

IN THE SENATE

SENATE BILL NO. 1182

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE  
2 ARRANGEMENTS ACT; REPEALING CHAPTER 5, TITLE 15, IDAHO CODE, RELAT-  
3 ING TO THE PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY;  
4 AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 5, TI-  
5 TLE 15, IDAHO CODE, TO PROVIDE A CHAPTER HEADING; AMENDING CHAPTER 5,  
6 TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 1, CHAPTER 5, TITLE  
7 15, IDAHO CODE, TO ESTABLISH GENERAL PROVISIONS; AMENDING CHAPTER 5,  
8 TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 2, CHAPTER 5, TITLE  
9 15, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING GUARDIANSHIP OF A  
10 MINOR; AMENDING CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A  
11 NEW PART 3, CHAPTER 5, TITLE 15, IDAHO CODE, TO ESTABLISH PROVISIONS  
12 REGARDING GUARDIANSHIP OF AN ADULT; AMENDING CHAPTER 5, TITLE 15, IDAHO  
13 CODE, BY THE ADDITION OF A NEW PART 4, CHAPTER 5, TITLE 15, IDAHO CODE,  
14 TO ESTABLISH PROVISIONS REGARDING CONSERVATORSHIPS; AMENDING CHAPTER  
15 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 5, CHAPTER 5, TI-  
16 TLE 15, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING OTHER PROTECTIVE  
17 ARRANGEMENTS; AMENDING CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION  
18 OF A NEW PART 6, CHAPTER 5, TITLE 15, IDAHO CODE, TO PROVIDE A RESERVED  
19 SPACE FOR FORMS; AMENDING CHAPTER 5, TITLE 15, IDAHO CODE, BY THE AD-  
20 DITION OF A NEW PART 7, CHAPTER 5, TITLE 15, IDAHO CODE, TO ESTABLISH  
21 MISCELLANEOUS PROVISIONS; AMENDING SECTION 15-1-201, IDAHO CODE, TO  
22 REVISE A DEFINITION; AMENDING SECTION 15-12-108, IDAHO CODE, TO PROVIDE  
23 A CORRECT CODE REFERENCE; AMENDING SECTION 18-211, IDAHO CODE, TO PRO-  
24 VIDE CORRECT CODE REFERENCES; AMENDING SECTION 18-212, IDAHO CODE, TO  
25 PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 18-3302, IDAHO CODE,  
26 TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 19-2914A, IDAHO  
27 CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 19-4204,  
28 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION  
29 19-4207, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SEC-  
30 TION 19-5703, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING  
31 SECTION 19-6009, IDAHO CODE, TO REMOVE A CODE REFERENCE; AMENDING SEC-  
32 TION 19-6010, IDAHO CODE, TO REMOVE A CODE REFERENCE; AMENDING SECTION  
33 31-3201G, IDAHO CODE, TO REMOVE A REFERENCE; AMENDING SECTION 32-1806,  
34 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION  
35 39-4504, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING  
36 SECTION 56-214, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMEND-  
37 ING SECTION 59-1317, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE;  
38 AMENDING SECTION 63-3022E, IDAHO CODE, TO PROVIDE CORRECT CODE REF-  
39 ERENCES; AMENDING SECTION 63-3025D, IDAHO CODE, TO PROVIDE A CORRECT  
40 CODE REFERENCE; AMENDING SECTION 66-356, IDAHO CODE, TO PROVIDE COR-  
41 RECT CODE REFERENCES; AMENDING SECTION 66-402, IDAHO CODE, TO REMOVE  
42 DEFINITIONS AND TO REVISE DEFINITIONS; REPEALING SECTION 66-404, IDAHO  
43 CODE, RELATING TO PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSER-  
44 VATORS; REPEALING SECTION 66-404A, IDAHO CODE, RELATING TO TEMPORARY  
45

1 GUARDIANS; REPEALING SECTION 66-405, IDAHO CODE, RELATING TO AN ORDER  
 2 IN PROTECTIVE PROCEEDINGS; AMENDING SECTION 66-408, IDAHO CODE, TO RE-  
 3 MOVE PROVISIONS REGARDING GUARDIANSHIP AND CONSERVATORSHIP; AMENDING  
 4 SECTION 66-415, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMEND-  
 5 ING SECTION 66-416, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE;  
 6 AMENDING SECTION 66-417, IDAHO CODE, TO PROVIDE A CORRECT CODE REFER-  
 7 ENCE; AMENDING SECTION 68-1404, IDAHO CODE, TO PROVIDE A CORRECT CODE  
 8 REFERENCE; AND PROVIDING AN EFFECTIVE DATE.

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

10 SECTION 1. That Chapter 5, Title 15, Idaho Code, be, and the same is  
 11 hereby repealed.

12 SECTION 2. That Title 15, Idaho Code, be, and the same is hereby amended  
 13 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
 14 ter 5, Title 15, Idaho Code, and to read as follows:

15 CHAPTER 5  
 16 UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS  
 17 ACT

18 SECTION 3. That Chapter 5, Title 15, Idaho Code, be, and the same is  
 19 hereby amended by the addition thereto of a NEW PART, to be known and desig-  
 20 nated as Part 1, Chapter 5, Title 15, Idaho Code, and to read as follows:

21 PART 1  
 22 GENERAL PROVISIONS

23 15-5-101. SHORT TITLE. This chapter shall be known and may be cited as  
 24 the "Uniform Guardianship, Conservatorship, and Other Protective Arrange-  
 25 ments Act."

26 15-5-102. DEFINITIONS. As used in this chapter:

27 (1) "Adult" means an individual at least eighteen (18) years of age or  
 28 an emancipated individual under eighteen (18) years of age.

29 (2) "Adult subject to conservatorship" means an adult for whom a con-  
 30 servator has been appointed under this chapter.

31 (3) "Adult subject to guardianship" means an adult for whom a guardian  
 32 has been appointed under this chapter.

33 (4) "Advance care planning document," "advance directive," "direc-  
 34 tive," or "health care directive" means a document as defined in section  
 35 39-4502(1), Idaho Code.

36 (5) "Claim" includes a claim against an individual or conservatorship  
 37 estate, whether arising in contract, tort, or otherwise.

38 (6) "Conservator" means a person appointed by a court to make decisions  
 39 with respect to the property or financial affairs of an individual subject to  
 40 conservatorship. The term includes a co-conservator.

41 (7) "Conservatorship estate" means the property subject to conserva-  
 42 torship under this chapter.

1 (8) "De facto custodian" means a person who has either been appointed  
2 as the de facto custodian pursuant to section 32-1705, Idaho Code, or if not  
3 appointed, has been the primary caregiver for, and primary financial sup-  
4 porter of, a child who, prior to the filing of a petition for guardianship,  
5 has resided with the person for a period of six (6) months or more if the child  
6 is under three (3) years of age and for a period of one (1) year or more if the  
7 child is three (3) years of age or older.

8 (9) "Developmental disability" is as defined in section 66-402(5),  
9 Idaho Code.

10 (10) "Evaluation committee" is as defined in section 66-402(7), Idaho  
11 Code.

12 (11) "Full conservatorship" means a conservatorship that grants the  
13 conservator all powers available under this chapter.

14 (12) "Full guardianship" means a guardianship that grants the guardian  
15 all powers available under this chapter.

16 (13) "Guardian" means a person appointed by the court to make decisions  
17 with respect to the personal affairs of an individual. The term includes a  
18 co-guardian but does not include a guardian ad litem.

19 (14) "Guardian ad litem" means a person appointed to inform the court  
20 about, and to represent, the needs and best interest of an individual.

21 (15) "Individual subject to conservatorship" means an adult or minor  
22 for whom a conservator has been appointed under this chapter.

23 (16) "Individual subject to guardianship" means an adult or minor for  
24 whom a guardian has been appointed under this chapter.

25 (17) "Less restrictive alternative" means an approach to meeting an  
26 individual's needs that restricts fewer rights of the individual than would  
27 the appointment of a guardian or conservator. The term includes supported  
28 decision-making, appropriate technological assistance, appointment of a  
29 representative payee, and appointment of an agent by the individual, includ-  
30 ing appointment under a medical directive or power of attorney for finances.

31 (18) "Letters of office" means a record issued by a court certifying a  
32 guardian's or conservator's authority to act. The term includes letters of  
33 guardianship and letters of conservatorship.

34 (19) "Licensed independent practitioner" or "LIP" means:

35 (a) An individual licensed as a physician or physician assistant pur-  
36 suant to chapter 18, title 54, Idaho Code; or

37 (b) A person licensed as an advanced practice registered nurse pursuant  
38 to chapter 14, title 54, Idaho Code.

39 (20) "Limited conservatorship" means a conservatorship that grants the  
40 conservator less than all powers available under this chapter, grants powers  
41 over only certain property, or otherwise restricts the powers of the conser-  
42 vator.

43 (21) "Limited guardianship" means a guardianship that grants the  
44 guardian less than all powers available under this chapter or otherwise re-  
45 stricts the powers of the guardian.

46 (22) "Minor" means an unemancipated individual under eighteen (18)  
47 years of age.

48 (23) "Minor subject to conservatorship" means a minor for whom a conser-  
49 vator has been appointed under this chapter.

1 (24) "Minor subject to guardianship" means a minor for whom a guardian  
2 has been appointed under this chapter.

3 (25) "Parent" does not include an individual whose parental rights have  
4 been terminated.

5 (26) "Person" means an individual, estate, business or nonprofit en-  
6 tity, public corporation, government or governmental subdivision, agency,  
7 or instrumentality, or other legal entity.

8 (27) "Property" includes tangible and intangible property.

9 (28) "Protective arrangement instead of conservatorship" means a court  
10 order entered under section 15-5-503, Idaho Code.

11 (29) "Protective arrangement instead of guardianship" means a court or-  
12 der entered under section 15-5-502, Idaho Code.

13 (30) "Protective arrangement under part 5" means a court order entered  
14 under section 15-5-502 or 15-5-503, Idaho Code.

15 (31) "Record," used as a noun, means information that is inscribed on a  
16 tangible medium or that is stored in an electronic or other medium and is re-  
17 trievable in perceivable form.

18 (32) "Respondent" means an individual for whom appointment of a  
19 guardian or conservator is sought or a protective arrangement instead of  
20 guardianship or conservatorship is sought.

21 (33) "Sign" means, with present intent to authenticate or adopt a  
22 record:

23 (a) To execute or adopt a tangible symbol; or

24 (b) To attach to or logically associate with the record an electronic  
25 symbol, sound, or process.

26 (34) "State" means a state of the United States, the District of Colum-  
27 bia, Puerto Rico, the United States Virgin Islands, or any territory or in-  
28 sular possession subject to the jurisdiction of the United States. The term  
29 includes federally recognized Indian tribes.

30 (35) "Supported decision-making" means assistance from one (1) or more  
31 persons of an individual's choosing in understanding the nature and conse-  
32 quences of potential personal and financial decisions, which enables the in-  
33 dividual to make the decisions, and in communicating a decision once made if  
34 consistent with the individual's wishes.

35 15-5-103. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY APPLICABLE. Un-  
36 less displaced by a particular provision of this chapter, the principles of  
37 law and equity supplement its provisions.

38 15-5-104. SUBJECT MATTER JURISDICTION. (1) The district court has  
39 jurisdiction over a conservatorship or protective arrangement instead of  
40 a conservatorship for a minor domiciled or having property in this state.  
41 Except to the extent jurisdiction is precluded by the uniform child custody  
42 jurisdiction and enforcement act, chapter 11, title 32, Idaho Code, or the  
43 Idaho child protective act, chapter 16, title 16, Idaho Code, the district  
44 court has jurisdiction over a guardianship for a minor domiciled or present  
45 in this state. Where a minor is within the jurisdiction of a court under the  
46 child protective act or where a guardianship proceeding arose in connec-  
47 tion with a permanency plan for a minor who was the subject of a proceeding  
48 under the child protective act, the court having jurisdiction over the pro-

1 ceeding under the child protective act shall have exclusive jurisdiction  
2 and venue over any guardianship proceeding involving such minor unless, in  
3 furtherance of the permanency plan, the court declines to exercise such ju-  
4 risdiction and venue, notwithstanding the provisions of this subsection.

5 (a) In any action connected to a guardianship pursuant to this subsec-  
6 tion, in addition to notice or service upon interested parties, as pro-  
7 vided in section 15-5-203, Idaho Code, notice of the following shall  
8 be served upon the department of health and welfare in the manner pre-  
9 scribed in Idaho supreme court rules:

10 (i) Any petition for the appointment of a guardian of a minor;

11 (ii) Any pleading filed in connection with such guardianship;

12 (iii) Any proceeding of any nature in such guardianship; and

13 (iv) The time and place of any hearing in connection with such  
14 guardianship.

