facts
33 in the record, that, in addition to the findings required in subsection (4)
34 of this section, continuation of residence in the home would be contrary to
35 the welfare of the child and that vesting legal custody with the department
36 or other authorized agency would be in the best interests of the child. In
37 addition the court shall make detailed written findings based on facts in the
38 record as to whether the department made reasonable efforts to prevent the
39 placement of the child in foster care, including findings, when appropriate,
40 that:

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

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

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

47 (d) Reasonable efforts ~~were not required as the parent had subjected~~
48 ~~the child to aggravated circumstances as determined by the court in-~~
49 ~~cluding, but not limited to: abandonment; torture; chronic abuse;~~
50 ~~sexual abuse; committed murder; committed voluntary manslaughter of~~

1 ~~another child; aided or abetted, attempted, conspired or solicited to~~
 2 ~~commit such a murder or voluntary manslaughter; committed a battery or~~
 3 ~~an injury to a child that results in serious or great bodily injury to~~
 4 ~~a child; or the parental rights of the parent to a sibling of the child~~
 5 ~~have been terminated involuntarily and that as a result, a hearing to~~
 6 ~~determine the permanent future plan for this child will be held within~~
 7 ~~thirty (30) days of this determination to reunify the child with one (1)~~
 8 ~~or both parents were not required because aggravated circumstances were~~
 9 ~~present. If aggravated circumstances are found, a permanency hearing~~
 10 ~~for the child shall be held within thirty (30) days of the determination~~
 11 ~~of aggravated circumstances.~~

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

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

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

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

29 SECTION 4. That Section 16-1620, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 16-1620. FINDING OF AGGRAVATED CIRCUMSTANCES -- PERMANENCY PLAN --
 32 HEARING. (1) After a judicial determination that reasonable efforts to re-
 33 turn the child to his home are not required because ~~the parent has subjected~~
 34 ~~the child to aggravated circumstances as set forth in section 16-1619(6)(d),~~
 35 ~~Idaho Code, the department shall prepare a permanency plan. The plan shall~~
 36 ~~set forth reasonable efforts to place the child for adoption, with a le-~~
 37 ~~gal guardian, or in another approved permanent placement were found to be~~
 38 ~~present, the court shall hold a permanency hearing within thirty (30) days~~
 39 ~~after the finding. The department shall prepare a permanency plan and file~~
 40 ~~the permanency plan with the court at least five (5) days prior to the perma-~~
 41 ~~nency hearing. If the permanency plan has a goal of termination of parental~~
 42 ~~rights and adoption, the department shall file the petition to terminate as~~
 43 ~~required in section 16-1624(2), Idaho Code. Copies of the permanency plan~~
 44 ~~shall be delivered to the parents and other legal guardians, prosecuting~~
 45 ~~attorney or deputy attorney general, the guardian ad litem and attorney for~~
 46 ~~the child.~~

47 (2) ~~Notice of the permanency hearing shall be provided to the parents,~~
 48 ~~legal guardians, guardians ad litem and foster parents, provided however,~~
 49 ~~that foster parents are not thereby made parties to the child protective~~

~~act action~~ The permanency plan shall have a permanency goal of termination of parental rights and adoption, guardianship or another planned permanent living arrangement and shall set forth the reasonable efforts necessary to finalize the permanency goal.

(3) ~~When it is in the child's best interests, the child's connections to the community, including individuals with a significant relationship to the child, religious organizations and community activities, will be maintained throughout the transition. The plan shall state with specificity the role of the department toward each parent~~ The permanency plan shall also:

(a) Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement;

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

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

(d) Specifically identify the actions necessary to implement the recommended option;

(e) Specifically set forth a schedule for accomplishing the actions necessary to implement the permanency goal;

(f) Consider the options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection; and

(g) In the case of a child who has attained the age of sixteen (16) years, identify the services needed to assist the child to make the transition from foster care to independent living.

(4) The court shall hold a permanency hearing to determine whether the best interest of the child is served by adopting, rejecting or modifying the permanency plan proposed by the department.

(5) Notice of the permanency hearing shall be provided to the parents and other legal guardians, prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department and foster parents; provided however, that foster parents are not thereby made parties to the child protective act action.

(6) The permanency plan as approved by the court shall be entered into the record as an order of the court. The order may include interim and final deadlines for implementing the permanency plan and finalizing the permanency goal.

