

# MINUTES

## CHILD PROTECTION COMMITTEE MEETING

*July 25, 2012*  
*Idaho Supreme Court Building – Boise, Idaho*

---

**Wednesday, July 25, 2012**

### *ATTENDANCE:*

Judges Bryan Murray (Chair), John Melanson, Roger Harris, Gregory Kalbfleisch, Gregory Frates, Lynne Krogh, Barbara Buchanan, and Cathleen McGregor-Irby, Miren Unsworth, Mary Jo Beig, Elizabeth Brandt, Karlene Behringer, Jennifer Bergin, Adam Kimball, Rob Luce, Mike Scholl, and Scott Davis. Administrative Office of the Court Staff: Nanci Thaumert, Kim Halbig-Sparks, Debra Alsaker-Burke, and Janice Beller.

### **Agenda Items:**

- 1. Welcome/Announcements** - Judge Murray welcomed the Committee and reviewed the following changes in membership:
  - a. **Bill Lasley** – retired from DJC.
  - b. **Chuck Halligan** – retired from the Department in May, 2012.
  - c. **Shirley Alexander** – retired from the Department in June, 2012.
  - d. **Miren Unsworth** – new to the Committee, representing FACS.
  
- 2. Review of Proposed Amendments to Statutes and Rules:**
  - a. **Aggravated Circumstances:** Judge Krogh explained the purpose of the changes, as outlined in the agenda.
    - i. Judge Irby moved to approve the proposed amendments to: 16-1602(4)(c), 16-1624(3), 16-1625(1)(c). The amendments delete the reference to 16-1619(6)(d) in each of the statutes. Seconded by Judge Frates. Motion approved with one dissenting vote by Mary Jo Beig.  
  
**16-1602(4)(c) will now read:**
      - (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;
        - (c) Whether aggravated circumstances as defined in section ~~16-1619~~, Idaho Code, exist.

**16-1624(3) will now read:**

(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 ~~sixty (60)~~ thirty (30) days of a judicial determination that an infant has been abandoned or that reasonable efforts are not required because the parent has subjected the child to aggravated circumstances ~~as determined by the court pursuant to section 16-1619(6)(d), Idaho Code.~~

**16-1625(1)(c) will now read:**

(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 that the parent subjected the child to aggravated circumstances ~~as set forth in section 16-1619(6)(d), Idaho Code;~~ or

- ii. New language was proposed in the amendments to 16-1619(6)(d) and in 16-1620(1). Motion by Jennifer Bergin to approve as presented in meeting materials. Second by Judge Buchanan. Discussion:

The question was raised as to whether the language regarding agg. circ. in 16-1619(6)(a) should be identical to the language in 16-1620(1). Consensus of the Committee was yes. Proposed amendments to 16-1620(1) and (8) as revised are:

Changes proposed by CP Committee to 16-1620(1) and (8) in **BOLD**:

(1) After a judicial determination that reasonable efforts to return the child to his home are not required because ~~the parent has subjected the child to~~ aggravated circumstances **were found to be present** ~~as set forth in section 16-1619(6)(d), Idaho Code,~~ the department shall prepare a permanency plan. The plan shall set forth reasonable efforts to place the child for adoption, with a legal guardian, or in another approved permanent placement, the court shall hold a permanency hearing within thirty (30) days after the finding.

(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 ~~the parent subjected the child to~~ aggravated circumstances **were present.**

**Amendment to I.C. 16-1619(6)(d) is:**

Reasonable efforts to reunify the child with one or both parents were not required because aggravated circumstances, ~~as defined in section 16-1602, Idaho Code,~~ 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.

Judge Buchanan moved to approve 16-1619(6)(d) and 16-1620(1) and (8) with Committee’s revisions as set forth above. Additionally, Judge Buchanan moved that the Committee authorize AOC staff to make similar amendments as needed, regarding the deletion of references to I.C. 16-1619(6)(d) and 16-1602. Seconded by Judge Kalbfleisch. Unanimously approved as amended by the Committee.

