

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 148

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO GUARDIANS AND CONSERVATORS; AMENDING SECTION 15-5-207, IDAHO  
2 CODE, TO PROVIDE FOR THE APPOINTMENT OF CO-GUARDIANS IN CERTAIN IN-  
3 STANCES, TO PROVIDE FOR THE APPOINTMENT OF TEMPORARY GUARDIANS IN  
4 CERTAIN INSTANCES, TO PROVIDE FOR NOTICE TO CERTAIN PERSONS, TO PROVIDE  
5 FOR POWERS AND DUTIES OF A TEMPORARY GUARDIAN AND TO REVISE TERMINOLOGY;  
6 AMENDING SECTION 15-5-303, IDAHO CODE, TO PROVIDE FOR CO-GUARDIANS;  
7 AMENDING SECTION 15-5-304, IDAHO CODE, TO PROVIDE FOR THE APPOINTMENT  
8 OF CO-GUARDIANS IN CERTAIN INSTANCES AND TO MAKE TECHNICAL CORREC-  
9 TIONS; AMENDING SECTION 15-5-308, IDAHO CODE, TO REVISE THE DUTIES AND  
10 QUALIFICATIONS FOR A VISITOR IN GUARDIANSHIP PROCEEDINGS; AMENDING  
11 SECTION 15-5-310, IDAHO CODE, TO PROVIDE FOR THE APPOINTMENT OF TEMPO-  
12 RARY GUARDIANS IN CERTAIN INSTANCES, TO PROVIDE FOR NOTICE TO CERTAIN  
13 PERSONS AND TO PROVIDE FOR POWERS AND DUTIES OF A TEMPORARY GUARDIAN;  
14 AMENDING SECTION 66-404, IDAHO CODE, TO REVISE THE PROCEEDINGS FOR THE  
15 APPOINTMENT OF GUARDIANS AND CONSERVATORS; AND AMENDING CHAPTER 4,  
16 TITLE 66, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 66-404A, IDAHO  
17 CODE, TO PROVIDE FOR THE APPOINTMENT OF TEMPORARY GUARDIANS IN CERTAIN  
18 INSTANCES, TO PROVIDE FOR NOTICE TO CERTAIN PERSONS AND TO PROVIDE FOR  
19 POWERS AND DUTIES OF A TEMPORARY GUARDIAN.  
20

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

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

24 15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. (1)  
25 Proceedings for the appointment of a guardian or co-guardians may be initi-  
26 ated by the following persons:

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

31 (2) Notice of the time and place of hearing of a petition ~~for the ap-~~  
32 ~~pointment of a guardian of a minor~~ under this section is to be given by the  
33 petitioner in the manner prescribed by section 15-1-401, Idaho Code, to:

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

1 (i) The father was never married to the mother of the minor  
 2 and has failed to register his paternity as provided in section  
 3 16-1504(4), Idaho Code; or

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

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

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

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

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

17 (i) May act independently;

18 (ii) May act independently but must act jointly in specified mat-  
 19 ters; or

20 (iii) Must act jointly.

21 This determination by the court must be stated in the order of appointment  
 22 and in the letters of guardianship.

23 (4) Upon hearing, if the court finds, upon hearing, that a qualified  
 24 person seeks appointment, venue is proper, the required notices have been  
 25 given, the requirements of section 15-5-204, Idaho Code, have been met, and  
 26 the welfare and best interests of the minor will be served by the requested  
 27 appointment, it shall make the appointment. In other cases the court may  
 28 dismiss the proceedings, or make any other disposition of the matter that  
 29 will best serve the interest of the minor.

30 (45) If necessary, the court may appoint a temporary Prior to the ap-  
 31 pointment of a guardian, with the status of an ordinary guardian of a minor,  
 32 but the authority of a temporary guardian shall not last longer than six (6)  
 33 months:

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

36 (i) A petition for guardianship under this section has been  
 37 filed, but a guardian has not yet been appointed;

38 (ii) The appointment is necessary to protect the minor's health,  
 39 safety or welfare until the petition can be heard; and

40 (iii) No other person appears to have the ability, authority and  
 41 willingness to act.