(7) If the permanency goal is not termination of parental rights and adoption or guardianship, the court may approve a permanency plan with a permanency goal of another planned permanent living arrangement only upon written case-specific findings that specify why a more permanent plan is not in the best interest of the child.

(8) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a petition or other motion is filed in a child protection pro-

1 ceeding seeking a determination of the court that aggravated circumstances
 2 were present.

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

5 16-1621. CASE PLAN HEARING -- NO FINDING OF AGGRAVATED CIRCUM-
 6 STANCES. (1) The department shall prepare a written case plan iIn every case
 7 in which the child is determined to be within the jurisdiction of the court,
 8 and there is no judicial determination that aggravated circumstances were
 9 present, the department shall prepare a written case plan, including cases
 10 in which the parent(s) is incarcerated. The case plan shall be filed with
 11 the court no later than sixty (60) days from the date the child was removed
 12 from the home or The court shall schedule a case plan hearing to be held
 13 within thirty (30) days after the adjudicatory hearing, whichever occurs
 14 first. The case plan shall be filed with the court no later than five (5) days
 15 prior to the case plan hearing. Copies of the case plan shall be delivered
 16 to the parents and other legal guardians, the prosecuting attorney or deputy
 17 attorney general, the guardian ad litem and attorney for the child. Within
 18 five (5) days of filing the plan, the court shall hold a planning hearing to
 19 determine whether to adopt, reject or modify the case plan proposed by the
 20 department The court shall hold a case plan hearing to determine whether the
 21 best interest of the child is served by adopting, rejecting or modifying the
 22 case plan proposed by the department.

23 (2) Notice of the case plan hearing shall be provided to the parents,
 24 and other legal guardians, the prosecuting attorney or deputing attorney
 25 general, guardians ad litem, attorney for the child, the department and fos-
 26 ter parents. Although foster parents are provided notice of this hearing,
 27 they are not parties to the child protective act action.

28 (3) The case plan shall set forth reasonable efforts which will be made
 29 to make it possible for the child to return to his home and shall concur-
 30 rently include a plan setting forth reasonable efforts to place the child for
 31 adoption, with a legal guardian, or in another approved permanent placement.
 32 Whenever possible, the child's connections to the community, including in-
 33 dividuals with a significant relationship to the child, religious organiza-
 34 tions and community activities, will be maintained through the transition.
 35 The plan shall state with specificity the role of the department toward each
 36 parent If the child is placed in the legal custody of the department, the case
 37 plan filed by the department shall set forth reasonable efforts that will be
 38 made to make it possible for the child to return home. The case plan shall
 39 also:

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

44 (b) Address options for maintaining the child's connection to the com-
 45 munity, including individuals with a significant relationship to the
 46 child, and organizations or community activities with which the child
 47 has a significant connection.

48 (c) Include a goal of reunification and a plan for achieving that
 49 goal. The reunification plan shall identify all issues that need to

1 be addressed before the child can safely be returned home without de-
2 partment supervision. The court may specifically identify issues to
3 be addressed by the plan. The reunification plan shall specifically
4 identify the tasks to be completed by the department, each parent or
5 others to address each issue, including services to be made available
6 by the department to the parents and in which the parents are required
7 to participate, and deadlines for completion of each task. The case
8 plan shall state with specificity the role of the department toward each
9 parent. When appropriate, the reunification plan should identify terms
10 for visitation, supervision of visitation and child support.

11 (d) Include a concurrent permanency goal and a plan for achieving that
12 goal. The concurrent permanency goal may be one (1) of the following:
13 termination of parental rights and adoption, guardianship or another
14 planned permanent living arrangement. The concurrent plan shall:

15 (i) Address all options for permanent placement of the child,
16 including consideration of options for in-state and out-of-state
17 placement of the child;

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

21 (iii) Specifically identify the actions necessary to implement
22 the recommended option;

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

25 (v) Address options for maintaining the child's connection to the
26 community, including individuals with a significant relationship
27 to the child, and organizations or community activities with which
28 the child has a significant connection;

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

32 (vii) Identify further investigation necessary to identify or as-
33 sess other options for permanent placement, to identify actions
34 necessary to implement the recommended placement or to identify
35 options for maintaining the child's significant connections.

