

TITLE 16
JUVENILE PROCEEDINGS

CHAPTER 16
CHILD PROTECTIVE ACT

16-1601. POLICY. The policy of the state of Idaho is hereby declared to be the establishment of a legal framework conducive to the judicial processing, including periodic review of child abuse, abandonment and neglect cases, and the protection of any child whose life, health or welfare is endangered. At all times, the health and safety of the child shall be the primary concern. Each child coming within the purview of this chapter shall receive, preferably in his own home, the care, guidance and control that will promote his welfare and the best interest of the state of Idaho, and if he is removed from the control of one (1) or more of his parents, guardian or other custodian, the state shall secure adequate care for him; provided, however, that the state of Idaho shall, to the fullest extent possible, seek to preserve, protect, enhance and reunite the family relationship. Nothing in this chapter shall be construed to allow discrimination on the basis of disability. This chapter seeks to coordinate efforts by state and local public agencies, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

- (1) Preserve the privacy and unity of the family whenever possible;
- (2) Take such actions as may be necessary and feasible to prevent the abuse, neglect, abandonment or homelessness of children;
- (3) Take such actions as may be necessary to provide the child with permanency including concurrent planning;
- (4) Clarify for the purposes of this act the rights and responsibilities of parents with joint legal or joint physical custody of children at risk; and
- (5) Maintain sibling bonds by placing siblings in the same home when possible, and support or facilitate sibling visitation when not, unless such contact is not in the best interest of one (1) or more of the children.

[16-1601, added 1976, ch. 204, sec. 2, p. 732; am. 1982, ch. 186, sec. 1, p. 492; am. 1991, ch. 212, sec. 1, p. 501; am. 1996, ch. 272, sec. 1, p. 885; am. 1998, ch. 257, sec. 1, p. 851; am. 2001, ch. 107, sec. 1, p. 352; am. 2003, ch. 279, sec. 1, p. 748; am. 2018, ch. 287, sec. 1, p. 675.]

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

- (1) "Abused" means any case in which a child has been the victim of:
 - (a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, head injury, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or
 - (b) Sexual conduct, including rape, molestation, incest, commercial sexual activity, obscene or pornographic photographing, filming or depiction for commercial purposes, human trafficking as defined in [chapter 86, title 18](#), Idaho Code, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

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

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

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

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

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

(5) "Age of developmentally appropriate" means:

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

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

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

(a) Circumstances in which the parent has engaged in any of the following:

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

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section [18-1506](#), [18-1506A](#), [18-1507](#), [18-1508](#), [18-1508A](#), [18-6101](#), or [18-6604](#), or [chapter 86, title 18](#), Idaho Code.

(iii) Torture of a child. Any conduct listed in section [18-8303](#)(1), Idaho Code; battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter;

(b) The parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or

(c) The parental rights of the parent to another child have been terminated involuntarily.

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

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

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

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

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

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

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

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

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

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

(17) "Department" means the department of health and welfare and its authorized representatives.

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

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

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

(21) "Foster parent" means a person or persons licensed to provide foster care.

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

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

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

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

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

(27) "Idaho network of children's advocacy centers" means an organization that provides education and technical assistance to child advocacy centers and to interagency multidisciplinary teams developed pursuant to section [16-1617](#), Idaho Code.

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

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

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

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

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

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

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

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

(31) "Neglected" means a child:

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

(b) Whose parent, guardian or other custodian is unable to discharge the responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or

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

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

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

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

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

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

(36) "Psychotropic medication" means a drug prescribed to affect psychological functioning, perception, behavior or mood. Psychotropic medications include, but are not limited to, antidepressants, mood stabilizers, antipsychotics, antianxiety medications, sedatives and stimulants.

(37) "Qualified individual" means a trained professional or licensed clinician who is not connected to or affiliated with any placement setting in which children are placed by the department and who is not an employee of child and family services, unless a waiver has been approved by the authorized agency.

(38) "Qualified residential treatment program" means a program that has a trauma-informed treatment model designed to address the needs of children with serious emotional or behavioral disorders or disturbances, is able to implement the treatment identified for the child by the assessment of the child required under section [16-1619A](#)(2), Idaho Code, and is licensed and accredited in accordance with state and federal law.

(39) "Reasonable and prudent parent standard" means the standard of care characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a child while simultaneously encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural or social activities.

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

(41) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parents after the transfer of legal custody including, but not necessarily limited to, the right of visitation, the right to consent to adoption, the right to determine religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(42) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

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

[16-1602, added 1976, ch. 204, sec. 2, p. 733; am. 1982, ch. 186, sec. 2, p. 492; am. 1986, ch. 84, sec. 5, p. 247; am. 1989, ch. 281, sec. 1, p. 685; am. 1989, ch. 302, sec. 1, p. 752; am. 1991, ch. 38, sec. 1, p. 76; am. 1991, ch. 212, sec. 2, p. 501; am. 1996, ch. 272, sec. 2, p. 886; am. 2000, ch. 136, sec. 3, p. 357; am. 2001, ch. 107, sec. 2, p. 353; am. 2003, ch. 279, sec. 2, p. 749; am. 2005, ch. 391, sec. 5, p. 1269; am. 2007, ch. 26, sec. 1, p. 48; am. 2009, ch. 103, sec. 1, p. 316; am. 2010, ch. 147, sec. 1, p. 314; am. 2013, ch. 287, sec. 1, p. 741; am. 2014, ch. 120, sec. 1, p. 337; am. 2016, ch. 265, sec. 1, p. 700; am. 2016, ch. 296, sec. 6, p. 831; am. 2016, ch. 360, sec. 1, p. 1061; am. 2017, ch. 38, sec. 1, p. 57; am. 2017, ch. 58, sec. 3, p. 95; am. 2017, ch. 174, sec. 1, p. 401; am. 2019, ch. 133, sec. 1, p. 473; am. 2021, ch. 281, sec. 1, p. 836; am. 2022, ch. 124, sec. 10, p. 440; am. 2024, ch. 147, sec. 44, p. 576.]

16-1603. JURISDICTION OF THE COURTS. (1) Except as otherwise provided herein, the court shall have exclusive original jurisdiction in all proceedings under this chapter concerning any child living or found within the state:

- (a) Who is neglected, abused or abandoned by his parents, guardian or other legal custodian, or who is homeless; or
- (b) Whose parents or other legal custodian fails to provide a stable home environment.

(2) If the court has taken jurisdiction over a child under subsection (1) of this section, it may take jurisdiction over another child living or having custodial visitation in the same household without the filing of a separate petition if it finds all of the following:

- (a) The other child is living or is found within the state;
- (b) The other child has been exposed to or is at risk of being a victim of abuse, neglect or abandonment;
- (c) The other child is listed in the petition or amended petition;
- (d) The parents or legal guardians of the other child have notice as provided in section [16-1611](#), Idaho Code.

[16-1603, as added by 1976, ch. 204, sec. 2, p. 735; am. 1982, ch. 186, sec. 3, p. 494; am. 1991, ch. 212, sec. 3, p. 503; am. 1996, ch. 272, sec. 3, p. 888; am. 1999, ch. 123, sec. 2, p. 361; am. 2001, ch. 107, sec. 3, p. 355; am. 2003, ch. 279, sec. 3, p. 752; am. 2005, ch. 391, sec. 6, p. 1272.]

16-1604. RETENTION OF JURISDICTION. (1) Jurisdiction obtained by the court under this chapter shall be retained until the child's eighteenth birthday, unless terminated prior thereto or extended by the court pursuant to section [16-1622](#)(5), Idaho Code. Jurisdiction of the court shall not be terminated by an order of termination of parental rights if guardianship

and/or custody of the child is placed with the department of health and welfare.

(2) The parties have an ongoing duty to inquire concerning, and inform the court as soon as possible about, any other pending actions or current orders involving the child. In the event there are conflicting orders from Idaho courts concerning the child, the child protection order is controlling.

[I.C., sec. 16-1604, as added by 1976, ch. 204, sec. 2, p. 735; am. 1982, ch. 186, sec. 4, p. 494; am. 1989, ch. 218, sec. 1, p. 527; am. 2001, ch. 107, sec. 4, p. 356; am. 2021, ch. 281, sec. 2, p. 840.]

16-1605. REPORTING OF ABUSE, ABANDONMENT OR NEGLECT. (1) Any physician, resident on a hospital staff, intern, nurse, coroner, school teacher, day care personnel, social worker, or other person having reason to believe that a child under the age of eighteen (18) years has been abused, abandoned or neglected or who observes the child being subjected to conditions or circumstances that would reasonably result in abuse, abandonment or neglect shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the proper law enforcement agency or the department. The department shall be informed by law enforcement of any report made directly to it. If the department knows or has reason to know that an adult in the home has been convicted of lewd and lascivious conduct or felony injury to a child in the past or that the child has been removed from the home for circumstances that resulted in a conviction for lewd and lascivious conduct or felony injury to a child, then the department shall investigate. When the attendance of a physician, resident, intern, nurse, day care worker, or social worker is pursuant to the performance of services as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the institution or his designated delegate who shall make the necessary reports.

(2) For purposes of subsection (3) of this section, the term "duly ordained minister of religion" means a person who has been ordained or set apart, in accordance with the ceremonial, ritual or discipline of a church or religious organization which has been established on the basis of a community of religious faith, belief, doctrines and practices, to hear confessions and confidential communications in accordance with the bona fide doctrines or discipline of that church or religious organization.

(3) The notification requirements of subsection (1) of this section do not apply to a duly ordained minister of religion, with regard to any confession or confidential communication made to him in his ecclesiastical capacity in the course of discipline enjoined by the church to which he belongs if:

- (a) The church qualifies as tax-exempt under 26 U.S.C. 501(c) (3);
- (b) The confession or confidential communication was made directly to the duly ordained minister of religion; and
- (c) The confession or confidential communication was made in the manner and context that places the duly ordained minister of religion specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine. A confession or confidential communication made under any other circumstances does not fall under this exemption.

(4) Failure to report as required in this section shall be a misdemeanor.

[(16-1605) 16-1619, added 1976, ch. 204, sec. 2, p. 743; am. 1982, ch. 186, sec. 18, p. 501; am. 1985, ch. 158, sec. 1, p. 416; am. 1995, ch. 329, sec. 1, p. 1098; am. and redesisg. 2005, ch. 391, sec. 7, p. 1272; am. 2018, ch. 287, sec. 2, p. 676.]

16-1606. IMMUNITY. Any person who has reason to believe that a child has been abused, abandoned or neglected and, acting upon that belief, makes a report of abuse, abandonment or neglect as required in section [16-1605](#), Idaho Code, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any such judicial proceeding resulting from such report. Any person who reports in bad faith or with malice shall not be protected by this section. Any privilege between husband and wife, or between any professional person except the lawyer-client privilege, including but not limited to physicians, counselors, hospitals, clinics, day care centers and schools and their clients shall not be grounds for excluding evidence at any proceeding regarding the abuse, abandonment or neglect of the child or the cause thereof.

[(16-1606) 16-1620, added 1976, ch. 204, sec. 2, p. 744; am. 1982, ch. 186, sec. 19, p. 501; am. 1985, ch. 158, sec. 2, p. 417; am. 1995, ch. 328, sec. 1, p. 1097; am. and redesisg. 2005, ch. 391, sec. 8, p. 1273.]