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

47 (c) Notice of the appointment of a temporary guardian must be given to  
 48 those designated in subsection (2) of this section within seventy-two  
 49 (72) hours after the appointment. The notice must inform interested  
 50 persons of the right to request a hearing. The court must hold a hearing

1 on the appropriateness of the appointment within ten (10) days after  
 2 request by an interested person. In all cases, either a hearing on  
 3 the temporary guardianship or on the petition for guardianship itself  
 4 must be held within ninety (90) days of the filing of any petition for  
 5 guardianship of a minor.

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

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

12 (6) When a minor is under guardianship:

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

14 (i) Substantial evidence that the previously appointed guardian  
 15 is not performing the guardian's duties; and

16 (ii) The appointment of a temporary guardian is necessary to pro-  
 17 tect the minor's health, safety or welfare.

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

22 (c) Notice of the appointment of a temporary guardian must be given to  
 23 those designated in subsection (2) of this section within seventy-two  
 24 (72) hours after the appointment. The notice must inform interested  
 25 persons of the right to request a hearing. The court shall hold a hear-  
 26 ing on the appropriateness of the appointment within ten (10) days after  
 27 request by an interested person.

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

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

34 (57) The court shall appoint an attorney to represent the minor if the  
 35 court determines that the minor possesses sufficient maturity to direct the  
 36 attorney. If the court finds that the minor is not mature enough to direct  
 37 an attorney, the court shall appoint a guardian ad litem for the minor. The  
 38 court may decline to appoint an attorney or guardian ad litem if it finds in  
 39 writing that such appointment is not necessary to serve the best interests of  
 40 the minor or if the Idaho department of health and welfare has legal custody  
 41 of the child.

42 (68) Letters of guardianship must indicate whether the guardian was ap-  
 43 pointed by will or by court order.

44 SECTION 2. That Section 15-5-303, Idaho Code, be, and the same is hereby  
 45 amended to read as follows:

46 15-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCA-  
 47 PACITATED PERSON. (a) The incapacitated person or any person interested in  
 48 his welfare may petition for a finding of incapacity and appointment of a  
 49 guardian or co-guardians, limited or general. It is desirable to make avail-

1 able the least restrictive form of guardianship to assist persons who are  
2 only partially incapable of caring for their own needs. Recognizing that ev-  
3 ery individual has unique needs and differing abilities, the public welfare  
4 should be promoted by establishing a guardianship that permits incapaci-  
5 tated persons to participate as fully as possible in all decisions affecting  
6 them; that assists such persons in meeting the essential requirements for  
7 their physical health and safety, in protecting their rights, in managing  
8 their financial resources, and in developing or regaining their abilities to  
9 the maximum extent possible; and that accomplishes these objectives through  
10 providing, in each case, the form of guardianship that least interferes  
11 with legal capacity of a person to act in his own behalf. The petition shall  
12 include a plan in reasonable detail for the proposed actions of the guardian  
13 regarding the affairs of the ward after appointment of the guardian, to  
14 the extent reasonably known to the petitioner at the time of filing of the  
15 petition. If the complete mental, physical and emotional status, and the  
16 health care needs and other needs of the ward are not reasonably known to the  
17 petitioner at the time the petition is filed, or if the petitioner is not the  
18 proposed guardian, then the guardian shall submit to the court, and to all  
19 interested persons, in writing, within thirty (30) days after appointment of  
20 the guardian, a reasonably detailed plan covering such matters. Such plan  
21 must also be given to any person who has filed a request for notice under  
22 section 15-5-406, Idaho Code, and to other persons as the court may direct.  
23 Such plan shall be given to all such persons in accordance with the methods  
24 set forth in section 15-1-401, Idaho Code. If the plan changes during any  
25 time period between the periodic reports of the guardian, the modified plan  
26 shall be filed with the next report as a part thereof.