Upon further review, the following changes will also be made:

<u>16-1619 cross reference:</u>	<u>“subjected to” language:</u>
16-1621(4)	16-1610(2)(h)(iii)
16-1624	16-1624
16-1625(c)	16-1625(1)(c)
16-1629(9)	IJR 39(m)(2)
	IJR 41(a)
	IJR 44(c)

- b. Proposed amendments to IJR 41 and 45: At a previous meeting, the Committee voted to delete “in the child’s own home” as part of the definition of protective supervision. The following proposed amendments will delete that language in other parts of the Child Protective Act. Judge Buchanan moved to delete references to “in the child’s own home” in IJR 41(h) and IJR 45(a)(2). Second by Adam Kimball and approved unanimously.

IJR 41(h) will now read:

(h) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and the court places the child ~~in the child’s own home~~ under the protective supervision of the department, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the hearing on the case plan. The department shall consult with the guardian ad litem and the child’s parents in preparing the plan.

IJR 45(a)(2) will now read:

(2) modify disposition (provided that where a child was placed ~~in the child’s own home~~ under the protective supervision of the department, modification is subject to the requirement of ~~I.C. §~~ section 16-1623, Idaho Code);

- c. Termination of Parent-Child Relationship  
**Proposed substantive changes:** 16-1624(2), (3), (4), (5) and (6)  
(2) – Petition to terminate parental rights shall be filed within 30 days of an order approving a permanency plan with a permanency goal of TPR and Adoption.  
(3) – TPR petition filed within 30 rather than 60 days of a judicial determination that an infant has been abandoned or that a parent subjected the child to

aggravated circumstances.

- (4) – Include reference to “fit and willing” relative found in I.C. 16-1629(11).
- (5) – Remove “of health and welfare” in line 2, remove last sentence directing that a petition should be filed in the CPA case.
- (6) – Court may authorize IDHW to suspend further efforts to reunify child when a TPR petition has been filed. (Moved from IJR 41(j)(1).)

Judge Buchanan moved to approve proposed amendments to 16-1624(2), (3), (4), (5), and (6) as follows:

(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 ~~sixty (60)~~ thirty (30) days of a judicial determination that an infant has been abandoned or that reasonable efforts are not required because the parent has subjected the child to aggravated circumstances as determined by the court pursuant to section 16-1619(6)(d), Idaho Code.

(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, ~~of health and welfare~~ 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. ~~A petition to terminate parental rights shall be filed in the child protective act case.~~

(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.

Second by Karlene Behringer. Unanimously approved as drafted.

- d. Proposed amendments to 16-1620(1) and (5), 16-1621(1) and (2), and 16-1622(a)(2) regarding notice to parties:

16-1620:

(1) After a judicial determination that reasonable efforts to return the child to his home are not required because ~~the parent has subjected the child to aggravated circumstances~~ were found to be present as set forth in section 16-1619(6)(d), Idaho Code, ~~the department shall prepare a permanency plan. The plan shall set forth reasonable efforts to place the child for adoption, with a legal guardian, or in another approved permanent placement,~~ the court shall hold a permanency hearing within thirty (30) days after the finding. 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 parent(s) and other legal guardians, prosecutor or deputy attorney general, the guardian ad litem, and attorney for the child.

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

(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.

16-1621:

~~(1) The department shall prepare a written case plan. 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 The case plan shall be filed with the court no later than sixty (60) days from the date the child was removed from the home or thirty (30) days after the adjudicatory hearing, whichever occurs first. 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, guardian ad litem, and attorney for the child. The court shall hold a case plan hearing to determine whether the best interest of the child is served by adopting, rejecting, or modifying the case plan proposed by the department. Within five (5) days of filing the plan, the court shall hold a planning hearing to determine whether to adopt, reject or modify the case plan as proposed by the department.~~

(2) Notice of the case plan hearing shall be provided to the parent(s) and other legal guardians, the prosecuting attorney or deputy attorney general, guardians 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.

16-1622(a)(2):

~~(4) 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. All persons required to be summoned or notified of the original petition pursuant to section 16-1611, Idaho Code, shall be served with notice of a motion for review of a child's case. Notice of a motion for review of a child's case shall be provided to the parent(s) and other legal~~

guardians, the prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department, and foster parents.

Judge Buchanan moved to approve as drafted the proposed amendments to 16-1620(1) and (5), 16-1621(1) and (2), and 16-1622(a)(2) set forth above regarding notice. Second by Liz Brandt. Unanimously approved as drafted.

