Child Protection Laws

"Child abuse casts a shadow the length of a lifetime." ~Herbert Ward

NEW LEGISLATION

- S1328a [1] and HB556a [2]—CHILD PROTECTIVE ACT—During the 2016 Legislative session, two bills made several key changes to the Child Protective Act. Legislators also made a change to Idaho Code section 16-1506 (Adoption). The changes, effective July 1, 2016, include additional requirements for courts and the Department of Health and Welfare regarding placement of children in care, identification of potential adoptive parents, identifying Indian children, engaging children in court, inquiring about psychotropic drug treatment, and assisting youth transition to independent living from foster care.
- IDAHO JUVENILE RULE AMENDMENTS AND ADDITIONS-In addition to statutory changes, the Idaho Supreme Court has also approved amendments to Idaho Juvenile Rules 39 [3], 40 [4], and 45 [3], effective July 1, 2016. A new rule also goes into effect July 1, IJR 43. All of these changes compliment the new statutory requirements discussed above.

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IDAHO CASE LAW

State ex rel. Child v Clouse 93 Idaho 893 (1970) *[5]*

NATURE OF CASE: Natural mother petitioned for a rehearing as to probate court decree granting Department of Public Assistance legal custody of her five sons and the Department petitioned to terminate the parent-child relationship. The District Court, Seventh Judicial District, Butte County, Willard C. Burton, J., in a de novo hearing, affirmed probate court's decision terminating the parent-child relationship as to four of the mother's five sons and the mother appealed. The Supreme Court, Spear, J., held that trial court's finding that the best interests of the mother and her children required the termination of the parent-child relationship was supported by evidence. Affirmed.

Steve v Swan 112 Idaho 22 (1986) *[6]*

NATURE OF CASE: Unwed father appealed from order of the Third Judicial District Court, Gem County, Edward J. Lodge, J., which found that father's consent to pending adoption was not required. The Supreme Court held that father who had never established relationship with child and had not been prevented from doing so by either the state or the prospective adoptive parents had no liberty interest in the relationship with the child, so that his consent was not required.

Brown v State 112 Idaho 901 (1987) *[7]*

NATURE OF CASE: Mother appealed from order of the Fifth Judicial District Court, Jerome County, Phillip M. Becker, J., which upheld judgment of magistrate terminating mother's parental rights. The Court of Appeals, Walters, C.J., held that: (1) evidence sustained findings of abandonment and abuse, and (2) State was not required to provide psychotherapy to mother before terminating parental rights.

Ortiz v State Department of Health and Welfare 113 Idaho 682 (1987) *[8]*

NATURE OF CASE: State Department of Health and Welfare brought petition under Child Protective Act. John F. Dutcher, Magistrate, decreed that child was within purview of Act. Father appealed. The Fourth Judicial District Court, Ada County, Robert M. Rowett, J., affirmed. Father appealed. The Court of Appeals, Burnett, J., held that there was substantial evidence of abuse despite unreliable evidence and division of expert opinion and that magistrate's refusal to grant new trial on newly discovered evidence was not abuse of discretion.

Bush v Phillips 113 Idaho 873 (1988) *[9]*

NATURE OF CASE: Paternal grandparents petitioned for termination of parental rights and award of permanent custody. The District Court of the Seventh Judicial District, County of Jefferson, Grant L. Young, J., affirmed magistrate's judgment terminating the parent-child relationship on grounds of parental neglect, and parents appealed. The Supreme Court, Bistline, J., held that: (1) procedures followed in conducting second hearing in case did not violate due process; (2) substantial competent evidence supported magistrate's finding that clear and convincing proof warranted termination decree; and (3) magistrate was not required to make a finding as to whether parents could be rehabilitated prior to termination of their parental rights.

State v Doe 123 Idaho 562 (1993) *[10]*

NATURE OF CASE: Mother's parental rights were terminated by the District Court, Seventh Judicial District, Bonneville County, Marvin Smith, J. Mother appealed. The Court of Appeals, Swanstrom, J., held that: (1) court was obligated under statute to inform mother of her right to counsel in parental rights termination proceedings as soon as court perceived that original voluntary termination proceedings would be involuntary; (2) statute requiring court to provide parent with notice of right to appointed counsel in parental rights termination proceedings did not condition notice on parent's request or demand; (3) on appointment of counsel for mother in parental rights termination proceedings, court should have begun termination proceeding anew with counsel's appointment rather than requiring counsel to step in on second day of hearing without knowing what had transpired on first day; and (4) where mother's mental capacity was issue raised in parental rights termination petition, court should have appointed guardian ad litem to protect rights of mother.

