

SUMMARY OF GUARDIANSHIP AND CONSERVATORSHIP LEGISLATION

The Supreme Court has approved the proposal of legislation that has been developed by the Court's Guardianship and Conservatorship Committee. The legislation has several objectives.

The legislation addresses the issue of co-guardians. In *Doe I v. Doe II*, 160 Idaho 311, 372 P.3d 366 (2016), the Court held that the current statutes permit the appointment of only a single guardian for a minor. The proposed legislation would amend I.C. §§ 15-5-207, 15-5-303, 15-5-304, and 66-404 to permit the appointment of co-guardians and, in the case of persons with developmental disabilities, co-conservators. The Court was concerned that care be taken in the appointment of co-guardians. Accordingly, a provision has been added to I.C. § 15-5-101 that would provide that: (1) no more than two guardians could be appointed for a minor or incapacitated person; (2) the parents of an incapacitated person would have preference over other persons to be appointed as co-guardians, unless the court finds that the parents are unwilling to serve as co-guardians, or are not capable of serving the best interests of the incapacitated person; and (3) co-guardians may be appointed only if the court finds that they will work together cooperatively to serve the best interests of the incapacitated person or the minor. Further, the court would be required to specify whether the co-guardians: (1) may act independently; (2) may act independently but must act jointly in specified matters; or (3) must act jointly. Similar provisions would be added to I.C. § 66-404 with regard to the appointment of co-conservators or co-guardians for a person with a developmental disability.

The legislation would also provide for the appointment of temporary guardians. The amendments to I.C. § 15-5-207 and 15-5-310 would clarify the standards for such appointments for minors and incapacitated persons. A new statute, I.C. § 66-404A would provide for the appointment of a temporary guardian or conservator for an individual with a developmental disability.

In addition, I.C. § 15-5-308 would be amended to delete the requirements for the contents of a visitor report. These requirements would be placed in a new court rule, ICAR 54.4. I.C. § 66-404 would be amended to delete the requirements for the contents of a Department of Health and Welfare evaluation committee report. These requirements would also be placed in a new rule, ICAR 54.5.