

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 528

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO DOMESTIC VIOLENCE AND CRIME PREVENTION; AMENDING SECTION
2 39-6301, IDAHO CODE, TO REVISE THE SHORT TITLE OF THE ACT; AMENDING
3 SECTION 39-6303, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS;
4 AMENDING SECTION 39-6304, IDAHO CODE, TO REVISE PROVISIONS RELATING TO
5 ACTIONS FOR PROTECTION ASSOCIATED WITH DOMESTIC VIOLENCE AND TO PRO-
6 VIDE FOR ACTIONS FOR PROTECTION ASSOCIATED WITH SEXUAL ASSAULT, SEXUAL
7 ABUSE AND STALKING; AMENDING SECTION 39-6306, IDAHO CODE, TO REVISE
8 PROVISIONS RELATING TO THE TIME IN WHICH COURTS MUST HOLD HEARINGS
9 ON PETITIONS FOR PROTECTION ORDERS, TO REVISE PROVISIONS RELATING TO
10 PROTECTION ORDERS ASSOCIATED WITH DOMESTIC VIOLENCE, TO PROVIDE FOR
11 PROTECTION ORDERS ASSOCIATED WITH SEXUAL ASSAULT, SEXUAL ABUSE AND
12 STALKING, TO REMOVE A TIME LIMITATION PROVISION RELATING TO PROTECTION
13 ORDERS, TO PROVIDE THAT RELIEF SHALL NOT BE DENIED IN THE EVENT OF SPEC-
14 IFIED CIRCUMSTANCES IN MATTERS INVOLVING SEXUAL ASSAULT, SEXUAL ABUSE
15 AND STALKING, TO PROVIDE THAT PROOF OF PHYSICAL INJURY SHALL NOT BE RE-
16 QUIRED IN MATTERS RELATING TO SEXUAL ASSAULT, TO PROVIDE THAT A COURT
17 MAY CONSIDER WHETHER A PETITIONER'S AFFIDAVIT IS CONSISTENT WITH ANY
18 PHYSICAL INJURIES PRESENT IN REGARD TO SEXUAL ASSAULT PROTECTION OR-
19 DERS, TO REMOVE A TIME LIMITATION PROVISION RELATING TO RELIEF GRANTED
20 BY A PROTECTION ORDER, TO PROVIDE FOR NONDISCLOSURE OF ADDRESSES AND TO
21 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-6308, IDAHO CODE, TO
22 REVISE PROVISIONS RELATING TO EX PARTE TEMPORARY PROTECTION ORDERS IN
23 REGARD TO DOMESTIC VIOLENCE, TO PROVIDE FOR EX PARTE TEMPORARY PROTEC-
24 TION ORDERS IN REGARD TO MATTERS INVOLVING SEXUAL ASSAULT, SEXUAL ABUSE
25 AND STALKING, TO REVISE PROVISIONS RELATING TO SITUATIONS CONSTITUTING
26 IRREPARABLE INJURY, TO REVISE PROVISIONS RELATING TO THE DURATION OF EX
27 PARTE TEMPORARY PROTECTION ORDERS, TO REVISE PROVISIONS RELATING TO THE
28 TIME IN WHICH COURTS MUST HOLD HEARINGS ON EX PARTE TEMPORARY PROTECTION
29 ORDERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-6311,
30 IDAHO CODE, TO REMOVE A TIME LIMITATION PROVISION RELATING TO RENEWED
31 PROTECTION ORDERS; AND AMENDING SECTION 16-1602, IDAHO CODE, TO PROVIDE
32 A CORRECT CODE REFERENCE.
33

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

35 SECTION 1. That Section 39-6301, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 39-6301. SHORT TITLE. This chapter shall be known and may be cited as
38 the "Domestic Violence, Sexual Abuse, Sexual Assault and Stalking Crime Pre-
39 vention Act."

40 SECTION 2. That Section 39-6303, Idaho Code, be, and the same is hereby
41 amended to read as follows:

1 39-6303. DEFINITIONS. (1) "Domestic violence" means the physical in-
2 jury, sexual abuse, sexual assault or ~~forced false~~ imprisonment or threat
3 thereof of a family or household member, or of a minor child by a family or
4 household member or a person with whom the minor child has had or is having a
5 dating relationship, or of an adult by a person with whom the adult has had or
6 is having a dating relationship.

