

STATEMENT OF PURPOSE

RS18423

This bill makes necessary corrections to the Idaho probate code regarding guardianships and conservatorships, especially for minors. Idaho law currently provides that a convicted felon should not be appointed guardian of an adult incapacitated person unless the court finds that such appointment is in the best interests of the incapacitated person. A bill in the 2008 session, Senate Bill 1327, extended that provision to provide that a convicted felon cannot reside at the residence of the proposed guardian, or frequent that residence, and thereby endanger the incapacitated person, unless the court finds similarly that the appointment of the guardian is still in the best interests of the incapacitated person. Sections One, Two, and Three of the bill provides the same protections to the appointment of the guardian of a minor, including that the petition must include a statement as to whether the proposed guardian, or a person who resides at or frequents the proposed place of residence of the minor, is a felon, and, in Section Three, that the guardian must take reasonable steps to protect the minor from such felons. There have been an increasing number of cases involving minors where felons are involved, which can cause danger to the minor, including sexual or other abuse.

Section Four, covering adult guardianships, provides for similar inclusion in a petition for guardianship of a statement as to whether the proposed guardian, or a person who resides at or frequents the proposed place of residence of the ward, is a convicted felon. Prior legislation required the court to make that determination and then decide whether the appointment was still in the best interests of the ward. Section Five requires the same information in a petition for conservatorship of a minor or an adult. Both Sections Four and Five require that existing powers and trusts be revealed, since it is the duty of the Guardian ad Litem and Court Visitor to determine if existing powers and/or trusts can either eliminate the need for a conservatorship or guardianship, or allow a limited appointment. This bill will garner that information at the petition stage, from the petitioner, who is the person most likely to know that information.

Existing Idaho law allows the closing of a guardianship case, but not a conservatorship case. There is no logical reason that the statutes are not parallel. Section Six of this bill corrects the lack of an express procedure to close a conservatorship case and also clarifies who may request such a closure.

Finally, Section Seven corrects an existing failure of the code to adequately protect the funds of minors in certain proceedings. If a settlement is made for the claim of a minor, a court proceeding called a Minors Compromise is used. If the amount of the claim is over \$10,000, a conservatorship is usually instituted, which protects the funds. However, if the funds are less than \$10,000, or if the court does not require a conservatorship, the funds may simply be given to the parents of the minor. In a number of such cases, the funds have been dissipated and were not used for the benefit of the minor. This statute provides for protection of the funds by having a bond posted, or a blocked or sequestered account created, or involvement of a professional fiduciary, at the option of the court. This will give the court great flexibility in determining whether protection is needed, and if needed, the best method of protection.

FISCAL NOTE

This bill will have no fiscal impact.



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