16-1607. REPORTING IN BAD FAITH -- CIVIL DAMAGES. Any person who makes a report or allegation of child abuse, abandonment or neglect knowing the same to be false or who reports or alleges the same in bad faith or with malice shall be liable to the party or parties against whom the report was made for the amount of actual damages sustained or statutory damages of two thousand five hundred dollars (\$2,500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.

[(16-1607) 16-1620A, added 1995, ch. 276, sec. 1, p. 924; am. and redesisg. 2005, ch. 391, sec. 9, p. 1274; am. 2007, ch. 128, sec. 1, p. 385.]

16-1608. EMERGENCY REMOVAL.

(1) (a) A child may be taken into shelter care by a peace officer without an order issued pursuant to subsection (4) of section [16-1611](#) or section [16-1619](#), Idaho Code, only where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child or where the child is an abandoned child pursuant to the provisions of [chapter 82, title 39](#), Idaho Code.

(b) An alleged offender may be removed from the home of the victim of abuse or neglect by a peace officer without an order, issued pursuant to subsection (5) of section [16-1611](#), Idaho Code, only where the child is endangered and prompt removal of an alleged offender is necessary to prevent serious physical or mental injury to the child.

(2) When a child is taken into shelter care under subsection (1) of this section, he may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, unless a shelter care hearing has been held pursuant to section [16-1615](#), Idaho Code, and the court orders an adjudicatory hearing.

(3) When an alleged offender is removed from the home under subsection (1) (b) of this section, a motion based on a sworn affidavit by the department must be filed simultaneously with the petition and the court shall determine at a shelter care hearing, held within a maximum of twenty-four (24) hours, excluding Saturdays, Sundays and holidays, whether the relief sought shall be granted, pending an adjudicatory hearing. Notice of such hearing shall be served upon the alleged offender at the time of removal or other protective relief.

[(16-1608) 16-1612, as added by 1976, ch. 204, sec. 2, p. 740; am. 1982, ch. 186, sec. 12, p. 498; am. 1989, ch. 302, sec. 4, p. 756; am. 2001, ch. 107, sec. 13, p. 365; am. 2001, ch. 357, sec. 3, p. 1259; am. 2005, ch. 25, sec. 76, p. 113; am. and redsig. 2005, ch. 391; sec. 10, p. 1274.]

16-1609. EMERGENCY REMOVAL -- NOTICE. (1) A peace officer who takes a child into shelter care under section [16-1608](#), Idaho Code, shall immediately:

- (a) Take the child to a place of shelter; and
- (b) Notify the court of the action taken and the place to which the child was taken; and
- (c) With the exception of a child abandoned pursuant to the provisions of [chapter 82, title 39](#), Idaho Code, notify each of the parents, guardian or other legal custodian that the child has been taken into shelter care, the type and nature of shelter care, and that the child may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, within which time there must be a shelter care hearing.

(2) A peace officer who takes a child into shelter care under section [16-1608](#), Idaho Code, shall not be held liable either criminally or civilly unless the action of taking the child was exercised in bad faith and/or the requirements of subsection (1) of this section are not complied with.

[(16-1609) 16-1613, as added by 1976, ch. 204, sec. 2, p. 740; am. 1982, ch. 186, sec. 13, p. 499; am. 1996, ch. 272, sec. 10, p. 893; am. 2001, ch. 107, sec. 14, p. 365; am. 2001, ch. 357, sec. 4, p. 1259; am. 2005, ch. 25, sec. 77, p. 113; am. and redsig. 2005, ch. 391, sec. 11, p. 1274.]

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

- (a) A petition must be signed by the prosecutor or deputy attorney general before being filed with the court.
- (b) Any person or governmental body of this state having evidence of abuse, abandonment, neglect or homelessness of a child may request the attorney general or prosecuting attorney to file a petition. The prosecuting attorney or the attorney general may file a petition on behalf of any child whose parent, guardian, or custodian has been accused in a criminal complaint of the crime of cruel treatment or neglect as defined in section [18-1501](#), Idaho Code.

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

(a) The facts which bring the child within the jurisdiction of the court upon the grounds set forth in section [16-1603](#), Idaho Code, with the actions of each parent described therein;

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

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

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

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

(f) Whether or not there exists a legal document including, but not limited to, a divorce decree, stipulation or parenting agreement controlling the custodial status of the children described in this section;

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

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

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

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

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

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

(j) The petition shall state with specificity whether a parent with joint legal custody or a noncustodial parent has been notified of placement;

(k) The petition shall state whether a court has adjudicated the custodial rights of the parents and shall set forth the custodial status of the child;

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

[(16-1610) 16-1605, added 1976, ch. 204, sec. 2, p. 735; am. 1977, ch. 304, sec. 1, p. 852; am. 1982, ch. 186, sec. 5, p. 494; am. 1986, ch. 121, sec. 1, p. 319; am. 1996, ch. 272, sec. 4, p. 888; am. 1998, ch. 257, sec. 2, p. 851; am. 2001, ch. 107, sec. 5, p. 356; am. and redesisg. 2005, ch. 391, sec. 12, p. 1275; am. 2013, ch. 287, sec. 2, p. 745.]

16-1611. SUMMONS. (1) After a petition has been filed, the clerk of the court may issue a summons requiring the person or persons who have custody of the child to bring the child before the court at the adjudicatory hearing held in accordance with section [16-1619](#), Idaho Code. Each parent or guardian

shall also be notified in the manner hereinafter provided of the pendency of the case and the time and place set for the hearing. A summons shall be issued and served requiring the appearance of each parent and legal guardian, and a summons may be issued and served for any other person whose presence is required by the child, either of his parents or guardian or any other person whose presence, in the opinion of the court, is necessary.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall notify each of the parents, guardian or legal custodian of their right to retain and be represented by counsel. Each parent or legal guardian of each child named in the petition shall be notified by the court of the case and of the time and place set for the hearing.

(4) If based on facts presented to the court, it appears that the court has jurisdiction upon the grounds set forth in section 16-1603, Idaho Code, and the court finds that the child should be removed from his present condition or surroundings because continuation in such condition or surroundings would be contrary to the welfare of the child and vesting legal custody with the department or other authorized agency would be in the child's best interests, the court shall include on the summons an order to remove the child. The order to remove the child shall specifically state that continuation in the present condition or surroundings is contrary to the welfare of the child and shall require a peace officer or other suitable person to take the child at once to a place of shelter care designated by the authorized agency which shall provide shelter care for the child.

(5) If it appears that the child is safe in his present condition or surroundings and it is not in his best interest to remove him at this time, the court may issue a protective order based on an affidavit pending the adjudicatory hearing. If the child is in joint custody, the protective order shall state with specificity the rights and responsibilities of each parent. Each parent shall be provided with a copy of the protective order.

[(16-1611) 16-1606, added 1976, ch. 204, sec. 2, p. 736; am. 1982, ch. 186, sec. 6, p. 495; am. 1989, ch. 302, sec. 2, p. 754; am. 1996, ch. 272, sec. 5, p. 889; am. 2001, ch. 107, sec. 6, p. 357; am. and redesisg. 2005, ch. 391, sec. 13, p. 1276; am. 2007, ch. 223, sec. 1, p. 669.]

16-1612. SERVICE OF SUMMONS -- TRAVEL EXPENSES -- NECESSARY WITNESSES. (1) Service of summons shall be made personally by delivery of an attested copy thereof to the person summoned; provided that if the court is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to the last known address, or by publication thereof, or both. It shall be sufficient to confer jurisdiction if service is effected at least forty-eight (48) hours before the time fixed in the summons for the hearing.

(2) When publication is used the summons shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county; such newspaper to be designated by the court in the order for publication of the summons, and such publication shall have the same force and effect as though such person had been personally served with said summons.

(3) Service of summons, process or notice required by this chapter shall be made by the sheriff or other person appointed by the court, and a return must be made on the summons showing that service has been made.

(4) The court may authorize payment of any necessary travel expenses incurred by any person summoned or otherwise required to appear at the hear-

ing of any case coming within the purview of this chapter, and such expenses when approved by the court shall be a charge upon the county, except that not more than five (5) witnesses on behalf of any parent or guardian may be required to attend such hearing at the expense of the county.

(5) The court may summon the appearance of any person whose presence is deemed necessary as a witness.

(6) The child, each of his parents, guardian or custodian shall be notified as soon as practicable after the filing of a petition and prior to the start of a hearing of their right to be represented by counsel.

(7) If any person summoned as herein provided shall, without reasonable cause, fail to appear, the court may proceed in such person's absence or such person may be proceeded against for contempt of court.

(8) Where the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the court that the service will be ineffectual, or that the welfare of the child requires that he be brought forthwith into the custody of the court, a warrant or capias may be issued for the parent, guardian or the child.

[(16-1612) 16-1607, added 1976, ch. 204, sec. 2, p. 737; am. 1982, ch. 186, sec. 7, p. 496; am. 1996, ch. 272, sec. 6, p. 890; am. and redesign. 2005, ch. 391, sec. 14, p. 1277.]

16-1613. HEARINGS UNDER THE CHILD PROTECTIVE ACT. (1) Proceedings under this chapter shall be dealt with by the court at hearings separate from those for adults and without a jury. The hearings shall be conducted in an informal manner and may be adjourned from time to time. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case. The child may be excluded from hearings at any time at the discretion of the court. If the parent or guardian is without counsel, the court shall inform them of their right to be represented by counsel and to appeal from any disposition or order of the court.

(2) When a child is summoned as a witness in any hearing under this act, notwithstanding any other statutory provision, parents, a counselor, a friend, or other person having a supportive relationship with the child shall, if available, be permitted to remain in the courtroom at the witness stand with the child during the child's testimony unless, in written findings made and entered, the court finds that the constitutional right of the child's parent(s), guardian(s) or other custodian(s) to a fair hearing will be unduly prejudiced.

(3) At any stage of a proceeding under this chapter, if the court determines that it is in the best interests of the child or society, the court may cause the proceeding to be expanded or altered to include full or partial consideration of the cause under the juvenile corrections act without terminating the original proceeding under this chapter.

[(16-1613) 16-1607A, added 2001, ch. 107, sec. 7, p. 358; am. and redesign. 2005, ch. 391, sec. 15, p. 1278.]

16-1614. APPOINTMENT OF GUARDIAN AD LITEM, COUNSEL FOR GUARDIAN AD LITEM, COUNSEL FOR CHILD. [EFFECTIVE UNTIL OCTOBER 1, 2024] (1) In any proceeding under this chapter for a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem, unless the

guardian ad litem is already represented by counsel. If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint counsel for the child. In appropriate cases, the court may appoint a guardian ad litem for the child and counsel to represent the guardian ad litem and may, in addition, appoint counsel to represent the child.

(2) In any proceeding under this chapter for a child twelve (12) years of age or older, the court:

(a) Shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or

(b) Where appointment of counsel is not practicable or not appropriate, may appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel.

(3) Counsel appointed for the child under the provisions of this section shall be paid for by the county unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs.

16-1614. APPOINTMENT OF GUARDIAN AD LITEM, COUNSEL FOR GUARDIAN AD LITEM, COUNSEL FOR CHILD. [EFFECTIVE OCTOBER 1, 2024] (1) In any proceeding under this chapter for a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel. If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint counsel for the child. In appropriate cases, the court may appoint a guardian ad litem for the child and counsel to represent the guardian ad litem and may, in addition, appoint counsel to represent the child.

