

IN THE SENATE

SENATE BILL NO. 1382

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO DE FACTO CUSTODIANS; AMENDING TITLE 32, IDAHO CODE, BY THE
2 ADDITION OF A NEW CHAPTER 17, TITLE 32, IDAHO CODE, TO PROVIDE A SHORT
3 TITLE, TO PROVIDE A PURPOSE, TO PROVIDE FOR DE FACTO CUSTODIANS,
4 TO PROVIDE FOR PETITIONS FOR CUSTODY AND MOTIONS TO INTERVENE BY
5 PERSONS SEEKING DETERMINATIONS THAT THEY ARE DE FACTO CUSTODIANS, TO
6 PROVIDE FOR NOTICE, TO REQUIRE STIPULATED FACTS OR FINDINGS OF FACT
7 THAT A PERSON IS A DE FACTO CUSTODIAN, TO PROVIDE CERTAIN EVIDENTIARY
8 STANDARDS, TO PROVIDE FOR THE APPLICATION OF SPECIFIED STANDARDS AND
9 CONSIDERATIONS RELATING TO A DETERMINATION OF THE BEST INTERESTS OF
10 THE CHILD, TO PROVIDE FOR DE FACTO CUSTODIAN ORDERS, TO PROVIDE FOR
11 ACCESS TO CERTAIN RECORDS AND TO PROVIDE FOR TERMINATION OF CUSTODY
12 ORDERS; AMENDING SECTION 15-5-207, IDAHO CODE, TO REVISE PROVISIONS
13 RELATING TO THE APPOINTMENT OF GUARDIANS OF MINORS, TO PROVIDE THAT
14 DE FACTO CUSTODIANS MAY INITIATE PROCEEDINGS FOR THE APPOINTMENT OF A
15 GUARDIAN, TO REVISE PROVISIONS RELATING TO NOTICE AND TO MAKE TECHNICAL
16 CORRECTIONS; AND AMENDING SECTION 15-5-213, IDAHO CODE, TO REVISE A
17 DEFINITION OF "DE FACTO CUSTODIAN" AND TO REVISE PROVISIONS RELATING TO
18 THE RECOGNITION OF DE FACTO CUSTODIANS RELATING TO STANDING IN CERTAIN
19 PROCEEDINGS.
20

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

22 SECTION 1. That Title 32, Idaho Code, be, and the same is hereby amended
23 by the addition thereto of a NEW CHAPTER, to be known and designated as
24 Chapter 17, Title 32, Idaho Code, and to read as follows:

25 CHAPTER 17
26 DE FACTO CUSTODIAN ACT

27 32-1701. SHORT TITLE. This chapter may be known and cited as the "De
28 Facto Custodian Act."

29 32-1702. PURPOSE. The purpose of this act is to:
30 (1) Give constitutionally required deference to the decisions of fit
31 parents in custody actions brought by third parties;
32 (2) Subject to such constitutionally required deference, meet the
33 needs of children for caring and stable homes by providing a flexible method
34 by which a third party who has cared for and supported a child may obtain
35 legal and physical custody of the child where such custody is in the child's
36 best interests.

37 32-1703. DE FACTO CUSTODIANS. (1) "De facto custodian" means an
38 individual who:

- 1 (a) Is related to a child within the third degree of consanguinity or
2 affinity; and
3 (b) Either individually or together with a copetitioner has been the
4 primary caretaker and primary financial supporter of such child for a
5 period of:
6 (i) Six (6) months or more if the child is under three (3) years of
7 age; or
8 (ii) One (1) year or more if the child is three (3) years of age or
9 older.
- 10 (2) Any period of time after the filing of a petition pursuant to this
11 chapter shall not be included in determining whether the child has resided
12 with the individual for the time period as provided in subsection (1) of this
13 section.
- 14 (3) An individual shall not be deemed a de facto custodian if a child has
15 resided with the individual because:
16 (a) The child was placed in the individual's care through a court order
17 or voluntary placement agreement under title 16, Idaho Code; or
18 (b) The individual is or was cohabiting with, or is or was married to, a
19 parent of the child.