- e. Amendments related to the time standards approved by the Committee in October 2011:

Summary of proposed amendments:

- **Proposed amendments to IJR 44(a)** – Case Plan: No Finding of Aggravated Circumstances
  - ➔ Strike text in old rule 44
  - ➔ New (a)(1) - proposed timeline for finalization of reunification by 12 months from the date of removal. Court may approve a three month extension.
  - ➔ New (a)(2) - proposed timeline for finalizing guardianship within 13 months from removal. Extension must be approved by the court.
  
- **Proposed amendment to IJR 44(b)** - Permanency Hearing – Aggravated circumstances found:
  - ➔ NEW (b)(1) - Proposed timeline for finalizing guardianship within 5 months of a finding of aggravated circumstances.
  - ➔ NEW (b)(2) - Proposed timeline for finalizing termination of parental rights within 6 months and adoption within 12 months of approval of permanency plan with goal of TPR and adoption.
  - ➔ NEW (b)(3) - When court approves a permanency goal of TPR and adoption, proposal to require petition to terminate to be filed within 30 days.
  
- **Proposed amendments to IJR 46 - Annual permanency hearing**
  - ➔ Strike old IJR 46 as moved to statute.
  
  - ➔ NEW (a) If permanency plan has a goal of termination and adoption, proposed timeline to finalize TRP within 18 months of removal. Extension of time must be approved by the court
  
  - ➔ NEW (b) If approved permanency goal is TRP and adoption, proposal that petition be filed within 30 days of approval of permanency plan.

IJR 44:

~~(a) If a case plan is ordered to be prepared, the court shall schedule a case plan hearing within 30 days after the adjudicatory hearing. The case plan shall include the following:~~

~~—(1) The plan shall identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the~~

placement, or to ensure the stability of the placement. The plan shall also address options for maintaining the child's connection to the community, including individuals with a significant relationship to this child, and organizations or community activities with who the child has a significant connection.

~~—(2) The case plan shall include a reunification plan. The reunification plan shall identify all issues that need to be addressed before the child can safely be returned home, without department supervision. The order may specifically identify such 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 agency to the parents and in which the parents are required to participate, and deadlines for completion of each task. When appropriate the reunification plan should identify terms for visitation, supervision of visitation, and/or child support.~~

~~—(3) The case plan shall include an alternative permanency plan. The permanency plan shall~~

~~—(A) address all options for permanent placement of the child; including consideration of options for in-state and out-of-state placement of the child~~

~~—(B) address the advantages and disadvantages of each option, in light of the child's best interest;~~

~~—(C) include recommendations as to which option is in the child's best interest;~~

~~—(D) specifically identify the actions necessary to implement the recommended option, and schedules for accomplishing those actions, and in the case of a child who has attained the age of sixteen (16) years, the services needed to assist the child to make the transition from foster care to independent living;~~

~~—(E) 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 whom the child has a significant connection; and~~

~~—(F) identify further investigation necessary to identify and/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.~~

~~(b) If the child has been placed in the child's own home under the protective supervision of the department, the case plan shall include the same information set forth in subsections (a)(1) and (2) above.~~

~~(c) If the court finds that the parent has subjected the child to aggravated circumstances, then the court shall order the department to prepare a written permanency plan, and the court shall schedule a permanency hearing within 30 days after the adjudicatory hearing. The permanency plan shall include the same information as the case plan described in subsections (a)(1) and (3) above.~~

(a) Case Plan: No Finding of Aggravated Circumstances.

(1) Absent a finding of aggravated circumstances, the case plan shall provide that reunification must be finalized within twelve (12) months from the date the child is removed from the home. If in the child's best interest, the court may approve an amendment to the case plan extending the time to finalize reunification for up to three (3) months.

(2) Absent a finding of aggravated circumstances, if the case plan has a concurrent permanency goal of guardianship, the case plan shall include a schedule to finalize the guardianship within thirteen (13) months from the date the child was removed from the home. Any amendment to the case plan to extend the time to finalize the guardianship must be approved by the court.

(b) Permanency Plan – Aggravated Circumstances Found.

(1) If the permanency plan has a permanency goal of guardianship, the permanency plan will include a schedule to finalize the guardianship within five (5) months from the date of the judicial determination of aggravated circumstances. Amendments to the permanency plan to extend the time to finalize the guardianship must be approved by the court.