36 (4) The If the child has been placed under protective supervision of
37 the department, the case plan, as approved by the court filed by the depart-
38 ment, shall be entered into the record as an order of the court. In the ab-
39 sence of a finding of aggravated circumstances as provided for in section
40 16-1619(6) (d), Idaho Code, the court's order shall provide that reasonable
41 efforts shall be made to reunify the family in a timely manner in accordance
42 with the case plan or in the alternative to complete the steps necessary to
43 finalize the permanent placement of the child;

44 (a) Identify the services to be provided to the child, including ser-
45 vices to identify and meet any special educational, emotional, physip-
46 cal or developmental needs the child may have, to assist the child in
47 adjusting to the placement or to ensure the stability of the placement.
48 The plan shall also address options for maintaining the child's connec-
49 tion to the community, including individuals with a significant rela-

1 tionship to the child, and organizations or community activities with
 2 which the child has a significant connection.

3 (b) Identify all issues that need to be addressed to allow the child to
 4 remain at home without department supervision. The court may specifi-
 5 cally identify issues to be addressed by the plan. The case plan shall
 6 specifically identify the tasks to be completed by the department, the
 7 parents or others to address each issue, including services to be made
 8 available by the department to the parents and in which the parents are
 9 required to participate, and deadlines for completion of each task. The
 10 plan shall state with specificity the role of the department toward each
 11 parent.

12 (5) The case plan, as approved by the court, shall be entered into the
 13 record as an order of the court. The order may include interim and final
 14 deadlines for implementing the case plan and finalizing the permanency goal.
 15 The court's order shall provide that reasonable efforts shall be made to re-
 16 unify the family in a timely manner in accordance with the case plan. Unless
 17 the child has been placed under the protective supervision of the depart-
 18 ment, the court's order shall also require the department to simultaneously
 19 take steps to accomplish the goal of reunification and the concurrent perma-
 20 nency goal.

21 SECTION 6. That Section 16-1622, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 16-1622. REVIEW ~~AND~~ HEARINGS -- ANNUAL PERMANENCY HEARINGS. (1)
 24 Review hearing.

25 (a) A hearing for review of the child's case and permanency plan shall
 26 be held no later than six (6) months after entry of the court's order
 27 taking jurisdiction under this act and every six (6) months thereafter.
 28 The purpose of the review hearing is to determine:

29 (i) The safety of the child;

30 (ii) The continuing necessity for and appropriateness of the
 31 placement;

32 (iii) The extent of compliance with the case plan;

33 (iv) The extent of progress that has been made toward alleviating
 34 or mitigating the causes necessitating placement in foster care;

35 and

36 (v) When reasonable, to project a likely date by which the child
 37 may be safely returned to and maintained in the home or placed in
 38 another permanent placement.

39 (b) A motion for revocation or modification of an order issued un-
 40 der section 16-1619, Idaho Code, may be filed by the department or any
 41 party; provided that no motion may be filed by the respondents under
 42 this section within three (3) months of a prior hearing on care and
 43 placement of the child. ~~All persons required to be summoned or notified~~
 44 ~~of the original petition pursuant to section 16-1611, Idaho Code, shall~~
 45 ~~be served with notice of a motion for review of a child's case~~ Notice of
 46 a motion for review of a child's case shall be provided to the parents
 47 and other legal guardians, the prosecuting attorney or deputy attorney
 48 general, guardian ad litem, attorney for the child, the department and
 49 foster parents.

1 (2c) If the motion filed under subsection paragraph (1b) of this
2 subsection alleges that the child's best interests are no longer served
3 by carrying out the order issued under section 16-1619, Idaho Code, or
4 that the department or other authorized agency has failed to provide ad-
5 equuate care for the child, the court shall hold a hearing on the motion.

6 (3d) A hearing for review of the child's case and permanency plan shall
7 be held no later than six (6) months after entry of the court's order
8 taking jurisdiction under the act, and every six (6) months thereafter,
9 so long as the child is in the custody of the department or authorized
10 agency. The department or authorized agency may move the court at any
11 time to vacate any order placing a child in its custody or under its pro-
12 protective supervision.

13 (2) Permanency plan and hearing.