7 (2) "Dating relationship," for the purposes of this chapter, is defined
8 as a social relationship of a romantic nature. Factors that the court may
9 consider in making this determination include:

10 (a) The nature of the relationship;

11 (b) The length of time the relationship has existed;

12 (c) The frequency of interaction between the parties; and

13 (d) The time since termination of the relationship, if applicable.

14 (3) "False imprisonment" is the unlawful violation of the personal lib-
15 erty of another.

16 (4) "Family member" means spouses, former spouses and persons related
17 by blood, adoption or marriage.

18 (45) "Family dwelling" is any premises in which the petitioner resides.

19 (56) "Foreign protection order" means a protection order issued by a
20 tribunal of another state.

21 (67) "Household member" means persons who reside or have resided to-
22 gether, and persons who have a child in common regardless of whether they
23 have been married or have lived together at any time.

24 (78) "Judicial day" means any day upon which court business may be
25 transacted as provided in sections 1-1606 and 1-1607, Idaho Code.

26 (9) "Nonconsensual" means any contact with the victim that is initi-
27 ated or continued without the victim's consent, that is beyond the scope of
28 consent provided by the victim, is beyond the scope of consent the victim is
29 capable of providing pursuant to sections 18-6101 and 18-6108, Idaho Code,
30 or that is in disregard of the victim's expressed desire that the contact be
31 avoided or discontinued.

32 (810) "Protection order" means any order issued for the purpose of pre-
33 venting violent or threatening acts or acts of harassment against, or con-
34 tact or communication with, or physical proximity to, another person, where
35 the order was issued:

36 (a) Pursuant to this chapter;

37 (b) In another jurisdiction pursuant to a provision similar to section
38 39-6306, Idaho Code; or

39 (c) In any criminal or civil action, as a temporary or final order
40 (other than a support or child custody order), and where the order was
41 issued in a response to a criminal complaint, petition or motion filed
42 by or on behalf of a person seeking protection, and issued after giving
43 notice and an opportunity to respond to the person being restrained.

44 (911) "Respondent" means the individual against whom enforcement of a
45 protection order is sought.

46 (12) "Sexual abuse" means sexual activity with a minor child under six-
47 teen (16) years of age as provided in sections 18-1506 and 18-1508, Idaho
48 Code.

49 (13) "Sexual assault" means nonconsensual sexual conduct or nonconsen-
50 sual sexual penetration.

1 (14) "Sexual conduct" means any of the following:

2 (a) Any intentional or knowing touching or fondling of the genitals,
3 anus or breasts including through clothing;

4 (b) Any intentional or knowing touching or fondling of the genitals,
5 anus or breasts, directly or indirectly, including through clothing,
6 that the petitioner is forced to perform by the respondent with another
7 person;

8 (c) Any forced display of the petitioner's genitals, anus or breasts
9 for the purposes of arousal or sexual gratification of the respondent or
10 others.

11 (15) "Sexual penetration" means any intrusion, however slight, of any
12 part of the body of one (1) person or object into the sex organ or anus of an-
13 other person, including anal penetration.

14 (16) "Stalking" shall include activity that constitutes stalking in the
15 first degree and stalking in the second degree as defined in sections 18-7905
16 and 18-7906, Idaho Code.

17 SECTION 3. That Section 39-6304, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 39-6304. ACTION FOR PROTECTION. (1) There shall exist an action known
20 as a "petition for a protection order" in cases of domestic violence, sexual
21 assault, sexual abuse or stalking.

22 (2) A person ~~may seek relief who has been the victim of domestic vio-~~
23 lence, sexual assault, sexual abuse or stalking may petition the court for
24 relief from domestic violence, sexual assault, sexual abuse or stalking by
25 filing a petition based on a sworn affidavit with the magistrates division
26 of the district court, alleging that the person or a family or household mem-
27 ber, whether an adult or a child, is the victim of domestic violence, sexual
28 assault, sexual abuse or stalking. Any petition properly filed under this
29 chapter may seek protection for any additional persons covered by this chap-
30 ter. A custodial or noncustodial parent or guardian may file a petition on
31 behalf of a minor child who is the victim of domestic violence, sexual as-
32 sault, sexual abuse or stalking. The fact a respondent is incarcerated or
33 has a principal residence more than one hundred (100) miles from the princi-
34 pal residence of the petitioner does not necessarily indicate there is not an
35 immediate and present risk of danger to the petitioner.