Wood v State Department of Health and Welfare 127 Idaho 513 (1995) *[11]*

NATURE OF CASE: In proceedings to place children in permanent foster care, the First Judicial District Court, Kootenai County, Gary M. Haman, J., affirmed order of Robert Burton, Magistrate Judge, placing children in permanent foster care, and natural parents appealed. The Court of Appeals, Perry, J., held that: (1) magistrate was not required to make threshold determination as to level of participation necessary for guardian ad litem to adequately represent children; (2) letter written by child to judge expressing concerns at being returned to parents was admissible; (3) error in admitting hearsay report of guardian was harmless; and (4) evidence supported finding that special needs of children required permanent foster care.

State Department of Health and Welfare v Doe 130 Idaho 47 (1997) *[12]*

NATURE OF CASE: Department of Health and Welfare petitioned to terminate father's parental rights. The Fourth Judicial District Court, Ada County, Robert M. Rowett, J., upheld order of Karen Vehlow, Magistrate, pro tem, granting petition. Father appealed. The Court of Appeals, Walters, Chief Judge, held that: (1) presence of father incarcerated in Texas was not required, and (2) evidence supported termination order.

Department of Health and Welfare v Doe 133 Idaho 826 (2000) *[13]*

NATURE OF CASE: Petition was filed to terminate mother's parental rights. Magistrate ordered

termination and the District Court of the Sixth Judicial District, Bannock County, N. Randy Smith, J., affirmed. Mother appealed. The Court of Appeals, Perry, J., held: 1) magistrate properly denied motion for disqualification; 2) neglect is proper ground for termination of parent and child relationship where that parent was a noncustodial parent due to his or her own actions and child is in custody of state; and 3) magistrate's findings that mother neglected child and that termination was in best interest of child were supported by substantial evidence.

Doe 134 Idaho 760 (2000) *[14]*

NATURE OF CASE: Grandmother moved for permissive intervention in Child Protective Act (CPA) proceedings involving granddaughter. The District Court, Fourth Judicial District, Ada County, John F. Dutcher, Magistrate Judge, denied motion. Granting permissive appeal, the Supreme Court, Silak, J., held that: (1) CPA does not confer on related persons seeking placement of child in their home a conditional right to intervene in CPA proceedings; (2) rule governing permissive intervention in cases where an applicant's claim or defense has a question of law or fact in common with the main action should not be applied in CPA proceedings; and (3) grandmother's claim for permanent placement of child with her did not provide basis for permissive intervention.

Idaho Department of Health and Welfare v Hays 137 Idaho 233 (2002) *[15]*

NATURE OF CASE: After magistrate, Patricia G. Young, Magistrate Judge, entered finding that foster parents, rather than potential adoptive parents, could adopt two children, the Department of Health and Welfare appealed. The District Court of the Fourth Judicial District, Boise County, Kathryn A. Sticklen, J., reversed the decision of the magistrate and vacated order granting potential adoptive parents permission to intervene. Guardian ad litem for children and foster parents appealed. The Supreme Court, Eismann, J., held that: (1) magistrate did not possess authority to determine who could adopt two children; (2) the magistrate's statutory authority to conduct a hearing on the future status of the children did not grant the magistrate authority to decide who should adopt the children; (3) the Department of Health and Welfare's failure to appeal a custody recommendation from a permanency planning hearing officer did not prevent the Department from challenging the magistrate's determination that she had the authority to select the adoptive parents of dependent children; and (4) prospective adoptive parents did not have a right to intervene.