14 (a) The permanency plan shall include a permanency goal. The per-
15 manency goal may be one (1) of the following: continued efforts at
16 reunification, in the absence of a judicial determination of aggra-
17 vated circumstances; or termination of parental rights and adoption,
18 guardianship or another planned permanent living arrangement. Every
19 permanency plan shall include the information set forth in section
20 16-1621 (3) (a), Idaho Code. If the permanency plan has reunification as
21 a permanency goal, the plan shall include information set forth in sec-
22 tion 16-1621 (3) (b), Idaho Code. If the permanency plan has a permanency
23 goal other than reunification, the plan shall include the information
24 set forth in section 16-1621 (3) (c), Idaho Code. The court may approve a
25 permanency plan which includes a primary goal and a concurrent goal.

26 (4b) A permanency hearing shall be held to review the permanency plan
27 of the department prior to no later than twelve (12) months from the
28 date the child is removed from the home or the date of the court's order
29 taking jurisdiction under this chapter, whichever occurs first, and
30 at least every twelve (12) months thereafter, so long as the court has
31 jurisdiction over the child. The court shall review, approve, reject
32 or modify the permanency plan of the department and review progress in
33 accomplishing the permanency plan goal. This A permanency hearing may
34 be held at any time and may be combined with the review hearing required
35 under subsection (31) of this section.

36 (5c) The court shall make written case-specific findings whether the
37 department made reasonable efforts to finalize a the primary permanency
38 plan goal in effect for the child. Lack of reasonable efforts to reunify
39 may be a basis for an order approving a permanency plan with a permanency
40 goal of reunification.

41 (6) The department or authorized agency may move the court at any time
42 to vacate any order placing a child in its custody or under its protective
43 supervision.

44 (7) The department or any party may move the court requesting relief
45 from the duty imposed on the department pursuant to the provisions of sec-
46 tion 16-1629(9), Idaho Code, that it seek termination of parental rights.
47 The court may grant the department's motion if it appears based on compelling
48 reasons in the record that the presumption has been rebutted

49 (d) Where the permanency goal is not reunification, the hearing shall
50 include a review of the department's consideration of options for

1 in-state and out-of-state placement of the child. In the case of a
2 child in an out-of-state placement, the court shall determine whether
3 the out-of-state placement continues to be appropriate and in the best
4 interest of the child.

5 (e) In the case of a child who has attained the age of sixteen (16)
6 years, the hearing shall include a determination of the services needed
7 to assist the child to make the transition from foster care to indepen-
8 dent living.

9 (f) The court may approve a primary permanency goal of another planned
10 permanent living arrangement only upon written, case-specific findings
11 that there are compelling reasons why a more permanent goal is not in the
12 best interests of the child.

13 (g) If the child has been in the temporary or legal custody of the de-
14 partment for fifteen (15) of the most recent twenty-two (22) months, the
15 department shall file, prior to the last day of the fifteenth month, a
16 petition to terminate parental rights, unless the court finds that:

17 (i) The child is placed permanently with a relative;

18 (ii) There are compelling reasons why termination of parental
19 rights is not in the best interests of the child; or

20 (iii) The department has failed to provide reasonable efforts to
21 reunify the child with his family.

22 (h) The court may authorize the department to suspend further efforts
23 to reunify the child with the child's parent, pending further order of
24 the court, when a permanency plan is approved by the court and the perma-
25 neny plan does not include a permanency goal of reunification.

26 SECTION 7. That Section 16-1623, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 16-1623. AMENDED DISPOSITION -- REMOVAL DURING PROTECTIVE SUPERVI-
29 SION. (1) Where the child has been placed under the protective supervision
30 of the department pursuant to section 16-1619, Idaho Code, the child may be
31 removed from his or her home under the following circumstances:

32 (a) A peace officer may remove the child where the child is endangered
33 in his surroundings and prompt removal is necessary to prevent serious
34 physical or mental injury to the child; or

35 (b) The court has ordered, based upon facts presented to the court,
36 that the child should be removed from his or her present conditions or
37 surroundings because continuation in such conditions or surroundings
38 would be contrary to the welfare of the child and vesting legal custody
39 in the department or other authorized agency would be in the child's
40 best interests.

41 (2) Upon removal, the child shall be taken to a place of shelter care.

42 (3) When a child under protective supervision is removed from his home,
43 a hearing shall be held within forty-eight (48) hours of the child's removal
44 from the home, except for Saturdays, Sundays and holidays. At the hearing,
45 the court shall determine whether to vest legal custody in the department or
46 other authorized agency pursuant to section 16-1619(5) (b), Idaho Code.

