

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 245

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO FOSTER CARE; AMENDING SECTION 16-1622, IDAHO CODE, TO REVISE PROVISIONS REGARDING EXTENDED FOSTER CARE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-1202, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-1211A, IDAHO CODE, TO REVISE PROVISIONS REGARDING RELATIVE FOSTER CARE; AMENDING SECTION 39-1213, IDAHO CODE, TO REVISE PROVISIONS REGARDING LICENSING AUTHORITY AND TO MAKE TECHNICAL CORRECTIONS; PROVIDING THAT CERTAIN ADMINISTRATIVE RULES CONTAINED IN IDAPA 16.06.01 SHALL BE NULL, VOID, AND OF NO FORCE AND EFFECT; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 16-1622, Idaho Code, be, and the same is hereby amended to read as follows:

16-1622. REVIEW HEARINGS -- STATUS HEARINGS -- ANNUAL PERMANENCY HEARINGS. (1) Review hearing.

(a) A hearing for review of the child's case and permanency plan shall be held no later than six (6) months after entry of the court's order taking jurisdiction under this act and every six (6) months thereafter. The department and the guardian ad litem shall file reports to the court no later than five (5) days prior to the six (6) month review hearing. The purpose of the review hearing is:

(i) To determine:

1. The safety of the child;
2. The continuing necessity for and appropriateness of the placement;
3. The extent of compliance with the case plan; and
4. The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care;

(ii) To determine or continue to investigate whether the child is an Indian child. If there is reason to believe that the child is an Indian child and there has not been a final determination regarding the child's status as an Indian child:

1. The department shall document and the court shall inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child; and
2. The department shall document and the court shall determine that the department is using active efforts to work with all tribes of which the child may be a member to verify whether the child is a member or eligible for membership;

(iii) To inquire regarding the child's educational stability. The department shall document and the court shall inquire as to the efforts made to ensure educational stability for the child, including the efforts made to keep the child in the school in which the child is enrolled at the time of placement or the reason that remaining in the school is not in the child's best interests;

(iv) To inquire regarding sibling placement. The department shall document and the court shall inquire whether siblings were placed together or, if siblings were not placed together, the efforts made to place siblings together, the reasons why siblings were not placed together, and a plan for ensuring frequent visitation or ongoing interaction between the siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings;

(v) To inquire regarding permanency. The court shall ask each youth age twelve (12) years and older about his desired permanency outcome and discuss with the youth his current permanency plan. For a youth age fourteen (14) years and older, the hearing shall include a review of the services needed to assist the youth to make the transition from foster care to successful adulthood;

(vi) To document efforts related to the reasonable and prudent parent standard. For a youth whose permanency goal is another planned permanent living arrangement, the department shall document:

1. That the youth's foster parents or child care institution is following the reasonable and prudent parent standard when deciding whether the child may participate in extracurricular, enrichment, cultural and social activities; and

2. The regular, ongoing opportunities to engage in age- or developmentally appropriate activities that have been provided to the youth;

(vii) To document efforts made to find a permanent placement other than another planned permanent living arrangement. For a youth whose permanency goal is another planned permanent living arrangement, the department shall document:

1. The intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to place the youth with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the department in a placement with a fit and willing relative, including an adult sibling; and

2. Why another planned permanent living arrangement is the best permanency plan for the youth and a compelling reason why, as of the date of the review hearing, it would not be in the best interest of the child to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the department in a placement with a fit and willing relative, including an adult sibling;

(viii) To make findings regarding a permanency goal of another planned permanent living arrangement. For youth whose permanency goal is another planned permanent living arrangement, the court

shall make written, case-specific findings, as of the date of the hearing, that:

1. Another planned permanent living arrangement is the best permanency goal for the youth; and

2. There are compelling reasons why it is not in the best interest of the youth to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the department in a placement with a fit and willing relative, including an adult sibling;

(ix) To document and inquire regarding psychotropic medication. At each review hearing, if the child is being treated with psychotropic medication, these additional requirements shall apply:

1. The department shall report to the court the medication and dosage prescribed for the child and the medical professional who prescribed the medication; and

2. The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medication; and

(x) To project, when reasonable, a likely date by which the child may be safely returned to and maintained in the home or placed in another permanent placement.