Doe v Department of Health and Welfare 141 Idaho 511 (2005) *[16]*

NATURE OF CASE: Department of Health and Welfare petitioned to terminate parents' parental rights. The Fifth Judicial District Court, Blaine County, R. Barry Wood, J., affirmed an order from Mark A. Ingram, Magistrate Judge, terminating parental rights. Parents appealed. Holdings: The Supreme Court, Jones, J., held that: 1) finding of neglect was supported by substantial and competent evidence, and 2) substantial and competent evidence supported finding that it was in children's best interests to terminate their parents' parental rights.

Department of Health and Welfare v Doe 2009-ID-0601.176 (2009) *[17]*

NATURE OF CASE: Magistrate Judge Murray of the Third Judicial District terminated Jane Doe III's (Appellant) parental rights to her children based on neglect, abandonment and the best interest of the children. Because we do not have jurisdiction to hear this case, we dismiss the appeal.

Department of Health and Welfare v Doe I Docket No. 37746 (2010) *[18]*

NATURE OF CASE: The magistrate’s failure to hold a timely shelter care hearing and adjudicatory hearing, as well as the Department’s failure to timely disclose the investigation report, did not operate to divest the magistrate of jurisdiction under the CPA. There was no merit in any of Parents’ evidentiary contentions--specifically, that the Fourth Amendment’s exclusionary rule does not apply to child protection proceedings; that Parents failed to show a violation of Father’s Fifth Amendment Miranda

rights; that even if the court were to apply Brady to CPA proceedings, Parents have not demonstrated that the undisclosed evidence was favorable, suppressed by the Department, and prejudice resulted; and that the magistrate did not err in admitting photographs of the older children's injuries. Finally, the court concludes that that magistrate did not err in concluding that based on the circumstances, there was evidence of abuse to establish the court's jurisdiction over A.L. under the CPA.

Idaho Department of Health and Welfare v. Doe I 150 Idaho 140, 244 P.3d 1226 (2010) *[19]*

NATURE OF CASE: Department of Health and Welfare filed petition to terminate parental rights of mother and mother's boyfriend, who had been ordered to pay child support after being deemed child's "legal father." The Magistrate Court, Fourth Judicial District, Ada County, Carolyn Minder, Magistrate Judge, terminated mother's parental rights and terminated boyfriend's "legal father" status. Boyfriend appealed. Holdings: The Supreme Court held that: (1) mother's boyfriend, who was not child's biological or adoptive father, was not a "parent" of child for purposes termination of parental rights proceedings; (2) assuming child support order precluded Department from relitigating issue of paternity, Department would be required to prove statutory ground for termination of parental rights; and (3) termination of parental rights proceedings did not provide basis for terminating whatever relationship existed between child and a person who was not a parent. Reversed.

Idaho Department of Health and Welfare v Doe, Docket No. 37220 (2011) *[20]*

NATURE OF CASE: County prosecutor's office filed petitions under the Child Protective Act (CPA) in connection with son and daughter after son was hospitalized for injuries inflicted by father, and children were placed in shelter care and foster care. Following adjudicatory hearing, the District Court, Sixth Judicial District, Bannock County, Bryan Kenneth Murray, Magistrate, entered order vesting legal custody of children in the Department of Health and Welfare (DHW) and subsequently ordered extended home visit with mother. Mother appealed. Holdings: (1) magistrate court met minimum requirements in child protection proceeding for notifying mother of her right to counsel at shelter care hearings; (2) magistrate court had jurisdiction over minor son based on father's abuse of son, despite absence of allegations that mother abused, neglected, or abandoned son; and (3) magistrate court acted within bounds of its discretion by taking jurisdiction over daughter; but (4) magistrate court abused its discretion by vesting legal custody of children in DHW after adjudicatory hearing, instead of placing children in mother's care under protective supervision of DHW. Affirmed in part, reversed and vacated in part.

Idaho Department of Health and Welfare v Jane (2010-28) Doe and John Doe, Docket No 38217 (2011) *[21]*

NATURE OF CASE: The Idaho Department of Health and Welfare (IDHW) filed a petition to terminate mother and father's parental rights to their two children. The Magistrate Court, Penny J. Stanford, J., terminated parental rights. Parents appealed. The District Court of the Seventh Judicial District, Fremont County, Gregory W. Moeller, J., affirmed. Parents appealed. Holdings: (1) as a matter of first impression, the trial court's failure to appoint separate counsel to represent mother and father during termination of parental rights proceeding did not constitute reversible error, and (2) the magistrate judge's failure to recuse herself did not constitute reversible error. Affirmed.