15 (b) In any action occurring pursuant to the provisions of this subsec-  
16 tion, the department of health and welfare shall have the right to ap-  
17 pear and be heard at any hearing and shall have the right to intervene at  
18 any stage of the action.

19 (c) A guardian appointed in an action occurring pursuant to this sub-  
20 section may not consent to the adoption of the minor without providing  
21 prior notice of the action of adoption to the department of health and  
22 welfare.

23 (2) The district court has jurisdiction over a guardianship, conserva-  
24 torship, or protective arrangement under this chapter for an adult as pro-  
25 vided in the uniform adult guardianship and protective proceedings juris-  
26 diction act, chapter 13, title 15, Idaho Code.

27 (3) After notice is given in a proceeding for a guardianship, conserva-  
28 torship, or protective arrangement under this chapter and until termination  
29 of the proceeding, the court in which the petition is filed has:

30 (a) Exclusive jurisdiction to determine the need for the guardianship,  
31 conservatorship, or protective arrangement;

32 (b) Exclusive jurisdiction to determine how property of the respondent  
33 shall be managed, expended, or distributed to or for the use of the re-  
34 spondent, an individual who is dependent in fact on the respondent, or  
35 other claimant;

36 (c) Nonexclusive jurisdiction to determine the validity of a claim  
37 against the respondent or property of the respondent or a question of  
38 title concerning the property; and

39 (d) If a guardian or conservator is appointed, exclusive jurisdiction  
40 over issues related to administration of the guardianship or conserva-  
41 torship.

42 (4) A court that appoints a guardian or conservator or authorizes a pro-  
43 tective arrangement under this chapter has exclusive and continuing juris-  
44 diction over the proceeding until the court terminates the proceeding or the  
45 appointment or protective arrangement expires by its terms.

46 15-5-105. TRANSFER OF PROCEEDING. (1) The provisions of this section  
47 do not apply to a guardianship or conservatorship for an adult that is sub-  
48 ject to the transfer provisions of part 3, chapter 13, title 15, Idaho Code,  
49 the uniform adult guardianship and protective proceedings jurisdiction act.

1 (2) After appointment of a guardian or conservator, the court that made  
2 the appointment may transfer the proceeding to a court in another county in  
3 this state or another state if transfer is in the best interest of the indi-  
4 vidual subject to the guardianship or conservatorship.

5 (3) If a proceeding for a guardianship or conservatorship is pending in  
6 another state or a foreign country and a petition for guardianship or conser-  
7 vatorship for the same individual is filed in a court in this state, the court  
8 shall notify the court in the other state or foreign country and, after con-  
9 sultation with that court, assume or decline jurisdiction, whichever is in  
10 the best interest of the respondent.

11 (4) A guardian or conservator appointed in another state or country may  
12 petition the court for appointment as a guardian or conservator in this state  
13 for the same individual if jurisdiction in this state is or will be estab-  
14 lished. The appointment may be made on proof of appointment in the other  
15 state or foreign country and presentation of a certified copy of the part of  
16 the court record in the other state or country specified by the court in this  
17 state.

18 (5) Notice of hearing on a petition under subsection (4) of this sec-  
19 tion, together with a copy of the petition, shall be given to the respondent,  
20 if the respondent is at least twelve (12) years of age at the time of the hear-  
21 ing and to the persons that would be entitled to notice if the procedures for  
22 appointment of a guardian or conservator under this chapter were applicable.  
23 The court shall make the appointment unless it determines the appointment  
24 would not be in the best interest of the respondent.

25 (6) No later than fourteen (14) days after appointment under subsection  
26 (5) of this section, the guardian or conservator shall give a copy of the or-  
27 der of appointment to the individual subject to guardianship or conservator-  
28 ship, if the individual is at least twelve (12) years of age, and to all per-  
29 sons given notice of the hearing on the petition.

30 15-5-106. VENUE. (1) Venue for a guardianship proceeding for a minor  
31 shall be in:

32 (a) The county in which the minor resides or is present at the time the  
33 proceeding commences; or

34 (b) The county in which another proceeding concerning the custody or  
35 parental rights of the minor is pending.

36 (2) Venue for a guardianship proceeding or protective arrangement in-  
37 stead of guardianship for an adult shall be in:

38 (a) The county in which the respondent resides;

39 (b) If the respondent has been admitted to an institution by court or-  
40 der, the county in which the court is located; or

41 (c) If the proceeding is for appointment of an emergency guardian for  
42 the respondent, the county in which the respondent is present.

43 (3) Venue for a conservatorship proceeding or protective arrangement  
44 instead of conservatorship shall be in:

45 (a) The county in which the respondent resides, whether or not a  
46 guardian has been appointed in another county or other jurisdiction; or

47 (b) If the respondent does not reside in this state, in any county in  
48 which property of the respondent is located.

1 (4) If proceedings under this chapter are brought in more than one (1)  
2 county, the court of the county in which the first proceeding is brought has  
3 the exclusive right to proceed unless the court determines venue is properly  
4 in another court or the interest of justice otherwise requires transfer of  
5 the proceeding.

6 15-5-107. PRACTICE IN COURT. Except as otherwise provided in this  
7 chapter, Idaho supreme court rules shall govern a proceeding under this  
8 chapter.

9 15-5-108. LETTERS OF GUARDIANSHIP AND CONSERVATORSHIP. (1) The court  
10 shall issue letters of guardianship to a guardian upon filing by the guardian  
11 of an acceptance of appointment.

12 (2) The court shall issue letters of conservatorship to a conservator  
13 upon filing by the conservator of an acceptance of appointment and filing of  
14 any required bond or compliance with any other asset-protection arrangement  
15 required by the court.

16 (3) Limitations on the powers of a guardian or conservator or on the  
17 property subject to conservatorship shall be stated on the letters of  
18 guardianship or conservatorship.

19 (4) The court at any time may limit the powers conferred on a guardian  
20 or conservator. The court shall issue new letters of office to reflect the  
21 limitation. The court shall give notice of the limitation to the guardian  
22 or conservator, individual subject to guardianship or conservatorship, each  
23 parent of a minor subject to guardianship or conservatorship, and any other  
24 person as the court determines.

25 15-5-109. EFFECT OF ACCEPTANCE OF APPOINTMENT. Upon acceptance of ap-  
26 pointment, a guardian or conservator submits to personal jurisdiction of the  
27 court in this state in any proceeding relating to the guardianship or conser-  
28 vatorship.

29 15-5-110. CO-GUARDIAN -- CO-CONSERVATOR. (1) The court at any time may  
30 appoint a co-guardian or co-conservator.

31 (2) A co-guardian or co-conservator appointed to serve may act when  
32 that co-guardian or co-conservator complies with the provisions of section  
33 15-5-108, Idaho Code.

34 (3) Unless an order of appointment under subsection (1) of this section  
35 or subsequent order states otherwise, co-guardians or co-conservators shall  
36 make decisions jointly.

37 15-5-111. JUDICIAL APPOINTMENT OF SUCCESSOR GUARDIAN OR SUCCESSOR  
38 CONSERVATOR. (1) The court at any time may appoint a successor guardian or  
39 successor conservator.

40 (2) A person entitled under section 15-5-202 or 15-5-302, Idaho Code,  
41 to petition the court to appoint a guardian may petition the court to appoint  
42 a successor guardian. A person entitled under section 15-5-402, Idaho Code,  
43 to petition the court to appoint a conservator may petition the court to ap-  
44 point a successor conservator.

1 (3) A successor guardian or successor conservator has the predeces-  
2 sor's powers unless otherwise provided by the court.

3 15-5-112. EFFECT OF DEATH, REMOVAL, OR RESIGNATION OF GUARDIAN OR  
4 CONSERVATOR. (1) Appointment of a guardian or conservator terminates on  
5 the death or removal of the guardian or conservator or when the court under  
6 subsection (2) of this section approves a resignation of the guardian or  
7 conservator.

8 (2) A guardian or conservator shall petition the court in order to re-  
9 sign. The petition may include a request that the court appoint a successor.  
10 Resignation of a guardian or conservator is effective on the date the resig-  
11 nation is approved by the court.

12 (3) Death, removal, or resignation of a guardian or conservator does  
13 not affect liability for a previous act or the obligation to account for:

14 (a) An action taken on behalf of the individual subject to guardianship  
15 or conservatorship; or

16 (b) The individual subject to guardianship or conservatorship's funds  
17 or other property.

18 15-5-113. NOTICE OF HEARING GENERALLY. (1) Except as otherwise pro-  
19 vided in sections 15-5-203, 15-5-208, 15-5-303, 15-5-403, and 15-5-505,  
20 Idaho Code, if notice of a hearing under this chapter is required, the movant  
21 shall give notice of the date, time, and place of the hearing to the person to  
22 be notified unless otherwise ordered by the court for good cause. Except as  
23 otherwise provided in this chapter, notice shall be given in compliance with  
24 the Idaho supreme court rules at least fourteen (14) days before the hearing.

25 (2) Proof of notice of a hearing under this chapter shall be made before  
26 or at the hearing and filed in the proceeding.

27 (3) Notice of a hearing under this chapter shall be communicated:

28 (a) In a form and manner that is accessible and understandable by the  
29 recipient, through the use of assistive technology if necessary;

30 (b) In plain language; and

31 (c) To the extent feasible, in a language in which the recipient is pro-  
32 ficient.

33 15-5-114. WAIVER OF NOTICE. (1) Except as otherwise provided in sub-  
34 section (2) of this section, a person may waive notice under this chapter in  
35 a record signed by the person or the person's attorney and filed in the pro-  
36 ceeding.

37 (2) A respondent, individual subject to guardianship, individual sub-  
38 ject to conservatorship, or individual subject to a protective arrangement  
39 under this chapter may not waive notice under this chapter.

40 15-5-115. GUARDIAN AD LITEM. The court at any time may appoint a  
41 guardian ad litem for a respondent or individual subject to guardianship  
42 or conservatorship if the court determines the respondent's or individual  
43 subject to guardianship or conservatorship's interest otherwise would not  
44 be adequately represented. If no conflict of interest exists, a guardian ad  
45 litem may be appointed to represent multiple individuals or interests. The  
46 guardian ad litem may not be the same individual as the attorney representing



1 the respondent or individual subject to guardianship or conservatorship.  
2 The court shall state the duties of the guardian ad litem and the reasons for  
3 the appointment.

4 15-5-116. REQUEST FOR NOTICE. (1) A person may file with the court a  
5 request for notice under this chapter if the person is:

6 (a) Not otherwise entitled to notice; and  
7 (b) Interested in the welfare of a respondent, individual subject to  
8 guardianship or conservatorship, or individual subject to a protective  
9 arrangement under this chapter.

10 (2) A request under subsection (1) of this section shall include a  
11 statement showing the interest of the person making the request and the  
12 address of the person or an attorney for the person to whom notice is to be  
13 given.

14 (3) If the court approves a request under subsection (1) of this sec-  
15 tion, the court shall give notice of the approval to the guardian or conser-  
16 vator, if one has been appointed, or the respondent if no guardian or conser-  
17 vator has been appointed.

18 15-5-117. DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY. (1) None of  
19 the following persons shall be appointed as a guardian of a respondent unless  
20 the court finds by clear and convincing evidence that such appointment is in  
21 the best interest of the respondent:

22 (a) A convicted felon; or  
23 (b) A person whose residence is the respondent's proposed residence  
24 or who will be frequented by the respondent and is frequented by a con-  
25 victed felon.

26 (2) No individual shall be appointed as guardian of an adult respondent  
27 unless all of the following first occurs:

28 (a) The proposed guardian has submitted to and paid for a criminal his-  
29 tory and background check conducted pursuant to section 56-1004A(2) and  
30 (3), Idaho Code;

31 (b) Pursuant to an order of the court so requiring, any individual who  
32 resides in the respondent's proposed residence has submitted, at the  
33 proposed guardian's expense, to a criminal history and background check  
34 conducted pursuant to section 56-1004A(2) and (3), Idaho Code;

35 (c) The findings of such criminal history and background checks have  
36 been made available to the visitor, guardian ad litem, and any other  
37 person entitled to the findings by the department of health and welfare;  
38 and

39 (d) The proposed guardian provided a report of his civil judgments and  
40 bankruptcies to the visitor, the guardian ad litem, and all others enti-  
41 tled to notice of the guardianship proceeding.