- 20 32-1704. COMMENCEMENT OF PROCEEDINGS. (1) A child custody proceeding
21 may be initiated in any court of this state with jurisdiction to determine
22 child custody matters, by an individual:
23 (a) Filing a petition seeking a determination that he or she is a de
24 facto custodian pursuant to section 32-1703, Idaho Code, and seeking
25 custody of a child; or
26 (b) Filing a motion seeking permissive intervention pursuant to rule 24
27 of the Idaho rules of civil procedure, in a pending custody proceeding
28 seeking a determination that he or she is a de facto custodian pursuant
29 to section 32-1703, Idaho Code, and seeking custody of a child.
- 30 (2) A petition for custody or a motion to intervene based on the
31 petitioners or intervenors alleged status as a de facto custodian, filed
32 under this section, must state and allege:
33 (a) The name and address of the petitioner or intervenor and any prior
34 or other name used by the petitioner or intervenor;
35 (b) The name of the respondent mother and father or guardian(s) and
36 any prior or other name used by the respondent(s) and known to the
37 petitioner or intervenor;
38 (c) The name and date of birth of each child for whom custody is sought;
39 (d) The relationship of the petitioner or intervenor to each child for
40 whom custody is sought;
41 (e) The basis for jurisdiction asserted by the petitioner or
42 intervenor;
43 (f) The current legal and physical custodial status of each child
44 for whom custody is sought, whether a proceeding involving custody of
45 the child, including a proceeding for an order or protection pursuant
46 to section 39-6304, Idaho Code, is pending in a court in this state
47 or elsewhere, and a list of all prior orders of custody, including
48 temporary orders, if known to the petitioner or intervenor;

1 (g) Whether either parent is a member of the armed services, if known to
2 the petitioner or intervenor;

3 (h) The length of time each child has resided with the petitioner or
4 intervenor and the nature of the petitioners or intervenors role in
5 caring for each child for whom custody is sought;

6 (i) The financial support provided by the petitioner or intervenor for
7 each child for whom custody is sought;

8 (j) Whether physical and/or legal custody should be granted to and/or
9 shared with the respondent(s); and

10 (k) The basis upon which the petitioner or intervenor is claiming
11 that it is in the best interests of the child that the petitioner or
12 intervenor have custody of the child.

13 (3) The petition or motion must be verified by the petitioner or
14 intervenor.

15 (4) Written notice of a hearing on a petition or motion to intervene for
16 custody of a child by a de facto custodian must be given to:

17 (a) The parent(s) of the child as defined in section 16-2002(11) and
18 (12), Idaho Code; and

19 (b) The guardian or legal custodian, if any, of the child; and

20 (c) The child's tribe pursuant to federal law, if the child is an Indian
21 child as defined in the Indian child welfare act, 25 U.S.C. 1901, et seq.

22 (5) Written notice of a hearing on a petition for custody of a child
23 by a de facto custodian must be given to the Idaho department of health and
24 welfare if the petitioner has reason to believe that either parent receives
25 public assistance, the petitioner receives public assistance on behalf
26 of the child or either parent receives child support enforcement services
27 from the Idaho department of health and welfare or applies for such public
28 assistance or child support enforcement services after a petition under this
29 section is filed. Notice to the Idaho department of health and welfare must
30 include a copy of the petition.

31 (6) In an action for custody of a child by a de facto custodian, the
32 parties must stipulate to, or the court must find, facts establishing by
33 clear and convincing evidence that the petitioner or intervenor is a de
34 facto custodian pursuant to the requirements of section 32-1703, Idaho Code,
35 before the court considers whether custody with the de facto custodian is in
36 the best interests of the child.

37 (7) Once a court has found facts supporting the appointment of the
38 petitioner or intervenor as the de facto custodian of a child, the petitioner
39 or intervenor must prove by a preponderance of the evidence that it is in the
40 best interests of the child to be in the custody of the de facto custodian.
41 In determining the best interests of the child, the court shall apply the
42 standards as provided in section 32-717(1), Idaho Code.

43 (8) In determining whether the petitioner or intervenor has
44 established that it is in the best interests of the child to be in the custody
45 of the de facto custodian, the court may also consider:

46 (a) The circumstances under which the child was allowed to remain in the
47 care of the de facto custodian, including whether the child was placed
48 with the de facto custodian to allow the parent to seek work or to attend
49 school;

1 (b) Whether the child is currently residing with the de facto custodian
 2 and, if not, the length of time since the petitioner or intervenor last
 3 functioned as the child's de facto custodian.

4 32-1705. NATURE OF DE FACTO CUSTODIAN ORDER -- ACCESS TO RECORDS
 5 -- TERMINATION OF DE FACTO CUSTODIANSHIP. (1) A court may enter an order
 6 granting a de facto custodian sole or joint legal and/or physical custody as
 7 defined in section 32-717B(1), (2) and (3), Idaho Code, in the same manner as
 8 it would grant such custody to a parent.