36 (3) A person's right to petition for relief under this chapter shall not
37 be affected by that person's having left the residence or household to avoid
38 abuse.

39 (4) The petition shall disclose the existence of any custody or any mar-
40 ital annulment, dissolution or separation proceedings pending between the
41 parties, the existence of any other custody order affecting the children of
42 the parties, the existence of a custody order affecting the minor child on
43 whose behalf the petition is being filed, and the existence of child protec-
44 tion or adoption proceedings affecting the children of any party or affect-
45 ing the minor on whose behalf the petition is being filed.

46 (5) When the petitioner requests custody of any child, the petition
47 shall disclose:

48 (a) The county and state where the child has resided for six (6) months
49 immediately prior to the filing of the petition;

1 (b) The party or other responsible person with whom the child is
2 presently residing; and

3 (c) The party or other responsible person with whom the child has
4 resided for six (6) months immediately prior to the filing of the peti-
5 tion.

6 (6) A petition shall be filed in the county of the respondent's resi-
7 dence, the petitioner's residence, or where the petitioner is temporarily
8 residing.

9 SECTION 4. That Section 39-6306, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 39-6306. HEARING ON PETITION FOR PROTECTION ORDER -- RELIEF PROVIDED
12 AND REALIGNMENT OF DESIGNATION OF PARTIES. (1) Upon filing of a petition
13 based upon a sworn affidavit for a protection order, the court shall hold a
14 hearing, no sooner than ten (10) days and no later than twenty-one (21) days,
15 to determine whether the relief sought shall be granted ~~within fourteen (14)~~
16 ~~days.~~ If either party is represented by counsel at a hearing seeking entry
17 of a protection order, the court shall permit a continuance, if requested,
18 of the proceedings so that counsel may be obtained by the other party. If
19 the court finds that it is necessary for both parties to be represented by
20 counsel, the court shall enter appropriate orders to ensure that counsel
21 is retained. The order entered may require either the petitioner or re-
22 spondent, or both, to pay for costs of counsel. Upon a showing, in a case
23 of domestic violence, that there is an immediate and present danger of do-
24 mestic violence to the petitioner, or in a case of sexual assault or sexual
25 abuse, upon a preponderance of the evidence that the petitioner has been a
26 victim of sexual assault or sexual abuse by the respondent, and in the case
27 of stalking, reasonable apprehension regarding the personal safety of the
28 petitioner or a member of the petitioner's family or household, the court
29 may, if requested, order ~~for a period not to exceed one (1) year~~ that:

30 (a) Temporary custody of the minor children of the petitioner or of the
31 parties be awarded to the petitioner or respondent if exercise of such
32 jurisdiction is consistent with the provisions of section 32-11-204,
33 Idaho Code, and consistent with prior custody orders entered by a court
34 of competent jurisdiction unless grounds exist pursuant to section
35 32-717, Idaho Code;

36 (b) A party be restrained from committing acts of domestic violence,
37 sexual assault, sexual abuse or stalking;

38 (c) Exclude the respondent from the dwelling which the parties share or
39 from the residence of the petitioner;

40 (d) The respondent be ordered to participate in treatment or counseling
41 services. The council on domestic violence and victim assistance, in
42 recognition of the particular treatment requirements for batterers,
43 shall develop minimal program and treatment standards to be used as
44 guidelines for recommending approval of batterer programs to the court;

45 (e) Other relief be ordered as the court deems necessary for the protec-
46 tion of a family or household member, including orders or directives to
47 a peace officer, as allowed under this chapter;

1 (f) The respondent be required to pay service fees, and to reimburse the
2 petitioner for costs incurred in bringing the action, including a rea-
3 sonable attorney's fee;