47 (4) In determining whether to vest legal custody in the department or
48 other authorized agency, the court shall consider any information relevant
49 to the redispotion of the child, and in any event shall make detailed

1 written findings based upon facts in the record as required by section
2 16-1619(6), Idaho Code.

3 (5) An order vesting legal custody with the department or other autho-
4 rized agency under this section shall be treated for all purposes as if such
5 an order had been part of the court's original decree under section 16-1619,
6 Idaho Code. The department shall prepare a written case plan and the court
7 shall hold a case plan hearing within thirty (30) days pursuant to section
8 16-1621, Idaho Code.

9 (6) Each of the parents or legal guardians from whom the child was re-
10 moved shall be given notice of the redistribution hearing in the same time
11 and manner as required for notice of a shelter care hearing under section
12 16-1615(2) and (3), Idaho Code.

13 (7) The redistribution hearing may be continued for a reasonable time
14 upon the request of the parties.

15 SECTION 8. That Section 16-1624, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 16-1624. TERMINATION OF PARENT-CHILD RELATIONSHIP. (1) If the child
18 has been placed in the legal custody of the department or under its protec-
19 tive supervision pursuant to section 16-1619, Idaho Code, the department may
20 petition the court for termination of the parent and child relationship in
21 accordance with chapter 20, title 16, Idaho Code. A petition to terminate
22 parental rights shall be filed in the child protective act case.

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

26 (3) Unless there are compelling reasons it would not be in the best
27 interest of the child, the department shall be required to file a petition
28 to terminate parental rights within ~~sixty thirty~~ (630) days of a judicial
29 determination that an infant has been abandoned or that reasonable efforts
30 are not required because ~~the parent has subjected the child to aggravated~~
31 ~~circumstances as determined by the court pursuant to section 16-1619(6)(d),~~
32 ~~Idaho Code were present.~~

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

38 (5) If termination of parental rights is granted and the child is placed
39 in the guardianship or legal custody of the department, ~~of health and wel-~~
40 ~~fare~~ the court, upon petition, shall conduct a hearing as to the future sta-
41 tus of the child within twelve (12) months of the order of termination of
42 parental rights, and every twelve (12) months subsequently until the child
43 is adopted or is in a placement sanctioned by the court. ~~A petition to termi-~~
44 ~~nate parental rights shall be filed in the child protective act case.~~

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

1 SECTION 9. That Section 16-1625, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 16-1625. APPEAL -- EFFECT ON CUSTODY. (1) An aggrieved party may ap-
4 peal the following orders or decrees of the court to the district court, or
5 may seek a direct permissive appeal to the supreme court as provided by rules
6 adopted by the supreme court:

7 (a) An adjudicatory decree entered pursuant to section 16-1619, Idaho
8 Code;

9 (b) Any order subsequent to the adjudicatory decree that vests legal
10 custody of the child in the department or other authorized agency;

11 (c) Any order subsequent to the adjudicatory decree that authorizes or
12 mandates the department to cease reasonable efforts to make it possible
13 to return the child to his home, including an order finding ~~that the par-~~
14 ~~ent subjected the child to aggravated circumstances as set forth in sec-~~
15 ~~tion 16-1619(6)(d), Idaho Code; or~~

16 (d) An order of dismissal.

17 (2) Where the order affects the custody of a child, the appeal shall be
18 heard at the earliest practicable time. The pendency of an appeal shall not
19 suspend the order of the court regarding a child, and it shall not discharge
20 the child from the legal custody of the authorized agency to whose care he has
21 been committed, unless otherwise ordered by the district court. No bond or
22 undertaking shall be required of any party appealing to the district court
23 under the provisions of this section. Any final order or judgment of the dis-
24 trict court shall be appealable to the supreme court of the state of Idaho in
25 the same manner as appeals in other civil actions. The filing of the notice
26 of appeal shall not, unless otherwise ordered, stay the order of the district
27 court.

28 SECTION 10. That Section 16-1629, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 16-1629. POWERS AND DUTIES OF THE DEPARTMENT. The department, working
31 in conjunction with the court and other public and private agencies and per-
32 sons, shall have the primary responsibility to implement the purpose of this
33 chapter. To this end, the department is empowered and shall have the duty to
34 do all things reasonably necessary to carry out the purpose of this chapter,
35 including, but not limited to, the following:

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

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

1 cal agencies shall report in such uniform format as may be required by the
2 department.