(2) In any proceeding under this chapter for a child twelve (12) years of age or older, the court:

(a) Shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or

(b) Where appointment of counsel is not practicable or not appropriate, may appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel.

(3) Counsel appointed for the child under the provisions of this section shall be paid for by the office of the state public defender unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs.

(4) (a) The legislature finds that guardian ad litem representation has been addressed differently throughout the state, with some counties providing representation through their public defense office or public defense contracts, or in other areas of the state with pro bono representation. The legislature finds that providing guardian ad litem representation through the office of the state public defender would create numerous costly conflicts of interest that would detract from the office's mission. Therefore, it is the intent of the legislature to keep guardian ad litem representation administered locally with reimbursement provided by state funds when needed. It is not the intent of the legislature to disrupt, terminate, or otherwise inhibit any pro

bono programs that now exist or may hereinafter be created to provide counsel for guardians ad litem.

(b) Counsel appointed for a guardian ad litem shall first come from volunteer attorneys willing to represent the guardian ad litem pro bono unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. Absent available volunteer pro bono counsel, attorneys for the guardian ad litem shall be paid by the county, and the county shall be reimbursed for the actual, verified costs of guardian ad litem representation the county incurred from the attorney costs for guardian ad litem account, as established in section [57-828](#), Idaho Code, by submitting a request to the office of the state public defender.

[(16-1614) 16-1618, added 1976, ch. 204, sec. 2, p. 743; am. 1982, ch. 186, sec. 17, p. 500; am. 1985, ch. 177, sec. 1, p. 459; am. 1989, ch. 281, sec. 2, p. 687; am. 2001, ch. 107, sec. 18, p. 368; am. and redesign. 2005, ch. 391, sec. 16, p. 1278; am. 2013, ch. 221, sec. 1, p. 521; am. 2024, ch. 270, sec. 1, p. 936.]

16-1615. SHELTER CARE HEARING. (1) Notwithstanding any other provision of this chapter, when a child is taken into shelter care pursuant to section [16-1608](#) or [16-1611](#), Idaho Code, a hearing to determine whether the child should be released shall be held according to the provisions of this section.

(2) Each of the parents or custodian from whom the child was removed shall be given notice of the shelter care hearing. Such notice shall include the time, place, and purpose of the hearing; and, that such person is entitled to be represented by legal counsel. Notice as required by this subsection shall be given at least twenty-four (24) hours before the shelter care hearing.

(3) Notice of the shelter care hearing shall be given to the parents or custodian from whom the child was removed by personal service and the return of service shall be filed with the court and to any person having joint legal or physical custody of the subject child. Provided, however, that such service need not be made where the undelivered notice is returned to the court along with an affidavit stating that such parents or custodian could not be located or were out of the state.

(4) The shelter care hearing may be continued for a reasonable time upon request by the parent, custodian or counsel for the child.

(5) If, upon the completion of the shelter care hearing, it is shown that:

- (a) A petition has been filed; and
- (b) There is reasonable cause to believe the child comes within the jurisdiction of the court under this chapter and either:
 - (i) The department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful; or
 - (ii) The department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventive services; and
- (c) The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and
- (d) It is contrary to the welfare of the child to remain in the home; and
- (e) It is in the best interests of the child to remain in temporary shelter care pending the conclusion of the adjudicatory hearing.

The court shall issue, within twenty-four (24) hours of such hearing, a shelter care order placing the child in the temporary legal custody of the department or other authorized agency. Any evidence may be considered by the court which is of the type which reasonable people may rely upon.

(6) Upon finding reasonable cause pursuant to subsection (5) (b) of this section, the court shall order an adjudicatory hearing to be held as soon as possible, but in no event later than thirty (30) days from the date the petition was filed. In addition, the court shall inquire whether there is reason to believe that the child is an Indian child.

(7) Upon entry of an order of shelter care, the court shall inquire:

(a) If the child is of school age, about the department's efforts to keep the child in the school at which the child is currently enrolled; and

(b) If a sibling group was removed from their home, about the department's efforts to place the siblings together, or if the department has not placed or will not be placing the siblings together, about a plan to ensure frequent visitation or ongoing interaction among the siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings.

(8) If there is reasonable cause to believe that the child comes within the jurisdiction of the court under this chapter, but a reasonable effort to prevent placement of the child outside the home could be affected by a protective order safeguarding the child's welfare, the court may issue, within twenty-four (24) hours of such hearing, a protective order. Any evidence may be considered by the court that is of the type which reasonable people may rely upon.

(9) If the court does not find that the child should be placed in or remain in shelter care under subsection (5) of this section, the child shall be released.

(10) If the court does not find reasonable cause pursuant to subsection (5) (b) of this section, the court shall dismiss the petition.

[(16-1615) 16-1614, added 1976, ch. 204, sec. 2, p. 740; am. 1982, ch. 186, sec. 14, p. 499; am. 1986, ch. 121, sec. 3, p. 321; am. 1989, ch. 58, sec. 1, p. 93; am. 1989, ch. 302, sec. 5, p. 757; am. 1996, ch. 272, sec. 11, p. 893; am. 2001, ch. 107, sec. 15, p. 366; am. and redesig. 2005, ch. 391, sec. 17, p. 1278; am. 2007, ch. 223, sec. 2, p. 670; am. 2016, ch. 265, sec. 2, p. 704.]

16-1616. INVESTIGATION. (1) After a petition has been filed, the department shall investigate the circumstances of the child and his family and prepare a written report to the court.

(2) The report shall be delivered to the court with copies to each of the parties prior to the pretrial conference for the adjudicatory hearing. If delivered by mail the report must be received by the court and the parties prior to the pretrial conference for the adjudicatory hearing. The report shall contain a social evaluation of the child and the parents or other legal custodian and such other information as the court shall require.

(3) The report shall not be considered by the court for purposes of determining whether the child comes within the jurisdiction of the act. The report may be admitted into evidence at the adjudicatory hearing for other purposes.

[(16-1616) 16-1609, added 1976, ch. 204, sec. 2, p. 738; am. 1982, ch. 186, sec. 9, p. 497; am. 1996, ch. 272, sec. 7, p. 891; am. 2001, ch. 107, sec. 9, p. 360; am. and redesisg. 2005, ch. 391, sec. 18, p. 1279.]

16-1617. INVESTIGATION BY MULTIDISCIPLINARY TEAMS. (1) The prosecuting attorney in each county shall be responsible for the development of an interagency multidisciplinary team or teams for investigation of child abuse and neglect referrals within each county. The teams shall consist of, but not be limited to, law enforcement personnel, department of health and welfare child protection risk assessment staff, child advocacy center staff where such staff is available in the county, a representative of the prosecuting attorney's office, and any other person deemed to be necessary due to his or her special training in child abuse investigation. Other persons may participate in investigation of particular cases at the invitation of the team and as determined necessary, such as medical personnel, school officials, mental health workers, personnel from domestic violence programs, persons knowledgeable about adaptive equipment and supportive services for parents or guardians with disabilities or the guardian ad litem program.

(2) The teams shall develop a written protocol for investigation of child abuse cases and for interviewing alleged victims of such abuse or neglect, including protocols for investigations involving a family member with a disability. Each team shall develop written agreements signed by member agencies, specifying the role of each agency, procedures to be followed to assess risks to the child and criteria and procedures to be followed to ensure the child victim's safety including removal of the alleged offender.

(3) Each team member shall be trained in his or her respective role, including risk assessment, dynamics of child abuse and interviewing and investigatory techniques. Such training may be provided by the Idaho network of children's advocacy centers or by the member's respective agency.

(4) Each team shall classify, assess and review a representative selection of cases referred to either the department or to law enforcement entities for investigation of child abuse or neglect.

(5) Each multidisciplinary team shall develop policies that provide for an independent review of investigation procedures utilized in cases upon completion of any court actions on those cases. The procedures shall include independent citizen input. Nonoffending parents of child abuse victims shall be notified of the review procedure.

(6) Prosecuting attorneys of the various counties may determine that multidisciplinary teams may be most effectively established through the use of joint exercise of powers agreements among more than one (1) county and such agreements are hereby authorized.

(7) Lack of review by a multidisciplinary team of a particular case does not defeat the jurisdiction of the court.

[(16-1617) 16-1609A, added 1996, ch. 388, sec. 1, p. 1312; am. 2001, ch. 107, sec. 10, p. 361; am. 2003, ch. 279, sec. 5, p. 754; am. and redesisg. 2005, ch. 391, sec. 19, p. 1280; am. 2014, ch. 120, sec. 2, p. 340.]

16-1618. INVESTIGATIVE INTERVIEWS OF ALLEGED CHILD ABUSE VICTIMS. Unless otherwise demonstrated by good cause, all investigative or risk assessment interviews of alleged victims of child abuse will be documented by audio or video taping whether conducted by personnel of law enforcement entities,

the department of health and welfare or child advocacy centers. The absence of such audio or video taping shall not limit the admissibility of such evidence in any related court proceeding.

[(16-1618) 16-1609B, added 1996, ch. 388, sec. 2, p. 1313; am. and redesign. 2005, ch. 391, sec. 20, p. 1281; am. 2014, ch. 120, sec. 3, p. 341.]

16-1618A. INVESTIGATION BASED UPON IMMUNIZATION STATUS PROHIBITED. No investigation may be conducted pursuant to this chapter if it is based upon a child's immunization status.

[16-1618A, added 2023, ch. 10, sec. 1, p. 34.]

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

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

(3) At the adjudicatory hearing, parents or guardians with disabilities shall have the right to introduce admissible evidence regarding how use of adaptive equipment or supportive services may enable the parent or guardian to carry out the responsibilities of parenting the child by addressing the reason for the removal of the child.

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

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

(a) Place the child under the protective supervision of the department for an indeterminate period not to exceed the child's eighteenth birthday; or

(b) Vest legal custody in the department or other authorized agency subject to residual parental rights and subject to full judicial review by the court and, when contested by any party, judicial approval of all matters relating to the custody of the child by the department or other authorized agency. If the department has placed the child in a qualified residential treatment program, the court shall approve or disapprove the placement within sixty (60) days of placement in accordance with section [16-1619A](#), Idaho Code.