(2) If the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan shall include a schedule to finalize the termination of parental rights within six (6) months from the approval of the permanency plan, and has the objective of finalizing the adoption within twelve (12) months from the approval of the permanency plan. Amendments to the permanency plan to extend the time to finalize the termination of parental rights or the adoption must be approved by the court.

(3) If the court approves a permanency plan with a permanency goal of termination of parental rights and adoption, the court shall order the department to file a petition to terminate parental rights within thirty (30) days of approval of the permanency plan and shall enter a scheduling order that complies with the time limits of this rule and implements the schedule set forth in the permanency plan. The scheduling order may include, but is not limited to, deadlines for filing the petition for termination of parental rights and service of process, the date and time of hearing in the event the petition is not contested, and the date and time of pretrial conference and trial in the event the petition is contested.

IJR 46:

~~(a) The permanency plan may be, but is not limited to, one of the following: continued efforts at reunification, termination of parental rights and adoption, guardianship, or long term foster care. In the case of a child who will not be returned to a parent, the hearing shall include review of the department's consideration of the options for in-state and out-of-state placement of the child. The plan shall specifically identify the activities necessary to implement the plan, and set forth schedules for the accomplishment of those actions.~~

~~(b) The court may approve a permanency plan of long term foster care only upon written case-specific findings that there are compelling reasons why a more permanent plan is not in the best interest of the child.~~

~~(c) The permanency plan, as approved by the court, shall be entered into the record as an order of the court. The court shall make written case-specific findings whether the department made reasonable efforts to finalize a permanency plan for 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 interests of the child. In the case of a child who has attained the age of 16 years, the hearing shall include a determination of the services needed to assist the child to make a transition from foster care to independent living.~~

#### RULE 46 ANNUAL PERMANENCY HEARINGS

(a) If the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan shall include a schedule which has the objective of finalizing the termination of parental rights within eighteen (18) months from the date the child was removed from the home, and has the objective of finalizing the adoption within twenty-four (24) months from the date the child was removed from the home. Amendments to the permanency plan to extend the time to finalize the termination of parental rights or the adoption must be approved by the court.

(b) If the court approves a permanency plan with a permanency goal of termination of parental rights and adoption, the court shall order the department to file a petition to terminate parental rights within thirty (30) days of approval of the permanency plan and shall enter a scheduling order that complies with the time limits set forth in this rule and implements the schedule set forth in the permanency plan. The scheduling order may include, but is not limited to, deadlines for filing the petition for termination of parental rights and service of process, the date and time of hearing in the event the petition is not contested, and the date and time of pretrial conference and trial in the event the petition is contested, with the objective of finalizing the proceedings on the petition within six (6) months of the date of the permanency hearing.

Judge Buchanan moved to approve proposed amendments to IJR 44 and 46 as drafted, **contingent upon Legislative approval to corresponding statutes under the Child Protective Act**. Second by Rob Luce. Approved with two votes opposed, Judge Frates and Adam Kimball.

- f. The proposed amendments to IJR 45(a) and (c) are miscellaneous “cleanup” amendments:

(a) At review hearings, the court shall review compliance with the case plan; and/or the permanency plan (whichever is in place at the time of the hearing) and the progress of the department in achieving permanency for the child. The court may:

(1) modify the case plan or permanency plan as appropriate;

(2) modify disposition (provided that where a child was placed ~~in the child's own home~~ under the protective supervision of the department, modification is subject to the requirement of ~~I.C.~~ section 16-1623, Idaho Code);

(3) determine whether the department has made reasonable efforts to finalize a permanency plan for the child; and in the case of a child who will not be returned to a parent, review the department's consideration of options for in-state and out-of-state placement of the child;

(4) enter further orders as necessary or appropriate to ensure the progress of the case towards achieving permanency for the child.

....

(c) If the next review hearing to be scheduled is combined with the annual permanency hearing described at ~~I.C.~~ § section 16-1622(b)(4), Idaho Code, the court shall order the department to prepare a written permanency plan, to be filed with the court and served upon the parties at least five (5) days prior to the hearing.

Judge Kalbfleisch moved to approve the proposed amendments as drafted. Second by Liz Brandt. Approved unanimously as drafted.

