

IN THE SENATE

SENATE BILL NO. 1133

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO GUARDIANS OF MINORS; AMENDING SECTION 15-5-207, IDAHO CODE, TO
2 LIMIT THE TIME DURING WHICH A TEMPORARY GUARDIANSHIP MAY BE EXTENDED,
3 TO PROVIDE THAT A COURT MUST TAKE APPROPRIATE ACTION PRIOR TO THE END OF
4 AN EXTENSION PERIOD, AND TO PROVIDE THAT NO TEMPORARY GUARDIANSHIP MAY
5 LAST LONGER THAN TWELVE MONTHS IN TOTAL.
6

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

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

10 15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. (1)
11 Proceedings for the appointment of a guardian or co-guardians may be initi-
12 ated by the following persons:

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

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

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

27 (i) The father was never married to the mother of the minor
28 and has failed to register his paternity as provided in section
29 16-1504(5), Idaho Code; or

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (d) The temporary guardian's authority may not exceed six (6) months
38 unless extended for good cause. Only one (1) such extension may be made,
39 and the extension period must not last longer than six (6) additional
40 months. The powers of the temporary guardian shall be limited to those
41 necessary to protect the immediate health, safety or welfare of the mi-
42 nor until a hearing may be held and must include the care and custody of
43 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 fourteen (14) days
10 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 as provided
16 in subsection (5) (d) of this section. Prior to the end of an exten-
17 sion period, the court must appoint a guardian other than a temporary
18 guardian or take other appropriate action, but in no event may a tempo-
19 rary guardianship last longer than twelve (12) months in total.

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

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

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