

IN THE SENATE

SENATE BILL NO. 1220

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO GUARDIANS AND CONSERVATORS; AMENDING SECTION 15-5-207, IDAHO
2 CODE, TO REVISE PROVISIONS REGARDING APPOINTMENT OF A GUARDIAN OF A
3 MINOR; AMENDING SECTION 15-5-310, IDAHO CODE, TO REVISE A PROVISION
4 REGARDING TEMPORARY GUARDIANS OF INCAPACITATED PERSONS; AND AMENDING
5 SECTION 15-5-407A, IDAHO CODE, TO REVISE PROVISIONS REGARDING TEMPO-
6 RARY AND EMERGENCY APPOINTMENTS OF A CONSERVATOR.
7

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

9 SECTION 1. That Section 15-5-207, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. (1)
12 Proceedings for the appointment of a guardian or co-guardians may be initi-
13 ated by the following persons:

- 14 (a) Any relative of the minor;
15 (b) The minor if he is fourteen (14) or more years of age;
16 (c) Any person who comes within section 15-5-213(1), Idaho Code; or
17 (d) Any person interested in the welfare of the minor.

18 (2) Notice of the time and place of hearing of a petition under this
19 section is to be given by the petitioner in the manner prescribed by section
20 15-1-401, Idaho Code, to:

- 21 (a) The minor, if he is fourteen (14) or more years of age;
22 (b) The person who has had the principal care and custody of the minor
23 during the sixty (60) days preceding the date of the petition;
24 (c) Any person who comes within section 15-5-213(1), Idaho Code; and
25 (d) Any living parent of the minor; provided however, that the court may
26 waive notice to a living parent of the minor who is, or is alleged to be,
27 the father of the minor if:

28 (i) The father was never married to the mother of the minor
29 and has failed to register his paternity as provided in section
30 16-1504(4), Idaho Code; or

31 (ii) The court has been shown to its satisfaction circumstances
32 that would allow the entry of an order of termination of parental
33 rights pursuant to section 16-2005, Idaho Code, even though termi-
34 nation of parental rights is not being sought as to such father.

35 (3) (a) As an alternative to appointing one (1) guardian for a minor, the
36 court may appoint no more than two (2) persons as co-guardians for a mi-
37 nor if the court finds:

38 (i) The appointment of co-guardians will best serve the interests
39 of the minor; and

40 (ii) The persons to be appointed as co-guardians will work to-
41 gether cooperatively to serve the best interests of the minor.

1 (b) If the court appoints co-guardians, the court shall also determine
2 whether the guardians:

- 3 (i) May act independently;
4 (ii) May act independently but must act jointly in specified mat-
5 ters; or
6 (iii) Must act jointly.

7 This determination by the court must be stated in the order of appoint-
8 ment and in the letters of guardianship.

9 (4) If the court finds, upon hearing, that a qualified person seeks ap-
10 pointment, venue is proper, the required notices have been given, the re-
11 quirements of section 15-5-204, Idaho Code, have been met, and the welfare
12 and best interests of the minor will be served by the requested appointment,
13 it shall make the appointment. In other cases the court may dismiss the pro-
14 ceedings, or make any other disposition of the matter that will best serve
15 the interests of the minor.

16 (5) Prior to the appointment of a guardian:

17 (a) The court may appoint a temporary guardian for the minor if it finds
18 by a preponderance of evidence that:

- 19 (i) A petition for guardianship under this section has been
20 filed, but a guardian has not yet been appointed;
21 (ii) The appointment is necessary to protect the minor's health,
22 safety or welfare until the petition can be heard; and
23 (iii) No other person appears to have the ability, authority and
24 willingness to act.

25 (b) A temporary guardian may be appointed without notice or hearing
26 if the minor is in the physical custody of the petitioner or proposed
27 temporary guardian and the court finds from a statement made under oath
28 that the minor may be immediately and substantially harmed before no-
29 tice can be given or a hearing held.