Idaho Dept. of Health & Welfare v. Doe 150 Idaho 752, 250 P.3d 803 (2011) *[22]*

NATURE OF CASE: The Department of Health and Welfare filed a petition to terminate mother and father's parental rights to their four children. The District Court, Fifth Judicial District, Cassia County, Mick Hodges, Magistrate, terminated parental rights. Father appealed. Holdings: The Court of Appeals, Lansing, J., held that: (1) evidence was insufficient to support finding that termination of father's parental rights was in the best interests of the children, and (2) on remand the magistrate court was required to reconsider father's motion to disqualify magistrate. Reversed and remanded. Gratton, J., filed a dissenting opinion.

In re Doe 151 Idaho 356, 256 P.3d 764 (2011) *[23]*

NATURE OF CASE: The State filed a petition to terminate father's parental rights to his three children. The District Court of the Fourth Judicial District, Ada County, Carolyn M. Minder, Magistrate Judge, and Mark A. Beebe, Magistrate Judge, terminated parental rights. Father appealed. Holdings: The Supreme Court, J. Jones, J., held that: (1) competent evidence supported finding that father neglected his children, and (2) competent evidence supported finding that termination of father's parental rights was in the best interest of the children. Affirmed.

In re Doe --- P.3d ---, 2011 WL 3116934 Idaho App., (2011) *[24]*

NATURE OF CASE: The Department of Health and Welfare filed a petition to terminate parental rights. The Magistrate Division of the District Court of the Fourth Judicial District, Ada County, Cathleen MacGregor–Irby, Magistrate, terminated parental rights. Father appealed. Holdings: The Court of Appeals, Melanson, J., held that: (1) substantial evidence supported finding that father was incarcerated and was likely to remain incarcerated for a substantial period of child's minority, and (2) evidence supported finding that termination of father's parental rights was in child's best interest. Affirmed.

Idaho Department of Health and Welfare v. John (2010-28) Doe, 151 Idaho 605 (2011) [25]

NATURE OF CASE: The Department of Health and Welfare filed a petition to terminate parental rights. The Magistrate Division of the District Court of the Fourth Judicial District, Ada County, Cathleen MacGregor–Irby, Magistrate, terminated parental rights. Father appealed. The Court of Appeals, Melanson, J., held that: (1) substantial evidence supported finding that father was incarcerated and was likely to remain incarcerated for a substantial period of child's minority, and (2) evidence supported finding that termination of father's parental rights was in child's best interest.

Idaho Department of Health and Welfare v. John (2011-23) Doe, Docket No. 39464-2011 (2012) [26]

NATURE OF CASE: John Doe is a citizen of Mexico, who entered the United State illegally in 2003. In 2007, he married a U.S. citizen in Idaho. John Doe voluntarily returned to Mexico with his wife in 2008. After becoming pregnant, his wife returned to the United State without Doe where the child was born. John doe attempted to enter the United State illegally in 2009 but he was caught in Arizona and returned to Mexico. He is now legally barred from entering the United State. John Doe's child was ordered into protective custody. Eventually the wife failed to follow her case plan, and as a result IDHW moved to terminate her rights to the child. IDHW also moved to terminate the parental rights of John Doe, claiming that he has willfully abandoned the child. The court held John Doe willfully abandoned the child and it was in the child's bested interest to remain in the case of IDHW. John Doe appealed to the Supreme Court.

The Supreme Court held that IDHW failed to prove John Doe willfully abandoned the child and reversed the magistrate's ruling that it was in the best interest of the child to remain in the care of IDHW and remanded the case to the magistrate court with instructions to order IDHW to deliver the child to John Doe in Mexico.