(6) If the court vests legal custody in the department or other authorized agency, the court shall make detailed written findings based on facts in the record that, in addition to the findings required in subsection (4) of this section, continuation of residence in the home would be contrary to the welfare of the child and that vesting legal custody with the department or other authorized agency would be in the best interests of the child. In ad-

dition, the court shall make detailed written findings based on facts in the record as to whether the department made reasonable efforts to prevent the placement of the child in foster care, including findings, when appropriate, that:

- (a) Reasonable efforts were made but were not successful in eliminating the need for foster care placement of the child;
 - (b) The department made reasonable efforts to prevent removal but was not able to safely provide preventive services;
 - (c) Reasonable efforts to temporarily place the child with related persons were made but were not successful; or
 - (d) Reasonable efforts to reunify the child with one (1) or both parents were not required because aggravated circumstances were present. If aggravated circumstances are found, a permanency hearing for the child shall be held within thirty (30) days of the determination of aggravated circumstances.
- (7) (a) The court shall also inquire regarding:
- (i) Whether there is reason to believe that the child is an Indian child;
 - (ii) The efforts that have been made since the last hearing to determine whether the child is an Indian child; and
 - (iii) The department's 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.
- (b) In addition, if the court vests legal custody of the child in the department or other authorized agency, the court shall inquire as to:
- (i) If the child is of school age, the department's efforts to keep the child in the school at which the child is currently enrolled; and
 - (ii) If a sibling group was removed from the home, the department's efforts to place the siblings together, or if the department has not placed or will not be placing the siblings together, about a plan to ensure frequent visitation or ongoing interaction among the siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings.
- (c) If the court vests legal custody of the child in the department or other authorized agency and the child is being treated with psychotropic medication, these additional requirements shall apply:
- (i) The department shall report to the court the medications and dosages prescribed for the child and the medical professional who prescribed the medication; and
 - (ii) The court shall inquire about and may make any additional inquiry relevant to the use of psychotropic medications.
- (8) A decree vesting legal custody in the department shall be binding upon the department and may continue until the child's eighteenth birthday.
- (9) A decree vesting legal custody in an authorized agency other than the department shall be for a period of time not to exceed the child's eighteenth birthday and on such other terms as the court shall state in its decree to be in the best interests of the child and which the court finds to be acceptable to such authorized agency.
- (10) In order to preserve the unity of the family system and to ensure the best interests of the child, whether issuing an order of protective supervision or an order of legal custody, the court may consider extending or

initiating a protective order as part of the decree. The protective order shall be determined as in the best interests of the child and upon a showing of continuing danger to the child. The conditions and terms of the protective order shall be clearly stated in the decree.

(11) If the court does not find that the child comes within the jurisdiction of this chapter pursuant to subsection (4) of this section, it shall dismiss the petition.

(12) Where legal custody of a child is vested in the department, any party or counsel for a child may, at or after the disposition phase of an adjudicatory hearing, file and serve a written motion to contest matters relating to the placement of the child by the department. The hearing must be held no later than thirty (30) days from the date the motion was filed. If the court approves the placement, the court shall enter an order denying the motion. If the court does not approve the placement, the court shall enter an order directing the department to identify and implement an alternative placement in accordance with applicable law. The court shall consider everything necessary or proper in the best interests of the children. The court shall consider all relevant factors, which may include:

- (a) The wishes of the child regarding the child's custodian;
- (b) The wishes of the child's parent or parents regarding the child's custody, if appropriate;
- (c) The interaction and interrelationship of the child with his parent or parents or foster parent or foster parents, and the child's siblings;
- (d) The child's adjustment to his home, school and community;
- (e) The character and circumstances of all individuals involved;
- (f) The need to promote continuity and stability in the life of the child; and
- (g) A history of domestic violence as defined in section [39-6303](#), Idaho Code, whether or not in the presence of the child, or a conviction for lewd and lascivious conduct or felony injury to a child.

[(16-1619) 16-1608, added 1976, ch. 204, sec. 2, p. 738; am. 1982, ch. 186, sec. 8, p. 496; am. 1988, ch. 280, sec. 1, p. 911; am. 1989, ch. 377, sec. 1, p. 946; am. 2001, ch. 107, sec. 8, p. 358; am. 2003, ch. 279, sec. 4, p. 752; am. and redesign. 2005, ch. 391, sec. 21, p. 1281; am. 2007, ch. 223, sec. 3, p. 671; am. 2010, ch. 216, sec. 1, p. 483; am. 2013, ch. 287, sec. 3, p. 746; am. 2016, ch. 265, sec. 3, p. 705; am. 2016, ch. 347, sec. 2, p. 1001; am. 2018, ch. 287, sec. 3, p. 677; am. 2021, ch. 281, sec. 3, p. 841.]

16-1619A. PLACEMENT OF A CHILD IN A QUALIFIED RESIDENTIAL TREATMENT PROGRAM. (1) Where legal custody of a child is vested in the department, and the department places the child in a qualified residential treatment program, the department shall file a notice of the placement with the court within seven (7) days of the placement. The notice shall identify the placement and the date of the placement.

(2) Within thirty (30) days of the date of placement, a qualified individual shall conduct a placement assessment and prepare a written assessment report. The qualified individual shall:

- (a) Assess the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional assessment tool;
- (b) Determine whether the needs of the child can be met with family members or through placement in a foster family home or, if not, the specialized setting that will provide the most effective and appropriate

level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child, as set forth in the case plan or permanency plan currently in effect;

(c) Develop a list of child-specific short-term and long-term mental and behavioral health goals;

(d) Work in conjunction with the family of, and the permanency team for, the child while conducting the assessment; and

(e) Prepare an assessment specifying:

(i) Why the needs of the child cannot be met by the family of the child or in a foster home; and

(ii) Why the recommended placement in a qualified residential treatment program is the setting that will provide the most effective and appropriate level of care in the least restrictive environment and how that placement is consistent with the short-term and long-term goals for the child, as set forth in the case plan or the permanency plan currently in effect.

(3) The department shall prepare a written case plan for the child or amend the case plan if it has been previously ordered by the court and shall include the assessment report of the qualified individual.

(4) Within sixty (60) days of the start of each placement in a qualified residential treatment program, the court shall:

(a) Consider the assessment, determination, and documentation made by the qualified individual;

(b) Determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child; and

(c) Approve or disapprove the placement.

(5) The assessment by the qualified individual and the court's determination to approve or disapprove the placement in a qualified residential treatment program shall be made part of the case plan for the child. If the court approves the placement in a qualified residential treatment program, the court shall order the amended case plan for the child.

[16-1619A, added 2021, ch. 281, sec. 4, p. 843.]

16-1619B. PLACEMENT OF CHILD IN CONGREGATE CARE SETTINGS. (1) Where legal custody of a child is vested in the department and the department places the child in a short-term rental, temporary shelter care, or congregate care setting, the department shall file a notice of such placement with the court within seven (7) days of the placement. The notice shall identify the type of placement and the date of the placement.

(2) No child twelve (12) years of age or younger shall be placed in a short-term rental, temporary shelter care, or congregate care setting unless the director of the department has granted express written approval of such placement. Written approval may be given by the director only when:

(a) The child is three (3) years of age or older; the child is a part of a sibling group placed in the same short-term rental, temporary shelter care, or congregate care setting; and at least one (1) of the members of the sibling group is thirteen (13) years of age or older;

(b) The child is six (6) years of age or older and has been taken into shelter care through the emergency removal process pursuant to section [16-1608](#), Idaho Code; or

(c) The child's teenage mother is placed in the same short-term rental, temporary shelter, or congregate care setting.

(3) Children who do not meet the eligibility requirements set forth in section [16-1619A](#), Idaho Code, shall not be placed in a qualified residential treatment program or a short-term rental, temporary shelter care, or congregate care setting for more than two (2) weeks, except for documented emergency circumstances. The director of the department must approve the placement of all children residing in such settings for more than two (2) weeks and shall approve the continued placement of the child in such settings at least every two (2) weeks.

[16-1619B, added 2024, ch. 153, sec. 1, p. 600.]

16-1620. FINDING OF AGGRAVATED CIRCUMSTANCES -- PERMANENCY PLAN -- HEARING. (1) After a judicial determination that reasonable efforts to return the child to his home are not required because aggravated circumstances were found to be present, the court shall hold a permanency hearing within thirty (30) days after the finding and every twelve (12) months thereafter for as long as the court has jurisdiction. The department shall prepare a permanency plan and file the permanency plan with the court at least five (5) days prior to the permanency hearing. If the permanency plan has a goal of termination of parental rights and adoption, the department shall file the petition to terminate as required in section [16-1624](#)(2), Idaho Code. Copies of the permanency plan shall be delivered to the parents and other legal guardians, prosecuting attorney or deputy attorney general, the guardian ad litem and attorney for the child.

(2) The permanency plan shall have a permanency goal of termination of parental rights and adoption, guardianship or, for youth age sixteen (16) years and older only, another planned permanent living arrangement and shall set forth the reasonable efforts necessary to finalize the permanency goal.

(3) The permanency plan shall also:

(a) Identify the services to be provided to the child, including services to identify and meet any 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 interests;

(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) Address 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. This shall also include the efforts made to ensure educational stability for the child, the efforts to keep the child in the school in which the child is enrolled at the time of

placement or the reasons why remaining in that school is not in the best interests of the child;

(g) Document that siblings were placed together or, if siblings were not placed together, document 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;

(h) For youth age fourteen (14) years and older:

(i) Identify the services needed to assist the youth to make the transition from foster care to successful adulthood; and

(ii) Document the youth's rights in regard to education, health, visitation, court participation and receipt of an annual credit report, including a signed acknowledgment by the department that the youth was provided with a written copy of these rights and that the rights were explained to the youth in an age-appropriate or developmentally appropriate manner;

(i) For youth age sixteen (16) years and older with a proposed permanency goal of another planned permanent living arrangement, document:

(i) 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;

(ii) Why another planned permanent living arrangement is the best permanency plan for the youth and compelling reasons why, as of the date of the permanency hearing, it would not be in the best interests 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;

(iii) The steps that the department has taken to ensure that the youth's foster parents or child care institution are following the reasonable and prudent parent standard when determining whether to allow the youth in their care to participate in extracurricular, enrichment, cultural and social activities; and

(iv) The opportunities provided to the youth to engage in age-appropriate or developmentally appropriate activities;

(j) If there is reason to believe the child is an Indian child and there has been no final determination as to the child's status as an Indian child, document:

(i) The efforts made to determine whether the child is an Indian child; and

(ii) The department's 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; and

(k) Identify the prospective adoptive parents, if known; if the prospective adoptive parents are not known, the department shall amend the plan to name the proposed adoptive parents as soon as such persons become known.

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

(a) For youth age twelve (12) years and older, unless good cause is shown, the court shall ask the youth about his desired permanency outcome and consult with the youth about his current permanency plan;

(b) 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, the court shall:

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

(ii) 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;

(c) 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; and

(d) 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 hearing pursuant to this section and each hearing held pursuant to section [16-1622](#), Idaho Code, the department shall document:

(i) 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- and long-term goals for the child, as specified in the permanency plan for the child;

(ii) 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

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

(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) For youth with a proposed or current permanency goal of another planned permanent living arrangement, at each permanency hearing the court shall make written, case-specific findings that as of the date of the permanency hearing another planned permanent living arrangement is the best permanency plan for the youth and that there are compelling reasons why it is not in the youth's best interests 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.

(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 proceeding seeking a determination of the court that aggravated circumstances were present.

[16-1620, added 2005, ch. 391, sec. 22, p. 1282; am. 2013, ch. 287, sec. 4, p. 747; am. 2016, ch. 265, sec. 4, p. 707; am. 2016, ch. 347, sec. 3, p. 1002; am. 2017, ch. 58, sec. 4, p. 99; am. 2021, ch. 281, sec. 5, p. 844.]

16-1621. CASE PLAN HEARING -- NO FINDING OF AGGRAVATED CIRCUMSTANCES. (1) In every case in which the child is determined to be within the jurisdiction of the court and there is no judicial determination that aggravated circumstances were present, the department shall prepare a written case plan, including cases in which the parent(s) is incarcerated. The court shall schedule a case plan hearing to be held within thirty (30) days after the adjudicatory hearing. The case plan shall be filed with the court no later than five (5) days prior to the case plan hearing. Copies of the case plan shall be delivered to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, the guardian ad litem and attorney for the child.