### **3. Amendments about which there has been previous discussion**

- a. IDHW duty to file for TPR if child has been in care 15 of the last 22 months:
  - i. Issue #1: Delete reference to 15/22 months in 16-1629(9) and IJR 45(d), change definition of neglect for failure to comply with case plan in 16-1622(7).

#### Summary of proposed amendments:

Proposed amendment: 16-1629(9) – delete reference to 15/22 months.

Proposed amendment: 16-1622(7) – redefine IDHW’s obligation to file for termination by last day of fifteenth month when a child has been in care for 15 of the last 22 months.

Proposed amendment: IJR 45(d) – delete entirely.

16-1629(9):

(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. ~~There shall be a rebuttable presumption that if a child is placed in the custody of the department and was also placed in out of the home care for a period not less than fifteen (15) out of the last twenty two (22) months from the date the child entered shelter care, the department shall initiate a petition for termination of parental rights. This presumption may be rebutted by a finding of the court that the filing of a petition for termination of parental rights would not be in the best interest of the child or reasonable efforts have not been provided to reunite the child with his family, or the child is placed permanently with a relative.~~

16-1622(7):

~~(7) The department or any party may move the court requesting relief from the duty imposed on the department pursuant to the provisions of section 16-1629(9), Idaho Code, that it seek termination of parental rights. The court may grant the~~

~~department's motion if it appears based on compelling reasons in the record that the presumption has been rebutted. If the child has been in the 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.~~

IJR 45(d):

~~(d) If the child has been in the custody of the department and placed in out-of-home care for 15 of the last 22 months, and a petition to terminate parental rights has not been filed, then the state shall file a motion for an order finding that the filing of the petition would not be in the best interest of the child, that reasonable efforts have not been provided to reunite the child with his family, or that the child is placed permanently with a relative. If the court denies the motion, the court may set a deadline for the filing of such a petition. If a motion has not been filed as required in this rule, the court may set a deadline, by which time the state must file either a petition to terminate parental rights or a motion as described above.~~

Liz Brandt moved to approve the proposed amendments to 16-1629(9), 16-1622(7) and IJR 45(d) as drafted. Seconded by Rob Luce. Unanimously approved as drafted.

- ii. Issue #2: Proposed amendment to 16-2002(3):  
Change definition of “neglect” for failure to comply with the case plan.

**I.C. 16-2003:**

(3) "Neglected" means:

- (a) Conduct as defined in section [16-1602\(25\)](#), Idaho Code; or
- (b) has failed to comply with the court's orders or the case plan in a child protective act case ~~or the case plan~~, and reunification has not been accomplished within fifteen (15) months. ~~reunification of the child with his or her parent(s) has not occurred within the time standards set forth in section 16-1629(9), Idaho Code.~~

Discussion centered around whether or not the timeline for filing TPR based on failure to comply with case plan should be at 12 months rather than 15.

A motion was made by Mary Jo Beig to change the 15 month standard to 12 months. Motion seconded by Jennifer Bergin. Motion to change to 12 months did not pass.

Judge Buchanan moved to approve the proposed amendments to 16-2002(3) as drafted. Discussion followed and further amendments were proposed to the amendment to 16-2002(3):

(3) "Neglected" means:

(a) Conduct as defined in section [16-1602\(25\)](#), Idaho Code; or

~~(b) has failed to comply with the court's orders or the case plan in a child protective act case or the case plan, and reunification has not been accomplished within fifteen (15) months. reunification of the child with his or her parent(s) has not occurred within the time standards set forth in section 16-1629(9), Idaho Code.~~

**b) The parent(s) has failed to comply with the court's orders or the case plan in a child protective act case and:**

**(i) The Department has had temporary and/or legal custody of the child for fifteen (15) of the most recent twenty-two (22) months, and**

**(ii) Reunification has not been accomplished by the last day of the fifteenth month in which the child has been in the temporary and/or legal custody of the Department.**

Judge Buchanan withdrew her motion.

Jennifer Bergin moved to approve the proposed amendments to 16-2002(3) as revised by the committee. Seconded by Judge MacGregor-Irby. The motion passed with one opposition vote from Adam Kimball.

Liz Brandt moved to reopen discussion on the proposed amendment to 16-1622(7) to reflect the changes made above. Seconded by Judge Buchanan. Vote to re-open discussion unanimously approved.