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FEDERAL CASE LAW

Smith v. Organization of Foster Families 431 U.S. 816 (1977) *[27]*

NATURE OF CASE: Individual foster parents and organization of foster parents brought action for

declaratory and injunctive relief with respect to New York State and New York City statutory and regulatory procedures for removal of foster children from foster homes. A three-judge Court in the Southern District of New York, 418 F.Supp. 277, granted relief and state and city officials appealed. The Supreme Court, Mr. Justice Brennan, held that removal procedures under which foster parents were given ten days' advanced notice of removal, were permitted to request a preremoval conference with the social services department, and were entitled to full adversary administrative hearing, subject to judicial review, following the conference with no stay of removal pending the hearing and judicial review, and under which preremoval judicial review was provided with respect to children who have been in foster care for 18 months or more afforded sufficient due process protection to any liberty interests involved. Reversed.

Quilloin v. Walcott 434 U.S. 246 (1978) *[28]*

NATURE OF CASE: Stepfather of illegitimate child petitioned to adopt the child. The Superior Court, Fulton County, granted adoption, and natural father appealed. The Supreme Court of Georgia, 238 Ga. 230, 232 S.E.2d 246, affirmed. The natural father appealed. The Supreme Court, Mr. Justice Marshall held that: (1) natural father's substantive rights under due process clause were not violated by application of the best interests of the child standard where natural father had not petitioned for legitimation at any time in 11-year period between birth and filing of adoption petition, child had always been in mother's custody and adoption petition was filed over eight years after mother married and (2) equal protection principles did not require that natural father's authority to veto an adoption be measured by the same standard as applied to a divorced father since the state was not foreclosed from recognizing the difference in extent of commitment to a child's welfare between that of an unwed father who has never shouldered any significant responsibility for the child's rearing and that of a divorced father who at least will have borne some full responsibility for the child's rearing. Affirmed.

Doe v. Delaware 450 U.S. 382 (1981) *[29]*

NATURE OF CASE: Appellants, a half brother and sister, are the natural parents of five children who were in the custody of the Division of Social Services of the Delaware Department of Health and Social Services at the beginning of this litigation.FN1 After determining*383 that the children should be put up for adoption,FN2 the Division filed suit pursuant to Delaware law to obtain termination of appellants' parental rights over their children. The Superior Court of Delaware ordered termination, and the Supreme Court of Delaware affirmed.FN3 Appellants appealed to this Court, arguing that the termination order and the Delaware statute authorizing it were unconstitutional. We noted probable jurisdiction.

Lassiter v. Department of Social Services of Durham County 452 U.S. 18 (1981) *[30]*

NATURE OF CASE: The District Court, Durham County, Samuel F. Gantt, J., terminated a mother's parental rights and appeal was taken. The North Carolina Court of Appeals, Robert M. Martin, J., 43 N.C.App. 525, 259 S.E.2d 336 affirmed, and certiorari was granted. The Supreme Court, Justice Stewart, held that failure to appoint counsel for indigent parents in proceeding for termination of parental status did not deprive parent of due process in light of circumstances which included that petition contained no allegations upon which criminal charges could be based, no expert witnesses testified, case presented no specially troublesome points of law, and presence of counsel could not have made a determinative difference for petitioner; such decision does not imply that appointment of counsel is other than enlightened and wise. Affirmed.

Santosky v. Kramer 455 U.S. 745 (1982) *[31]*

NATURE OF CASE: Parents appealed from judgment of the Family Court, Ulster County, Elwyn, J., which adjudged their children to be permanently neglected. The New York Supreme Court, Appellate Division, affirmed, 75 A.D.2d 910, 427 N.Y.S.2d 319. The New York Court of Appeals dismissed the parents' appeal. Certiorari was granted. The Supreme Court, Justice Blackmun, held that before a state may

sever completely and irrevocably the rights of parents in their natural child, due process requires that the state support its allegations by at least clear and convincing evidence, and, therefore, the fair preponderance of the evidence standard prescribed by the New York Family Court Act for the termination of parental rights denied the parents due process. Judgment vacated and remanded.

Lehr v. Robertson 463 U.S. 248 (1983) *[32]*

NATURE OF CASE: Putative father filed a petition to open, vacate, and/or set aside an order of adoption. The Family Court, Ulster County, 102 Misc.2d 102, 423 N.Y.S.2d 378, denied the petition. The Supreme Court, Appellate Division, 77 A.D.2d 381, 434 N.Y.S.2d 772, and the New York Court of Appeals, 54 N.Y.2d 417, 446 N.Y.S.2d 20, 430 N.E.2d 896, affirmed. Putative father appealed. The Supreme Court, Justice Stevens, held that where the putative father had never established a substantial relationship with his child, the failure to give him notice of pending adoption proceedings, despite the state's actual notice of his existence and whereabouts, did not deny the putative father due process or equal protection since he could have guaranteed that he would receive notice of any adoption proceedings by mailing a postcard to the putative father registry. Affirmed.