(a) The court shall hold a case plan hearing to determine whether the best interests of the child are served by adopting, rejecting or modifying the case plan proposed by the department.

(b) 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, the court shall:

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

(ii) 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.

(c) If the child is being treated with psychotropic medication, the court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medication.

(2) Notice of the case plan hearing shall be provided to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department, and foster parents. Although foster parents are provided notice of this hearing, they are not parties to the child protective act action.

(3) If the child is placed in the legal custody of the department, the case plan filed by the department shall set forth reasonable efforts that will be made to make it possible for the child to return home. The case plan shall also:

(a) Identify the services to be provided to the child, including services to identify and meet any educational, emotional, physical or developmental needs the child may have, and to assist the child in adjusting to the placement or to ensure the stability of the placement. For youth age fourteen (14) years and older:

- (i) Identify the services needed to assist the youth in making the transition to successful adulthood; and
 - (ii) Document the youth's rights in regard to education and health, visitation, court participation and receipt of an annual credit report, including a signed acknowledgment by the department that the youth was provided with a written copy of these rights and that the rights were explained to the youth in an age-appropriate or developmentally appropriate manner;
- (b) Address the options for maintaining the child's connection to the community:
- (i) Include connections to individuals with a significant relationship to the child and organizations or community activities with which the child has a significant connection;
 - (ii) Ensure educational stability for the child, including the efforts to keep the child in the school in which the child is enrolled at the time of placement or the reasons why remaining in that school is not in the best interests of the child;
 - (iii) Include a visitation plan and identify the need for supervision of visitation and child support;
 - (iv) Either document that siblings were placed together or, if siblings were not placed together, document the efforts made to place the siblings together, the reasons why siblings were not placed together and a plan for ensuring frequent visitation or other ongoing interaction among siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings; and
 - (v) If there is reason to believe the child is an Indian child and there has been no final determination as to the child's status as an Indian child, document:
 - 1. The efforts made to determine whether the child is an Indian child; and
 - 2. The department's 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;
- (c) Include a goal of reunification and a plan for achieving that goal. The reunification plan shall identify all issues that need to be addressed before the child can safely be returned home without department supervision. The court may specifically identify issues to be addressed by the plan. The reunification plan shall specifically identify the tasks to be completed by the department, each parent or others to address each issue, including services to be made available by the department to the parents and in which the parents are required to participate, and deadlines for completion of each task. The case plan shall state with specificity the role of the department toward each parent. When appropriate, the reunification plan should identify terms for visitation, supervision of visitation and child support;
- (d) Include a concurrent permanency goal and a plan for achieving that goal. The concurrent permanency goal may be one (1) of the following: termination of parental rights and adoption, guardianship or, for youth age sixteen (16) years or older only, another planned permanent living arrangement. The concurrent plan shall:

- (i) Address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child;
- (ii) Address the advantages and disadvantages of each option and include a recommendation as to which option is in the child's best interests;
- (iii) Specifically identify the actions necessary to implement the recommended option;
- (iv) Specifically set forth a schedule for accomplishing the actions necessary to implement the concurrent permanency goal;
- (v) Address 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;
- (vi) Identify the names of the proposed adoptive parents when known if the permanency goal is termination of parental rights and adoption;
- (vii) In the case of a child who has attained the age of fourteen (14) years, include the services needed to assist the child to make the transition from foster care to successful adulthood;
- (viii) For youth with a proposed permanency goal of another permanent planned living arrangement, 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;
- 2. Why another planned permanent living arrangement is the best permanency goal for the youth and a compelling reason why, as of the date of the case plan hearing, it would not be in the best interests 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;
- 3. The steps taken by the department to ensure that the youth's foster parents or child care institution are following the reasonable and prudent parent standard when making decisions about whether the youth can engage in extracurricular, enrichment, cultural and social activities; and
- 4. The opportunities provided to the youth to regularly engage in age-appropriate or developmentally appropriate activities; and

- (ix) Identify further investigation necessary to identify or assess other options for permanent placement, to identify actions necessary to implement the recommended placement or to identify options for maintaining the child's significant connections.

(4) If the child has been placed under protective supervision of the department, the case plan filed by the department shall:

- (a) Identify the services to be provided to the child, including services to identify and meet any educational, emotional, physical or developmental needs the child may have, and to assist the child in adjusting to the placement or to ensure the stability of the placement. For youth age fourteen (14) years and older, identify the services

needed to assist the youth in making the transition to successful adulthood and document the youth's rights in regard to education and health, visitation, court participation and receipt of an annual credit report, including a signed acknowledgment by the department that the youth was provided with a written copy of the youth's rights and that the rights were explained to the youth in an age-appropriate or developmentally appropriate manner. The plan shall also address 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;

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

(5) If the child is placed in a qualified residential treatment program, then the case plan shall include the assessment report of the qualified individual.

(6) The case 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 case plan and finalizing the permanency goal. The court's order shall provide that reasonable efforts shall be made to reunify the family in a timely manner in accordance with the case plan. Unless the child has been placed under the protective supervision of the department, the court's order shall also require the department to simultaneously take steps to accomplish the goal of reunification and the concurrent permanency goal.

[(16-1621) 16-1610, added 1976, ch. 204, sec. 2, p. 738; am. 1982, ch. 186, sec. 10, p. 497; am. 1986, ch. 121, sec. 2, p. 320; am. 1989, ch. 218, sec. 2, p. 527; am. 1989, ch. 302, sec. 3, p. 755; am. 1991, ch. 212, sec. 4, p. 503; am. 1996, ch. 272, sec. 8, p. 891; am. 1998, ch. 257, sec. 3, p. 852; am. 1998, ch. 385, sec. 1, p. 1186; am. 2001, ch. 107, sec. 11, p. 361; am. 2003, ch. 279, sec. 6, p. 755; am. and redesig. 2005, ch. 391, sec. 23, p. 1283; am. 2013, ch. 287, sec. 5, p. 748; am. 2016, ch. 265, sec. 5, p. 709; am. 2016, ch. 347, sec. 4, p. 1004; am. 2017, ch. 58, sec. 5, p. 101; am. 2021, ch. 281, sec. 6, p. 847.]

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, guardian ad litem, 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 permanency 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 in-state and out-of-state placement of the child. In the case of a child in an out-of-state placement, the court shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child.

(e) 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. In the case of a child who has attained the age of fourteen (14) years and older, the hearing shall include a determination of the services needed to assist the youth to make the transition from foster care to successful adulthood.

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

(i) Another planned permanent living arrangement is the best permanency goal for the youth; and

(ii) 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.

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

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

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

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

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

(i) 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 that remaining in the school is not in the child's best interests; and

(ii) That 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 or why a joint placement would be contrary to the safety or well-being of one (1) or more of the siblings, and a plan for ensuring frequent visitation or ongoing interaction among siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings.

(i) 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, the department shall document and the court shall:

- (i) Inquire about the efforts that have been made since the last 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) 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 birthday.

sec. 9, p. 892; am. 2001, ch. 107, sec. 12, p. 364; am. and redesign. 2005, ch. 391, sec. 24, p. 1283; am. 2007, ch. 223, sec. 4, p. 672; am. 2013, ch. 287, sec. 6, p. 750; am. 2014, ch. 23, sec. 1, p. 29; am. 2016, ch. 265, sec. 6, p. 712; am. 2016, ch. 347, sec. 5, p. 1005; am. 2018, ch. 287, sec. 4, p. 679; am. 2021, ch. 281, sec. 7, p. 850.]

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

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

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

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

(3) When a child under protective supervision is removed from his home pursuant to subsection (1) (a) or (b) of this section without a hearing, a redispotion hearing shall be held within forty-eight (48) hours of the child's removal from the home, except for Saturdays, Sundays and holidays. At the hearing, the court shall determine whether to vest legal custody in the department or other authorized agency pursuant to section [16-1619](#) (5) (b), Idaho Code. When a child under protective supervision is removed from his home pursuant to subsection (1) (b) of this section and the facts supporting the removal are presented to the court at a hearing, the hearing at which the court orders the child's removal is the redispotion hearing.

(4) In determining whether to vest legal custody in the department or other authorized agency, the court shall consider any information relevant to the redispotion of the child, and in any event shall make detailed written findings based upon facts in the record as required by section [16-1619](#) (6), Idaho Code.

(5) An order vesting legal custody with the department or other authorized agency under this section shall be treated for all purposes as if such an order had been part of the court's original decree under section [16-1619](#), Idaho Code. The court may order the department to prepare a written case plan. The court may hold a case plan hearing. The case plan hearing shall be held within thirty (30) days of the redispotion hearing pursuant to section [16-1621](#), Idaho Code.

(6) Each of the parents or legal guardians from whom the child was removed shall be given notice of the redispotion hearing in the same time and manner as required for notice of a shelter care hearing under section [16-1615](#) (2) and (3), Idaho Code.

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

[16-1623, added 2005, ch. 391, sec. 25, p. 1284; am. 2013, ch. 287, sec. 7, p. 752; am. 2016, ch. 265, sec. 7, p. 716.]

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

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

(3) Unless there are compelling reasons it would not be in the best interest of the child, the department shall be required to file a petition to terminate parental rights within thirty (30) days of a judicial determination that an infant has been abandoned or that reasonable efforts are not required because aggravated circumstances were present.

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

(5) If termination of parental rights is granted and the child is placed in the guardianship or legal custody of the department, the court, upon petition, shall conduct a hearing as to the future status of the child within twelve (12) months of the order of termination of parental rights, and every twelve (12) months subsequently until the child is adopted or is in a placement sanctioned by the court.

(6) 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 to terminate parental rights has been filed with regard to the child.

[(16-1624) 16-1615, added 1976, ch. 204, sec. 2, p. 741; am. 1982, ch. 186, sec. 15, p. 500; am. 1989, ch. 218, sec. 3, p. 528; am. 1998, ch. 257, sec. 4, p. 854; am. 2000, ch. 233, sec. 1, p. 653; am. 2001, ch. 107, sec. 16, p. 367; am. 2003, ch. 279, sec. 7, p. 755; am. and redesign. 2005, ch. 391, sec. 26, p. 1285; am. 2010, ch. 147, sec. 2, p. 316; am. 2013, ch. 287, sec. 8, p. 753.]

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

(a) An adjudicatory decree entered pursuant to section [16-1619](#), Idaho Code;

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

(c) Any order subsequent to the adjudicatory decree that authorizes or mandates the department to cease reasonable efforts to make it possible to return the child to his home, including an order finding aggravated circumstances; or

(d) An order of dismissal.

(2) Where the order affects the custody of a child, the appeal shall be heard at the earliest practicable time. The pendency of an appeal shall not suspend the order of the court regarding a child, and it shall not discharge the child from the legal custody of the authorized agency to whose care he has

been committed, unless otherwise ordered by the district court. No bond or undertaking shall be required of any party appealing to the district court under the provisions of this section. Any final order or judgment of the district court shall be appealable to the supreme court of the state of Idaho in the same manner as appeals in other civil actions. The filing of the notice of appeal shall not, unless otherwise ordered, stay the order of the district court.