27 (b) Upon the filing of a petition, the court shall set a date for hearing  
28 on the issues of incapacity and unless the allegedly incapacitated person  
29 has counsel of his own choice, it shall appoint an attorney to represent  
30 him in the proceeding, who shall have the powers and duties of a guardian ad  
31 litem. The person alleged to be incapacitated shall be examined by a physi-  
32 cian or other qualified person appointed by the court who shall submit his  
33 report in writing to the court. The court may, in appropriate cases, appoint  
34 a mental health professional, defined as a psychiatrist, psychologist,  
35 gerontologist, licensed social worker, or licensed counselor, to examine  
36 the proposed ward and submit a written report to the court. The person al-  
37 leged to be incapacitated also shall be interviewed by a visitor sent by  
38 the court. The visitor shall also interview the person who appears to have  
39 caused the petition to be filed and any person who is nominated to serve as  
40 guardian, and visit the present place of abode of the person alleged to be  
41 incapacitated and the place it is proposed that he will be detained or reside  
42 if the requested appointment is made and submit his report in writing to the  
43 court. Where possible without undue delay and expenses beyond the ability  
44 to pay of the allegedly incapacitated person, the court, in formulating the  
45 judgment, may utilize the service of any public or charitable agency that of-  
46 fers or is willing to evaluate the condition of the allegedly incapacitated  
47 person and make recommendations to the court regarding the most appropriate  
48 form of state intervention in his affairs.

49 (c) Unless excused by the court for good cause, the proposed guardian  
50 shall attend the hearing. The person alleged to be incapacitated is enti-

1 tled to be present at the hearing in person, and to see or hear all evidence  
 2 bearing upon his condition. He is entitled to be represented by coun-  
 3 sel, to present evidence and subpoena witnesses and documents, to examine  
 4 witnesses, including the court-appointed physician, mental health pro-  
 5 fessional, or other person qualified to evaluate the alleged impairment,  
 6 as well as the court-appointed visitor, and otherwise participate in the  
 7 hearing. The hearing may be a closed hearing upon the request of the person  
 8 alleged to be incapacitated or his counsel and a showing of good cause. After  
 9 appointment, the guardian shall immediately provide written notice of any  
 10 proposed change in the permanent address of the ward to the court and all  
 11 interested parties.

12 SECTION 3. That Section 15-5-304, Idaho Code, be, and the same is hereby  
 13 amended to read as follows:

14 15-5-304. FINDINGS -- ORDER OF APPOINTMENT. (a) The court shall exer-  
 15 cise the authority conferred in this part so as to encourage the development  
 16 of maximum self-reliance and independence of the incapacitated person and  
 17 make appointive and other orders only to the extent necessitated by the in-  
 18 capacitated person's actual mental and adaptive limitations or other condi-  
 19 tions warranting the procedure.

20 (b) The court may appoint a guardian as requested if it is satisfied  
 21 that the person for whom a guardian is sought is incapacitated and that the  
 22 appointment is necessary or desirable as a means of providing continuing  
 23 care and supervision ~~of the person~~ of the incapacitated person. The court,  
 24 on appropriate findings, may:

25 (1) Treat the petition as one for a protective order under section 15-5-  
 26 401, Idaho Code, and proceed accordingly;

27 (2) Enter any other appropriate order; or

28 (3) Dismiss the proceedings.

29 (c) (1) As an alternative to appointing one (1) guardian for an inca-  
 30 pacitated person, the court may appoint no more than two (2) persons as  
 31 co-guardians for the incapacitated person if the court finds:

32 (i) The appointment of co-guardians will best serve the interests  
 33 of the incapacitated person; and

34 (ii) The persons to be appointed as co-guardians will work to-  
 35 gether cooperatively to serve the best interests of the incapac-  
 36 itated person.

37 (2) The parents of an incapacitated person shall have preference over  
 38 all other persons for appointment as co-guardians, unless the court  
 39 finds that the parents are unwilling to serve as co-guardians, or are  
 40 not capable of adequately serving the best interests of the incapaci-  
 41 tated person.

42 (3) If the court appoints co-guardians, the court shall also determine  
 43 whether the guardians:

44 (i) May act independently;

45 (ii) May act independently but must act jointly in specified mat-  
 46 ters; or

47 (iii) Must act jointly.