42 (3) A guardian or conservator that engages or anticipates engaging an  
43 agent the guardian or conservator knows has been convicted of a felony, a  
44 crime involving dishonesty, neglect, violence, or use of physical force, or  
45 other crime relevant to the functions the agent is being engaged to perform  
46 promptly shall disclose that knowledge to the court.

47 (4) If a conservator engages or anticipates engaging an agent to manage  
48 finances of the individual subject to conservatorship and knows the agent is

1 or has been a debtor in a bankruptcy, insolvency, or receivership proceed-  
2 ing, the conservator promptly shall disclose that knowledge to the court.

3 15-5-118. MULTIPLE NOMINATIONS. If a respondent or other person makes  
4 more than one (1) nomination of a guardian or conservator, the latest in time  
5 governs.

6 15-5-119. COMPENSATION AND EXPENSES -- IN GENERAL. (1) Unless other-  
7 wise compensated or reimbursed, an attorney for a respondent in a proceeding  
8 under this chapter is entitled to reasonable compensation for services and  
9 reimbursement of reasonable expenses from the property of the respondent.

10 (2) Unless otherwise compensated or reimbursed, an attorney or other  
11 person whose services resulted in an order beneficial to an individual sub-  
12 ject to guardianship or conservatorship or for whom a protective arrangement  
13 under this chapter was ordered is entitled to reasonable compensation for  
14 services and reimbursement of reasonable expenses and, if appropriate, rea-  
15 sonable attorney's fees and costs from the property of the individual sub-  
16 ject to guardianship or conservatorship.

17 (3) Upon the petition of any interested person, the court may review  
18 compensation and expenses payable under this section and determine whether,  
19 or to what extent, such compensation and expenses are approved.

20 (4) If the court dismisses a petition under this chapter and determines  
21 the petition was filed in bad faith, the court may assess attorney's fees and  
22 costs and the cost of any court-ordered professional evaluation or visitor  
23 or guardian ad litem against the petitioner.

24 (5) If any person brings or defends any conservatorship proceeding in  
25 good faith, whether successful or not, the person is entitled to receive from  
26 the estate the person's necessary expenses and disbursements, including  
27 reasonable attorney's fees incurred in such proceeding.

28 (6) If the estate is inadequate to bear any of the reasonable compensa-  
29 tion, fees, or costs referenced in this section, the court may apportion the  
30 reasonable compensation, fees, or costs to any party, or among the parties,  
31 as the court deems reasonable.

32 (7) The court may not apportion any reasonable compensation, fees, or  
33 costs to the county in which proceedings pursuant to this chapter were held.

34 15-5-120. COMPENSATION OF GUARDIAN OR CONSERVATOR. (1) Subject to  
35 court approval, a guardian is entitled to reasonable compensation for ser-  
36 vices as guardian and to reimbursement for room, board, clothing, and other  
37 appropriate expenses advanced for the benefit of the individual subject  
38 to guardianship. If a conservator, other than the guardian or a person  
39 affiliated with the guardian, is appointed for the individual subject to  
40 conservatorship, reasonable compensation and reimbursement to the guardian  
41 may be approved and paid by the conservator without court approval.

42 (2) Subject to court approval, a conservator is entitled to reasonable  
43 compensation for services and reimbursement for appropriate expenses from  
44 the property of the individual subject to conservatorship.

45 (3) In determining reasonable compensation for a guardian or conserva-  
46 tor, the court, or a conservator in determining reasonable compensation for  
47 a guardian as provided in subsection (1) of this section, shall consider:

- 1 (a) The necessity and quality of the services provided;  
2 (b) The experience, training, professional standing, and skills of the  
3 guardian or conservator;  
4 (c) The difficulty of the services performed, including the degree of  
5 skill and care required;  
6 (d) The conditions and circumstances under which a service was per-  
7 formed, including whether the service was provided outside regular  
8 business hours or under dangerous or extraordinary conditions;  
9 (e) The effect of the services on the individual subject to guardian-  
10 ship or conservatorship;  
11 (f) The extent to which the services provided were or were not consis-  
12 tent with the guardian's plan under section 15-5-316, Idaho Code, or  
13 conservator's plan under section 15-5-419, Idaho Code; and  
14 (g) The fees customarily paid to a person that performs a like service  
15 in the community.

16 (4) A guardian or conservator need not use personal funds for the ex-  
17 penses of the individual subject to guardianship or conservatorship.

18 (5) If an individual subject to guardianship or conservatorship seeks  
19 to modify or terminate the guardianship or conservatorship or remove the  
20 guardian or conservator, the court may order compensation to the guardian or  
21 conservator for time spent opposing modification, termination, or removal  
22 only to the extent the court determines the opposition was reasonably nec-  
23 essary to protect the interest of the individual subject to guardianship or  
24 conservatorship.

25 (6) If the estate is inadequate to bear any of the reasonable compensa-  
26 tion, fees, or costs referenced in this section, the court may apportion the  
27 reasonable compensation, fees, or costs to any party, or among the parties,  
28 as the court deems reasonable.

29 15-5-121. LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OF INDIVID-  
30 UAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP. A guardian or conservator  
31 is not personally liable to another person solely because of the guardian-  
32 ship or conservatorship for an act or omission of the individual subject to  
33 guardianship or conservatorship.

34 15-5-122. PETITION AFTER APPOINTMENT FOR INSTRUCTION OR RATIFICA-  
35 TION. (1) A guardian or conservator may petition the court for instruction  
36 concerning fiduciary responsibility or ratification of a particular act  
37 related to the guardianship or conservatorship.

38 (2) Upon notice of and hearing on a petition under subsection (1) of  
39 this section, the court may give an instruction and issue an appropriate or-  
40 der.

41 15-5-123. THIRD-PARTY ACCEPTANCE OF AUTHORITY OF GUARDIAN OR CONSER-  
42 VATOR. (1) A person shall not recognize the authority of a guardian or con-  
43 servator to act on behalf of an individual subject to guardianship or conser-  
44 vatorship if:

- 45 (a) The person has actual knowledge or a reasonable belief that the let-  
46 ters of office of the guardian or conservator are invalid or the con-

1 servator or guardian is exceeding or improperly exercising authority  
2 granted by the court; or

3 (b) The person has actual knowledge that the individual subject to  
4 guardianship or conservatorship is subject to physical or financial  
5 abuse, neglect, exploitation, or abandonment by the guardian or conser-  
6 vator or a person acting for or with the guardian or conservator.

7 (2) A person may refuse to recognize the authority of a guardian or con-  
8 servator to act on behalf of an individual subject to guardianship or conser-  
9 vatorship if:

10 (a) The guardian's or conservator's proposed action would be inconsis-  
11 tent with the provisions of this chapter; or

12 (b) The person makes, or has actual knowledge that another person has  
13 made, a report to the government agency providing protective services  
14 to adults or children stating a good faith belief that the individual  
15 subject to guardianship or conservatorship is subject to physical or  
16 financial abuse, neglect, exploitation, or abandonment by the guardian  
17 or conservator or a person acting for or with the guardian or conserva-  
18 tor.

19 (3) A person that refuses to accept the authority of a guardian or con-  
20 servator in accordance with subsection (2) of this section may report the  
21 refusal and the reason for refusal to the court. The court upon receiving  
22 the report shall consider whether removal of the guardian or conservator or  
23 other action is appropriate.

24 (4) A guardian or conservator may petition the court to require a third  
25 party to accept a decision made by the guardian or conservator on behalf of  
26 the individual subject to guardianship or conservatorship.

27 15-5-124. USE OF AGENT BY GUARDIAN OR CONSERVATOR. (1) Except as oth-  
28 erwise provided in subsection (3) of this section, a guardian or conserva-  
29 tor may delegate a power to an agent that a prudent guardian or conservator  
30 of comparable skills could delegate prudently under the circumstances if the  
31 delegation is consistent with the guardian's or conservator's fiduciary du-  
32 ties and the guardian's plan under section 15-5-316, Idaho Code, or conser-  
33 vator's plan under section 15-5-419, Idaho Code.

34 (2) In delegating a power under subsection (1) of this section, the  
35 guardian or conservator shall exercise reasonable care, skill, and caution  
36 in:

37 (a) Selecting the agent;

38 (b) Establishing the scope and terms of the agent's work in accordance  
39 with the guardian's plan under section 15-5-316, Idaho Code, or conser-  
40 vator's plan under section 15-5-419, Idaho Code;

41 (c) Monitoring the agent's performance and compliance with the delega-  
42 tion; and

43 (d) Redressing an act or omission of the agent that would constitute a  
44 breach of the guardian's or conservator's duties if done by the guardian  
45 or conservator.

46 (3) A guardian or conservator may not delegate all powers to an agent.

47 (4) In performing a power delegated under this section, an agent shall:

48 (a) Exercise reasonable care to comply with the terms of the delegation  
49 and use reasonable care in the performance of the power; and

1 (b) If the guardian or conservator has delegated to the agent the power  
2 to make a decision on behalf of the individual subject to guardianship  
3 or conservatorship, use the same decision-making standard the guardian  
4 or conservator would be required to use.

5 (5) By accepting a delegation of a power under subsection (1) of this  
6 section from a guardian or conservator, an agent submits to the personal ju-  
7 risdiction of the courts of this state in an action involving the agent's  
8 performance as agent.

9 (6) A guardian or conservator that delegates and monitors a power in  
10 compliance with this section is not liable for the decision, act, or omission  
11 of the agent.

12 15-5-125. TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR. (1) The court  
13 may appoint a temporary substitute guardian for an individual subject to  
14 guardianship for a period not exceeding six (6) months if:

15 (a) A proceeding to remove a guardian for the individual subject to  
16 guardianship is pending; or

17 (b) The court finds a guardian is not effectively performing the  
18 guardian's duties and the welfare of the individual subject to  
19 guardianship requires immediate action.

20 (2) The court may appoint a temporary substitute conservator for an  
21 individual subject to conservatorship for a period not exceeding six (6)  
22 months if:

23 (a) A proceeding to remove a conservator for the individual subject to  
24 conservatorship is pending; or

25 (b) The court finds that a conservator for the individual subject to  
26 conservatorship is not effectively performing the conservator's duties  
27 and the welfare of the individual subject to conservatorship or the con-  
28 servatorship estate requires immediate action.

29 (3) Except as otherwise ordered by the court, a temporary substitute  
30 guardian or temporary substitute conservator appointed under this section  
31 has the powers stated in the order of appointment of the guardian or conser-  
32 vator. The authority of the existing guardian or conservator is suspended  
33 for as long as the temporary substitute guardian or conservator has author-  
34 ity.

35 (4) The court shall give notice of appointment of a temporary substi-  
36 tute guardian or temporary substitute conservator, not later than seven (7)  
37 days after the appointment, to:

38 (a) The individual subject to guardianship or conservatorship;

39 (b) The affected guardian or conservator; and

40 (c) In the case of a minor, each parent of the minor and any person cur-  
41 rently having care or custody of the minor.

42 (5) The court may remove a temporary substitute guardian or temporary  
43 substitute conservator at any time. The temporary substitute guardian or  
44 temporary substitute conservator shall make any report the court requires.

45 15-5-126. REGISTRATION OF ORDER -- EFFECT. (1) If a guardian has been  
46 appointed in another state for an individual, and a petition for guardian-  
47 ship for the individual is not pending in this state, the guardian appointed  
48 in the other state, after giving notice to the appointing court, may regis-

1 ter the guardianship order in this state by filing as a foreign judgment, in  
2 a court of an appropriate county of this state, certified copies of the order  
3 and letters of guardianship.

4 (2) If a conservator has been appointed in another state for an individ-  
5 ual, and a petition for conservatorship for the individual is not pending in  
6 this state, the conservator appointed for the individual in the other state,  
7 after giving notice to the appointing court, may register the conservator-  
8 ship in this state by filing as a foreign judgment, in a court of a county in  
9 which property belonging to the individual subject to conservatorship is lo-  
10 cated, certified copies of the order of conservatorship, letters of conser-  
11 vatorship, and any bond or other asset-protection arrangement required by  
12 the court.

13 (3) Upon registration under this section of a guardianship or conserva-  
14 torship order from another state, the guardian or conservator may exercise  
15 in this state all powers authorized in the order except as prohibited by this  
16 chapter and law of this state other than this chapter. If the guardian or  
17 conservator is not a resident of this state, the guardian or conservator may  
18 maintain an action or proceeding in this state subject to any condition im-  
19 posed by this state on an action or proceeding by a nonresident party.