[(16-1625) 16-1617, added 1976, ch. 204, sec. 2, p. 742; am. 1982, ch. 186, sec. 16, p. 500; am. 2001, ch. 107, sec. 17, p. 367; am. and redesign. 2005, ch. 391, sec. 27, p. 1286; am. 2010, ch. 26, sec. 2, p. 46; am. 2013, ch. 287, sec. 9, p. 753.]

16-1626. COURT RECORDS. The court shall keep a record of all court proceedings under this chapter. The records shall be available only to parties to the proceeding, persons having full or partial custody of the subject child and authorized agencies providing protective supervision or having legal custody of the child. Any other person may have access to the records only upon permission by the court and then only if it is shown that such access is in the best interests of the child; or for the purpose of legitimate research. If the records are released for research purposes, the person receiving them must agree not to disclose any information which could lead to the identification of the child.

[(16-1626) 16-1621, added 1976, ch. 204, sec. 2, p. 744; am. 1982, ch. 186, sec. 20, p. 502; am. 1996, ch. 272, sec. 13, p. 895; am. and redesign. 2005, ch. 391, sec. 28, p. 1286.]

16-1627. AUTHORIZATION OF EMERGENCY MEDICAL TREATMENT. (1) At any time whether or not a child is under the authority of the court, the court may authorize medical or surgical care for a child when:

(a) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

(b) A physician informs the court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent.

(2) If time allows in a situation under subsection (1) (b) of this section, the court shall cause every effort to be made to grant each of the parents or legal guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

(3) In making its order under subsection (1) of this section, the court shall take into consideration any treatment being given the child by prayer through spiritual means alone, if the child or his parent, guardian or legal custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment.

(4) After entering any authorization under subsection (1) of this section, the court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.

(5) Oral authorization by the court is sufficient for care or treatment to be given by and shall be accepted by any physician or hospital. No

physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability for performance of care or treatment in reliance on the court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

[(16-1627) 16-1616, added 1976, ch. 204, sec. 2, p. 742; am. 1996, ch. 272, sec. 12, p. 894; am. and redesisg. 2005, ch. 391, sec. 29, p. 1287.]

16-1628. SUPPORT OF COMMITTED CHILD. (1) Whenever legal custody of a child is vested in someone other than his parents, after due notice to the parent or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the child after an order of temporary custody, if any, or the decree is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(2) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to [chapter 12, title 32](#), Idaho Code.

(3) Failure to include these provisions does not affect the validity of the support order or decree. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

[(16-1628) 16-1622, added 1976, ch. 204, sec. 2, p. 744; am. 1982, ch. 186, sec. 21, p. 502; am. 1986, ch. 222, sec. 8, p. 608; am. 1990, ch. 361, sec. 4, p. 977; am. 1998, ch. 292, sec. 3, p. 930; am. and redesisg. 2005, ch. 391, sec. 30, p. 1287; am. 2012, ch. 257, sec. 2, p. 709.]

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

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

(2) On December 1, the department shall make an annual statistical report to the governor covering the preceding fiscal year showing the number and status of persons in its custody and including such other data as will provide sufficient facts for sound planning in the conservation of children and youth. All officials and employees of the state and of every county and city shall furnish the department, upon request, such information within their knowledge and control as the department deems necessary. Local agencies shall report in such uniform format as may be required by the department.

(3) The department shall be required to maintain a central registry for the reporting of child neglect, abuse and abandonment information. Provided however, that the department shall not retain any information for this purpose relating to a child, or parent of a child, abandoned pursuant to [chapter 82, title 39](#), Idaho Code.

(4) The department shall make periodic evaluation of all persons in its custody or under its protective supervision for the purpose of determining whether existing orders and dispositions in individual cases shall be modified or continued in force. Evaluations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding six (6) months. Reports of evaluation made pursuant to this section shall be filed with the court that has jurisdiction. Reports of evaluation shall be provided to persons having full or partial legal or physical custody of a child. Failure of the department to evaluate a person or to reevaluate him within six (6) months of a previous examination shall not of itself entitle the person to a change in disposition but shall entitle him, his parent, guardian or custodian or his counsel to petition the court pursuant to section [16-1622](#), Idaho Code.

(5) In a consultative capacity, the department shall assist communities in the development of constructive programs for the protection, prevention and care of children and youth.

(6) The department shall keep written records of investigations, evaluations, prognoses and all orders concerning disposition or treatment of every person over whom it has legal custody or under its protective supervision. Department records shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code, unless otherwise ordered by the court, the person consents to the disclosure, or disclosure is necessary for the delivery of services to the person. Notwithstanding the provisions restricting disclosure or the exemptions from disclosure provided in [chapter 1, title 74](#), Idaho Code, all records pertaining to investigations, the rehabilitation of youth, the protection of children, evaluation, treatment and/or disposition records pertaining to the statutory responsibilities of the department shall be disclosed to any duly elected state official carrying out his official functions.

(7) The department shall establish appropriate administrative procedures for the processing of complaints of child neglect, abuse and abandonment received and for the implementation of the protection, treatment and care of children formally or informally placed in the custody of the department or under its protective supervision under this chapter including, but not limited to:

(a) Department employees whose job duties are related to the child protective services system under this chapter shall first be trained as to their obligations under this chapter regarding the protection of children whose health and safety may be endangered. The curriculum shall include information regarding their legal duties, how to conduct their work in conformity with the requirements of this chapter, information regarding applicable federal and state laws with regard to the rights of the child, parent and others who may be under investigation under the child protective services system, and the applicable legal and constitutional parameters within which they are to conduct their work.

(b) Department employees whose job duties are related to the child protective services system shall advise the individual of the complaints

or allegations made against the individual at the time of the initial contact, consistent with protecting the identity of the referent.

(8) The department, having been granted legal custody of a child, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court's consent. The court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department, and the court shall have jurisdiction over all matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court. Notwithstanding the provisions of this subsection, all other determinations relating to where and with whom the child shall live shall be subject to judicial review by the court and, when contested by any party, judicial approval.

(9) The department shall give to the court any information concerning the child that the court may at any time require, but in any event shall report the progress of the child under its custody or under its protective supervision at intervals of not to exceed six (6) months. The department shall file with the court at least five (5) days prior to the permanency hearing either under section [16-1622](#), Idaho Code, or, in the case of a finding of aggravated circumstances, section [16-1620](#), Idaho Code, the permanency plan and recommendations of the department.

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

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

- (a) A fit and willing relative;
- (b) A fit and willing nonrelative with a significant relationship with the child;
- (c) Foster parents and other persons licensed in accordance with [chapter 12, title 39](#), Idaho Code, with a significant relationship with the child;
- (d) Foster parents and other persons licensed in accordance with [chapter 12, title 39](#), Idaho Code.

(12) If the caseworker assigned to a foster care case recommends removing the child from a foster home in which the child has been placed for sixty (60) or more days, for placement in another foster home, then the case worker's supervisor shall conduct a review of the foster care case and must approve such recommendation before a change in foster home placement occurs. The supervisor shall consider the best interests and special needs of the child, including:

- (a) The clearly stated reasons for the recommended change in placement;
- (b) The number of times the child's placement has been changed since removal from the child's home and the reasons for each change;
- (c) Whether the child will change schools as a result of the change in placement; and
- (d) Whether the change in placement will separate or reunite siblings or affect sibling visitation.

(13) If the supervisor determines that the recommended change in foster care placement is in the best interests of the child, then the department may change the placement of the child; provided that, the department shall give the foster parents and the court written notice of the planned change at least seven (7) days before the change in placement.

(14) If the caseworker determines that there is abuse or neglect or a substantial risk of abuse or neglect in the foster home, then the department may change the placement of the child without a supervisor's review; provided that, the department shall give the foster parents and the court written notice of the unplanned change within seven (7) days after the change in placement.

(15) In its written notice of a planned or unplanned change required under this section, the department shall clearly state the reasons for the change in placement of the child.

[(16-1629) 16-1623, added 1976, ch. 204, sec. 2, p. 744; am. 1982, ch. 186, sec. 22, p. 502; am. 1989, ch. 218, sec. 4, p. 529; am. 1990, ch. 213, sec. 10, p. 495; am. 1991, ch. 212, sec. 6, p. 505; am. 1996, ch. 272, sec. 14, p. 895; am. 1996, ch. 361, sec. 1, p. 1217; am. 1998, ch. 257, sec. 5, p. 855; am. 1999, ch. 30, sec. 8, p. 50; am. 2000, ch. 233, sec. 2, p. 654; am. 2001, ch. 93, sec. 1, p. 233; am. 2001, ch. 107, sec. 19, p. 368; am. 2001, ch. 358, sec. 1, p. 1261; am. 2005, ch. 25, sec. 78, p. 114; am. 2005, ch. 332, sec. 1, p. 1041; am. and redesign. 2005, ch. 391, sec. 31, p. 1288; am. 2006, ch. 16, sec. 2, p. 45; am. 2007, ch. 223, sec. 5, p. 673; am. 2010, ch. 147, sec. 3, p. 317; am. 2013, ch. 287, sec. 10, p. 754; am. 2015, ch. 141, sec. 13, p. 387; am. 2016, ch. 347, sec. 6, p. 1007; am. 2018, ch. 287, sec. 5, p. 683.]

16-1630. OTHER DUTIES OF THE DEPARTMENT -- EXCEPTIONS. (1) Nothing in this chapter shall be construed as modifying duties of the department as described in sections [56-204A](#) and [56-204B](#), Idaho Code.

(2) Nothing in this chapter shall be construed as assigning or imposing duties or responsibilities on the department by those provisions of this chapter relating to guardian ad litem.

[(16-1630) 16-1624, added 1976, ch. 204, sec. 2, p. 746; am. 1982, ch. 186, sec. 23, p. 503; am. 1989, ch. 281, sec. 3, p. 687; am. and redesign. 2005, ch. 391, sec. 32, p. 1290.]

16-1631. AUTHORIZATION FOR DEPARTMENT TO ACT. (1) Upon receiving information that a child may be abused, neglected or abandoned, the department shall cause such investigation to be made in accordance with this chapter as is appropriate. In making the investigation the department shall use its own resources, and may enlist the cooperation of peace officers for phases of the investigation for which they are better equipped. Upon satisfying itself as to the course of action which should be pursued to best accord with the purpose of this chapter, the department shall:

- (a) Resolve the matter in such informal fashion as is appropriate under the circumstances; or
- (b) Seek to enter a voluntary agreement with all concerned persons to resolve the problem in such a manner that the child will remain in his own home; or
- (c) Refer the matter to the prosecutor or attorney general with recommendation that appropriate action be taken under this chapter; or

(d) Refer the matter to the prosecutor or attorney general with recommendation that appropriate action be taken under other laws.

(2) In the event that the department concludes that a voluntary agreement pursuant to subsection (1) (b) of this section should be used, the agreement shall be in writing, shall state the behavioral basis of each parent and necessary third person, shall contain such other terms as the department and each parent having joint custody shall deem appropriate under the circumstances, shall utilize such resources as are available to the department from any source and are considered appropriate to the situation, shall specify the services or treatment to be undertaken, shall be signed by all persons, including:

- (a) The child if appropriate;
- (b) Every parent having joint custody of the subject child;
- (c) Any other full or part-time resident of the home;
- (d) All other persons the department considers necessary to the agreement's success;

and shall specify the responsibilities of each party to the agreement, which responsibilities shall be thoroughly explained to each person orally. The agreement shall not run for more than one (1) year. Copies shall be given to all signatories.