48 This determination by the court must be stated in the order of appointment  
 49 and in the letters of guardianship.

1        (d) The court may, at the time of appointment or later, on its own motion  
 2 or on appropriate petition or motion of the incapacitated person or other in-  
 3 terested person, limit the powers of a guardian otherwise conferred by this  
 4 section and thereby create a limited guardianship. Any limitations on the  
 5 statutory power of a guardian of an incapacitated person shall be endorsed on  
 6 the guardian's letters, or in the case of a guardian by testamentary appoint-  
 7 ment, shall be reflected in letters that shall be issued at the time any limi-  
 8 tation is imposed. Following the same procedure, a limitation may be removed  
 9 and appropriate letters issued.

10        SECTION 4. That Section 15-5-308, Idaho Code, be, and the same is hereby  
 11 amended to read as follows:

12        15-5-308. VISITOR IN GUARDIANSHIP PROCEEDING. (1) A visitor is, with  
 13 respect to guardianship proceedings, ~~a person who is trained in law, nurs-~~  
 14 ~~ing, psychology, social work, or counseling or has other qualifications~~  
 15 ~~that make him suitable to perform the function and is an officer, employee~~  
 16 ~~or special appointee of the court~~ an individual with no personal interest  
 17 in the proceedings and who meets the qualifications identified in Idaho  
 18 supreme court rule. A visitor may either be an employee of or appointed by  
 19 the court. If appointed, a visitor becomes an officer of the court. ~~The~~  
 20 ~~visitor's report is to include the following information: a description of~~  
 21 ~~the nature, cause and degree of incapacity, and the basis upon which this~~  
 22 ~~judgment is made; a description of the needs of the person alleged to be~~  
 23 ~~incapacitated for care and treatment and the probable residential require-~~  
 24 ~~ments; a statement as to whether a convicted felon resides in or frequents~~  
 25 ~~the incapacitated person's proposed residence; an evaluation of the appro-~~  
 26 ~~priateness of the guardian or conservator whose appointment is sought and a~~  
 27 ~~description of the steps the proposed guardian or conservator has taken or~~  
 28 ~~intends to take to meet the needs of the incapacitated person; a description~~  
 29 ~~of the abilities of the alleged incapacitated person and a recommendation~~  
 30 ~~as to whether a full or limited guardianship or conservatorship should be~~  
 31 ~~ordered and, if limited, the visitor's recommendation of the specific areas~~  
 32 ~~of authority the limited guardianship or conservatorship should have and~~  
 33 ~~the limitations to be placed on the incapacitated person; any expression of~~  
 34 ~~approval or disapproval made by the alleged incapacitated person concerning~~  
 35 ~~the proposed guardianship or conservatorship; an analysis of the financial~~  
 36 ~~status and assets of the alleged incapacitated person; identification of~~  
 37 ~~people with significant interest in the welfare of the alleged incapaci-~~  
 38 ~~tated person who should be informed of the proceedings; a description of the~~  
 39 ~~qualifications and relationship of the proposed guardian or conservator; an~~  
 40 ~~explanation of how the alleged incapacitated person responded to the advice~~  
 41 ~~of the proceedings and the right to be present at the hearing on the petition;~~  
 42 ~~in the case of conservatorship, a recommendation for or against a bond re-~~  
 43 ~~quirement for the proposed conservator, taking into account the financial~~  
 44 ~~statement of the person whose appointment is sought.~~

45        (2) A visitor must report to the court on the status of the person pro-  
 46 posed to be under guardianship. All reports must be under oath or affirma-  
 47 tion and must comply with Idaho supreme court rules.

48        (3) Any person appointed as a A visitor shall be personally immune from  
 49 any liability for acts, omissions or errors in the same manner as if such

1 ~~person visitor~~ were a volunteer or director under the provisions of section  
2 6-1605, Idaho Code.

3 ~~(34) The A visitor may not also be appointed cannot serve as guardian ad~~  
4 ~~litem for the person alleged to be incapacitated nor may.~~ The visitor and the  
5 guardian ad litem for the person alleged proposed to be incapacitated be ap-  
6 ~~pointed as visitor, nor under guardianship may the visitor and the guardian~~  
7 ~~ad litem for the person alleged to be incapacitated not~~ be members or employ-  
8 ees of the same entity including, but not limited to, being members or em-  
9 ployees of the same law firm.

