

IN THE SENATE

SENATE BILL NO. 1253

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CHILD PROTECTION; AMENDING SECTION 16-1602, IDAHO CODE, TO DE-
2 FINE TERMS; AMENDING CHAPTER 16, TITLE 16, IDAHO CODE, BY THE ADDITION
3 OF A NEW SECTION 16-1644, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE THAT
4 CAREGIVERS SHALL EXERCISE CERTAIN STANDARDS OF CARE IN DECIDING WHETHER
5 TO ALLOW A FOSTER CHILD TO PARTICIPATE IN ACTIVITIES, TO LIMIT LIABILITY
6 AND TO PROVIDE THAT THIS SECTION DOES NOT AFFECT LIABILITY PROTECTIONS
7 OTHERWISE PROVIDED BY LAW; AND AMENDING SECTION 16-2002, IDAHO CODE, TO
8 PROVIDE A CORRECT CODE REFERENCE.
9

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

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

13 16-1602. DEFINITIONS. For purposes of this chapter:

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

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

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

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

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

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

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

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

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

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

3 (i) Abandonment, chronic abuse or chronic neglect of the child.
4 Chronic neglect or chronic abuse of a child shall consist of abuse
5 or neglect that is so extreme or repetitious as to indicate that
6 return of the child to the home would result in unacceptable risk
7 to the health and welfare of the child.

8 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
9 the purposes of this section, includes any conduct described in
10 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
11 18-6108 or 18-6608, Idaho Code.

12 (iii) Torture of a child; any conduct described in the code sec-
13 tions listed in section 18-8303(1), Idaho Code; battery or an
14 injury to a child that results in serious or great bodily in-
15 jury to a child; voluntary manslaughter of a child, or aiding or
16 abetting such voluntary manslaughter, soliciting such voluntary
17 manslaughter or attempting or conspiring to commit such voluntary
18 manslaughter;

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

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

23 (6) "Authorized agency" means the department, a local agency, a person,
24 an organization, corporation, benevolent society or association licensed
25 or approved by the department or the court to receive children for control,
26 care, maintenance or placement.

27 (7) "Caregiver" means a foster parent with whom a child in foster care
28 has been placed or a designated official for a child care institution in
29 which a child in foster care has been placed.

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

32 (~~8~~9) "Child" means an individual who is under the age of eighteen (18)
33 years.

34 (~~9~~10) "Child advocacy center" or "CAC" means an organization that
35 adheres to national best practice standards established by the national
36 membership and accrediting body for children's advocacy centers and that
37 promotes a comprehensive and coordinated multidisciplinary team response to
38 allegations of child abuse by maintaining a child-friendly facility at which
39 appropriate services are provided. These services may include forensic in-
40 terviews, forensic medical examinations, mental health services and other
41 related victim services.

42 (~~10~~1) "Circumstances of the child" includes, but is not limited to, the
43 joint legal custody or joint physical custody of the child.

44 (~~11~~2) "Commit" means to transfer legal and physical custody.

45 (~~12~~3) "Concurrent planning" means a planning model that prepares for
46 and implements different outcomes at the same time.

47 (~~13~~4) "Court" means district court or magistrate's division thereof, or
48 if the context requires, a magistrate or judge thereof.

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

4 (156) "Department" means the department of health and welfare and its
5 authorized representatives.

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

18 (178) "Family or household member" shall have the same meaning as in
19 section 39-6303(6), Idaho Code.

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

24 (20) "Foster parent" means a person or persons licensed to provide fos-
25 ter care.

26 (~~1921~~) "Grant administrator" means the supreme court or any organiza-
27 tion or agency as may be designated by the supreme court in accordance with
28 such procedures as may be adopted by the supreme court. The grant adminis-
29 trator shall administer funds from the guardian ad litem account in accor-
30 dance with the provisions of this chapter.

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

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

37 (224) "Guardian ad litem program" means the program to recruit, train
38 and coordinate volunteer persons to serve as guardians ad litem for abused,
39 neglected or abandoned children.