[(16-1631) 16-1625, added 1976, ch. 204, sec. 2, p. 746; am. 1982, ch. 186, sec. 24, p. 504; am. 1996, ch. 272, sec. 15, p. 897; am. and redesign. 2005, ch. 391, sec. 33, p. 1290.]

16-1632. GUARDIAN AD LITEM COORDINATOR -- DUTIES -- ANNUAL REPORT. (1) Under rules, policies and procedures adopted by the Idaho supreme court which may include, but are not limited to, provisions establishing fiscal controls and requiring compliance with all or part of the standards adopted by the national court appointed special advocate association, the persons or entities receiving moneys from the grant administrator to coordinate a guardian ad litem program in a judicial district may be required by the terms of the grant to perform any or all of the following duties:

- (a) To establish, maintain and coordinate a districtwide guardian ad litem program consistent with the provisions of this chapter;
- (b) To furnish the necessary administrative and staffing services as may from time to time be required;
- (c) To act as a coordinator for the purpose of providing guardians ad litem for children brought within the purview of this chapter;
- (d) To seek to have each child brought within the purview of this chapter available to him a guardian ad litem throughout each stage of any child protective proceeding;
- (e) To establish a program for attorneys to represent guardians ad litem, whether or not appointed by the court in conjunction with the local, districtwide, and state bar associations;
- (f) To the extent possible to establish a districtwide program to recruit volunteer guardians ad litem sufficient to provide services in each county of the judicial district;
- (g) In conjunction with the department, prosecuting attorneys and city and county law enforcement officials, mental health professionals, social workers, school counselors and the medical community, the coordinators may assist in the development and implementation of a statewide uniform protocol for the investigation of allegations of abuse, neglect or abandonment pursuant to the provisions of this chapter;

(h) To develop uniform criteria to screen, select, train and remove guardians ad litem;

(i) To establish a priority list of those proceedings under this chapter in which a guardian ad litem shall be appointed in districts where there are insufficient numbers of guardians ad litem.

(2) Each guardian ad litem coordinator shall submit an annual report for the preceding fiscal year to the grant administrator for delivery to the legislature no later than ten (10) days following the start of each regular session. Such report shall contain the number and type of proceedings filed in the district under this chapter, the number of children subject to proceedings in the district under this chapter and the number of appointed guardians ad litem, the nature of services the guardians ad litem provided, the number of guardians ad litem trained in each district, the number of hours of service provided by guardians ad litem and attorneys and a complete financial statement for the past year and financial support requirements for the next fiscal year.

(3) The coordinators and staff members of any guardian ad litem program receiving moneys from the grant administrator, and any persons volunteering to serve as guardians ad litem in such programs, shall submit to a fingerprint-based criminal history check through any law enforcement office in the state providing such service. The criminal history check shall include a statewide criminal identification bureau check, federal bureau of investigation criminal history check, and statewide sex offender registry check. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho with a copy going to the applicant.

[(16-1632) 16-1630, added 1989, ch. 281, sec. 4, p. 687; am. and redesign. 2005, ch. 391, sec. 34, p. 1290; am. 2007, ch. 26, sec. 2, p. 52.]

16-1633. GUARDIAN AD LITEM -- DUTIES. Subject to the direction of the court, the guardian ad litem shall advocate for the best interests of the child and shall have the following duties which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(1) To conduct an independent factual investigation of the circumstances of the child including, without limitation, the circumstances described in the petition.

(2) To file with the court prior to any adjudicatory, review or permanency hearing a written report stating the results of the investigation, the guardian ad litem's recommendations and such other information as the court may require. In all post-adjudicatory reports, the guardian ad litem shall inquire of any child capable of expressing his or her wishes regarding permanency and, when applicable, the transition from foster care to independent living and shall include the child's express wishes in the report to the court. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case at least five (5) days before the date set for the hearing. The report submitted prior to the adjudicatory hearing shall not be admitted into evidence at the hearing and shall be used by the court only for disposition if the child is found to be within the purview of the act.

(3) To act as an advocate for the child for whom appointed at each stage of proceedings under this chapter. To that end, the guardian ad litem shall participate fully in the proceedings and to the degree necessary to adequately advocate for the child's best interests, and shall be entitled

to confer with the child, the child's siblings, the child's parents and any other individual or entity having information relevant to the child protection case.

(4) To monitor the circumstances of a child and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the child.

(5) To maintain all information regarding the case confidential and to not disclose the same except to the court or to other parties to the case.

(6) Such other and further duties as may be expressly imposed by the court order.

[(16-1633) 16-1631, added 1989, ch. 281, sec. 5, p. 688; am. 1996, ch. 272, sec. 16, p. 898; am. and redesiɡ. 2005, ch. 391, sec. 35, p. 1291; am. 2010, ch. 284, sec. 1, p. 765.]

16-1634. GUARDIAN AD LITEM -- RIGHTS AND POWERS. The guardian ad litem will have the following rights and powers, which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(1) The guardian ad litem, if represented by counsel, may file pleadings, motions, memoranda and briefs on behalf of the child, and shall have all of the rights of a party whether conferred by statute, rule of court or otherwise.

(2) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem and the guardian's attorney of all hearings, staffings, investigations, depositions and significant changes of circumstances of the child.

(3) Except to the extent prohibited or regulated by federal law or by the provisions of [chapter 82, title 39](#), Idaho Code, upon presentation of a copy of the order appointing guardian ad litem, any person or agency, including, without limitation, any hospital, school, organization, department of health and welfare, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the guardian ad litem to inspect and copy pertinent records necessary for the proceeding for which the guardian is appointed relating to the child and parent without consent of the child or parents.

[(16-1634) 16-1632, added 1989, ch. 281, sec. 6, p. 689; am. 1996, ch. 272, sec. 17, p. 898; am. 2001, ch. 357, sec. 5, p. 1260; am. 2005, ch. 25, sec. 79, p. 115; am. and redesiɡ. 2005, ch. 391, sec. 36, p. 1292.]

16-1635. IMMUNITY FROM LIABILITY. Any person appointed as a guardian ad litem, the coordinator, or a guardian ad litem volunteer program employee shall be personally immune from any liability for acts, omissions or errors in the same manner as if such person were a volunteer officer or director under the provisions of section [6-1605](#), Idaho Code.

[(16-1635) 16-1633, added 1989, ch. 281, sec. 7, p. 689; am. and redesiɡ. 2005, ch. 391, sec. 37, p. 1293.]

16-1636. COMPLIANCE WITH FEDERAL LAW. For the purposes of the child abuse prevention and treatment act, 42 U.S.C. sections 5101 et seq., grant to this state under public law no. 93-247, or any related state or federal legislation, a guardian ad litem or other person appointed pursuant to

section [16-1614](#), Idaho Code, shall be deemed a guardian ad litem to represent the interests of the minor in proceedings before the court. Any provisions of this chapter which shall cause this state to lose federal funding shall be considered null and void.

[(16-1636) 16-1634, added 1989, ch. 281, sec. 8, p. 690; am. and re-desig. 2005, ch. 391, sec. 38, p. 1293.]

16-1637. EXEMPTION. Any person appointed as a guardian ad litem by court order shall be exempt from the provisions of [chapter 32, title 54](#), Idaho Code.

[(16-1637) 16-1635, added 1989, ch. 281, sec. 9, p. 690; am. and re-desig. 2005, ch. 391, sec. 39, p. 1293.]

16-1638. GUARDIAN AD LITEM ACCOUNT -- CREATION. (1) There is hereby created an account in the agency asset fund in the state treasury to be designated the guardian ad litem account.

(2) The account shall consist of:

- (a) Moneys appropriated to the account;
- (b) Donations, gifts and grants to the account from any source; and
- (c) Any other moneys which may hereafter be provided by law.

(3) Moneys in the account may be expended for the purposes provided in sections [16-1632](#) through [16-1638](#), Idaho Code. Interest earned on the investment of idle money in the guardian ad litem account shall be returned to the guardian ad litem account.

(4) Disbursements of moneys from the account shall be by appropriation from the legislature to the supreme court, which moneys shall be used for the payment of grants to qualified recipients and for expenses incurred for carrying out the provisions of this chapter.

[(16-1638) 16-1636, added 1989, ch. 281, sec. 10, p. 690; am. and re-desig. 2005, ch. 391, sec. 40, p. 1293; am. 2007, ch. 26, sec. 3, p. 53.]

16-1639. GUARDIAN AD LITEM GRANTS. The grant administrator is hereby authorized and directed to award and administer grants from the money which shall be from time to time available to the grant administrator from the guardian ad litem account. The foregoing power and authorization shall be subject to requirements imposed by the supreme court and the following provisions:

(1) Grants may be made available to any person, organization, corporation, or agency for any of the following purposes:

- (a) To enable such entity to act as the guardian ad litem coordinator in any judicial district.
- (b) To enable such entity to recruit, organize and administer a panel of guardians ad litem and volunteer lawyers to represent guardians ad litem.
- (c) To enable such entity to recruit, organize, train and support persons or entities to act as guardian ad litem coordinators in judicial districts which do not yet have guardian ad litem coordinators.
- (d) To enable such entity to pay the administrative and other miscellaneous expenses incurred in carrying out the provisions of the guardian ad litem program.

(2) The grant administrator shall endeavor in allocating available funds to foster the development and operation of a guardian ad litem program in each judicial district in the state; provided, however, the grant administrator shall have no obligation to seek out or organize guardian ad litem coordinators or persons willing to act as such in judicial districts lacking a guardian ad litem coordinator.

(3) Funds available to the grant administrator from the guardian ad litem account may be also used to pay the grant administrator's cost of performing its duties and obligations pursuant to this chapter.

[(16-1639) 16-1637, added 1989, ch. 281, sec. 11, p. 691; am. and redesign. 2005, ch. 391, sec. 41, p. 1294; am. 2007, ch. 26, sec. 4, p. 53.]

16-1640. ADMINISTRATIVE PROCEDURE ACT. Nothing in this chapter shall be construed to alter the requirements provided in [chapter 52, title 67](#), Idaho Code.

[(16-1640) 16-1626, added 1976, ch. 204, sec. 2, p. 747; am. 1982, ch. 186, sec. 25, p. 504; am. and redesign. 2005, ch. 391, sec. 42, p. 1294.]

16-1641. CONSTRUCTION. This chapter shall be liberally construed to accomplish the purposes herein set forth.

[(16-1641) 16-1627, added 1976, ch. 204, sec. 2, p. 747; am. 1982, ch. 186, sec. 26, p. 504; am. and redesign. 2005, ch. 391, sec. 43, p. 1294.]

16-1642. SHORT TITLE. This chapter shall be known and cited as the "Child Protective Act."

[(16-1642) 16-1628, as added by 1976, ch. 204, sec. 2, p. 747; am. 1982, ch. 186, sec. 27, p. 504; am. and redesign. 2005, ch. 391, sec. 44, p. 1294.]