4 (g) The respondent be restrained from harassing, annoying, disturbing
5 the peace of, telephoning, contacting, or otherwise communicating,
6 directly or indirectly, with the petitioner and any designated family
7 member or specifically designated person of the respondent's house-
8 hold, including the minor children whose custody is awarded to the
9 petitioner;

10 (h) The respondent be restrained from entering any premises when it
11 appears to the court that such restraint is necessary to prevent the
12 respondent from contacting, harassing, annoying, disturbing the peace
13 of or telephoning the petitioner or the minor children whose custody is
14 awarded to the petitioner; and/or

15 (i) The respondent be restrained from coming within one thousand five
16 hundred (1,500) feet or other appropriate distance of the petitioner,
17 the petitioner's residence, the school or place of employment of the pe-
18 titioner, or any specified place frequented by the petitioner and by any
19 other designated family member or specifically designated person of the
20 respondent's household, including the minor children whose custody is
21 awarded to the petitioner.

22 (2) Immediate and present danger under this section includes, but is
23 not limited to, situations in which the respondent has recently threatened
24 the petitioner with bodily harm or engaged in domestic violence against the
25 petitioner or where there is reasonable cause to believe bodily harm may re-
26 sult.

27 (3) No order made under this chapter shall in any manner affect title to
28 real property.

29 (4) Relief shall not be denied because petitioner used reasonable force
30 in self-defense against respondent, ~~or~~ because petitioner or respondent was
31 a minor at the time of the incident of domestic violence, sexual assault,
32 sexual abuse or stalking, solely because the petitioner did not report the
33 incident of domestic violence, sexual assault, sexual abuse or stalking to
34 law enforcement, or because of a lapse of time since the last incident if the
35 other requirements of subsection (1) of this section are met.

36 (5) The court, when determining whether to issue a sexual assault pro-
37 tection order, shall not require proof of physical injury on the person, but
38 a judge may consider if the petitioner's affidavit is consistent with any
39 physical injuries present.

40 (6) Any relief granted by the protection order, other than a judg-
41 ment for costs, shall be for a fixed period. ~~not to exceed one (1) year;~~
42 ~~provided,~~ that an order obtained pursuant to this chapter may, upon motion
43 and upon good cause shown, continue for an appropriate time period as di-
44 rected by the court or be made permanent if the requirements of this chapter
45 are met, provided the order may be terminated or modified by further order of
46 the court either on written stipulation filed with the court or on the motion
47 of a party and after a hearing on the motion. The motion to renew an order may
48 be granted without a hearing, if not timely objected to by the party against
49 whom the order was entered.

1 (7) If the petition states that disclosure of the petitioner's address
 2 would risk abuse of the petitioner, or place the petitioner or a household
 3 member in danger, that address may be omitted from all documents filed with
 4 the court. If the petitioner has not disclosed an address, the petitioner
 5 shall designate an alternative address at which the respondent may serve no-
 6 tice of any motions.

7 (68) In providing relief under this chapter, the court may realign the
 8 designation of the parties as "petitioner" and "respondent" where the court
 9 finds that the original petitioner is the abuser and the original respondent
 10 is the victim of domestic violence.

11 SECTION 5. That Section 39-6308, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

13 39-6308. EX PARTE TEMPORARY PROTECTION ORDER. (1) Where an applica-
 14 tion under this section, in cases of domestic violence or stalking, alleges
 15 that irreparable injury could result from domestic violence or stalking if
 16 an order is not issued immediately without prior notice to the respondent,
 17 and in cases of sexual assault or sexual abuse, shows by a preponderance of
 18 the evidence that a petitioner has been a victim of sexual assault or sexual
 19 abuse by the respondent, the court may grant an ex parte temporary protection
 20 order based upon the affidavit submitted or otherwise shall hold a hearing
 21 which may be ex parte on the day a petition is filed or on the following ju-
 22 dicial day to determine whether the court should grant an ex parte temporary
 23 protection order, pending a full hearing, and grant such other relief as the
 24 court deems proper, including an order:

25 (a) Restraining any party from committing acts of domestic violence,
 26 sexual assault, sexual abuse or stalking;

27 (b) Excluding any party from the dwelling shared or from the residence
 28 of the other until further order of the court;

29 (c) Restraining any party from interfering with the other's custody of
 30 the minor children or from removing the children from the jurisdiction
 31 of the court;