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

8 (4) The department shall make periodic evaluation of all persons in its
9 custody or under its protective supervision for the purpose of determining
10 whether existing orders and dispositions in individual cases shall be modi-
11 fied or continued in force. Evaluations may be made as frequently as the de-
12 partment considers desirable and shall be made with respect to every person
13 at intervals not exceeding six (6) months. Reports of evaluation made pur-
14 suant to this section shall be filed with the court ~~which vested custody of~~
15 ~~the person with the department that has jurisdiction~~. Reports of evaluation
16 shall be provided to persons having full or partial legal or physical custody
17 of a child. Failure of the department to evaluate a person or to reevaluate
18 him within six (6) months of a previous examination shall not of itself enti-
19 tle the person to a change in disposition but shall entitle him, his parent,
20 guardian or custodian or his counsel to petition the court pursuant to sec-
21 tion 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 3, title 9, Idaho Code, unless otherwise ordered by the court, the per-
30 son consents to the disclosure, or disclosure is necessary for the deliv-
31 ery of services to the person. Notwithstanding the provisions restricting
32 disclosure or the exemptions from disclosure provided in chapter 3, title
33 9, Idaho Code, all records pertaining to investigations, the rehabilitation
34 of 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 Provided however, that the court shall retain jurisdiction over the child,
13 which jurisdiction shall be entered on any order or petition granting legal
14 custody to the department, and the court shall have jurisdiction over all
15 matters relating to the child. The department shall not place the child in
16 the home from which the court ordered the child removed without first obtain-
17 ing 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. ~~There shall be a rebuttable presumption~~
26 ~~that if a child is placed in the custody of the department and was also placed~~
27 ~~in out of the home care for a period not less than fifteen (15) out of the last~~
28 ~~twenty-two (22) months from the date the child entered shelter care, the de-~~
29 ~~partment shall initiate a petition for termination of parental rights. This~~
30 ~~presumption may be rebutted by a finding of the court that the filing of a~~
31 ~~petition for termination of parental rights would not be in the best inter-~~
32 ~~est of the child or reasonable efforts have not been provided to reunite the~~
33 ~~child with his family, or the child is placed permanently with a relative.~~

34 (10) The department shall establish appropriate administrative proce-
35 dures for the conduct of administrative reviews and hearings as required by
36 federal statute for all children committed to the department and placed in
37 out of the home care.

38 (11) At any time the department is considering a placement pursuant to
39 this chapter, the department shall make a reasonable effort to place the
40 child in the least restrictive environment to the child and in so doing shall
41 consider, consistent with the best interest and special needs of the child,
42 placement priority of the child in the following order:

43 (a) A fit and willing relative.

44 (b) A fit and willing nonrelative with a significant relationship with
45 the child.

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

48 SECTION 11. That Section 16-2002, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 16-2002. DEFINITIONS. When used in this chapter, unless the text oth-
2 erwise requires:

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

5 (2) "Child" or "minor" means any individual who is under the age of
6 eighteen (18) years.

7 (3) "Neglected" means:

8 (a) Conduct as defined in section 16-1602(256), Idaho Code; or

9 (b) ~~The parent(s) has failed to comply with the court's orders in a~~
10 ~~child protective act case or the case plan, and reunification of the~~
11 ~~child with his or her parent(s) has not occurred within the time stan-~~
12 ~~dards set forth in section 16-1629(9), Idaho Code~~ The parent(s) has
13 failed to comply with the court's orders or the case plan in a child pro-
14 TECTIVE ACT CASE AND:

15 (i) The department has had temporary or legal custody of the child
16 for fifteen (15) of the most recent twenty-two (22) months; and

17 (ii) Reunification has not been accomplished by the last day of
18 the fifteenth month in which the child has been in the temporary or
19 legal custody of the department.

20 (4) "Abused" means conduct as defined in section 16-1602(1), Idaho
21 Code.

22 (5) "Abandoned" means the parent has willfully failed to maintain a
23 normal parental relationship including, but not limited to, reasonable sup-
24 port or regular personal contact. Failure of the parent to maintain this
25 relationship without just cause for a period of one (1) year shall constitute
26 prima facie evidence of abandonment under this section; provided however,
27 where termination is sought by a grandparent seeking to adopt the child, the
28 willful failure of the parent to maintain a normal parental relationship as
29 provided herein without just cause for six (6) months shall constitute prima
30 facie evidence of abandonment.