16-1643. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

[(16-1643) 16-1629, added 1976, ch. 204, sec. 2, p. 747; am. 1982, ch. 186, sec. 28, p. 505; am. and redesign. 2005, ch. 391, sec. 45, p. 1294.]

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

(a) "Age or developmentally appropriate" means:

- (i) Activities that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical and behavioral capacities that are typical for an age or age group; and
- (ii) In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical and behavioral capacities of the child.

(b) "Reasonable and prudent parent standard" means the standard of care characterized by careful and sensible parental decisions that maintain the health, safety and best interest of a child while simultaneously encouraging the emotional and developmental growth of the child when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural or social activities.

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

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

(4) This section does not remove or limit any existing liability protection otherwise provided by law.

[16-1644, added 2016, ch. 360, sec. 2, p. 1064.]

16-1645. EXEMPTION. Notwithstanding any other provision of law, nothing in this chapter modifies or supersedes the requirements of the Indian child welfare act of 1978, 25 U.S.C. 1901, et seq.

[(16-1645) 16-1644, added 2016, ch. 347, sec. 7, p. 1009; am. and redesign. 2017, ch. 58, sec. 6, p. 104.]

16-1646. STATE DEPARTMENT OF HEALTH AND WELFARE ANNUAL REPORT. The state department of health and welfare shall submit an annual report regarding the foster care program to the germane standing committees of the legislature no later than ten (10) days following the start of each regular session. On or before February 15 of each year, the state department of health and welfare shall appear before the germane standing committees to present the report. Such report shall include, but need not be limited to, the number of children that are in the department's legal custody pursuant to this chapter, the number of such children who have been placed in foster care, how many times such children have been moved to different foster care homes and the reasons for such moves, best practices in foster care, goals to improve the foster care system in Idaho to ensure best practices are adhered to, a description of progress made with regard to the previous year's goals to improve the foster care system and any other information relating to foster care that the legislature requests. If a member of the legislature requests additional information between the time the report is received by the legislature and the time the department appears to present the report, then the department shall supplement its report to include such additional information.

[(16-1646) 16-1644, added 2016, ch. 284, sec. 1, p. 784; am. and redesign. 2017, ch. 58, sec. 7, p. 104.]

16-1647. CITIZEN REVIEW PANELS -- CHILD PROTECTION LEGISLATIVE REVIEW PANEL. (1) Each public health district, as set forth in section [39-408](#), Idaho Code, shall establish a citizen review panel for the purposes of evaluating

and providing recommendations for the improvement of the child protection system within its respective health district.

(2) Each citizen review panel shall be comprised of up to seven (7) members. Members shall reside within the boundaries of the public health district.

(3) The public health districts shall develop an application and process for selecting citizen review panel members. The public health districts shall be responsible for convening the meetings of the citizen review panels and providing administrative support to coordinate meeting times and reports. Panel members shall be volunteers broadly representative of the community in which the panel is established and include members who have expertise in the prevention and treatment of child abuse and neglect and may include adult former victims of child abuse or neglect. An effort shall be made to create a panel comprised of members from diverse professional backgrounds who demonstrate a strong motivation to improve the lives of children. Panel members must pass a criminal background check.

(4) Each citizen review panel shall review all cases brought under the child protective act that have been open in the corresponding district court, or other appropriate local jurisdiction, longer than one hundred twenty (120) days.

(5) Citizen review panel members shall be granted access to copies of all records in the department's custody related to the child and case under review including all information pertaining to prior referrals, prior safety assessments, all court filings and any police reports. The department shall give citizen review panel members access to copies of any additional records within the department's custody upon request. The department shall develop a memorandum of understanding addressing delivery, maintenance and destruction of all records, which must be signed by the panel member before accessing department records.

(6) Representative members from each of the seven (7) citizen review panels shall meet at least quarterly to discuss trends and concerns arising in different areas of the state. Meetings may take place telephonically, electronically or in person.

(7) Each citizen review panel shall produce a quarterly report containing a summary of the activities of the panel and offering recommendations to improve the child protection system experience for children. Reports shall be provided to the department and presented to the child protection legislative review panel established in subsection (9) of this section during its next meeting. Reports shall be exempt from public disclosure in the same manner as are records of investigations prepared by the department pursuant to section [74-105](#)(7), Idaho Code.

(8) The department shall submit an annual written response to citizen review panel reports. This response shall be made available to the public and presented to the child protection legislative review panel established in subsection (9) of this section.

(9) A child protection legislative review panel is hereby established. The panel shall be comprised of four (4) members of the house of representatives chosen by the speaker of the house, with one (1) such member chosen from the house health and welfare committee and one (1) such member chosen from the house judiciary, rules and administration committee and four (4) members of the senate chosen by the president pro tempore, with one (1) such member chosen from the senate health and welfare committee and one (1) such member chosen from the senate judiciary and rules committee. The child protection

legislative review panel shall meet as needed, but at least twice annually, to review citizen review panel reports and the department's annual response and for other purposes related to child protection. The child protection legislative review panel shall prepare an annual report summarizing citizen review panel recommendations and the department's response and shall submit that report to the United States department of health and human services annually.

[16-1647, added 2018, ch. 287, sec. 6, p. 686.]

16-1648. PROHIBITION ON RELIGIOUS DISCRIMINATION. (1) As used in this section:

(a) "Adoption or foster care" or "adoption or foster care services" means social services provided to or on behalf of children, including services:

- (i) Promoting foster parenting;
- (ii) Providing foster homes, residential care, group homes, or temporary group shelters for children;
- (iii) Recruiting foster parents;
- (iv) Placing children in foster homes;
- (v) Licensing or certifying foster homes;
- (vi) Promoting adoption or recruiting adoptive parents;
- (vii) Assisting adoptions or supporting adoptive families;
- (viii) Performing or assisting home studies;
- (ix) Assisting kinship guardianships or kinship caregivers;
- (x) Providing family support services; and
- (xi) Providing temporary family reunification services.

(b) "Discriminatory action" means any action taken by the state government to:

- (i) Alter in any way the tax treatment of, or cause any tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation of any person referred to in subsections (2) and (3) of this section;
- (ii) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by any person referred to in subsections (2) and (3) of this section;
- (iii) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to any person referred to in subsections (2) and (3) of this section;
- (iv) Withhold, reduce, exclude, terminate, adversely alter the terms or conditions of, or otherwise make unavailable or deny any entitlement or benefit under a state benefit program from or to any person referred to in subsections (2) and (3) of this section;
- (v) Impose, levy, or assess a monetary fine, fee, penalty, damages award, or injunction;
- (vi) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any license, certification, accreditation, custody award or agreement, diploma, grade, recognition, or other similar benefit, position, or status from or to any person; or
- (vii) Refuse to hire or promote, force to resign, terminate, demote, sanction, discipline, adversely alter the terms or condi-

tions of employment of, or retaliate or take other adverse employment action against a person employed or commissioned by the state government.

(c) "State benefit program" means any program administered, controlled, or funded by the state, or by any agent on behalf of the state, providing cash, payments, grants, contracts, loans, or in-kind assistance.

(d) "State government" means:

(i) The state or a political subdivision of the state;

(ii) Any agency of the state or of a political subdivision of the state, including a department, bureau, board, commission, council, or court;

(iii) Any city, county, urban county government, charter county government, unified local government, consolidated local government, special district, or any combination thereof;

(iv) Any person acting under color of state law; and

(v) Any private person suing under or attempting to enforce a law, rule, or regulation adopted by the state or a political subdivision of the state.

(2) The state government shall not take any discriminatory action against a person that advertises, provides, or facilitates adoption or foster care services wholly or partially on the basis that the person has provided or declined to provide any adoption or foster care service or related service based on or in a manner consistent with a sincerely held religious belief.

(3) The state government shall not take any discriminatory action against a person who the state grants custody of a foster or adoptive child wholly or partially on the basis that the person guides, instructs, or raises a child, or intends to guide, instruct, or raise a child, based on or in a manner consistent with a sincerely held religious belief. The state government may consider whether a person shares the same religious or faith tradition as a foster or adoptive child when considering placement of the child in order to prioritize placement with a person of the same religious or faith tradition.

(4) The state government shall consider any person as accredited, licensed, or certified who would otherwise be accredited, licensed, or certified, respectively, for any purposes under state law if not for a determination against such person wholly or partially on the basis that the person believes, maintains policies and procedures, or acts in accordance with a sincerely held religious belief.

(5) The state government shall consider any person for a contract, grant, or agreement that would otherwise be considered for a contract, grant, or agreement if not for a determination against such person wholly or partially on the basis that the person believes, maintains policies and procedures, or acts in accordance with a sincerely held religious belief.

(6) A person may assert a violation of the provisions of this section as a claim against the state government in any judicial or administrative proceeding or as a defense in any judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of the state government, any private person, or any other party.

(7) Notwithstanding any other provision of law to the contrary, an action under this section may be commenced, and relief may be granted, without

regard to whether the person commencing the action has sought or exhausted available administrative remedies.

(8) A person shall bring an action to assert a claim under this section no later than two (2) years after the date that the person knew or should have known that a discriminatory action was taken against that person.

(9) Any person who successfully asserts a claim or defense under this section may recover:

- (a) Declaratory relief;
- (b) Injunctive relief to prevent or remedy a violation of this section or the effects of such a violation;
- (c) Compensatory damages;
- (d) Reasonable attorney's fees and costs; and
- (e) Any other appropriate relief, except that declaratory relief and injunctive relief shall be available against a private person not acting under color of state law upon a successful assertion of a defense under this section.

(10) Sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to the extent of liability pursuant to subsection (9) of this section, and a person may sue the state government, except state courts, for damages allowed pursuant to subsection (9) of this section.

[16-1648, added 2024, ch. 166, sec. 2, p. 632.]

16-1648 [16-1649]. NOTIFICATION OF RIGHTS. (1) When the department, in accordance with this chapter, commences an investigation after having received information that a child may be abused, neglected, or abandoned and in the course of such investigation contacts, directly and in person, the parents, guardians, or any persons having legal custody of the child, then the department shall notify such parents, guardians, or persons that they have the right to:

- (a) Refuse to answer questions;
- (b) Obtain an attorney at their own expense, consult with such attorney, and have such attorney present during an investigation; provided, however, that the department is not authorized to appoint or obtain an attorney for such parents, guardians, or persons;
- (c) Refuse entry to their home or other real property; and
- (d) Refuse the questioning of any minor children in their home or on their property, unless there is an order issued by a court of competent jurisdiction authorizing a particular entry or particular questioning or examination.

(2) The notification required by subsection (1) of this section shall be made in writing at the time of or within seventy-two (72) hours after the department makes the first contact directly and in person with the parents, guardians, or other persons having legal custody of the child.

(3) A parent, guardian, or other person having legal custody of the child may expressly assert the rights provided in this section.

(4) The notification required by subsection (1) of this section shall be made in writing on a form prescribed by the department. Such notification shall state that if the safety of the child cannot be determined, the department may request assistance from a law enforcement agency or seek a court order.

(5) Failure by the department to provide the notification required by this section in a specific investigation shall not affect the department's

ability to conduct such investigation or to carry out the department's duties as provided in this chapter.

[16-1648 [16-1649], added 2024, ch. 64, sec. 1, p. 328.]

CHAPTER 17

CORRECTION OF DELINQUENT CHILDREN -- [REPEALED]