32 (d) Ordering other relief as the court deems necessary for the protec-
 33 tion of a family or household member, including orders or directives to
 34 a peace officer, as allowed under this chapter;

35 ~~(e) Restraining the respondent from~~ The respondent from be restrained from harassing, an-
 36 noying, disturbing the peace of, telephoning, contacting, molesting,
 37 interfering with or menacing or otherwise communicating, directly or
 38 indirectly, with the petitioner and any designated family member in the
 39 petitioner's household, including the minor children whose custody is
 40 awarded to the petitioner;

41 (f) Restraining the respondent from entering any premises when it ap-
 42 pears to the court that such restraint is necessary to prevent the re-
 43 spondent from contacting, molesting, interfering with or menacing the
 44 petitioner or the minor children whose custody is awarded to the peti-
 45 tioner; and/or

46 (g) Restraining the respondent from taking more than personal clothing
 47 and toiletries and any other items specifically ordered by the court.

1 (2) An ex parte hearing to consider the issuance of a temporary protec-
 2 tion order may be conducted by telephone in accordance with procedures es-
 3 tablished by the Idaho supreme court.

4 (3) Irreparable injury under this section includes, but is not limited
 5 to, situations in which the respondent:

6 (a) ~~H~~has recently threatened the petitioner with bodily injury;

7 (b) ~~or h~~has engaged in acts of domestic violence against the peti-
 8 tioner;

9 (c) Has engaged in a course of conduct that seriously alarms, annoys or
 10 harasses the victim and is such as would cause a reasonable person sub-
 11 stantial emotional distress; or

12 (d) Has engaged in a course of conduct such as would cause a reasonable
 13 person to be in fear of death or physical injury, or in fear of the death
 14 or physical injury of a family or household member.

15 (4) The court shall hold an ex parte hearing on the day the petition is
 16 filed or on the following judicial day.

17 (5) An ex parte temporary protection order shall be effective for a
 18 fixed period not to exceed ~~fourteen~~ twenty-one (1421) days, but may be reis-
 19 sued. A full hearing, as provided in this chapter, shall be set for not later
 20 than ~~fourteen~~ twenty-one (1421) days from the issuance of the temporary or-
 21 der. The respondent shall be served with a copy of the ex parte order along
 22 with a copy of the petition and notice of the date set for the hearing. If the
 23 ex parte temporary protection order substantially affects the respondent's
 24 rights to enter the domicile or the respondent's right to custody or visi-
 25 tation of the respondent's children and the ends of justice so require, the
 26 respondent may move the court for an order shortening the time period within
 27 which the hearing required under the provisions of section 39-6306, Idaho
 28 Code, must be held. Motions seeking an order shortening the time period must
 29 be served upon the petitioner at least two (2) days prior to the hearing on
 30 the motion.

31 SECTION 6. That Section 39-6311, Idaho Code, be, and the same is hereby
 32 amended to read as follows:

33 39-6311. ORDER -- TRANSMITTAL TO LAW ENFORCEMENT AGENCY -- RECORD IN
 34 IDAHO LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM -- ENFORCEABILITY. (1) The
 35 orders issued under sections 39-6306 and 39-6308, Idaho Code, or foreign
 36 protection orders recognized under section 39-6306A, Idaho Code, shall be in
 37 a form approved by the supreme court of the state of Idaho.

38 (2) (a) A copy of a protection order granted or a foreign protection or-
 39 der recognized under this chapter shall be forwarded by the clerk of the
 40 court on or before the next judicial day to the appropriate law enforce-
 41 ment agency specified in the order.

42 (b) Upon receipt of the order, the law enforcement agency shall
 43 forthwith enter the order and its expiration date into the Idaho law
 44 enforcement telecommunications system available in this state used by
 45 law enforcement agencies to list outstanding warrants. Notification
 46 of service as required in section 39-6310, Idaho Code, shall also be
 47 entered into the Idaho law enforcement telecommunications system upon
 48 receipt. Entry into the Idaho law enforcement telecommunications sys-
 49 tem constitutes notice to all law enforcement agencies of the existence

1 of the order. The order is fully enforceable in any county in the state.
 2 Renewals of the order shall be recorded in the same manner as original
 3 orders. The information entered shall specifically state that the pro-
 4 tection order is civil in nature. If the appropriate law enforcement
 5 agency determines that the service information sheet is incomplete or
 6 cannot be entered into the Idaho law enforcement telecommunications
 7 system upon receipt, the service information sheet shall be returned
 8 to the clerk of the court. The clerk of the court shall then notify the
 9 petitioner of the error or omission.