20 (4) The court may grant any relief available under this chapter and law  
21 of this state other than this chapter to enforce an order registered under  
22 this section.

23 15-5-127. GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR. (1) An individ-  
24 ual who is subject to guardianship or conservatorship, or a person inter-  
25 ested in the welfare of an individual subject to guardianship or conserva-  
26 torship, that reasonably believes the guardian or conservator is breaching  
27 the guardian's or conservator's fiduciary duty or otherwise acting in a man-  
28 ner inconsistent with this chapter may file a grievance in a record with the  
29 court.

30 (2) Subject to subsection (3) of this section, after receiving a  
31 grievance under subsection (1) of this section, the court:

32 (a) Shall review the grievance and, if necessary to determine the ap-  
33 propriate response, court records related to the guardianship or conser-  
34 vatorship;

35 (b) Shall schedule a hearing if the individual subject to guardianship  
36 or conservatorship is an adult and the grievance supports a reasonable  
37 belief that:

38 (i) Removal of the guardian and appointment of a successor may be  
39 appropriate under section 15-5-318, Idaho Code;

40 (ii) Termination or modification of the guardianship may be ap-  
41 propriate under section 15-5-319, Idaho Code;

42 (iii) Removal of the conservator and appointment of a successor  
43 may be appropriate under section 15-5-430, Idaho Code; or

44 (iv) Termination or modification of the conservatorship may be  
45 appropriate under section 15-5-431, Idaho Code; and

46 (c) May take any action supported by the evidence, including:

47 (i) Ordering the guardian or conservator to provide the court  
48 a report, accounting, inventory, updated plan, or other informa-  
49 tion;

- 1 (ii) Appointing a guardian ad litem;  
2 (iii) Appointing an attorney for the individual subject to  
3 guardianship or conservatorship; or  
4 (iv) Holding a hearing.

5 (3) The court may decline to act under subsection (2) of this section if  
6 a similar grievance was filed within the six (6) months preceding the filing  
7 of the current grievance and the court followed the procedures of subsection  
8 (2) in considering the earlier grievance.

9 15-5-128. DELEGATION OF POWERS BY PARENT. A parent of a minor or in-  
10 capacitated person, by a properly executed power of attorney, may delegate  
11 to another person, for a period not exceeding six (6) months, or in the case  
12 of military personnel serving beyond the territorial limits of the United  
13 States for a period not exceeding twelve (12) months, any of the parent's  
14 powers regarding care, custody, or property of the minor, including but not  
15 limited to powers for medical care and educational care of the minor, except  
16 the parent's power to consent to marriage or adoption of a minor. The delega-  
17 tion for a minor to a grandparent of the minor, or to a sibling of the minor,  
18 or to a sibling of either parent of the minor, shall continue in effect un-  
19 til the time period, date, or condition set forth in the power of attorney for  
20 automatic expiration of the power of attorney occurs. If the power of attor-  
21 ney does not provide a time period, date, or condition for automatic expira-  
22 tion of the power, the power of attorney shall continue in effect for a period  
23 of three (3) years. The power may be revoked prior to the expiration of the  
24 three (3) year period, or prior to the time period, date, or condition for au-  
25 tomatic expiration, in a writing delivered to the grandparent or sibling by  
26 the delegating parent. The power of attorney does not need to be notarized or  
27 recorded to be valid. However, if the power is recorded, any revocation of  
28 the power by a writing shall also be recorded before the revocation is effec-  
29 tive.

30 15-5-129. EVIDENCE IN PROCEEDINGS INVOLVING VETERANS BENEFITS. If  
31 benefits derived from the United States through the veterans administration  
32 are involved in any proceeding under this chapter, a certificate of the ad-  
33 ministrators or his authorized representative shall be prima facie evidence  
34 of the necessity of appointment of a guardian or conservator or both if:

35 (1) It sets forth the age of the minor involved in the proceeding as  
36 shown by the records of the veterans administration and the fact that ap-  
37 pointment is a condition precedent to payment of any moneys; or

38 (2) It sets forth the fact that a purportedly incapacitated person in-  
39 volved in the proceeding has been rated incompetent by the veterans adminis-  
40 tration upon examination pursuant to the laws governing such administration  
41 and that appointment of a guardian is a condition precedent to payment of any  
42 moneys due such incapacitated person.

43 15-5-130. COPIES OF PUBLIC RECORDS TO BE FURNISHED. When a copy of any  
44 public record is required by the veterans administration to be used in deter-  
45 mining the eligibility of any persons to participate in benefits made avail-  
46 able by the veterans administration, the official custodian of such public  
47 records shall without charge provide the applicant for such benefits or any

1 person acting on his behalf or the authorized representative of the veterans  
2 administration with a certified copy of such record.

3 SECTION 4. That Chapter 5, Title 15, Idaho Code, be, and the same is  
4 hereby amended by the addition thereto of a NEW PART, to be known and desig-  
5 nated as Part 2, Chapter 5, Title 15, Idaho Code, and to read as follows:

6 PART 2  
7 GUARDIANSHIP OF MINOR

8 15-5-201. BASIS FOR APPOINTMENT OF GUARDIAN FOR MINOR. (1) Testamen-  
9 tary appointment of guardian of minor. A parent of a minor may appoint a  
10 guardian of an unmarried minor by will, subject to the right of the minor to  
11 object to the appointment. The termination of parental rights of a parent  
12 as to the minor shall also terminate the right of that parent to appoint a  
13 guardian for the minor. A testamentary appointment becomes effective upon  
14 the filing of the guardian's acceptance in the court in which the will is  
15 probated, if, at the decedent's death, no parent of the minor was alive who  
16 had a right to appoint a guardian for the minor. This state recognizes a  
17 testamentary appointment effected by the guardian's acceptance under a will  
18 probated in another state that is the testator's domicile. Written notice  
19 of acceptance of the appointment shall be given by the guardian to the mi-  
20 nor and to the person having his custody, or if none, to the person having  
21 his care, or if none, to his nearest adult relation immediately upon accep-  
22 tance of appointment. The parent may appoint by will one (1) or more alter-  
23 nate guardians, in order of priority. If a guardian appointed by will fails  
24 to accept guardianship within thirty (30) days after the will is probated,  
25 or files a notice of declination to accept appointment prior to the running  
26 of the thirty (30) day period, or is deceased, or ceases to act after accep-  
27 tance, then the alternate guardian next in priority becomes the appointed  
28 guardian and may file a written notice of acceptance in the court in which the  
29 will is probated.

30 (2) Objection by minor twelve (12) years of age or older. A minor  
31 twelve (12) years of age or older may prevent an appointment of his testamen-  
32 tary guardian from becoming effective, or may cause a previously accepted  
33 appointment to terminate, by filing with the court in which the will is  
34 probated a written objection to the appointment before it is accepted or  
35 within thirty (30) days after notice of its acceptance. An objection may be  
36 withdrawn. In the event of such objection, the alternate guardian next in  
37 priority named in the will may accept appointment, and the minor shall have  
38 the same right of objection. An objection does not preclude appointment by  
39 the court in a proper proceeding by the testamentary nominee or any other  
40 suitable person.

41 (3) Testamentary appointment of guardian for incapacitated person or  
42 developmentally disabled person.

43 (a) The parent of an incapacitated person or developmentally disabled  
44 person may by will appoint a guardian of the incapacitated person or de-  
45 velopmentally disabled person. A testamentary appointment by a parent  
46 becomes effective when, after having given seven (7) days' prior writ-  
47 ten notice of his intention to do so to the incapacitated person or de-  
48 velopmentally disabled person and to the person having his care or to



1 his nearest adult relative, the guardian files acceptance of appoint-  
2 ment in the court in which the will is informally or formally probated,  
3 if prior thereto both parents are dead or the surviving parent is ad-  
4 judged incapacitated. If both parents are dead, an effective appoint-  
5 ment by the parent who died later has priority unless it is terminated by  
6 the denial of probate in formal proceedings.

7 (b) The spouse of a married incapacitated person or developmentally  
8 disabled person may by will appoint a guardian of the incapacitated  
9 person or developmentally disabled person. The appointment becomes  
10 effective when, after having given seven (7) days' prior written notice  
11 of his intention to do so to the incapacitated person or developmentally  
12 disabled person and to the person having his care or to his nearest adult  
13 relative, the guardian files acceptance of appointment in the court  
14 in which the will is informally or formally probated. An effective  
15 appointment by a spouse has priority over an appointment by a parent  
16 unless it is terminated by the denial of probate in formal proceedings.

17 (c) This state shall recognize a testamentary appointment effected by  
18 filing acceptance under a will probated at the testator's domicile in  
19 another state.

20 (d) Upon the filing with the court in which the will was probated of  
21 written objection to the appointment by the person for whom a tes-  
22 tamentary appointment of guardian has been made, the appointment is  
23 terminated. An objection does not prevent appointment by the court in  
24 a proper proceeding of the testamentary nominee or any other suitable  
25 person upon an adjudication of incapacity in proceedings under the suc-  
26 ceeding sections of this part.

27 (e) If the appointment by will is for a developmentally disabled person  
28 and there is an existing guardianship proceeding under chapter 4, ti-  
29 tle 66, Idaho Code, or under this chapter, in which the decedent was the  
30 sole guardian, the guardian appointed by will shall also give seven (7)  
31 days' written notice of his intention to file an acceptance of appoint-  
32 ment to any then-serving guardian ad litem for the developmentally dis-  
33 abled person in such proceeding and to the department of health and wel-  
34 fare for the region in which the proceeding was brought.

35 (4) Court appointment of guardian of minor and conditions for appoint-  
36 ment.

37 (a) The court may appoint a guardian for an unmarried minor if all  
38 parental rights of custody have been terminated by prior court order  
39 or upon a finding that the child has been neglected, abused, or aban-  
40 doned or that the child's parents are unable to provide a stable home  
41 environment. As used in this subsection, "abandoned," "abused," and  
42 "neglected" shall have the same meaning as provided in section 16-1602,  
43 Idaho Code. Failure to maintain a normal parental relationship with the  
44 child without just cause for a period of six (6) months shall constitute  
45 prima facie evidence of abandonment. Except in those circumstances de-  
46 scribed in subsections (2) and (3) of this section and where a temporary  
47 guardianship has been created at the request of a parent on active duty  
48 in or deployment with the United States armed forces, the court shall  
49 consider the best interest of the child as the primary factor in the de-  
50 termination whether to appoint, and whom to appoint as, a guardian for

1 such child. In determining the choice of a guardian for an unmarried  
2 minor, the advanced age or disability of a potential guardian shall not,  
3 in and of itself, be used as a criterion of the suitability of the poten-  
4 tial guardian as long as the potential guardian is otherwise suitable.  
5 A guardian appointed by will, as provided in subsection (1) of this  
6 section, whose appointment has not been prevented or nullified, as pro-  
7 vided in subsection (2) of this section, has priority over any guardian  
8 who may be appointed by the court, but the court may proceed with an ap-  
9 pointment nonetheless upon a finding that the testamentary guardian has  
10 failed to accept the testamentary appointment within thirty (30) days  
11 after notice of the guardianship proceeding.

12 (b) The extended absence of a parent due to active duty in or deployment  
13 with the United States armed forces shall not by itself constitute ne-  
14 glect, abuse, abandonment, or failure to provide a stable home environ-  
15 ment.

16 (c) Any guardianship granted at the request of or required by the United  
17 States armed forces or at the request of a parent while on active duty  
18 in or deployment with the United States armed forces, which duty or de-  
19 ployment does not constitute neglect, abuse, abandonment, or failure  
20 to provide a stable home environment, shall be terminated immediately  
21 upon the conclusion of the original circumstances necessitating the  
22 creation of the temporary guardianship or the filing of a termination  
23 report by the parent indicating the parent's intent to resume all care,  
24 custody, and control of the minor.

25 15-5-202. PETITION FOR APPOINTMENT OF GUARDIAN FOR MINOR. (1) A person  
26 interested in the welfare of a minor, including the minor, may petition for  
27 appointment of a guardian for the minor.