(b) A status hearing is a review hearing that does not address all or most of the purposes identified in paragraph (a) of this subsection and may be held at the discretion of the court. Neither the department nor the guardian ad litem is required to file a report with the court prior to a status hearing, unless ordered otherwise by the court.

(c) A motion for revocation or modification of an order issued under section 16-1619, Idaho Code, may be filed by the department or any party; provided that no motion may be filed by the respondents under this section within three (3) months of a prior hearing on care and placement of the child. Notice of a motion for review of a child's case shall be provided to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, the guardian ad litem, the attorney for the child, the department and foster parents.

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

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

(2) Permanency plan and hearing.

(a) The permanency plan shall include a permanency goal. The permanency goal may be one (1) of the following: continued efforts at reunification, in the absence of a judicial determination of aggravated circumstances; or termination of parental rights and adoption, guardianship or, for youth age sixteen (16) years and older only, another planned permanent living arrangement. Every permanency plan shall include the information set forth in section 16-1621(3)(a) and (b), Idaho Code. If the permanency plan has reunification as a per-

manency goal, the plan shall include information set forth in section 16-1621(3)(c), Idaho Code; however, if the circumstances that caused the child to be placed into protective custody resulted in a conviction for lewd and lascivious conduct or felony injury to a child, if the child has been in protective custody for more than six (6) months, or if a high risk of repeat maltreatment or reentry into foster care exists due to a parent's recent completion of substance abuse treatment or other compelling circumstances, then the permanency plan shall include a period of protective supervision or trial home visit period of no less than ninety (90) days prior to the court vacating the case. During the protective supervision or trial home visit period, the department shall make regular home visits. During the protective supervision or trial home visit period, the court shall hold one (1) or more review hearings for each permanency plan where a period of protective supervision or a trial home visit has been imposed and may require participation in supportive services, including community home visiting and peer-to-peer mentoring. Families reunified following a period of protective supervision or a trial home visit should be encouraged by the department or the court to continue to participate in supportive services when beneficial and appropriate. If the permanency plan has a permanency goal other than reunification, the plan shall include the information set forth in section 16-1621(3)(d), Idaho Code, and if the permanency goal is termination of parental rights and adoption, then in addition to the information set forth in section 16-1620(3), Idaho Code, the permanency plan shall also name the proposed adoptive parents when known. If the adoptive parents are not known at the time the permanency plan is prepared, then the department shall amend the plan to name the proposed adoptive parents as soon as such person or persons become known. The court may approve a permanency plan that includes a primary goal and a concurrent goal. As used in this paragraph, "trial home visit" means that a child is returned to the care of the parent or guardian from whom the child was removed with the department continuing to have legal custody of the child.

(b) A permanency hearing shall be held no later than twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction under this chapter, whichever occurs first, and at least every twelve (12) months thereafter, as long as the court has jurisdiction over the child. The court shall approve, reject or modify the permanency plan of the department and review progress in accomplishing the permanency goal. The permanency plan, as approved by the court, shall be entered into the record as an order of the court. A permanency hearing may be held at any time and may be combined with the review hearing required under subsection (1) of this section.

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

(d) Where the permanency goal is not reunification, the hearing shall 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) The court shall ask each youth age twelve (12) years and older about
 6 his desired permanency outcome and discuss with the youth his current
 7 permanency plan. In the case of a child who has attained the age of four-
 8 teen (14) years and older, the hearing shall include a determination of
 9 the services needed to assist the youth to make the transition from fos-
 10 ter care to successful adulthood.