**Proposed amendment to 16-1622(7):**

~~(7) The department or any party may move the court requesting relief from the duty imposed on the department pursuant to the provisions of section [16-1629\(9\)](#), Idaho Code, that it seek termination of parental rights. The court may grant the department's motion if it appears based on compelling reasons in the record that the presumption has been rebutted. If the child has been in the temporary and/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 ~~child's~~ fifteenth month ~~in care~~, 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.~~

Liz Brandt moved to approve proposed revisions to 16-1622(7). Seconded by Judge Buchanan. Unanimously approved.

- b. Proposed amendment to 16-1621 (No aggravated circumstances) and new 16-1602(7):

*i. Summary of proposed amendments to 16-1621:*

**Subsection 1:** The proposed amendments to this section clarify the timing of the case plan hearing. There was an inconsistency between 16-1621(1) and IJR 44(a). Phrase “whether the best interest of the child is served” was added to define the standard to be used to determine whether to adopt, modify, or reject the proposed case plan.

**Subsection 2:** Provides notice to prosecuting attorney, deputy attorney general, attorney for the child and IDHW.

**Subsection 3:** Proposed subsections 3a-c were moved to the statute from IJR 44(a)(1), (2), and (3). In subsection (c), we changed the word “order” to “court”. In subsection (d), we changed the reference from “alternative” to “concurrent”, and distinguished between a permanency “plan” and a permanency “goal”.

**Subsection 4:** Moved from IJR 44(b), which requires that the case plan include information set forth in IJR 44(a)(1) and (2). The text of subsections (a)(1) and (2) was moved into the new 16-1621(4).

**Subsection 5:** Is primarily the current 16-1621(4). There are two new substantive provisions in this section: the first is that the court may include interim and final deadlines for implementing the case plan and finalizing the permanency goal. Second, there is a new provision that clarifies that the department must simultaneously take steps to accomplish reunification and the concurrent permanency goal.

Text:

**16-1621:**

(1) ~~The department shall prepare a written case plan~~ In every case in which the child is determined to be within the jurisdiction of the court, and there is no judicial determination that ~~the parent has subjected the child to~~ 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 ~~The case plan shall be filed with the court no later than sixty (60) days from the date the child was removed from the home or thirty (30) days after the adjudicatory hearing, whichever occurs first.~~ 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, guardian ad litem, and attorney for the child. The court shall hold a case plan hearing to determine whether the best interest of the child is served by adopting, rejecting, or modifying the case plan proposed by the department. ~~Within five (5) days of filing the plan, the court shall hold a planning hearing to determine whether to adopt, reject or modify the case plan as proposed by the department.~~

(2) Notice of the case plan hearing shall be provided to the parent(s) and other legal guardians, the prosecuting attorney or deputy attorney general, guardians 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) The case plan shall set forth reasonable efforts which will be made to make it possible for the child to return to his home and shall concurrently include a plan setting forth reasonable efforts to place the child for adoption, with a legal guardian, or in another approved permanent placement. Whenever possible, the child's connections to the community, including individuals with a significant relationship to the child, religious organizations and community activities, will be maintained through the transition. The plan shall state with specificity the role of the department toward each parent. If the child is placed in the legal custody of the department, the case plan filed by the department shall set forth reasonable efforts which will be made to make it possible for the child to return home. The case plan shall also include the following:~~

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

(b) Address 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.

(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 agency 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/or child support.

(d) Include a concurrent permanency goal and a plan for achieving that goal. The concurrent permanency goal may be one of the following: termination of parental rights and adoption, guardianship, or 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 interest;

(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) In the case of a child who has attained the age of sixteen (16) years, include the services needed to assist the child to make the transition from foster care to independent living; and,  
(vii) Identify further investigation necessary to identify and/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, as approved by the court, shall: ~~be entered into the record as an order of the court. In the absence of a finding of aggravated~~ circumstances as provided for in section ~~16-1619~~(6)(d), Idaho Code, 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 or in the alternative to complete the steps necessary to finalize the permanent placement of the child.

(a) Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement. The plan shall also address options for maintaining the child's connection to the community, including individuals with a significant relationship to this 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 agency 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) 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.