10 ~~(45) The court visitor may request to order a criminal history and back-~~  
11 ~~ground check to be conducted at the proposed guardian's expense on any indi-~~  
12 ~~vidual who resides in the incapacitated person's proposed residence or may~~  
13 ~~frequent the residence of the person proposed to be under guardianship.~~ Any  
14 such check shall be conducted pursuant to section 56-1004A(2) and (3), Idaho  
15 Code.

16 ~~(5) In preparing their reports, the visitor and guardian ad litem~~  
17 ~~shall consider all information available to them concerning any proposed~~  
18 ~~guardian, conservator and individual who resides in or frequents the in-~~  
19 ~~capacitated person's proposed residence including, but not limited to,~~  
20 ~~such information as might be available to the visitor pursuant to section~~  
21 ~~15-5-311(5), Idaho Code.~~

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

24 15-5-310. TEMPORARY GUARDIANS OF INCAPACITATED PERSONS. (a) ~~If t~~The  
25 ~~court finds that may appoint a temporary guardian is not properly per-~~  
26 ~~forming the duties of guardian or an emergency exists such that the likely~~  
27 ~~result will be substantial harm to an alleged incapacitated person's health,~~  
28 ~~safety, or welfare, and that no other person appears to have authority and~~  
29 ~~willingness to act in the circumstances, the court, on petition by a person~~  
30 ~~interested in the alleged incapacitated person's welfare, may appoint an~~  
31 ~~emergency guardian whose authority may not exceed ninety (90) days, unless~~  
32 ~~extended for good cause upon application of the temporary guardian. The~~  
33 ~~emergency guardianship must be limited to only those powers absolutely nec-~~  
34 ~~essary, or the least restrictive to the proposed ward, for the immediate~~  
35 ~~health and safety of the proposed ward until such time as a full hearing may~~  
36 ~~be held in the matter and the emergency guardian may exercise only those~~  
37 ~~powers specified in the order. Emergency letters of guardianship shall~~  
38 ~~allow the temporary guardian only such access to the proposed ward's assets~~  
39 ~~as is necessary to provide and pay for the proposed ward's necessities of~~  
40 ~~life, including short and long-term health care, but shall expressly deny a~~  
41 ~~temporary guardian the right to have the temporary guardian's name added to~~  
42 ~~any assets of the proposed ward pending a hearing on the guardianship if it~~  
43 ~~finds:~~

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

46 (2) Substantial evidence of incapacity;

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

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

3        (b) When a person is under guardianship, tThe court shall may appoint a  
 4        temporary guardian ad litem to represent the proposed ward in all cases in-  
 5        volving a petition for adjudication of incapacity. The alleged incapaci-  
 6        tated person may substitute his own attorney for the guardian ad litem ap-  
 7        pointed by the court. Any attorney representing an alleged incapacitated  
 8        person may not serve as guardian of the proposed ward or as counsel for the  
 9        petitioner for guardianship if it finds:

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

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

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

19       (c) (1) An emergency A temporary guardian may be appointed without no-  
 20       tice to the alleged incapacitated person or his attorney only or hear-  
 21       ing if the court finds from affidavit or other sworn testimony a state-  
 22       ment under oath that the proposed ward person will be immediately and  
 23       substantially harmed before notice can be given or a hearing on the ap-  
 24       pointment can be held.

25       (2) If the court appoints an emergency a temporary guardian without no-  
 26       tice to the proposed ward, notice of the proposed ward appointment must  
 27       be given notice of the appointment to those designated in section 15-5-  
 28       309, Idaho Code, within forty-eight seventy-two (4872) hours after the  
 29       appointment. The notice must inform the interested persons of the right  
 30       to request a hearing. The court shall must hold a hearing on the ap-  
 31       propriateness of the appointment within five ten (510) days after the  
 32       appointment if requested request by an interested party at which time  
 33       the court shall appoint a visitor to meet with the alleged incapacitated  
 34       person and make a written report to the court. The court shall also ap-  
 35       point a physician to examine the proposed ward giving preference to the  
 36       appointment of the proposed ward's treating physician if the proposed  
 37       ward has a current treating physician.