11 (f) The court may approve a primary permanency goal of another planned
 12 permanent living arrangement only for youth age sixteen (16) years or
 13 older and only upon written, case-specific findings that, as of the date
 14 of the hearing:

15 (i) Another planned permanent living arrangement is the best per-
 16 manency goal for the youth; and

17 (ii) There are compelling reasons why it is not in the best inter-
 18 est of the youth to be placed permanently with a parent, in an adop-
 19 tive placement, in a guardianship, or in the legal custody of the
 20 department in a placement with a fit and willing relative, includ-
 21 ing an adult sibling.

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

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

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

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

31 (h) The department shall document and the court shall inquire:

32 (i) As to the efforts made to ensure educational stability for the
 33 child, including the efforts made to keep the child in the school
 34 in which the child is enrolled at the time of placement or that re-
 35 maining in the school is not in the child's best interests; and

36 (ii) That siblings were placed together, or, if siblings were not
 37 placed together, the efforts made to place siblings together, the
 38 reasons why siblings were not placed together or why a joint place-
 39 ment would be contrary to the safety or well-being of one (1) or
 40 more of the siblings, and a plan for ensuring frequent visitation
 41 or ongoing interaction among siblings, unless visitation or ongo-
 42 ing interaction would be contrary to the safety or well-being of
 43 one (1) or more of the siblings.

44 (i) If there is reason to believe that the child is an Indian child and
 45 there has not been a final determination regarding the child's status as
 46 an Indian child, the department shall document and the court shall:

47 (i) Inquire about the efforts that have been made since the last
 48 hearing to determine whether the child is an Indian child; and

(ii) Determine that the department has made active efforts to work with all tribes of which the child may be a member to verify whether the child is a member or eligible for membership.

(j) At each permanency hearing, if the child is being treated with psychotropic medication, these additional requirements shall apply:

(i) The department shall report to the court the medication and dosage prescribed for the child and the medical professional who prescribed the medication; and

(ii) The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medication.

(k) 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 permanency plan is approved by the court and the permanency plan does not include a permanency goal of reunification.

(3) If a youth is in the legal custody of the department or other authorized agency and is within ninety (90) days of his eighteenth birthday, the department shall file a report with the court that includes the department's transition plan for the youth. The court shall have a review or permanency hearing at which the court shall:

(a) Discuss with the youth his or her transition plan; and

(b) Review the transition plan with the youth for purposes of ensuring that the plan provides the services necessary to allow the youth to transition to a successful adulthood.

(4) If a child is in the legal custody of the department and the court has approved placement of the child in a qualified residential treatment program, then at each review hearing pursuant to subsection (1) (a) of this section and at each permanency hearing pursuant to subsection (2) (b) of this section the department shall document:

(a) That ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child that is in the least restrictive environment, and that the placement is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child;

(b) The specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(c) The efforts made by the department to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent or in a foster family home.

(5) Notwithstanding any provision of law to the contrary, the court may order extended foster care for a person between the ages of eighteen (18) and ~~twenty-one (21)~~ twenty-three (23) years to help such person achieve a successful transition to adulthood, provided such person must have been in the custody of the department until his eighteenth birthday and must meet the criteria set forth in 42 U.S.C. 675(8) (B) (iv). The extension shall be for a fixed period of time and shall not extend past the person's ~~twenty-first~~ twenty-third birthday.

SECTION 2. That Section 39-1202, Idaho Code, be, and the same is hereby amended to read as follows:

39-1202. DEFINITIONS. For the purposes of this chapter:

(1) "Board" means the Idaho board of health and welfare.

(2) "Child care" means that care, control, supervision or maintenance of children for twenty-four (24) hours a day provided as an alternative to parental care.

(3) "Child" means an individual less than eighteen (18) years of age who is not enrolled in an institution of higher education.