A motion was made to approve the proposed amendments to 16-1621. Seconded by Judge Kalbfleisch. Unanimously approved as drafted.

- ii. *Proposed amendment to Idaho Code 16-1602(new 7) - Definition of case plan hearing - Strike current (b) and (c) which appear to apply to review hearings.*

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

(a) ~~Review, a~~ Approve, modify or reject the case plan as provided in section 16-1621, Idaho Code.; ~~and~~

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

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

Jennifer Bergin moved to approve the proposed amendment to 16-1602(7). Seconded by Judge Buchanan. Unanimously approved as drafted.

- c. Proposed amendments to review and permanency hearings; 16-1622(a) and (b)(1)-(6) and (8):

*Summary of proposed amendments to (b):*

**Subsection b(1):** The permanency plan shall include the information set forth in section 16-1621(3)(a),(b), and (c), Idaho Code. The court may approve a permanency plan which includes a primary goal and a concurrent goal.

**Subsection b(2):** Under (b)(2), language was added to clarify that permanency hearings are required every 12 months, and uses language distinguishing between permanency plans and permanency goals. The last sentence clarifies that permanency hearings may be held at any time.

**Subsection b(3):** Clarifies that reasonable efforts to finalize permanency is in relation to the permanency goal currently in effect. Also added that lack of reasonable efforts to reunify may be a basis for an order approving a permanency plan with a permanency goal of reunification.

**Subsection b(4):** Not new – restates requirements of IJR 46(a) and (c).

**Subsection b(5):** Not new – restates requirements of IJR 46(c)

**Subsection b(6):** Use of “goal” and “APPLA” language have been discussed earlier. Adds the word “primary” in relation to the permanency goal approved by the court.

**Subsection b(8):** Not new – currently in IJR 41(i)(3).

Text:

(a) Review Hearing

~~(1) 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. All persons required to be summoned or notified of the original petition pursuant to section 16-1611, Idaho Code, shall be served with notice of a motion for review of a child's case.~~

~~(1) 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 the act, and every six (6) months thereafter. The purpose of the review hearing is to determine:~~

- ~~(i) The safety of the child;~~
- ~~(ii) The continuing necessity for and appropriateness of the placement;~~
- ~~(iii) The extent of compliance with the case plan;~~
- ~~(iv) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care; and~~

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

~~(42) 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. All persons required to be summoned or notified of the original petition pursuant to section 16-1611, Idaho Code, shall be served with notice of a motion for review of a child's case. Notice of a motion for review of a child's case shall be provided to the parent(s) and other legal guardians, the prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department, and foster parents.~~

~~(23) If the motion filed under subsection (42) of this section 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.~~

~~(3) 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 the act, and every six (6) months thereafter, so long as the child is in the custody of the department or authorized agency.~~

~~(64) 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.~~

**(b) Permanency Plan and Hearing.**

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

include information set forth in section 16-1621(3)(b), Idaho Code. If the permanency plan has a permanency goal other than reunification, the plan shall include the information set forth in section 16-1621(3)(c), Idaho Code. The court may approve a permanency plan which includes a primary goal and a concurrent goal.

(42) A permanency hearing shall be held to review the permanency plan of the department prior to 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, so long as the court has jurisdiction over the child. The court shall review, approve, reject, or modify the permanency plan of the department and review progress in accomplishing the permanency plan goal. This permanency hearing may be combined with the review hearing required under subsection (3) of this section. A permanency hearing may be held at any time and may be combined with the review hearing required under subsection (a).

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

(4) 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.

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

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

(7) NOTE THAT (7) WAS APPROVED PREVIOUSLY ON A SEPARATE MOTION AND VOTE.

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

Jennifer Bergin moved to approve the proposed amendments to 16-1622(a) and (b)(1)-(6) and (8) as drafted. Seconded by Judge Buchanan.

Discussion centered on a recommendation made by Judge Melanson to change the language of the title of (b)(1) to say "Permanency Plan and Hearing".

Judge Melanson proposed to amend the title of 16-1622(b) to read “Permanency Plan and Hearing” (reflected above with new text in **bold**). Second by Judge Frates. Unanimously approved.

Original motion from Jennifer Bergin was taken up and the entire package of proposed amendments to 16-1622(a) and (b)(1)-(6) and (8) were approved as drafted.

*Adjourn.*