31 (6) "Legal custody" means status created by court order which vests in a
32 custodian the following rights and responsibilities:

33 (a) To have physical custody and control of the child and to determine
34 where and with whom the child shall live;

35 (b) To supply the child with food, clothing, shelter and incidental ne-
36 cessities;

37 (c) To provide the child with care, education and discipline; and

38 (d) To authorize medical, dental, psychiatric, psychological and other
39 remedial care and treatment for the child, including care and treatment
40 in a facility with a program of services for children;

41 provided that such rights and responsibilities shall be exercised subject to
42 the powers, rights, duties and responsibilities of the guardian of the per-
43 son.

44 (7) "Guardianship of the person" means those rights and duties imposed
45 upon a person appointed as guardian of a minor under the laws of Idaho. It
46 includes but is not necessarily limited either in number or kind to:

47 (a) The authority to consent to marriage, to enlistment in the armed
48 forces of the United States, and to major medical, psychiatric and sur-
49 gical treatment; to represent the minor in legal actions; and to make

1 other decisions concerning the child of substantial legal signifi-
2 cance;

3 (b) The authority and duty of reasonable visitation, except to the ex-
4 tent that such right of visitation has been limited by court order;

5 (c) The rights and responsibilities of legal custody except where legal
6 custody has been vested in another individual or in an authorized child
7 placement agency;

8 (d) When the parent and child relationship has been terminated by judi-
9 cial decree with respect to the parents, or only living parent, or when
10 there is no living parent, the authority to consent to the adoption of
11 the child and to make any other decision concerning the child which the
12 child's parents could make.

13 (8) "Guardian ad litem" means a person appointed by the court pursuant
14 to section 16-1614 or 5-306, Idaho Code.

15 (9) "Authorized agency" means the department, a local agency, a person,
16 an organization, corporation, benevolent society or association licensed
17 or approved by the department or the court to receive children for control,
18 care, maintenance or placement.

19 (10) "Department" means the department of health and welfare and its au-
20 thorized representatives.

21 (11) "Parent" means:

22 (a) The birth mother or the adoptive mother;

23 (b) The adoptive father;

24 (c) The biological father of a child conceived or born during the fa-
25 ther's marriage to the birth mother; and

26 (d) The unmarried biological father whose consent to an adoption of the
27 child is required pursuant to section 16-1504, Idaho Code.

28 (12) "Presumptive father" means a man who is or was married to the birth
29 mother and the child is born during the marriage or within three hundred
30 (300) days after the marriage is terminated.

31 (13) "Parent and child relationship" includes all rights, privileges,
32 duties and obligations existing between parent and child, including inheri-
33 tance rights, and shall be construed to include adoptive parents.

34 (14) "Parties" includes the child and the petitioners.

35 (15) "Unmarried biological father," as used in this chapter and chapter
36 15, title 16, Idaho Code, means the biological father of a child who was not
37 married to the child's mother at the time the child was conceived or born.

38 (16) "Unmarried biological mother," as used in this chapter, means the
39 biological mother of a child who was not married to the child's biological
40 father at the time the child was conceived or born.

41 (17) "Disability" means, with respect to an individual, any mental or
42 physical impairment which substantially limits one (1) or more major life
43 activities of the individual including, but not limited to, self-care, man-
44 ual tasks, walking, seeing, hearing, speaking, learning, or working, or a
45 record of such an impairment, or being regarded as having such an impairment.
46 Disability shall not include transvestism, transsexualism, pedophilia,
47 exhibitionism, voyeurism, other sexual behavior disorders, or substance use
48 disorders, compulsive gambling, kleptomania, or pyromania. Sexual prefer-
49 ence or orientation is not considered an impairment or disability. Whether
50 an impairment substantially limits a major life activity shall be determined

1 without consideration of the effect of corrective or mitigating measures
2 used to reduce the effects of the impairment.

3 (18) "Adaptive equipment" means any piece of equipment or any item that
4 is used to increase, maintain, or improve the parenting abilities of a parent
5 with a disability.