(4) "Children's agency" means a person who operates a business for the placement of children in foster homes or for adoption in a permanent home and who does not provide child care as part of that business. Children's agency does not include a licensed attorney or physician assisting or providing natural and adoptive parents with legal services or medical services necessary to initiate and complete adoptive placements.

(5) "Children's camp" means a program of child care at a location away from the child's home that is primarily recreational and includes the overnight accommodation of the child and is not intended to provide treatment, therapy or rehabilitation for the child.

(6) "Children's institution" means a person who operates a residential facility for children not related to that person, if that person is an individual, for the purpose of providing child care. Children's institutions include, but are not limited to, foster homes, maternity homes, children's therapeutic outdoor programs, or any facilities providing treatment, therapy or rehabilitation for children. Children's institutions do not include: (a) facilities that provide only daycare as defined in chapter 11, title 39, Idaho Code; (b) facilities and agencies including hospitals, skilled nursing facilities, intermediate care facilities, and intermediate care facilities for people with intellectual disabilities licensed pursuant to chapter 13, title 39, Idaho Code; (c) day schools; (d) individuals acting in an advisory capacity, counseling a child in a religious context, and providing no child care associated with the advice; or (e) the occasional or irregular care of a neighbor's, relative's or friend's child or children by a person not ordinarily engaged in child care.

(7) "Children's residential care facility" means a children's institution, excluding:

(a) Foster homes;

(b) Residential schools;

(c) Children's camps.

No facility expressly excluded from the definition of a children's institution is included within the definition of a children's residential care facility.

(8) "Children's therapeutic outdoor program" is a program designed to provide behavioral, substance abuse, or mental health services to minors in an outdoor setting. This does not include children's camps, church camps, or other outdoor programs primarily designed to be educational or recreational, such as Boy Scouts, Girl Scouts, 4-H or sports camps.

(9) "Continued care" means the ongoing placement of an individual in a foster home, children's residential care facility, or transitional living

1 placement who reaches the age of eighteen (18) years but is less than ~~twenty-~~
 2 ~~one (21) twenty-three (23)~~ years of age.

3 (10) "Day school" means a public, private, parochial or secular facil-
 4 ity offering an educational program in which the children leave the facility
 5 each day at the conclusion of the academic, vocational or school-supervised
 6 activities.

7 (11) "Department" means the state department of health and welfare.

8 (12) "Director" means the director of the department of health and wel-
 9 fare.

10 (13) "Foster care" means child care by a person not related to the child,
 11 in lieu of parental care, in a foster home.

12 (14) "Foster home" means a home that accepts, for any period of time,
 13 with or without compensation, one (1) or more children who are not related
 14 to the foster parent as members of the household for the purpose of providing
 15 substitute parental care.

16 (15) "Group care" means foster care of a number of children for whom
 17 child care in a family setting is not available or appropriate, in a dormi-
 18 tory or cottage type setting, characterized by activities and discipline of
 19 a more regimented and less formal nature than found in a family setting.

20 (16) "Juvenile detention" is as defined in section 20-502(8), Idaho
 21 Code, of the juvenile corrections act.

22 (17) "Juvenile detention center" means a facility established pursuant
 23 to sections 20-517 and 20-518, Idaho Code.

24 (18) "Person" includes any individual, group of individuals, associa-
 25 tion, partnership, limited liability company or corporation.

26 (19) "Placement" means finding a suitable licensed foster home or suit-
 27 able adoptive home for a child and completing the arrangements for a child to
 28 be accepted into and adjusted to such home.

29 (20) "Relative" means a child's grandparent, great grandparent, aunt,
 30 great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
 31 cousin, sibling ~~and~~ or half-sibling.

32 (21) "Representative" means an employee of the state department of
 33 health and welfare.

34 (22) "Residential facility" means any facility where child care is pro-
 35 vided, as defined in this section, and that provides day and night accommo-
 36 dation.