30 (c) Notice of the appointment of a temporary guardian must be given to
31 those designated in subsection (2) of this section within seventy-two
32 (72) hours after the appointment. The notice must inform interested
33 persons of the right to request a hearing. The court must hold a hearing
34 on the appropriateness of the appointment within ~~ten~~ fourteen (14)
35 days after request by an interested person. In all cases, either a hear-
36 ing on the temporary guardianship or on the petition for guardianship
37 itself must be held within ninety (90) days of the filing of any petition
38 for guardianship of a minor.

39 (d) The temporary guardian's authority may not exceed six (6) months
40 unless extended for good cause. The powers of the temporary guardian
41 shall be limited to those necessary to protect the immediate health,
42 safety or welfare of the minor until a hearing may be held and must in-
43 clude the care and custody of the minor.

44 (e) A temporary guardian must make reports as the court requires.

45 (6) When a minor is under guardianship:

46 (a) The court may appoint a temporary guardian if it finds:

- 47 (i) Substantial evidence that the previously appointed guardian
48 is not performing the guardian's duties; and
49 (ii) The appointment of a temporary guardian is necessary to pro-
50 tect the minor's health, safety or welfare.

1 (b) A temporary guardian may be appointed without notice or hearing if
 2 the court finds from a statement made under oath that the minor may be
 3 immediately and substantially harmed before notice can be given or a
 4 hearing held.

5 (c) Notice of the appointment of a temporary guardian must be given to
 6 those designated in subsection (2) of this section within seventy-two
 7 (72) hours after the appointment. The notice must inform interested
 8 persons of the right to request a hearing. The court shall hold a hear-
 9 ing on the appropriateness of the appointment within ~~ten~~ fourteen (14)
 10 days after request by an interested person.

11 (d) The authority of a previously appointed guardian is suspended as
 12 long as a temporary guardian has authority. The court must hold a hear-
 13 ing before the expiration of the temporary guardian's authority and may
 14 enter any appropriate order. The temporary guardian's authority may
 15 not exceed six (6) months unless extended for good cause.

16 (e) A temporary guardian must make reports as the court requires.

17 (7) The court shall appoint an attorney to represent the minor if the
 18 court determines that the minor possesses sufficient maturity to direct the
 19 attorney. If the court finds that the minor is not mature enough to direct
 20 an attorney, the court shall appoint a guardian ad litem for the minor. The
 21 court may decline to appoint an attorney or guardian ad litem if it finds in
 22 writing that such appointment is not necessary to serve the best interests of
 23 the minor or if the Idaho department of health and welfare has legal custody
 24 of the child.

25 (8) Letters of guardianship must indicate whether the guardian was ap-
 26 pointed by will or by court order.

27 SECTION 2. That Section 15-5-310, Idaho Code, be, and the same is hereby
 28 amended to read as follows:

29 15-5-310. TEMPORARY GUARDIANS OF INCAPACITATED PERSONS. (a) The court
 30 may appoint a temporary guardian if it finds:

31 (1) A petition for guardianship under section 15-5-303, Idaho Code, has
 32 been filed, but a guardian has not yet been appointed;

33 (2) Substantial evidence of incapacity;

34 (3) By a preponderance of the evidence an emergency exists that will
 35 likely result in immediate and substantial harm to the person's health,
 36 safety or welfare; and

37 (4) No other person appears to have the ability, authority and willing-
 38 ness to act.

39 (b) When a person is under guardianship, the court may appoint a tempo-
 40 rary guardian if it finds:

41 (1) Substantial evidence that the guardian is not performing the
 42 guardian's duties; and

43 (2) By a preponderance of the evidence, an emergency exists that will
 44 likely result in immediate and substantial harm to the person's health,
 45 safety or welfare.

46 The authority of a guardian previously appointed by the court is suspended as
 47 long as a temporary guardian has authority. The court must hold a hearing be-
 48 fore the expiration of the temporary guardian's authority and may enter any
 49 appropriate order.

