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1. GENERAL

This bill is the result of four years of intense study of Title Fifteen, Chapter Five of the existing Idaho Probate Code and Title Sixty Six, Chapter Four of the Developmental Disability Code. Ongoing examination of those codes and modifications had been going on for many years before that. The organizing entity was Trust and Estates Professionals of Idaho, Inc., a non-profit Idaho corporation founded to review and present legislation in the area of the Probate Code, Developmental Disability Code, Idaho Tax Code, and related areas. It is composed of a broad number of members from multiple disciplines. Except for a Secretary, no one is paid and all time is volunteered. For this bill, literally hundreds of hours were spent on review. First the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act was reviewed in detail, word by word, three full times through the Act. Then the Act, as modified for Idaho preferences and needs, was reviewed against the existing Idaho Code in Title Fifteen, Chapter 5 and the Developmental Disability Code in Title Sixty Six, Chapter four. Then the resulting draft was shared with an reviewed by multiple stakeholders. Presentations were given to multiple stakeholders, and changes were made based on their suggestions. Finally, the existing bill language was created from that process.

2. OVERALL STRUCTURE OF THE BILL.

Sections 1 and 2 of the Bill are pages 1-84:

- a. Part 1 - General Provisions. Pages 2-15.
- b. Part 2 - Guardianship of Minor. Pages 15-24.
- c. Part 3 - Guardianship of Adult. Pages 24-43.
- d. Part 4 - Conservatorship. Pages 44-68.
- e. Part 5 - Other Protective Arrangements. Pages 68-75.
- f. Part 6 - Forms. Pages 75-83.
- g. Part 7 - Miscellaneous Provisions. Pages 83-84.

Section 3 of the bill, pages 84-88, makes required amendments in Title Fifteen, Section 1-201, general definitions for the Probate Code. Sections 4-30, pages 88-112, make the numerous changes to cross-references in other statutes, modifies to retain portions of code moved to the Probate Code that still needs to exist in the amended code, and deletes language in other statutes that is now moved to the Probate Code. No substantive changes are made in those Sections. Finally, Section 31, is the standard enactment date of July 1, 2024.

3. WHY IS THIS BILL NEEDED?

Over the years, many changes have been made in this area of the law to create Idaho-specific provisions. Those are kept in the bill. However, there were some major issues that needed to be addressed. Those included standards of evidence, Constitutional protections, how to deal with the Developmental Disability provisions on Conservatorship and Guardianship, how detailed pleadings needed to be, required methods of notice, and more. Additionally, our population is growing and much of the growth comes from people moving to Idaho. That included existing conservatorship and guardianship cases from other States. There

needed to be a consistent method of dealing with those transfers. There also needed to be ways to keep any interference in the lives and rights of Idaho citizens to the least restrictive method available, but the existing Code did not offer nearly enough in that area. Therefore, TEPI agreed to do a thorough review and to propose answers to all the above questions and any others needed.

4. MAIN CHANGES IN THE ACT.

a. The use of Guardian-ad-Litem's Greatly reduced. Instead, attorneys are either retained by, or appointed for, many of the persons in the action. Respondents and those whose fundamental rights are affected by the action (parents for example) have mandatory attorneys and if not retained need to have appointed attorneys. Constitutional guarantees, including those stated in *Troxell v. Granville* (530 US 57 2000) on the rights of a fit parent as to their minor child, were not being correctly handled in the current code. GaL provisions were simply not working as intended. Therefore, in the bill GaL usage is mainly for children too young or immature to work with an attorney and adults who cannot work with an attorney, usually because of lack of capacity. This complies with *Troxel v. Granville* (530 US 57 2000).

b. C&G portions of the Developmental Disability Act (Chapter 4 of Title 66) Removed from there and placed into the probate code. This will greatly aid in how DD cases are handled, since they will pick up all the protections and methods of the Probate Code while still retaining the protections of the DD Act. (under, for example, the Special Limitations portions of the Act). TEPI worked closely with DD groups and with the DD division of Health and Welfare in making those changes.

c. Court Attendance The respondent is to be in court, by technology if required, for all hearings unless specific findings are made that the respondent cannot be present.

d. Bill of Rights, Notices, Other Protections. There are detailed provisions for a Bill of Rights, required notices, details in pleadings, and other required protections in Part Six, page 75 et seq. of the bill. Additionally, notice for example is also covered in detail in the bill provisions (for example, page 7, starting at line 34, page 30, line 42 to page 31, line 48, page 51, line 48, to page 52, line 32, and page 82, line 3, to page 83, line 24). All those are to give guaranteed protections to those affected by the proceedings.

e. Minor Age for Attorney Our existing statutes have age 14 for when a minor can work with an attorney. The Act changes that to 12, but with great discretion in the Court to determine if that will actually work.

f. Alternatives to Full C&G. Very importantly, alternatives to full guardianship or conservatorship were laid out in detail. These were required to be reviewed by the Court and affirmative findings made that they either had been tried and did not work or for specific reasons could not work before a full C&G was implemented. These included Protective Arrangements in Part Five of the bill (pages 68-75 of the bill) which give great flexibility to tailor make provisions for a respondent without the time, expense, and frankly emotional consequences of a standard C&G procedure.