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

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

44       SECTION 6. That Section 66-404, Idaho Code, be, and the same is hereby  
 45       amended to read as follows:

46       66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSERVA-  
 47       TORS. (1) A person with a developmental disability or any person interested  
 48       in his welfare may petition for a finding of legal disability or partial



1 legal disability and appointment of a guardian or co-guardians, and/ or con-  
 2 servator or co-conservators, or both.

3 (2) The petition shall:

4 (a) State the names and addresses of the persons entitled to notice un-  
 5 der subsection (4) of this section;

6 (b) Describe the impairments showing the respondent is developmentally  
 7 disabled, the respondent's ability to receive, evaluate and communi-  
 8 cate information, and the respondent's ability to manage financial re-  
 9 sources and meet essential requirements for physical health or safety;

10 (c) State the nature and scope of guardianship and/or conservatorship  
 11 services sought;

12 (d) Describe the respondent's financial condition, including signif-  
 13 icant assets, income and ability to pay for the costs of judicial pro-  
 14 ceedings; and

15 (e) State if the appointment is made by will pursuant to section 15-5-  
 16 301, Idaho Code, and the name(s) and address(es) of the person(s) named  
 17 in the will to be guardian.

18 (3) Upon filing of a petition, the court shall set a date for a hearing,  
 19 appoint an attorney to represent the respondent in the proceedings unless  
 20 the respondent has an attorney, and authorize an evaluation committee to ex-  
 21 amine the respondent, interview the proposed guardians and/or conservators  
 22 and report to the court in writing. ~~The report shall contain:~~ All reports  
 23 shall be under oath or affirmation and shall comply with Idaho supreme court  
 24 rules

25 ~~(a) A description of the nature and extent of the evaluation and the al-~~  
 26 ~~leged impairments, if any;~~

27 ~~(b) A description of the respondent's mental, emotional and physical~~  
 28 ~~condition; educational status; and adaptive and social skills;~~

29 ~~(c) A description of the services, if any, needed by the respondent to~~  
 30 ~~meet essential requirements for physical health and safety, and/or man-~~  
 31 ~~age financial resources;~~

32 ~~(d) A recommendation regarding the type and extent of guardianship or~~  
 33 ~~conservatorship assistance, if any, required by the respondent and why~~  
 34 ~~no less restrictive alternative would be appropriate;~~

35 ~~(e) An opinion regarding the probability that the extent of the respon-~~  
 36 ~~dent's disabilities may significantly lessen, and the type of services~~  
 37 ~~or treatment which may facilitate improvement in the respondent's be-~~  
 38 ~~havior, condition, or skills;~~

39 ~~(f) The respondent's preference, if any, regarding the person or per-~~  
 40 ~~sons to be appointed as guardian and/or conservator;~~

41 ~~(g) The suitability of the person or persons proposed as guardian~~  
 42 ~~and/or conservator; and~~

43 ~~(h) The signature of each member of the evaluation committee with a~~  
 44 ~~statement of concurrence or nonconcurrence with the findings and any~~  
 45 ~~dissenting opinions or other comments of the members.~~

46 (4) Notice of the time and place of the hearing on the petition together  
 47 with a copy of the petition shall be served no less than ten (10) days before  
 48 the hearing on:

49 (a) The respondent;

1 (b) The respondent's spouse, parents and adult children, or if none,  
2 the respondent's closest relative, if any can be found; and

3 (c) Any person who is currently serving as guardian, conservator or who  
4 is providing care for the respondent.

5 Notice shall be served personally if the person to be served can be found  
6 within the state. If the person to be served cannot be found within the  
7 state, service shall be accomplished by registered mail to such person's  
8 last known address.

9 (5) The respondent is entitled to be present at the hearing in person,  
10 to present evidence, call and cross-examine witnesses, and to see or hear all  
11 evidence in the proceeding.