28 (2) A petition under subsection (1) of this section shall state the  
29 petitioner's name, principal residence, current street address, email ad-  
30 dress, phone number, relationship to the minor, interest in the appointment,  
31 and, if known, the name, address, email address, and phone number of any at-  
32 torney representing the petitioner, and, to the extent known, the following:

33 (a) The minor's name, age, principal residence, current street ad-  
34 dress, if different, and, if different, address of the dwelling in which  
35 it is proposed the minor will reside if the appointment is made;

36 (b) The name, current street address, email address, and phone number,  
37 if known, of the minor's parents;

38 (c) The name, address, email address, and phone number, if known, of  
39 each person that had primary care or custody of the minor for at least  
40 sixty (60) days during the two (2) years immediately before the filing  
41 of the petition or for at least seven hundred thirty (730) days during  
42 the five (5) years immediately before the filing of the petition;

43 (d) The name, address, email address, and phone number of any attorney  
44 for the minor and any attorney for each parent of the minor;

45 (e) The reason guardianship is sought and would be in the best interest  
46 of the minor;

47 (f) The name, address, email address, and phone number, if known, of  
48 any proposed guardian and the reason the proposed guardian should be se-  
49 lected;

1 (g) If the minor has property other than personal effects, a general  
2 statement of the minor's property with an estimate of its value;

3 (h) Whether the minor needs an interpreter, translator, or other form  
4 of support to communicate effectively with the court or understand  
5 court proceedings;

6 (i) Whether any parent of the minor needs an interpreter, translator,  
7 or other form of support to communicate effectively with the court or  
8 understand court proceedings; and

9 (j) Whether any other proceeding concerning the care or custody of the  
10 minor is pending in any court in this state or another jurisdiction.

11 15-5-203. NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR. (1)  
12 If a petition is filed under section 15-5-202, Idaho Code, the court shall  
13 schedule a hearing and the petitioner shall:

14 (a) Serve notice of the date, time, and place of the hearing, together  
15 with a copy of the petition, personally on each of the following that is  
16 not the petitioner:

17 (i) The minor, if the minor will be twelve (12) years of age or  
18 older at the time of the hearing;

19 (ii) Each parent of the minor or, if there is none, the adult near-  
20 est in kinship who can be found with reasonable diligence;

21 (iii) Any adult with whom the minor resides;

22 (iv) Each person that had primary care or custody of the minor  
23 for at least sixty (60) days during the two (2) years immediately  
24 before the filing of the petition or for at least seven hundred  
25 thirty (730) days during the five (5) years immediately before the  
26 filing of the petition; and

27 (v) Any other person the court determines should receive personal  
28 service of notice; and

29 (b) Give notice under section 15-5-113, Idaho Code, of the date, time,  
30 and place of the hearing, together with a copy of the petition, to:

31 (i) Any person nominated as guardian by the minor, if the minor is  
32 twelve (12) years of age or older;

33 (ii) Any nominee of a parent;

34 (iii) Each grandparent and adult sibling of the minor;

35 (iv) Any guardian or conservator acting for the minor in any ju-  
36 risdiction; and

37 (v) Any other person as the court determines.

38 (2) Notice required by subsection (1) of this section shall include a  
39 statement of the right to request appointment of an attorney for the minor  
40 or to object to appointment of a guardian and a description of the nature,  
41 purpose, and consequences of appointment of a guardian.

42 (3) The court may not grant a petition for guardianship of a minor if  
43 notice substantially complying with subsection (1) (a) of this section is not  
44 served on:

45 (a) The minor, if the minor is twelve (12) years of age or older; and

46 (b) Each parent of the minor, unless the court finds by clear and con-  
47 vincing evidence that the parent cannot with due diligence be located  
48 and served or the parent waived, in a record, the right to notice.

1 (4) If a petitioner is unable to serve notice under subsection (1) (a)  
2 of this section on a parent of a minor or alleges that the parent waived, in  
3 a record, the right to notice under this section, the court shall appoint a  
4 visitor who shall:

5 (a) Interview the petitioner and the minor;

6 (b) If the petitioner alleges the parent cannot be located, ascertain  
7 whether the parent cannot be located with due diligence; and

8 (c) Investigate any other matter relating to the petition as the court  
9 directs.

10 15-5-204. ATTORNEY FOR MINOR OR PARENT. (1) The court shall appoint an  
11 attorney to represent a minor who is the subject of a proceeding under sec-  
12 tion 15-5-202, Idaho Code, if:

13 (a) Requested by the minor and the minor is twelve (12) years of age or  
14 older;

15 (b) Recommended by a guardian ad litem; or

16 (c) The court determines the minor needs representation.

17 (2) An attorney appointed under subsection (1) of this section shall:

18 (a) Make a reasonable effort to ascertain the minor's wishes;

19 (b) Advocate for the minor's wishes to the extent reasonably ascertain-  
20 able; and

21 (c) If the minor's wishes are not reasonably ascertainable, advocate  
22 for the minor's best interest.

23 (3) A minor who is the subject of a proceeding under section 15-5-202,  
24 Idaho Code, may retain an attorney to represent the minor in the proceeding.

25 (4) A parent of a minor who is the subject of a proceeding under section  
26 15-5-202, Idaho Code, may retain an attorney to represent the parent in the  
27 proceeding.

28 (5) The court shall appoint an attorney to represent a parent of a minor  
29 who is the subject of a proceeding under section 15-5-202, Idaho Code, if:

30 (a) The parent objects to appointment of a guardian for the minor;

31 (b) The court determines that counsel is needed to ensure that consent  
32 to appointment of a guardian is informed; or

33 (c) The court otherwise determines the parent needs representation.

34 15-5-205. ATTENDANCE AND PARTICIPATION AT HEARING FOR APPOINTMENT OF  
35 GUARDIAN FOR MINOR. (1) The court shall require a minor who is the subject of  
36 a hearing under section 15-5-203, Idaho Code, to attend the hearing and al-  
37 low the minor to participate in the hearing unless the court determines, by  
38 clear and convincing evidence presented at the hearing or a separate hear-  
39 ing, that:

40 (a) The minor consistently and repeatedly refused to attend the hearing  
41 after being fully informed of the right to attend and, if the minor is  
42 twelve (12) years of age or older, the potential consequences of failing  
43 to attend;

44 (b) There is no practicable way for the minor to attend the hearing;

45 (c) The minor lacks the ability or maturity to participate meaningfully  
46 in the hearing; or

47 (d) Attendance would be harmful to the minor.

1 (2) Unless excused by the court for good cause, the person proposed to  
2 be appointed as guardian for a minor shall attend a hearing under section  
3 15-5-203, Idaho Code.

4 (3) Each parent of a minor who is the subject of a hearing under section  
5 15-5-203, Idaho Code, has the right to attend the hearing.

6 (4) A person may request permission to participate in a hearing under  
7 section 15-5-203, Idaho Code. The court may grant the request, with or with-  
8 out hearing, upon determining that it is in the best interest of the minor who  
9 is the subject of the hearing. The court may impose appropriate conditions  
10 on the person's participation.

11 15-5-206. ORDER OF APPOINTMENT -- PRIORITY OF NOMINEE -- LIMITED  
12 GUARDIANSHIP FOR MINOR. (1) After a hearing under section 15-5-203, Idaho  
13 Code, the court may appoint a guardian for a minor, if appointment is proper  
14 under section 15-5-201, Idaho Code, dismiss the proceeding, or take other  
15 appropriate action consistent with this chapter or law of this state other  
16 than this chapter.

17 (2) In appointing a guardian under subsection (1) of this section, the  
18 following rules apply:

19 (a) The court shall appoint a person nominated as guardian by a par-  
20 ent of the minor in a will or other record as provided in section 15-5-  
21 201(1), Idaho Code, unless the court finds the appointment is contrary  
22 to the best interest of the minor.

23 (b) If multiple parents have nominated different persons to serve as  
24 guardian, the court shall appoint the nominee whose appointment is in  
25 the best interest of the minor, unless the court finds that appointment  
26 of none of the nominees is in the best interest of the minor.

27 (c) If a guardian is not appointed under paragraph (a) or (b) of this  
28 subsection, the court shall appoint the person nominated by the minor  
29 if the minor is twelve (12) years of age or older unless the court finds  
30 that appointment is contrary to the best interest of the minor. In that  
31 case, the court shall appoint as guardian a person whose appointment is  
32 in the best interest of the minor.

33 (3) In the interest of maintaining or encouraging involvement by a mi-  
34 nor's parent in the minor's life, developing self-reliance of the minor, or  
35 for other good cause, the court, at the time of appointment of a guardian  
36 for the minor or later, on its own or on motion of the minor or other inter-  
37 ested person, may create a limited guardianship by limiting the powers oth-  
38 erwise granted by this part to the guardian. Following the same procedure,  
39 the court may grant additional powers or withdraw powers previously granted.

40 (4) The court, as part of an order appointing a guardian for a minor,  
41 shall state rights retained by any parent of the minor that may include con-  
42 tact or visitation with the minor, decision-making regarding the minor's  
43 health care, education, or other matter, or access to a record regarding the  
44 minor.

45 (5) An order granting a guardianship for a minor shall state that each  
46 parent of the minor is entitled to notice that:

47 (a) The guardian has delegated custody of the minor subject to  
48 guardianship;

49 (b) The court has modified or limited the powers of the guardian; or

1 (c) The court has removed the guardian.

2 (6) An order granting a guardianship for a minor shall identify any  
3 person in addition to a parent of the minor who is entitled to notice of the  
4 events listed in subsection (5) of this section.

5 15-5-207. DE FACTO CUSTODIAN. If a court determines by clear and con-  
6 vincing evidence that a person meets the definition of a de facto custodian  
7 and that recognition of the de facto custodian is in the best interest of the  
8 child, the court shall give the person the same standing that is given to each  
9 parent in proceedings for appointment of a guardian of a minor. In determin-  
10 ing whether recognition of a de facto custodian is in the child's best inter-  
11 est, the court shall consider:

12 (1) Whether the child is currently residing with the person seeking  
13 such standing; and

14 (2) If the child is not currently residing with the person seeking such  
15 standing, the length of time since the person served as the child's primary  
16 caregiver and primary financial supporter.

17 15-5-208. EMERGENCY GUARDIAN FOR MINOR. (1) On its own, or on petition  
18 by a person interested in a minor's welfare, the court may appoint an emer-  
19 gency guardian for the minor if the court finds:

20 (a) Appointment of an emergency guardian is likely to prevent substan-  
21 tial harm to the minor's health, safety, or welfare; and

22 (b) No other person appears to have authority and willingness to act in  
23 the circumstances.

24 (2) The duration of authority of an emergency guardian for a minor may  
25 not exceed ninety (90) days, and the emergency guardian may exercise only the  
26 powers specified in the order of appointment. The emergency guardian's au-  
27 thority may be extended once for not more than ninety (90) days if the court  
28 finds that the conditions for appointment of an emergency guardian in sub-  
29 section (1) of this section continue.

30 (3) Except as otherwise provided in subsection (4) of this section,  
31 reasonable notice of the date, time, and place of a hearing on a petition for  
32 appointment of an emergency guardian for a minor shall be given to:

33 (a) The minor, if the minor is twelve (12) years of age or older;

34 (b) Any attorney appointed under section 15-5-204, Idaho Code;

35 (c) Each parent of the minor;

36 (d) Any person, other than a parent, having care or custody of the mi-  
37 nor; and

38 (e) Any other person as the court determines.

39 (4) The court may appoint an emergency guardian for a minor without no-  
40 tice under subsection (3) of this section and without a hearing only if the  
41 court finds from an affidavit or testimony that the minor's health, safety,  
42 or welfare will be substantially harmed before a hearing with notice on the  
43 appointment can be held. If the court appoints an emergency guardian with-  
44 out notice to an unrepresented minor or the attorney for a represented mi-  
45 nor, notice of the appointment shall be given not later than forty-eight (48)  
46 hours after the appointment to the individuals listed in subsection (3) of  
47 this section. Not later than seven (7) days after the appointment, the court  
48 shall hold a hearing on the appropriateness of the appointment.

1 (5) Appointment of an emergency guardian under this section, with or  
2 without notice, is not a determination that a basis exists for appointment of  
3 a guardian under section 15-5-201, Idaho Code.

4 (6) The court may remove an emergency guardian appointed under this  
5 section at any time. The emergency guardian shall make any report the court  
6 requires.

7 15-5-209. DUTIES OF GUARDIAN FOR MINOR. (1) A guardian for a minor is a  
8 fiduciary. Except as otherwise limited by the court, a guardian for a minor  
9 has the duties and responsibilities of a parent regarding the minor's sup-  
10 port, care, education, health, safety, visitation, and welfare. A guardian  
11 shall act in the minor's best interest and exercise reasonable care, dili-  
12 gence, and prudence.