10 (3) Law enforcement agencies shall establish procedures reasonably ad-
 11 equate to assure that an officer approaching or actually at the scene of an
 12 incident of domestic violence may be informed of the existence and terms of
 13 such protection order.

14 (4) A protection order shall remain in effect for the term set by the
 15 court or until terminated by the court. A protection order may, upon motion
 16 and upon good cause shown, be renewed for additional terms ~~not to exceed one~~
 17 ~~(1) year each~~ if the requirements of this chapter are met. The motion to re-
 18 new an order may be granted without a hearing, if not timely objected to by
 19 the party against whom the order was entered. If the petitioner voluntarily
 20 and without duress consents to the waiver of any portion of the protection
 21 order vis-a-vis the respondent pursuant to section 39-6313, Idaho Code, the
 22 order may be modified by the court.

23 SECTION 7. That Section 16-1602, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 16-1602. DEFINITIONS. For purposes of this chapter:

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

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

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

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

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

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

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

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

5 (c) Whether aggravated circumstances as defined in section 16-1619,
6 Idaho Code, exist.

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

11 (6) "Case plan hearing" means a hearing to:

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

13 (b) Review reasonable efforts being made to rehabilitate the family;
14 and

15 (c) Review reasonable efforts being made to reunify the children with a
16 parent or guardian.

17 (7) "Child" means an individual who is under the age of eighteen (18)
18 years.

19 (8) "Circumstances of the child" includes, but is not limited to, the
20 joint legal custody or joint physical custody of the child.

21 (9) "Commit" means to transfer legal and physical custody.

22 (10) "Concurrent planning" means a planning model that prepares for and
23 implements different outcomes at the same time.

24 (11) "Court" means district court or magistrate's division thereof, or
25 if the context requires, a magistrate or judge thereof.

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

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

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

43 (15) "Family or household member" shall have the same meaning as in sec-
44 tion 39-6303(~~67~~), Idaho Code.

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

49 (17) "Grant administrator" means the supreme court or any organization
50 or agency as may be designated by the supreme court in accordance with such

1 procedures as may be adopted by the supreme court. The grant administrator
2 shall administer funds from the guardian ad litem account in accordance with
3 the provisions of this chapter.

4 (18) "Guardian ad litem" means a person appointed by the court pursuant
5 to a guardian ad litem volunteer program to act as special advocate for a
6 child under this chapter.

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

10 (20) "Guardian ad litem program" means the program to recruit, train and
11 coordinate volunteer persons to serve as guardians ad litem for abused, ne-
12 glected or abandoned children.

13 (21) "Homeless," as used in this chapter, shall mean that the child is
14 without adequate shelter or other living facilities, and the lack of such
15 shelter or other living facilities poses a threat to the health, safety or
16 well-being of the child.

17 (22) "Law enforcement agency" means a city police department, the pros-
18 ecuting attorney of any county, state law enforcement officers, or the of-
19 fice of a sheriff of any county.

20 (23) "Legal custody" means a relationship created by court order, which
21 vests in a custodian the following rights and responsibilities:

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

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

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

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

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

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

37 (25) "Neglected" means a child:

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

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

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

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

4 (26) "Permanency hearing" means a hearing to review, approve, reject or
5 modify the permanency plan of the department, and review reasonable efforts
6 in accomplishing the permanency plan.

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

9 (28) "Protective order" means an order created by the court granting re-
10 lief as delineated in section 39-6306, Idaho Code, and shall be for a period
11 not to exceed three (3) months unless otherwise stated herein. Failure to
12 comply with the order shall be a misdemeanor.

13 (29) "Protective supervision" means a legal status created by court or-
14 der in neglect and abuse cases whereby the child is permitted to remain in his
15 home under supervision by the department.

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

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

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

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