Pennsylvania v. Ritchie 480 U.S. 39 (1987) *[33]*

NATURE OF CASE: Defendant was convicted before the Court of Common Pleas, Criminal Division, No. CC7903887A, Allegheny County, of rape, involuntary sexual intercourse, incest, and corruption of minor, and defendant appealed. The Superior Court, No. 137 Pittsburgh 1981, 324 Pa.Super. 557, 472 A.2d 220, vacated and remanded for further proceedings. The Commonwealth appealed. The Supreme Court of Pennsylvania, No. 69 W.D. Appeal Docket 1984, McDermott, J., 509 Pa. 357, 502 A.2d 148, remanded. State sought writ of certiorari. The Supreme Court, Justice Powell, held that: (1) defendant was entitled to have Pennsylvania Children and Youth Services file reviewed by trial court to determine whether it contained information that probably would have changed outcome of trial, and (2) defense counsel was not entitled to examine confidential information in Children and Youth Services file. Furthermore, Justice Powell, with the Chief Justice and two other Justices concurring, and one Justice concurring in result, held that failure to disclose Children and Youth Services file did not violate the confrontation clause. Affirmed in part, reversed in part, and remanded for further proceedings.

DeShaney v. Winnebago County Department of Social Services 489 U.S. 189 (1989) *[34]*

NATURE OF CASE: Mother of child who had been beaten by father brought civil rights action against social workers and local officials who had received complaints that the child was being abused by his father but had not removed him from his father's custody. The United States District Court for the Eastern District of Wisconsin, John W. Reynolds, J., entered summary judgment in favor of defendant, and mother appealed. The Court of Appeals for the Seventh Circuit, 812 F.2d 298, affirmed, and certiorari was granted. The Supreme Court, Chief Justice Rehnquist, held that State had no constitutional duty to protect child from his father after receiving reports of possible abuse. Affirmed.

Michael H. v. Gerald D. 491 U.S. 110 (1989) *[35]*

NATURE OF CASE: Putative natural father, whose blood tests indicated 98.07% probability of paternity and who had established parental relationship with child, filed filiation action to establish paternity and right to visitation. The Superior Court, Los Angeles County, Steven M. Lachs, J., granted summary judgment motion filed by husband, who was presumed to be father under California law because he was living with mother at time of child's birth and who desired to raise child with mother as his own. Putative natural father and child appealed. The Court of Appeal, 191 Cal.App.3d 995, 236 Cal.Rptr. 810, affirmed and remanded. Probable jurisdiction was noted. The Supreme Court, Justice Scalia, held that: (1) California statute creating presumption that child born to married woman living with her husband is child of the marriage did not violate putative natural father's procedural due process rights; (2) statute did not violate putative natural father's substantive due process rights; (3) child did not have due process right to maintain filial relationship with both putative natural father and husband; and (4)

statute did not violate child's equal protection rights. Affirmed.

Wallis v. Spencer 202 F.3d 1126 (9th Cir. 1999) *[36]*

NATURE OF CASE: Parents and their children brought action against city and others, alleging that their constitutional and state-law rights were violated when police officers removed children from parents and had them subjected to invasive medical examinations based in part on mental patient's statements that father intended to ritually sacrifice his son to Satan. The United States District Court for the Southern District of California, Marilyn L. Huff, Chief Judge, entered summary judgment in favor of city. Parents and children appealed. The Court of Appeals, Reinhardt, Circuit Judge, held that: (1) fact issues existed as to whether information in possession of police officers gave them reasonable cause to believe that children faced immediate threat of serious physical injury or death; (2) fact issues existed as to police exceeded permissible scope of action necessary to protect children from alleged threat; (3) fact issues existed as to whether placing children in institution and having them subjected to invasive medical examinations violated parents' and children's constitutional rights; (4) fact issues existed as to whether alleged constitutional deprivations were caused by a city practice or custom; and (5) fact issues existed as to whether city was immune from state claims under California statute immunizing public employees for liability resulting from discretionary acts. Reversed and remanded.