9 (2) An order granting custody to a de facto custodian is subject to the
 10 continuing jurisdiction of the court and is modifiable in the same manner
 11 as an order establishing parental custody pursuant to section 32-717, Idaho
 12 Code, or a similar provision.

13 (3) A de facto custodian who has been granted sole or joint legal
 14 custody of a child shall have access to records pertaining to the child who is
 15 the subject of the de facto custodianship to the same extent as a parent would
 16 have such access pursuant to an order of legal custody.

17 (4) Any party to the proceeding granting custody to a de facto custodian
 18 may move for the termination of the custody order. A de facto custodian may
 19 move for permission to resign as de facto custodian.

20 (a) A party moving for termination of the de facto custodian-child
 21 relationship must show by a preponderance of the evidence that
 22 termination of the relationship would be in the best interests of the
 23 child.

24 (b) A motion for termination or for resignation may, but need not,
 25 include a proposal for the continuing custody of the child.

26 (c) After notice and hearing on a motion for termination or
 27 resignation, the court may terminate the custody of the de facto
 28 custodian and may make any further orders that may be appropriate in the
 29 best interests of the child.

30 SECTION 2. That Section 15-5-207, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. (1)
 33 Proceedings for the appointment of a guardian may be initiated by the
 34 following persons:

35 (a) ~~Any~~ relative of the minor;[;]

36 (b) ~~The~~ minor if he is fourteen (14) or more years of age, ~~a de facto~~
 37 ~~custodian of the minor;~~[;]

38 (c) Any person who comes within section 15-5-213(1), Idaho Code; or

39 (d) ~~Any~~ person interested in the welfare of the minor.

40 (2) Notice of the time and place of hearing of a petition for the
 41 appointment of a guardian of a minor is to be given by the petitioner in the
 42 manner prescribed by section 15-1-401, ~~of this code~~ Idaho Code, to:

43 (a) The minor, if he is fourteen (14) or more years of age;

44 (b) The person who has had the principal care and custody of the minor
 45 during the sixty (60) days preceding the date of the petition;

46 (c) ~~The de facto custodian of the minor, if any~~ Any person who comes
 47 within section 15-5-213(1), Idaho Code; and

1 (d) Any living parent of the minor; provided however, that the court may
 2 waive notice to a living parent of the minor who is, or is alleged to be,
 3 the father of the minor if:

4 (i) The father was never married to the mother of the minor
 5 and has failed to register his paternity as provided in section
 6 16-1504(4), Idaho Code; or

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

12 (3) Upon hearing, if the court finds that a qualified person seeks
 13 appointment, venue is proper, the required notices have been given, the
 14 requirements of section 15-5-204, ~~of this part~~ Idaho Code, have been met, and
 15 the welfare and best interests of the minor will be served by the requested
 16 appointment, it shall make the appointment. In other cases the court may
 17 dismiss the proceedings, or make any other disposition of the matter that
 18 will best serve the interest of the minor.

19 (4) If necessary, the court may appoint a temporary guardian, with the
 20 status of an ordinary guardian of a minor, but the authority of a temporary
 21 guardian shall not last longer than six (6) months.

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

30 (6) Letters of guardianship must indicate whether the guardian was
 31 appointed by will or by court order.

32 SECTION 3. That Section 15-5-213, Idaho Code, be, and the same is hereby
 33 amended to read as follows:

34 15-5-213. DE FACTO CUSTODIAN. (1) "De facto custodian" means a person
 35 who has either been appointed the de facto custodian pursuant to section
 36 32-1703, Idaho Code, or if not so appointed, has been the primary caregiver
 37 for, and primary financial supporter of, a child who, prior to the filing
 38 of a petition for guardianship, has resided with the person for a period of
 39 six (6) months or more if the child is under three (3) years of age and for a
 40 period of one (1) year or more if the child is three (3) years of age or older.

41 (2) If a court determines by clear and convincing evidence that a person
 42 meets the definition of a de facto custodian, and that recognition of the de
 43 facto custodian is in the best interests of the child, the court shall give
 44 the person the same standing that is given to each parent in proceedings for
 45 appointment of a guardian of a minor. In determining whether recognition
 46 of a de facto custodian is in the child's best interests, the court shall
 47 consider:

48 (a) Whether the child is currently residing with the person seeking
 49 ~~recognition as a de facto custodian~~ such standing; and

1 (b) If the child is not currently residing with the person seeking
2 ~~de facto custodian status~~ such standing, the length of time since the
3 person served as the child's primary caregiver and primary financial
4 supporter.