37 (23) "Residential school" means a residential facility for children
 38 that:

39 (a) Provides a planned, scheduled, regular, academic or vocational
 40 school program for students in the elementary, middle or secondary
 41 grades as defined in section 33-1001, Idaho Code; and

42 (b) Provides services substantially comparable to those provided in
 43 nonresidential public schools where the primary purpose is the educa-
 44 tion and academic pursuits of the students; and

45 (c) Does not seek, receive or enroll students for treatment of such spe-
 46 cial needs as substance abuse, mental illness, emotional disturbance,
 47 developmental disability or intellectual disability; and

48 (d) Is not:

49 (i) A college or university;

50 (ii) A children's camp as defined in this section; or

(iii) A public or private day school in which the children leave the facility each day at the conclusion of the academic, vocational ~~and~~ or school-supervised activities.

(24) "Transitional living" means living arrangements and aftercare services for children, or as continued care, to gain experience living on their own in a supportive and supervised environment prior to emancipation.

SECTION 3. That Section 39-1211A, Idaho Code, be, and the same is hereby amended to read as follows:

39-1211A. RELATIVE FOSTER CARE -- LIMITED VARIANCE OR WAIVER. (1) A relative providing foster care for a related child pursuant to chapter 16, title 16, Idaho Code, must be licensed in accordance with this chapter.

(2) Notwithstanding the provisions of subsection (1) of this section, the department may expedite placement with a relative, issue a foster care license, ~~or~~ grant a limited variance or waiver of a licensing standard or requirement, or establish separate standards or requirements for licensure of relatives if, in the department's judgment, the health and safety of the related child is not thereby endangered.

(3) If the department grants a limited variance or waiver of a licensing standard or requirement to the child's relative pursuant to this section, the department shall document the grounds for granting the limited variance or waiver and the reasons the limited variance or waiver will not compromise the related child's safety and health.

(4) A limited variance or waiver of a licensing standard or requirement granted to a child's relative pursuant to this section shall be reviewed by the department for continuing compliance, need, and approval at regular intervals, subject to the provisions of section 39-1113, Idaho Code.

~~(5) The board shall promulgate appropriate rules necessary to implement and enforce the provisions of this section.~~

SECTION 4. That Section 39-1213, Idaho Code, be, and the same is hereby amended to read as follows:

39-1213. LICENSING AUTHORITY. ~~(a)~~ (1) The board of health and welfare is hereby authorized and directed to establish procedures for licensing foster homes, children's agencies, children's therapeutic outdoor programs and children's residential care facilities which are maintained and operated in conformity with the rules and standards authorized herein. Such procedures shall include the manner and form for making application for license, investigation upon application and notice of decision.

~~(b)~~ (2) It is recognized that children's agencies may have their own procedure for approval of foster homes affiliated with their program. Any foster home which has been approved by a licensed children's agency shall be exempt from the licensing provisions of this chapter, provided that the standards for approval by such agency are no less restrictive than rules and standards established by the board of health and welfare, and provided further that such children's agency is maintained and operated in conformity with rules and standards of the board of health and welfare. The board of health and welfare may promulgate rules necessary to implement the provisions of this section.

1 ~~(e)~~ (3) The board of health and welfare is hereby authorized to estab-
2 lish rules allowing for continued care for appropriate individuals eighteen
3 (18) to ~~twenty-one (21)~~ twenty-three (23) years of age who have been receiv-
4 ing services by, through, or with the authorization of the department of
5 health and welfare or the department of juvenile corrections prior to their
6 eighteenth birthday.

7 SECTION 5. The rules contained in IDAPA 16.06.01, Idaho Department of
8 Health and Welfare, relating to Child and Family Services, Section 010.,
9 Subsection 14., shall be null, void, and of no force and effect on and after
10 July 1, 2025.

11 SECTION 6. An emergency existing therefor, which emergency is hereby
12 declared to exist, this act shall be in full force and effect on and after
13 July 1, 2025.