Troxel v. Granville 530 U.S. 57 (2000) *[37]*

NATURE OF CASE: Paternal grandparents petitioned for visitation with children born out-of-wedlock. The Superior Court, Skagit County, Michael Rickert, J., awarded visitation, and mother appealed. The Court of Appeals, 87 Wash.App. 131, 940 P.2d 698, reversed, and grandparents appealed. The Washington Supreme Court, Madsen, J., affirmed. Certiorari was granted. The Supreme Court, Justice O'Connor, held that Washington statute providing that any person may petition court for visitation at any time, and that court may order visitation rights for any person when visitation may serve best interest of child, violated substantive due process rights of mother, as applied to permit paternal grandparents, following death of children's father, to obtain increased court-ordered visitation, in excess of what mother had thought appropriate, based solely on state trial judge's disagreement with mother as to whether children would benefit from such increased visitation. Affirmed.

Miller v. California 355 F.3d 1172 (9th Cir. 2004) *[38]*

NATURE OF CASE: Noncustodial grandparents of children who had been removed from their natural parents due to neglect brought 1983 action against county, county human services agency, county child protective services, and employees of child protective services, alleging that defendants conspired to deprive them of the right to family integrity and asserting defamation claim premised on placement of grandfather's name on state's Child Abuse Central Index (CACI). The United States District Court for the Eastern District of California, Frank C. Damrell, Jr., J., granted summary judgment in favor of defendants, and grandparents appealed. Holdings: The Court of Appeals, Rymer, Circuit Judge, held that: (1) grandparents did not have substantive due process right to visit their grandchildren; (2) grandparents' status, under California law, as de facto parents to their grandchildren did not create a liberty interest entitling grandparents to visitation; and (3) grandfather failed to show that he suffered a loss of recognizable property or liberty interest in connection with injury to his reputation from having his name placed on CACI, as required to satisfy stigma-plus test for 1983 defamation claim. Affirmed.

Burke v. County of Alameda 586 F.3d 725 (9th Cir. 2009) *[39]*

NATURE OF CASE: Parents and stepfather of 14-year-old girl placed into protective custody sued county and police officer pursuant to 1983, alleging, inter alia, that officer violated their rights of familial association by placing child into protective custody without warrant and that county failed to train its officers on need to procure such warrants. The United States District Court for the Northern District of California, Saundra B. Armstrong, J.,2008 WL 114910, granted summary judgment for defendants, and subsequently, 2008 WL 786862, denied leave to file motion for reconsideration. Plaintiffs appealed.

Holdings: The Court of Appeals, held that: (1) officer reasonably relied upon girl's statements in finding that she was in imminent danger of abuse, as required to remove her from parents' custody without prior judicial authorization; (2) officer had reasonable cause to believe that risk of harm was imminent; (3) officer acted reasonably in removing girl from mother's custody; (4) factual issues precluded summary judgment on father's due process claim on grounds that no violation occurred; (5) officer was entitled to qualified immunity on father's due process claim; and (6) factual issues precluded summary judgment for county.

Doe v. Mann 415 F.3d 1038 (9th Cir. 2009) *[40]*

NATURE OF CASE: Native American mother challenged state's authority to terminate her parental rights. The United States District Court for the Northern District of California, Marilyn H. Patel, Chief Judge, 285 F.Supp.2d 1229, held for state, and mother appealed. Holdings: The Court of Appeals, held that: (1) Rooker-Feldman doctrine did not bar federal review of state decision, and (2) tribe's jurisdiction over child dependency proceeding was not exclusive.