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

44 (246) "Idaho network of children's advocacy centers" means an organ-
45 ization that provides education and technical assistance to child advocacy
46 centers and to interagency multidisciplinary teams developed pursuant to
47 section 16-1617, Idaho Code.

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

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

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

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

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

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

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

15 (279) "Mental injury" means a substantial impairment in the intellec-
16 tual or psychological ability of a child to function within a normal range of
17 performance and/or behavior, for short or long terms.

18 (2830) "Neglected" means a child:

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

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

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

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

35 (2931) "Permanency hearing" means a hearing to review, approve, reject
36 or modify the permanency plan of the department, and review reasonable ef-
37 forts in accomplishing the permanency plan.

38 (302) "Permanency plan" means a plan for a continuous residence and
39 maintenance of nurturing relationships during the child's minority.

40 (313) "Protective order" means an order issued by the court in a child
41 protection case, prior to the adjudicatory hearing, to enable the child to
42 remain in the home pursuant to section 16-1615(5)(f), Idaho Code. Such an
43 order shall be in the same form and have the same effect as a domestic vio-
44 lence protection order issued pursuant to chapter 63, title 39, Idaho Code.
45 A protective order shall be for a period not to exceed three (3) months unless
46 otherwise stated in the order.

47 (324) "Protective supervision" is a legal status created by court order
48 in a child protective case whereby the child is in the legal custody of his or
49 her parent(s), guardian(s) or other legal custodian(s), subject to supervi-
50 sion by the department.

1 (335) "Relative" means a child's grandparent, great grandparent,
2 aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
3 cousin, sibling and half-sibling.

4 (346) "Residual parental rights and responsibilities" means those
5 rights and responsibilities remaining with the parents after the transfer of
6 legal custody including, but not necessarily limited to, the right of visi-
7 tation, the right to consent to adoption, the right to determine religious
8 affiliation, the right to family counseling when beneficial, and the respon-
9 sibility for support.

10 (357) "Shelter care" means places designated by the department for tem-
11 porary care of children pending court disposition or placement.

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

20 SECTION 2. That Chapter 16, Title 16, Idaho Code, be, and the same is
21 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
22 ignated as Section 16-1644, Idaho Code, and to read as follows:

23 16-1644. LIMITATIONS ON CAREGIVER LIABILITY. (1) For purposes of this
24 section:

25 (a) "Age or developmentally appropriate" means:

26 (i) Activities that are generally accepted as suitable for chil-
27 dren of the same chronological age or level of maturity or that are
28 determined to be developmentally appropriate for a child, based on
29 the development of cognitive, emotional, physical and behavioral
30 capacities that are typical for an age or age group; and

31 (ii) In the case of a specific child, activities or items that are
32 suitable for the child based on the developmental stages attained
33 by the child with respect to the cognitive, emotional, physical
34 and behavioral capacities of the child.

35 (b) "Reasonable and prudent parent standard" means the standard of care
36 characterized by careful and sensible parental decisions that maintain
37 the health, safety and best interest of a child while simultaneously en-
38 couraging the emotional and developmental growth of the child when de-
39 termining whether to allow a child in foster care under the responsi-
40 bility of the state to participate in extracurricular, enrichment, cul-
41 tural or social activities.

42 (2) A caregiver shall use the reasonable and prudent parent standard in
43 determining whether to permit a child to participate in an activity while in
44 foster care. A caregiver shall also consider whether the activity is age or
45 developmentally appropriate.

46 (3) A caregiver shall not be liable for harm caused to a child in an out-
47 of-home placement if the child participates in an activity approved by the
48 caregiver when the caregiver has acted in accordance with subsection (2) of
49 this section.

1 (4) This section does not remove or limit any existing liability pro-
2 tection otherwise provided by law.

3 SECTION 3. That Section 16-2002, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 16-2002. DEFINITIONS. When used in this chapter, unless the text oth-
6 erwise requires:

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

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

11 (3) "Neglected" means:

12 (a) Conduct as defined in section 16-1602(~~2830~~), Idaho Code; or

13 (b) The parent(s) has failed to comply with the court's orders or the
14 case plan in a child protective 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.