g. Standards of Evidence. There was a great deal of confusion about standards of evidence in a proceeding - was it a preponderance of the evidence, a majority of the evidence, or clear and convincing evidence. The bill makes very clear when each of those applies and requires clear and convincing for many provisions that affect the fundamental rights of a person.

h. Idaho Court Administrative Rules The bill makes clear when the Idaho Court Administrative Rules contain provisions that are relevant to the statute, such as confidentiality (for example, page

28, lines 39-41, page 39, lines 30-32, and page 47, lines 32-34).

i. Attorney For Parents, Minors, Respondents. See, for example, page 19, lines 26-49, page 27, lines 8-19, page 47, line 35, to page 48, line 6, and page 73, line 20-38. This makes clear when and how attorneys are required in proceedings, and appointments when no attorney has been retained.

i. Transfer Provisions. Idaho has transfer provisions in Title 15, Chapter 13, Part 3 for transfers from other States to Idaho. Those are retained. But the bill adds additional guidance on proceedings not covered in those provisions, sometimes because to the other State does not have provisions to comply with our existing transfer provisions. 15-5-105, page 5.

j. Temporary Substitute Guardian or Conservator or Emergency Appointment. Not in current Idaho law but very useful. See, for example, page 12, line 30 to page 13, line 13, page 31, line 47 to page 32, line 40, and page 52, line 33, to page 53, line 25.

k. Attendance at, and Participation in, Hearings. Idaho law was vague. The bill requires attendance at hearings by the respondent for example, and defines rights to participate in hearings. See, for example, p 20, lines 1-24, page 27, line 46 to page 28, line 38, and page 48, line 34 to page 35, line 28.

l. Professional Evaluation. Idaho law generally only had provisions for a letter from an attending physician, which proved unworkable in many cases. Therefore, page 27, lines 20-46, allows the Court to obtain a professional evaluation from a wide range of possible professionals, who would be appropriate for the specific case.

m. Powers that Require Court Approval. Idaho law was limited at best. The bill outlines powers that can be done without prior Court approval (for example, page 35, line 17 to page 36, line 29) and those that require prior Court approval (for example, page 36, line 30, to page 38, line 32, and page 53, line 26, to page 54, line 36). These are extensive and clear. They also include the DD protections moved from Title 66, Chapter Four (page 37, line 31, to page 38, line 32).

4. RETAINED IDAHO-SPECIFIC PROVISIONS

A number of provisions in our Code that were done in the past but not part of the Uniform Act were retained, and after review, modified if needed. Those include:

a. Delegation of Parental Rights. Page 14, line 27-47., 15-5-128. In the Uniform Act there was a very brief section on delegation by a parent of their rights as to a minor child. However, originally from 1990 and Desert Storm but greatly expanded, Idaho has an existing detailed statute so section 15-5-104 of our existing Code was used instead. However we removed the word "guardian" from the language because policy dictated that a guardian could not delegate their duties. This was originally done to give deploying service personnel going to Desert Storm delegation to other family members to care for their minor children during deployment. It has also since become a method for grandparents and others to take care of minors when the parent leaves them, or for providing for schooling and other care when a child from a more remote area of Idaho will be going to a school in, for example, Boise.

b. Testamentary Appointment of Guardian. Page 16, line 8-49, 15-5-201(3). This allows a decedent to name a guardian in their Will. It is used as a stopgap to provide care for a minor child or a disabled child until more formal procedures are completed.

c. VA procedures. These were necessary and retained. Page 15, lines 1-20.

d. Boards of Community Guardians. Again, necessary and retained. Page 41, line 30, to page 43, line 48.

e. Minor's Compromise proceedings. Again, necessary and retained. See page 67, line 8, to page 68, line 29.

f. Training and background checks. Fully implemented in Idaho. Those were retained. Because of that, provisions in the Uniform Act for Standby Guardians or Conservators were not put in the bill, since they would have bypassed the training and background checks. Also, this required that setting of hearings would not be made until those were completed, except for emergency situations. See, for example, page 8, line 34 to page 9, line 25.

g. Monitoring of Conservatorships and Guardianships Also fully implemented in Idaho and retained. However, language was added to more fully describe how compensation is determined, including, for example, for guardians of a minor on page 10, lines 3-44.

h. Idaho Language. There were multiple places where Idaho language in our existing Code was deemed to be more appropriate than that in the Act and so was retained. For example, page 20, line 25 to page 21, line 18, page 28, line 42 to page 29, 39, and page 49, line 32 , to page 50, line 42, uses primarily Idaho language for the order of priority for appointment, including felons.

i. Defacto Custodian Defacto Custodian statute, 15-5-213(2), in our existing Code, has been a very useful tool and is retained. Page 21, lines 19-30.

j. Conservator and Guardian Plans and Reports, DD Evaluation Committee. All of these were fully covered in Idaho statutes and/or Idaho Court Administrative Rules and therefore retained. See, for example, page 57, line 46, to page 58, line 15.