Greene v. Camreta 588 F.3d 1011 (9th Cir. 2009) *[41]*

NATURE OF CASE: Mother, personally and as next friend for her minor daughters, brought 1983 action against, inter alia, child protective services caseworker and deputy sheriff, alleging violations of Fourth Amendment and their familial rights under Fourteenth Amendment's Due Process Clause. The United States District Court for the District of Oregon, Ann L. Aiken, J., 2006 WL 758547, granted summary judgment for defendants. Mother appealed. The Court of Appeals, Berzon, Circuit Judge, held that: (1) as a matter of apparent first impression, decision to seize and interrogate daughter, at school, in the absence of warrant, court order, exigent circumstances, or parental consent violated Fourth Amendment; (2) caseworker and deputy sheriff were entitled to qualified immunity with respect to claims that they violated daughter's Fourth Amendment rights; (3) absolute quasi-judicial immunity did not apply to preclude 1983 liability of caseworker, based upon his alleged violation of due process in removing daughters from mother's custody; (4) qualified immunity did not shield caseworker from liability on due process claims; and (5) caseworker violated due process rights of mother and daughters by excluding mother from medical center while daughters underwent physical examinations.

Camreta v. Green 131 S Ct. 2020 (2011) *[42]*

NATURE OF CASE: Background: Mother, personally and as next friend for her minor daughters, brought § 1983 action against state child protective services caseworker and county deputy sheriff, alleging violations of Fourth Amendment and familial rights under Fourteenth Amendment's Due Process Clause. The United States District Court for the District of Oregon, Ann L. Aiken, J., 2006 WL 758547, granted summary judgment for defendants. Mother appealed. The United States Court of Appeals for the Ninth Circuit, Berzon, Circuit Judge, 588 F.3d 1011, affirmed in part, reversed in part, and remanded. Certiorari was granted. Holdings: The Supreme Court, Justice Kagan, held that: (1) Supreme Court has authority to review an immunized official's challenge to a constitutional ruling; (2) the case was moot; and (3) the appropriate disposition was to vacate the part of the court of appeals' opinion that addressed the Fourth Amendment issue. Opinion of Court of Appeals vacated in part; remanded.

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Child Abuse Amendments of 1984 P.L. 98-457 [75]	1984
Child Abuse Prevention, Adoption, and Family Services Act of 1988 P.L. 100-294 [76]	1988

Child abuse, Domestic Violence, Adoption, and Family Services Act of 1992 P.L. 102-295 [77]	1992	
	1993	Family Preservation and Support Services Progran of 1993 P.L. 103-66 [78]
Multiethnic Placement Act of 1994 P.L. 103-382 [79]	1994	
The Interethnic Provisions of 1996 amends MEPA P.L. 104-188 [80] Child Abuse Prevention and Treatments Amendments of 1996 P.L. 104-235 [81]	1996	
	1997	Adoption and Safe Families Act of 1997 P.L. 105-8 [82]
Foster Care Independence Act of 1999 P.L. 106-169 [83]	1999	
	2000	Child Abuse Prevention And Enforcement act of 2(P.L. 106-177 [84] Intercountry Adoption Act of 2000 P.L. 106-279 [8
Promoting Safe and Stable Families Amendments of 2001* P.L. 107-133 [86]	2002	
	2003	Keeping Children and Families Safe Act of 2003 P. 108-36 [87] Adoption Promotion Act of 2003 P.L. 108-145 [88]
Fair Access Foster Care Act of 2005 P.L. 109-113 [89]	2005	
Deficit Reduction Act of 2005* P.L. 109-171 [90] Safe and Timely Interstate Placement of Foster Children Act of 2006 P.L. 109-239 [91]	2006	Adam Walsh Child Protection And Safety Act Of 2(P.L. 109-248 [92] Child and Family Services Improve Act of 2006 P.L 109-288 [93] Tax Relief And Health Care Act Of 2006 P.L. 109-4 [94]
Fostering Connections to Success and Increasing Adoptions Act of 2008 P.L. 110-351 [95]	2008	

Federal Timeline courtesy of the Information Gateway [96]. Click any of the boxes below for the full text of the corresponding Act or Amendment.

[top]

*Articles with an asterisk indicate a link to a website maintained by a third party and unaffiliated with the Idaho Supreme Court.

Source URL: https://isc.idaho.gov/child-protection/law

Links
[1] https://www.legislature.idaho.gov/legislation/2016/S1328E1.pdf
[2] https://www.https://www.legislature.idaho.gov/legislation/2016/H0556E1.pdf
[3] http://isc.idaho.gov/orders/IJR_Order_39and45_03.29.16.pdf
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