13 (2) A guardian for a minor shall:

14 (a) Be personally acquainted with the minor and maintain sufficient  
15 contact with the minor to know the minor's abilities, limitations,  
16 needs, opportunities, and physical and mental health;

17 (b) Provide opportunities for visitation and, absent a court order, ar-  
18 range for visitation;

19 (c) Take reasonable care of the minor's personal effects and bring a  
20 proceeding for a conservatorship or protective arrangement instead of  
21 conservatorship if necessary to protect other property of the minor;

22 (d) Expend funds of the minor that have been received by the guardian  
23 for the minor's current needs for support, care, education, health,  
24 safety, and welfare;

25 (e) Conserve any funds of the minor not expended under paragraph (d) of  
26 this subsection for the minor's future needs, but if a conservator is  
27 appointed for the minor, pay the funds at least quarterly to the conser-  
28 vator to be conserved for the minor's future needs;

29 (f) Report the condition of the minor and account for funds and other  
30 property of the minor in the guardian's possession or subject to the  
31 guardian's control, as required by court rule or ordered by the court on  
32 application of a person interested in the minor's welfare;

33 (g) Inform the court of any change in the minor's dwelling or address;  
34 and

35 (h) In determining what is in the minor's best interest, take into ac-  
36 count the minor's preferences, to the extent actually known or reason-  
37 ably ascertainable by the guardian.

38 15-5-210. POWERS OF GUARDIAN FOR MINOR. (1) Except as otherwise lim-  
39 ited by court order, a guardian of a minor has the powers a parent otherwise  
40 would have regarding the minor's support, care, education, health, safety,  
41 visitation, and welfare.

42 (2) Except as otherwise limited by court order, a guardian for a minor  
43 may:

44 (a) Apply for and receive funds and benefits otherwise payable for the  
45 support of the minor to the minor's parent, guardian, or custodian under  
46 a statutory system of benefits or insurance or any private contract, de-  
47 vise, trust, conservatorship, or custodianship;

1 (b) Unless inconsistent with a court order entitled to recognition in  
2 this state, take custody of the minor and establish the minor's place of  
3 dwelling and, on authorization of the court, establish or move the mi-  
4 nor's dwelling outside this state;

5 (c) If the minor is not subject to conservatorship, commence a proceed-  
6 ing, including an administrative proceeding, or take other appropriate  
7 action to compel a person to support the minor or make a payment for the  
8 benefit of the minor;

9 (d) Consent to health or other care, treatment, or service for the mi-  
10 nor; or

11 (e) To the extent reasonable, delegate to the minor responsibility for  
12 a decision affecting the minor's well-being.

13 (3) The court may authorize a guardian for a minor to consent to the  
14 adoption of the minor if the minor does not have a parent.

15 (4) A guardian for a minor may consent to the marriage of the minor if  
16 authorized by the court.

17 15-5-211. REMOVAL OF GUARDIAN FOR MINOR -- TERMINATION OF GUARDIAN-  
18 SHIP -- APPOINTMENT OF SUCCESSOR. (1) Guardianship under this chapter for a  
19 minor terminates:

20 (a) Upon the minor's death, adoption, emancipation, or attainment of  
21 majority; or

22 (b) When the court finds that the standard in section 15-5-201, Idaho  
23 Code, for appointment of a guardian is not satisfied, unless the court  
24 finds that:

25 (i) Termination of the guardianship would be harmful to the mi-  
26 nor; and

27 (ii) The minor's interest in the continuation of the guardianship  
28 outweighs the interest of any parent of the minor in restoration of  
29 the parent's right to make decisions for the minor.

30 (2) A minor subject to guardianship or a person interested in the wel-  
31 fare of the minor may petition the court to terminate the guardianship, mod-  
32 ify the guardianship, remove the guardian, and appoint a successor guardian.

33 (3) A petitioner under subsection (2) of this section shall give notice  
34 of the hearing on the petition to the minor, if the minor is twelve (12) years  
35 of age or older and is not the petitioner, to the guardian, to each parent of  
36 the minor, and to any other person as the court determines.

37 (4) Not later than thirty (30) days after appointment of a successor  
38 guardian for a minor, the successor guardian shall give notice of the ap-  
39 pointment to the minor subject to guardianship, if the minor is twelve (12)  
40 years of age or older, each parent of the minor, and any other person as the  
41 court determines.

42 (5) When terminating a guardianship for a minor under this section, the  
43 court may issue an order providing for transitional arrangements that will  
44 assist the minor with a transition of custody and is in the best interest of  
45 the minor.

46 (6) A guardian for a minor that is removed shall cooperate with a suc-  
47 cessor guardian to facilitate transition of the guardian's responsibilities  
48 and protect the best interest of the minor.



1 SECTION 5. That Chapter 5, Title 15, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW PART, to be known and desig-  
3 nated as Part 3, Chapter 5, Title 15, Idaho Code, and to read as follows:

4 PART 3  
5 GUARDIANSHIP OF ADULT

6 15-5-301. BASIS FOR APPOINTMENT OF GUARDIAN FOR ADULT. (1) Upon peti-  
7 tion and after notice and hearing, the court may:

8 (a) Appoint a guardian for an adult if the court finds by clear and con-  
9 vincing evidence that:

10 (i) The respondent lacks the ability to meet essential re-  
11 quirements for physical health, safety, or self-care because the  
12 respondent is unable to receive and evaluate information or make  
13 or communicate decisions, even with appropriate supportive ser-  
14 vices, technological assistance, or supported decision-making;  
15 and

16 (ii) The respondent's identified needs cannot be met by a protec-  
17 tive arrangement instead of guardianship or other less restric-  
18 tive alternative; or

19 (b) With appropriate findings, treat the petition as one for a conser-  
20 vatorship under part 4 of this chapter or a protective arrangement under  
21 part 5 of this chapter, issue any appropriate order, or dismiss the pro-  
22 ceeding.

23 (2) The court shall grant a guardian appointed under subsection (1) of  
24 this section only those powers necessitated by the demonstrated needs and  
25 limitations of the respondent and issue orders that will encourage develop-  
26 ment of the respondent's maximum self-determination and independence. The  
27 court may not establish a full guardianship if a limited guardianship, pro-  
28 tective arrangement instead of guardianship, or other less restrictive al-  
29 ternatives would meet the needs of the respondent.

30 15-5-302. PETITION FOR APPOINTMENT OF GUARDIAN FOR ADULT. (1) A person  
31 interested in an adult's welfare, including the adult for whom the order is  
32 sought, may petition for appointment of a guardian for the adult.

33 (2) A petition under subsection (1) of this section shall state the pe-  
34 titioner's name, principal residence, current street address, if differ-  
35 ent, email address, phone number, relationship to the respondent, interest  
36 in the appointment, the name and address of any attorney representing the pe-  
37 titioner, and, to the extent known, the following:

38 (a) The respondent's name, age, principal residence, current street  
39 address, if different, and, if different, address of the dwelling in  
40 which it is proposed the respondent will reside if the petition is  
41 granted;

42 (b) The name and address of the respondent's:

43 (i) Spouse or, if the respondent has none, an adult with whom the  
44 respondent has shared household responsibilities for more than  
45 six (6) months in the twelve (12) month period immediately before  
46 the filing of the petition;

47 (ii) Adult children or, if none, each parent and adult sibling of  
48 the respondent or, if none, at least one (1) adult nearest in kin-

- 1 ship to the respondent who can be found with reasonable diligence;  
2 and
- 3 (iii) Adult stepchildren whom the respondent actively parented  
4 during the stepchildren's minor years and with whom the respondent  
5 had an ongoing relationship in the two (2) year period immediately  
6 before the filing of the petition;
- 7 (c) The name and current address of each of the following, if applica-  
8 ble:
- 9 (i) A person responsible for care of the respondent;  
10 (ii) Any attorney currently representing the respondent;  
11 (iii) Any representative payee appointed by the social security  
12 administration for the respondent;  
13 (iv) A guardian or conservator acting for the respondent in this  
14 state or in another jurisdiction;  
15 (v) A trustee or custodian of a trust or custodianship of which  
16 the respondent is a beneficiary;  
17 (vi) Any fiduciary for the respondent appointed by the department  
18 of veterans affairs;  
19 (vii) An agent designated under a medical directive in which the  
20 respondent is identified as the principal;  
21 (viii) An agent designated under a power of attorney for finances  
22 in which the respondent is identified as the principal;  
23 (ix) A person nominated as guardian by the respondent;  
24 (x) A person nominated as guardian by the respondent's parent or  
25 spouse in a will or other signed record;  
26 (xi) A proposed guardian and the reason the proposed guardian  
27 should be selected; and  
28 (xii) A person known to have routinely assisted the respondent  
29 with decision-making during the six (6) months immediately before  
30 the filing of the petition;
- 31 (d) The reason a guardianship is necessary, including a brief descrip-  
32 tion of:
- 33 (i) The nature and extent of the respondent's alleged need;  
34 (ii) Any protective arrangement instead of guardianship or other  
35 less restrictive alternatives for meeting the respondent's al-  
36 leged need that have been considered or implemented;  
37 (iii) If no protective arrangement instead of guardianship or  
38 other less restrictive alternatives have been considered or  
39 implemented, the reason they have not been considered or imple-  
40 mented; and  
41 (iv) The reason a protective arrangement instead of guardianship  
42 or other less restrictive alternative is insufficient to meet the  
43 respondent's alleged need;
- 44 (e) Whether the petitioner seeks a limited guardianship or full  
45 guardianship;
- 46 (f) If the petitioner seeks a full guardianship, the reason a limited  
47 guardianship or protective arrangement instead of guardianship is not  
48 appropriate;
- 49 (g) If a limited guardianship is requested, the powers to be granted to  
50 the guardian;

1 (h) The name and current address, if known, of any person with whom the  
2 petitioner seeks to limit the respondent's contact;

3 (i) If the respondent has property other than personal effects, a gen-  
4 eral statement of the respondent's property, with an estimate of its  
5 value, including any insurance or pension, and the source and amount of  
6 other anticipated income or receipts; and

7 (j) Whether the respondent needs an interpreter, translator, or other  
8 form of support to communicate effectively with the court or understand  
9 court proceedings.

10 15-5-303. NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR ADULT. (1)  
11 Upon filing of a petition under section 15-5-302, Idaho Code, for appoint-  
12 ment of a guardian for an adult, and after compliance with any required  
13 training and background check, the court shall set a date, time, and place  
14 for hearing the petition.

15 (2) A copy of a petition under section 15-5-302, Idaho Code, and no-  
16 tice of a hearing on the petition shall be served personally on the respon-  
17 dent. The notice shall inform the respondent of the respondent's rights at  
18 the hearing, including the right to an attorney and to attend the hearing.  
19 The notice shall include a description of the nature, purpose, and conse-  
20 quences of granting the petition. The court may not grant the petition if  
21 notice substantially complying with this subsection is not served on the re-  
22 spondent.

23 (3) In a proceeding on a petition under section 15-5-302, Idaho  
24 Code, the notice required under subsection (2) of this section shall be  
25 given to the persons required to be listed in the petition under section  
26 15-5-302(2) (a) through (c), Idaho Code, and any other person interested in  
27 the respondent's welfare as the court determines. Failure to give notice un-  
28 der this subsection does not preclude the court from appointing a guardian.

29 (4) After the appointment of a guardian, notice of a hearing on a peti-  
30 tion for an order under this part, together with a copy of the petition, shall  
31 be given to:

32 (a) The adult subject to guardianship;

33 (b) The guardian; and

34 (c) Any other person as the court determines.

35 15-5-304. APPOINTMENT AND ROLE OF EVALUATION COMMITTEE AND VISI-  
36 TOR. (1) Upon receipt of a petition under section 15-5-302, Idaho Code, for  
37 appointment of a guardian for an adult with a developmental disability, the  
38 court shall appoint an evaluation committee to conduct an evaluation and  
39 submit a report in accordance with Idaho supreme court rules.

40 (2) Upon receipt of a petition under section 15-5-302, Idaho Code, for  
41 appointment of a guardian for an adult without a developmental disability,  
42 the court shall appoint a visitor to conduct an evaluation and submit a re-  
43 port in accordance with Idaho supreme court rules.

44 15-5-305. APPOINTMENT AND ROLE OF ATTORNEY FOR ADULT. (1) Unless the  
45 respondent in a proceeding for appointment of a guardian for an adult is rep-  
46 resented by an attorney, the court shall appoint an attorney to represent the  
47 respondent, regardless of the respondent's ability to pay.

