

IN THE SENATE

SENATE BILL NO. 1219

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO GUARDIANS AND CONSERVATORS; AMENDING SECTION 66-404, IDAHO CODE, TO REVISE PROVISIONS REGARDING PROCEEDINGS FOR THE APPOINTMENT OF GUARDIANS AND CONSERVATORS.

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

SECTION 1. That Section 66-404, Idaho Code, be, and the same is hereby amended to read as follows:

66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSERVATORS. (1) A person with a developmental disability or any person interested in his welfare may petition for a finding of legal disability or partial legal disability and appointment of a guardian or co-guardians, or conservator or co-conservators, or both.

(2) The petition shall:

(a) State the names and addresses of the persons entitled to notice under subsection (4) of this section;

(b) Describe the impairments showing the respondent is developmentally disabled, the respondent's ability to receive, evaluate and communicate information, and the respondent's ability to manage financial resources and meet essential requirements for physical health or safety;

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

(d) Describe the respondent's financial condition, including significant assets, income and ability to pay for the costs of judicial proceedings; and

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

(3) Upon filing of a petition, the court shall set a date for a hearing, appoint an attorney to represent the respondent in the proceedings unless the respondent has an attorney, and authorize an evaluation committee to examine the respondent, interview the proposed guardians and/or conservators and report to the court in writing. All reports shall be under oath or affirmation and shall comply with Idaho supreme court rules.

(4) Notice of the time and place of the hearing on the petition together with a copy of the petition shall be served no less than ~~ten~~ fourteen (14) days before the hearing on:

(a) The respondent;

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

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

1 Notice shall be served personally if the person to be served can be found
 2 within the state. If the person to be served cannot be found within the
 3 state, service shall be accomplished by registered mail to such person's
 4 last known address.

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

8 (6) At the hearing the court shall:

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

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

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

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

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

21 (f) (i) As an alternative to appointing one (1) guardian or one (1) con-
 22 servator, the court may appoint no more than two (2) co-guardians
 23 or no more than two (2) co-conservators if the court finds:

24 1. The appointment of co-guardians or co-conservators will
 25 best serve the interests of the person with a developmental
 26 disability; and

27 2. The persons to be appointed as co-guardians or co-con-
 28 servators will work together cooperatively to serve the best
 29 interests of the ~~child~~ person with a developmental disabili-
 30 ty.

31 (ii) The parents of a person with a developmental disability
 32 shall have preference over all other persons for appointment as
 33 co-guardians or co-conservators, unless the court finds that the
 34 parents are unwilling to serve as co-guardians or co-conserva-
 35 tors, or are not capable of adequately serving the best interests
 36 of the person with a developmental disability; and

37 (iii) If the court appoints co-guardians or co-conservators, the
 38 court shall also determine whether the co-guardians or co-conser-
 39 vators:

40 1. May act independently;

41 2. May act independently but must act jointly in specified
 42 matters; or

43 3. Must act jointly.

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

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

48 (a) The proposed guardian or conservator has submitted to and paid for
 49 a criminal history and background check conducted pursuant to section
 50 56-1004A(2) and (3), Idaho Code;

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

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

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

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

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