1 (c) (1) A temporary guardian may be appointed without notice or hear-
2 ing if the court finds from a statement under oath that the person will
3 be immediately and substantially harmed before notice can be given or a
4 hearing held.

5 (2) If the court appoints a temporary guardian without notice, notice
6 of the appointment must be given to those designated in section 15-5-
7 309, Idaho Code, within seventy-two (72) hours after the appointment.
8 The notice must inform the interested persons of the right to request a
9 hearing. The court must hold a hearing on the appropriateness of the ap-
10 pointment within ~~ten~~ fourteen (14) days after the request by an inter-
11 ested person.

12 (3) The temporary guardian's authority may not exceed ninety (90) days,
13 unless extended for good cause. The powers of the temporary guardian
14 must be limited to those necessary to protect the immediate health,
15 safety or welfare of the person until such time as a hearing may be held
16 in the matter.

17 (4) A temporary guardian must make reports as the court requires.

18 SECTION 3. That Section 15-5-407A, Idaho Code, be, and the same is
19 hereby amended to read as follows:

20 15-5-407A. TEMPORARY AND EMERGENCY APPOINTMENTS. (a) The court may
21 appoint upon an ex parte petition, without hearing, a person to act as tem-
22 porary conservator, pending the final hearing, upon a finding supported by
23 statement made under oath that an emergency situation exists. The emergency
24 appointment shall remain in effect no longer than ninety (90) days, unless
25 extended for good cause upon application of the temporary conservator.

26 (b) Any one (1) of the following shall be considered an emergency situa-
27 tion:

28 (1) A finding that the person to be protected is unable to reasonably
29 manage said person's finances and as a result the person's assets will
30 be wasted or dissipated unless proper management is provided without
31 delay; or

32 (2) A finding that the person to be protected has been taken advantage
33 of and that the situation is likely to continue unless a temporary ap-
34 pointment is made without delay; or

35 (3) A finding that funds are needed for support, care and welfare of the
36 person to be protected and a temporary appointment is necessary to se-
37 cure such funding; or

38 (4) A finding that other conditions exist that in the court's determi-
39 nation necessitate the appointment of a temporary conservator.

40 (c) The duty of a temporary conservator shall be to preserve and protect
41 the assets of the estate and to provide the funding necessary for the sup-
42 port, care and welfare of the person to be protected. The conservator shall
43 have all the powers enumerated in section 15-5-424, Idaho Code, to be exer-
44 cised, however, only within said limited context. The court may expand the
45 duties of the temporary conservator upon application and a finding that a
46 proposed action is necessary prior to the hearing.

47 (d) A temporary conservator shall not remove any of the assets of the
48 estate from the jurisdiction of the court without a specific order to that
49 effect.

1 (e) The petition for appointment of a temporary conservator must be ac-
2 companied by a petition for appointment of a conservator pursuant to section
3 15-5-404, Idaho Code.

4 (f) If the person to be protected is a minor, the court shall appoint a
5 guardian ad litem for said minor at the same time the temporary appointment
6 of a conservator is made.

7 (g) Upon application by an interested party and a hearing, the court may
8 limit the powers and duties of the temporary conservator.

9 (h) Notice of the appointment of a temporary conservator shall be given
10 to all interested persons by the petitioner within ~~five~~ seventy-two (~~572~~)
11 ~~days~~ hours after the date of such appointment.

12 (i) The court shall hold a hearing on the appropriateness of the tempo-
13 rary appointment within ~~five~~ fourteen (~~514~~) days if requested by an inter-
14 ested party. In such event, if a visitor and physician have not already been
15 appointed, the court shall appoint a visitor to meet with the alleged inca-
16 pacitated person and to make a written report to the court, and shall appoint
17 a physician to examine the proposed ward and submit a written report to the
18 court, giving preference to the appointment of the proposed ward's treating
19 physician if the proposed ward has a current treating physician.