1 (2) An attorney representing the respondent in a proceeding for ap-  
2 pointment of a guardian for an adult shall:

3 (a) Make reasonable efforts to ascertain the respondent's wishes;

4 (b) Advocate for the respondent's wishes to the extent reasonably as-  
5 certainable; and

6 (c) If the respondent's wishes are not reasonably ascertainable, advo-  
7 cate for the result that is the least restrictive in type, duration, and  
8 scope, consistent with the respondent's interests.

9 15-5-306. PROFESSIONAL EVALUATION. (1) At or before a hearing on a pe-  
10 tition for a guardianship for an adult, the court shall order a professional  
11 evaluation of the respondent:

12 (a) If the respondent requests the evaluation; or

13 (b) In other cases, unless the court finds that it has sufficient in-  
14 formation to determine the respondent's needs and abilities without the  
15 evaluation.

16 (2) If the court orders an evaluation under subsection (1) of this sec-  
17 tion, the respondent shall be examined by a licensed physician, psycholo-  
18 gist, social worker, or other individual appointed by the court who is qual-  
19 ified to evaluate the respondent's alleged cognitive and functional abili-  
20 ties and limitations and will not be advantaged or disadvantaged by a deci-  
21 sion to grant the petition or otherwise have a conflict of interest. The in-  
22 dividual conducting the evaluation promptly shall file a report in a record  
23 with the court. Unless otherwise directed by the court, the report shall  
24 contain:

25 (a) A description of the nature, type, and extent of the respondent's  
26 cognitive and functional abilities and limitations;

27 (b) An evaluation of the respondent's mental and physical condition  
28 and, if appropriate, educational potential, adaptive behavior, and  
29 social skills;

30 (c) A prognosis for improvement and recommendation for the appropriate  
31 treatment, support, or habilitation plan; and

32 (d) The date of the examination on which the report is based.

33 (3) The respondent may decline to participate in an evaluation ordered  
34 under subsection (1) of this section.

35 15-5-307. ATTENDANCE AND RIGHTS AT HEARING. (1) Except as otherwise  
36 provided in subsection (2) of this section, a hearing under section 15-5-  
37 303, Idaho Code, may not proceed unless the respondent attends the hearing.  
38 If it is not reasonably feasible for the respondent to attend a hearing at the  
39 location court proceedings typically are held, the court shall make reason-  
40 able efforts to hold the hearing at an alternative location convenient to the  
41 respondent or allow the respondent to attend the hearing using real-time au-  
42 dio-visual technology.

43 (2) A hearing under section 15-5-303, Idaho Code, may proceed without  
44 the respondent in attendance if the court finds by clear and convincing evi-  
45 dence that:

46 (a) The respondent consistently and repeatedly has refused to attend  
47 the hearing after having been fully informed of the right to attend and  
48 the potential consequences of failing to attend; or

1 (b) There is no practicable way for the respondent to attend and par-  
2 ticipate in the hearing even with appropriate supportive services and  
3 technological assistance.

4 (3) The respondent may be assisted in a hearing under section 15-5-303,  
5 Idaho Code, by a person or persons of the respondent's choosing, assistive  
6 technology, or an interpreter or translator, or a combination of these sup-  
7 ports. If assistance would facilitate the respondent's participation in the  
8 hearing, but is not otherwise available to the respondent, the court shall  
9 make reasonable efforts to provide it.

10 (4) The respondent has a right to choose an attorney to represent the  
11 respondent at a hearing under section 15-5-303, Idaho Code.

12 (5) At a hearing held under section 15-5-303, Idaho Code, the respon-  
13 dent may:

14 (a) Present evidence and subpoena witnesses and documents;

15 (b) Examine witnesses, including any court-appointed evaluator, any  
16 member of an evaluation committee, and the visitor; and

17 (c) Otherwise participate in the hearing.

18 (6) Unless excused by the court for good cause, a proposed guardian  
19 shall attend a hearing under section 15-5-303, Idaho Code.

20 (7) A hearing under section 15-5-303, Idaho Code, shall be closed on re-  
21 quest of the respondent and a showing of good cause.

22 (8) Any person may request to participate in a hearing under section  
23 15-5-303, Idaho Code. The court may grant the request, with or without a  
24 hearing, on determining that the best interest of the respondent will be  
25 served. The court may impose appropriate conditions on the person's partic-  
26 ipation.

27 15-5-308. CONFIDENTIALITY OF RECORDS. The confidentiality of records  
28 in a proceeding for guardianship for an adult shall be maintained in accor-  
29 dance with Idaho supreme court rules.

30 15-5-309. WHO MAY BE GUARDIAN FOR ADULT -- ORDER OF PRIORITY. (1) Ex-  
31 cept as otherwise provided in subsection (3) of this section, the court in  
32 appointing a guardian for an adult shall consider persons qualified to be  
33 guardian in the following order of priority:

34 (a) A guardian, other than a temporary or emergency guardian, currently  
35 acting for the respondent in another jurisdiction;

36 (b) A person nominated as guardian by the respondent, including the re-  
37 spondent's most recent nomination made in a power of attorney;

38 (c) An agent appointed by the respondent under a medical directive for  
39 health care;

40 (d) A spouse of the respondent; and

41 (e) A family member or other individual who has shown special care and  
42 concern for the respondent.

43 (2) If two (2) or more persons have equal priority under subsection (1)  
44 of this section, the court shall select as guardian the person the court con-  
45 siders best qualified. In determining the best qualified person, the court  
46 shall consider the person's relationship with the respondent, the person's  
47 skills, the expressed wishes of the respondent, the extent to which the per-  
48 son and the respondent have similar values and preferences, and the like-

1 likelihood the person will be able to perform the duties of a guardian success-  
2 fully.

3 (3) The court, acting in the best interest of the respondent, may de-  
4 cline to appoint as guardian a person having priority under subsection (1) of  
5 this section and appoint a person having a lower priority or no priority.

6 (4) A person that provides paid services to the respondent, or an indi-  
7 vidual who is employed by a person that provides paid services to the respon-  
8 dent or is the spouse, parent, or child of an individual who provides or is  
9 employed to provide paid services to the respondent, may not be appointed as  
10 guardian unless:

11 (a) The individual is related to the respondent by blood, marriage, or  
12 adoption; or

13 (b) The court finds by clear and convincing evidence that the person is  
14 the best qualified person available for appointment and the appointment  
15 is in the best interest of the respondent.

16 (5) An owner, operator, or employee of a long-term care institution at  
17 which the respondent is receiving care may not be appointed as guardian un-  
18 less the owner, operator, or employee is related to the respondent by blood,  
19 marriage, or adoption.

20 (6) Unless the court finds by clear and convincing evidence that such  
21 appointment is in the best interest of the respondent, no person shall be ap-  
22 pointed as a guardian of a respondent if the person is:

23 (a) A convicted felon; or

24 (b) A person whose residence is the respondent's proposed residence or  
25 will be frequented by the respondent and is frequented by a convicted  
26 felon.

27 15-5-310. ORDER OF APPOINTMENT FOR GUARDIAN. (1) A court order ap-  
28 pointing a guardian for an adult shall:

29 (a) Include a specific finding that clear and convincing evidence es-  
30 tablished that the identified needs of the respondent cannot be met by a  
31 protective arrangement instead of guardianship or other less restric-  
32 tive alternative, including use of appropriate supportive services,  
33 technological assistance, or supported decision-making;

34 (b) Include a specific finding that clear and convincing evidence es-  
35 tablished the respondent was given proper notice of the hearing on the  
36 petition; and

37 (c) State whether the adult subject to guardianship retains the right  
38 to marry and, if the adult does not retain the right to marry, include  
39 findings, established by clear and convincing evidence, that support  
40 removing that right.

41 (2) An adult subject to guardianship retains the right to marry unless  
42 the order includes findings that support removing that right by clear and  
43 convincing evidence required by subsection (1) (c) of this section.

44 (3) A court order establishing a full guardianship for an adult subject  
45 to guardianship shall state the basis for granting a full guardianship and  
46 include specific findings by clear and convincing evidence that support the  
47 conclusion that a limited guardianship would not meet the functional needs  
48 of the adult subject to guardianship.

1 (4) A court order establishing a limited guardianship for an adult  
2 subject to guardianship shall state the specific powers granted to the  
3 guardian.

4 (5) The court, as part of an order establishing a guardianship for an  
5 adult subject to guardianship, shall identify any person that subsequently  
6 is entitled to:

7 (a) Notice of the rights of the adult subject to guardianship under sec-  
8 tion 15-5-311(2), Idaho Code;

9 (b) Notice of a change in the primary dwelling of the adult subject to  
10 guardianship;

11 (c) Notice that the guardian will be unavailable to visit the adult sub-  
12 ject to guardianship for more than two (2) months or unavailable to per-  
13 form the guardian's duties for more than one (1) month;

14 (d) A copy of the guardian's plan under section 15-5-316, Idaho Code,  
15 and the guardian's report under section 15-5-317, Idaho Code;

16 (e) Access to court records relating to the guardianship;

17 (f) Notice of the death or significant change in the condition of the  
18 adult subject to guardianship;

19 (g) Notice that the court has limited or modified the powers of the  
20 guardian; and

21 (h) Notice of the removal of the guardian.

22 (6) A spouse and adult children of an adult subject to guardianship are  
23 entitled to notice under subsection (5) of this section unless the court de-  
24 termines notice would be contrary to the preferences or prior directions of  
25 the adult subject to guardianship or not in the best interest of the adult  
26 subject to guardianship.

27 (7) Orders for guardianship for a person with a developmental disabil-  
28 ity shall include notice of special limitations on a guardian's power in sec-  
29 tion 15-5-315(4), Idaho Code.

30 15-5-311. NOTICE OF ORDER OF APPOINTMENT -- RIGHTS. (1) A guardian  
31 appointed under section 15-5-309, Idaho Code, shall give the adult subject  
32 to guardianship and all other persons given notice under section 15-5-303,  
33 Idaho Code, a copy of the order of appointment, together with notice of the  
34 right to request termination or modification. The order and notice shall be  
35 given not later than fourteen (14) days after the appointment.

36 (2) Not later than thirty (30) days after appointment of a guardian un-  
37 der section 15-5-309, Idaho Code, the court shall give to the adult subject  
38 to guardianship, to the guardian, and to any other person entitled to notice  
39 under section 15-5-310(5), Idaho Code, or under a subsequent order, a state-  
40 ment of the rights of the adult subject to guardianship and the procedures to  
41 seek relief if the adult is denied those rights. The statement shall be com-  
42 municated in the manner set forth in section 15-5-113(3), Idaho Code. The  
43 statement shall notify the adult subject to guardianship of the right to:

44 (a) Seek termination or modification of the guardianship or removal of  
45 the guardian and choose an attorney to represent the adult subject to  
46 guardianship in these matters;

47 (b) Be involved in decisions affecting the adult subject to guardian-  
48 ship, including decisions about the adult subject to guardianship's

- 1 care, dwelling, activities, or social interactions, to the extent rea-  
 2 sonably feasible;
- 3 (c) Be involved in health care decision-making to the extent reason-  
 4 ably feasible and be supported in understanding the risks and benefits  
 5 of health care options to the extent reasonably feasible;
- 6 (d) Be notified at least fourteen (14) days before a change in the  
 7 adult subject to guardianship's primary dwelling or permanent move to  
 8 a nursing home, mental health facility, or other facility that places  
 9 restrictions on the adult subject to guardianship's ability to leave or  
 10 have visitors unless the change or move is proposed in the guardian's  
 11 plan under section 15-5-316, Idaho Code, or authorized by the court by  
 12 specific order;
- 13 (e) Object to a change or move described in paragraph (d) of this sub-  
 14 section and the process for objecting;
- 15 (f) Communicate, visit, or interact with others, including receiving  
 16 visitors and making or receiving telephone calls, personal mail, or  
 17 electronic communications, including through social media, unless:
- 18 (i) The guardian has been authorized by the court by specific or-  
 19 der to restrict communications, visits, or interactions;
- 20 (ii) A protective order or protective arrangement instead of  
 21 guardianship is in effect that limits contact between the adult  
 22 subject to guardianship and a person; or
- 23 (iii) The guardian has good cause to believe restriction is nec-  
 24 essary because interaction with a specified person poses a risk  
 25 of significant physical, psychological, or financial harm to the  
 26 adult subject to guardianship, and the restriction is:
- 27 1. For a period of not more than seven (7) business days if  
 28 the person has a family or preexisting social relationship  
 29 with the adult subject to guardianship; or
- 30 2. For a period of not more than sixty (60) days if the per-  
 31 son does not have a family or preexisting social relation-  
 32 ship with the adult subject to guardianship;
- 33 (g) Receive a copy of the guardian's plan under section 15-5-316, Idaho  
 34 Code, and the guardian's report under section 15-5-317, Idaho Code; and
- 35 (h) Object to the guardian's plan or report.