6 (19) "Supportive services" means services which assist a parent with a
7 disability to compensate for those aspects of their disability which affect
8 their ability to care for their child and which will enable them to discharge
9 their parental responsibilities. The term includes specialized or adapted
10 training, evaluations, or assistance with effective use of adaptive equip-
11 ment, and accommodations which allow a parent with a disability to benefit
12 from other services, such as Braille texts or sign language interpreters.

13 SECTION 12. That Section 16-2005, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 16-2005. CONDITIONS UNDER WHICH TERMINATION MAY BE GRANTED. (1) The
16 court may grant an order terminating the relationship where it finds that
17 termination of parental rights is in the best interests of the child and that
18 one (1) or more of the following conditions exist:

19 (a) The parent has abandoned the child.

20 (b) The parent has neglected or abused the child.

21 (c) The presumptive parent is not the biological parent of the child.

22 (d) The parent is unable to discharge parental responsibilities and
23 such inability will continue for a prolonged indeterminate period and
24 will be injurious to the health, morals or well-being of the child.

25 (e) The parent has been incarcerated and is likely to remain incarcer-
26 ated for a substantial period of time during the child's minority.

27 (2) The court may grant an order terminating the relationship and may
28 rebuttably presume that such termination of parental rights is in the best
29 interests of the child where:

30 (a) The parent caused the child to be conceived as a result of rape,
31 incest, lewd conduct with a minor child under the age of sixteen (16)
32 years, or sexual abuse of a child under the age of sixteen (16) years, as
33 defined in sections 18-6101, 18-1508, 18-1506 and 18-6602, Idaho Code;

34 ~~(b) The parent has subjected the child to torture, chronic abuse or~~
35 ~~sexual abuse, has committed murder or intentionally killed the other~~
36 ~~parent of the child, has committed murder or voluntary manslaughter of~~
37 ~~another child or has aided, abetted, conspired or solicited to commit~~
38 ~~such murder or voluntary manslaughter, and/or has committed battery~~
39 ~~which resulted in serious bodily injury to a child~~ The following circum-
40 stances are present:

41 (i) Abandonment, chronic abuse or chronic neglect of the child.
42 Chronic neglect or chronic abuse of a child shall consist of abuse
43 or neglect that is so extreme or repetitious as to indicate con-
44 tinuing the relationship would result in unacceptable risk to the
45 health and welfare of the child;

46 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
47 the purposes of this section, includes any conduct described in
48 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
49 18-6108 or 18-6608, Idaho Code;

1 name(s) is (are) subscribed to the within instrument, and acknowledged to me
2 that he (she, they) executed the same.

3 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
4 seal the day and year in this certificate first above written.
5 (District Judge or Magistrate)

6 The court shall accept a consent or a surrender and release executed in
7 another state if:

8 (1) It is witnessed by a magistrate or district judge of the state where
9 signed; or

10 (2) The court receives an affidavit or a certificate from a court of
11 comparable jurisdiction stating that the consent or the surrender and
12 release was executed in accordance with the laws of the state in which it
13 was executed, or the court is satisfied by other showing that the con-
14 sent or surrender and release was executed in accordance with the laws
15 of the state in which it was executed; or

16 (3) The court shall accept a termination or relinquishment from a sis-
17 ter state that has been ordered by a court of competent jurisdiction un-
18 der like proceedings; or in any other manner authorized by the laws of a
19 sister state. In a state where the father has failed to file notice of
20 claim to paternity and willingness to assume responsibility as provided
21 for pursuant to the laws of such state, and where such failure consti-
22 tutes an abandonment of such child and constitutes a termination or re-
23 relinquishment of the rights of the putative father, the court shall ac-
24 cept such failure as a termination in this state without further hearing
25 on the merits, if the court is satisfied that such failure constitutes
26 a termination or relinquishment of parental rights pursuant to the laws
27 of that state.

28 (5) Unless a consent to termination signed by the parent(s) of the child
29 has been filed by an adoption agency licensed in the state of Idaho, or unless
30 the consent to termination was filed in conjunction with a petition for adop-
31 tion of the child, the court shall hold a hearing.

32 (6) If the parent has a disability, as defined in this chapter, the par-
33 ent shall have the right to provide evidence to the court regarding the man-
34 ner in which the use of adaptive equipment or supportive services will enable
35 the parent to carry out the responsibilities of parenting the child. Nothing
36 in this section shall be construed to create any new or additional obligation
37 on state or local governments to purchase or provide adaptive equipment or
38 supportive services for parents with disabilities.