12 (6) At the hearing the court shall:

13 (a) Determine whether the respondent has a developmental disability;

14 (b) Evaluate the respondent's ability to meet essential requirements  
15 for physical health or safety and manage financial resources;

16 (c) Evaluate the ability of the proposed guardian and/or conservator  
17 to act in the respondent's best interests to manage the respondent's fi-  
18 nancial resources and meet essential requirements for the respondent's  
19 physical health or safety;

20 (d) Determine the nature and scope of guardianship or conservatorship  
21 services necessary to protect and promote the respondent's well-being;  
22 and

23 (e) Evaluate the ability of the respondent or those legally responsible  
24 to pay the costs associated with the judicial proceedings and fix re-  
25 sponsibility therefor; and

26 (f) (i) As an alternative to appointing one (1) guardian or one  
27 (1) conservator, the court may appoint no more than two (2)  
28 co-guardians or no more than two (2) co-conservators if the court  
29 finds:

30 1. The appointment of co-guardians or co-conservators will  
31 best serve the interests of the person with a developmental  
32 disability; and

33 2. The persons to be appointed as co-guardians or co-con-  
34 servators will work together cooperatively to serve the best  
35 interests of the child.

36 (ii) The parents of a person with a developmental disability  
37 shall have preference over all other persons for appointment as  
38 co-guardians or co-conservators, unless the court finds that the  
39 parents are unwilling to serve as co-guardians or co-conser-  
40 vators, or are not capable of adequately serving the best interests  
41 of the person with a developmental disability; and

42 (iii) If the court appoints co-guardians or co-conservators, the  
43 court shall also determine whether the co-guardians or co-conser-  
44 vators:

45 1. May act independently;

46 2. May act independently but must act jointly in specified  
47 matters; or

48 3. Must act jointly.

49 The determination by the court must be stated in the order of appointment and  
50 in the letters of guardianship or conservatorship.

1 (7) No individual shall be appointed as guardian or conservator of an  
2 incapacitated person unless all of the following first occurs:

3 (a) The proposed guardian or conservator has submitted to and paid for  
4 a criminal history and background check conducted pursuant to section  
5 56-1004A(2) and (3), Idaho Code;

6 (b) In the case of a petition for guardianship and pursuant to an order  
7 of the court so requiring, any individual who resides in the inca-  
8 pacitated person's proposed residence has submitted, at the proposed  
9 guardian's expense, to a criminal history and background check con-  
10 ducted pursuant to section 56-1004A(2) and (3), Idaho Code;

11 (c) The findings of such criminal history and background checks have  
12 been made available to the evaluation committee by the department of  
13 health and welfare; and

14 (d) The proposed guardian or conservator provided a report of his or  
15 her civil judgments and bankruptcies to the evaluation committee and  
16 all others entitled to notice of the guardianship or conservatorship  
17 proceeding pursuant to subsection (4) of this section.

18 (8) The provisions of paragraphs (a) and (d) of subsection (7) of this  
19 section shall not apply to an institution nor to a legal or commercial en-  
20 tity.

21 (9) Each proposed guardian and conservator and each appointed guardian  
22 and conservator shall immediately report any change in his or her criminal  
23 history and any material change in the information required by subsection  
24 (7) of this section to the evaluation committee, all others entitled to no-  
25 tice of the guardianship or conservatorship proceeding pursuant to subsec-  
26 tion (4) of this section and to the court.

27 SECTION 7. That Chapter 4, Title 66, Idaho Code, be, and the same is  
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
29 ignated as Section 66-404A, Idaho Code, and to read as follows:

30 66-404A. TEMPORARY GUARDIANS. (1) The court may appoint a temporary  
31 guardian if it finds:

32 (a) A petition for guardianship under section 66-404, Idaho Code, has  
33 been filed, but a guardian has not yet been appointed;

34 (b) Substantial evidence the person has a developmental disability;

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

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

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

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

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

47 The authority of a guardian previously appointed by the court is suspended as  
48 long as a temporary guardian has authority. The court must hold a hearing be-

1 fore the expiration of the temporary guardian's authority and may enter any  
2 appropriate order.

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

7 (b) If the court appoints a temporary guardian without notice, no-  
8 tice of the appointment must be given to those designated in section  
9 66-404(4), Idaho Code, within seventy-two (72) hours after the appoint-  
10 ment. The notice must inform interested persons of the right to request  
11 a hearing. The court must hold a hearing on the appropriateness of the  
12 appointment within ten (10) days after request by an interested person.

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

18 (d) A temporary guardian must make reports as the court requires.