36 15-5-312. EMERGENCY GUARDIAN FOR ADULT. (1) On its own, after a peti-  
 37 tion has been filed under section 15-5-302, Idaho Code, or upon petition by a  
 38 person interested in an adult respondent's welfare, the court may appoint an  
 39 emergency guardian for the respondent if the court finds:

- 40 (a) Appointment of an emergency guardian is likely to prevent substan-  
 41 tial harm to the respondent's physical health, safety, or welfare;
- 42 (b) No other person appears to have authority and willingness to act in  
 43 the circumstances; and
- 44 (c) There is reason to believe that a basis for appointment of a  
 45 guardian under section 15-5-301, Idaho Code, exists.
- 46 (2) The duration of authority of an emergency guardian for an adult may  
 47 not exceed ninety (90) days, and the emergency guardian may exercise only the  
 48 powers specified in the order of appointment. The emergency guardian's au-  
 49 thority may be extended once for not more than ninety (90) days if the court



1 finds that the conditions for appointment of an emergency guardian in sub-  
2 section (1) of this section continue.

3 (3) Immediately upon filing of a petition for appointment of an emer-  
4 gency guardian for an adult, the court shall appoint an attorney to represent  
5 the respondent in the proceeding. Except as otherwise provided in subsec-  
6 tion (4) of this section, reasonable notice of the date, time, and place of  
7 a hearing on the petition shall be given to the respondent, the respondent's  
8 attorney, and any other person as the court determines.

9 (4) The court may appoint an emergency guardian for an adult respondent  
10 without notice to the respondent and any attorney for the respondent only if  
11 the court finds from an affidavit or testimony that the respondent's physi-  
12 cal health, safety, or welfare will be substantially harmed before a hearing  
13 with notice on the appointment can be held. If the court appoints an emer-  
14 gency guardian without giving notice under subsection (3) of this section,  
15 the court shall:

16 (a) Give notice of the appointment not later than forty-eight (48)  
17 hours after the appointment to:

18 (i) The respondent;

19 (ii) The respondent's attorney; and

20 (iii) Any other person as the court determines; and

21 (b) Hold a hearing on the appropriateness of the appointment not later  
22 than seven (7) days after the appointment.

23 (5) Appointment of an emergency guardian under this section is not a de-  
24 termination that a basis exists for appointment of a guardian under section  
25 15-5-301, Idaho Code.

26 (6) The court may remove an emergency guardian appointed under this  
27 section at any time. The emergency guardian shall make any report the court  
28 requires.

29 15-5-313. DUTIES OF GUARDIAN FOR ADULT. (1) A guardian for an adult is  
30 a fiduciary. Except as otherwise limited by the court, a guardian for an  
31 adult shall make decisions regarding the support, care, education, health,  
32 and welfare of the adult subject to guardianship to the extent necessitated  
33 by the adult subject to guardianship's limitations.

34 (2) A guardian for an adult subject to guardianship shall promote the  
35 self-determination of the adult subject to guardianship and, to the extent  
36 reasonably feasible, encourage the adult subject to guardianship to partic-  
37 ipate in decisions, act on the adult subject to guardianship's own behalf,  
38 and develop or regain the capacity to manage the adult subject to guardian-  
39 ship's personal affairs. In furtherance of this duty, the guardian shall:

40 (a) Become or remain personally acquainted with the adult subject to  
41 guardianship and maintain sufficient contact with the adult subject to  
42 guardianship, including through regular visitation, to know the adult  
43 subject to guardianship's abilities, limitations, needs, opportuni-  
44 ties, and physical and mental health;

45 (b) To the extent reasonably feasible, identify the values and prefer-  
46 ences of the adult subject to guardianship and involve the adult subject  
47 to guardianship in decisions affecting the adult subject to guardian-  
48 ship, including decisions about the adult subject to guardianship's  
49 care, dwelling, activities, or social interactions; and

1 (c) Make reasonable efforts to identify and facilitate supportive re-  
2 lationships and services for the adult subject to guardianship.

3 (3) A guardian for an adult subject to guardianship at all times shall  
4 exercise reasonable care, diligence, and prudence when acting on behalf of  
5 or making decisions for the adult subject to guardianship. In furtherance of  
6 this duty, the guardian shall:

7 (a) Take reasonable care of the personal effects, pets, and service  
8 or support animals of the adult subject to guardianship and bring a  
9 proceeding for a conservatorship or protective arrangement instead of  
10 conservatorship if necessary to protect the adult subject to guardian-  
11 ship's property;

12 (b) Expend funds and other property of the adult subject to guardian-  
13 ship received by the guardian for the adult subject to guardianship's  
14 current needs for support, care, education, health, and welfare;

15 (c) Conserve any funds and other property of the adult subject to  
16 guardianship not expended under paragraph (b) of this subsection for  
17 the adult subject to guardianship's future needs, but if a conservator  
18 has been appointed for the adult subject to guardianship, pay the funds  
19 and other property at least quarterly to the conservator to be conserved  
20 for the adult subject to guardianship's future needs; and

21 (d) Monitor the quality of services, including long-term care ser-  
22 vices, provided to the adult subject to guardianship.

23 (4) In making a decision for an adult subject to guardianship, the  
24 guardian shall make the decision the guardian reasonably believes the adult  
25 subject to guardianship would make if the adult subject to guardianship  
26 were able unless doing so would unreasonably harm or endanger the welfare or  
27 personal or financial interests of the adult subject to guardianship. To  
28 determine the decision the adult subject to guardianship would make if able,  
29 the guardian shall consider the adult subject to guardianship's previous  
30 or current directions, preferences, opinions, values, and actions, to the  
31 extent actually known or reasonably ascertainable by the guardian.

32 (5) If a guardian for an adult subject to guardianship cannot make a  
33 decision under subsection (4) of this section because the guardian does  
34 not know and cannot reasonably determine the decision the adult subject  
35 to guardianship probably would make if able, or the guardian reasonably  
36 believes the decision the adult subject to guardianship would make would  
37 unreasonably harm or endanger the welfare or personal or financial interests  
38 of the adult subject to guardianship, the guardian shall act in accordance  
39 with the best interest of the adult subject to guardianship. In determining  
40 the best interest of the adult subject to guardianship, the guardian shall  
41 consider:

42 (a) Information received from professionals and persons that demon-  
43 strate sufficient interest in the welfare of the adult subject to  
44 guardianship;

45 (b) Other information the guardian believes the adult subject to  
46 guardianship would have considered if the adult subject to guardianship  
47 were able to act; and

48 (c) Other factors a reasonable person in the circumstances of the adult  
49 subject to guardianship would consider, including consequences for  
50 others.

1 (6) A guardian for an adult subject to guardianship shall immediately  
2 notify the court if the condition of the adult subject to guardianship has  
3 changed so that the adult subject to guardianship is capable of exercising  
4 rights previously removed.

5 15-5-314. POWERS OF GUARDIAN FOR ADULT. (1) Except as limited by court  
6 order, a guardian for an adult subject to guardianship may:

7 (a) Apply for and receive funds and benefits for the support of the  
8 adult subject to guardianship, unless a conservator is appointed for  
9 the adult subject to guardianship and the application or receipt is  
10 within the powers of the conservator;

11 (b) Unless inconsistent with a court order, establish the adult subject  
12 to guardianship's place of dwelling;

13 (c) Consent to health care or other care, treatment, or service for the  
14 adult subject to guardianship;

15 (d) If a conservator for the adult subject to guardianship has not been  
16 appointed, commence a proceeding, including an administrative proceed-  
17 ing, or take other appropriate action to compel another person to sup-  
18 port the adult subject to guardianship or pay funds for the adult sub-  
19 ject to guardianship's benefit;

20 (e) To the extent reasonable, delegate to the adult subject to  
21 guardianship responsibility for a decision affecting the adult subject  
22 to guardianship's well-being; and

23 (f) Receive personally identifiable health care information regarding  
24 the adult subject to guardianship.

25 (2) The court by specific order may authorize a guardian for an adult  
26 subject to guardianship to consent to the adoption of the adult subject to  
27 guardianship.

28 (3) The court by specific order may authorize a guardian for an adult  
29 subject to guardianship to:

30 (a) Consent or withhold consent to the marriage of the adult subject to  
31 guardianship if the adult subject to guardianship's right to marry has  
32 been removed under section 15-5-310, Idaho Code;

33 (b) Petition for divorce, dissolution, or annulment of marriage of  
34 the adult subject to guardianship or a declaration of invalidity of the  
35 adult subject to guardianship's marriage; or

36 (c) Support or oppose a petition for divorce, dissolution, or annulment  
37 of marriage of the adult subject to guardianship or a declaration of in-  
38 validity of the adult subject to guardianship's marriage.

39 (4) In determining whether to authorize a power under subsection (2)  
40 or (3) of this section, the court shall consider whether the underlying act  
41 would be in accordance with the adult subject to guardianship's preferences,  
42 values, and prior directions and whether the underlying act would be in the  
43 adult subject to guardianship's best interest.

44 (5) In exercising a guardian's power under subsection (1) (b) of this  
45 section to establish the adult subject to guardianship's place of dwelling,  
46 the guardian shall:

47 (a) Select a residential setting the guardian believes the adult sub-  
48 ject to guardianship would select if the adult subject to guardianship  
49 were able, in accordance with the decision-making standard in section

1 15-5-313(4) and (5), Idaho Code. If the guardian does not know and can-  
2 not reasonably determine what setting the adult subject to guardianship  
3 probably would choose if able, or the guardian reasonably believes the  
4 decision the adult subject to guardianship would make would unreason-  
5 ably harm or endanger the welfare or personal or financial interests of  
6 the adult subject to guardianship, the guardian shall choose in accor-  
7 dance with section 15-5-313(5), Idaho Code, a residential setting that  
8 is consistent with the adult subject to guardianship's best interest;

9 (b) In selecting among residential settings, give priority to a res-  
10 idential setting in a location that will allow the adult subject to  
11 guardianship to interact with persons important to the adult subject to  
12 guardianship and meet the adult subject to guardianship's needs in the  
13 least restrictive manner reasonably feasible unless to do so would be  
14 inconsistent with the decision-making standard in section 15-5-313(4)  
15 and (5), Idaho Code;

16 (c) No later than fourteen (14) days after a change in the dwelling of  
17 the adult subject to guardianship:

18 (i) Give notice of the change to the court, the adult subject to  
19 guardianship, and any person identified as entitled to the notice  
20 in the court order appointing the guardian or a subsequent order;  
21 and

22 (ii) Include in the notice the address and nature of the new  
23 dwelling and state whether the adult subject to guardianship re-  
24 ceived advance notice of the change and whether the adult subject  
25 to guardianship objected to the change;

26 (d) Establish or move the permanent place of dwelling of the adult sub-  
27 ject to guardianship to a nursing home, mental health facility, or other  
28 facility that places restrictions on the adult subject to guardian-  
29 ship's ability to leave or have visitors only if:

30 (i) The establishment or move is in the guardian's plan under sec-  
31 tion 15-5-316, Idaho Code;

32 (ii) The court authorizes the establishment or move; or

33 (iii) The guardian gives notice of the establishment or move at  
34 least fourteen (14) days before the establishment or move to the  
35 adult subject to guardianship and all persons entitled to notice  
36 under section 15-5-310(5) (b), Idaho Code, or a subsequent order,  
37 and no objection is filed;

38 (e) Establish or move the place of dwelling of the adult subject to  
39 guardianship outside this state only if consistent with the guardian's  
40 plan and authorized by the court by specific order; and

41 (f) Take action that would result in the sale of or surrender of the  
42 lease to the primary dwelling of the adult subject to guardianship only  
43 if:

44 (i) The action is specifically included in the guardian's plan  
45 under section 15-5-316, Idaho Code;

46 (ii) The court authorizes the action by specific order; or

47 (iii) Notice of the action was given at least fourteen (14) days  
48 before the action to the adult subject to guardianship and all per-  
49 sons entitled to the notice under section 15-5-310(5) (b), Idaho  
50 Code, or a subsequent order and no objection has been filed.

1 (6) In exercising a guardian's power under subsection (1) (c) of this  
2 section to make health care decisions, the guardian shall:

3 (a) Involve the adult subject to guardianship in decision-making to the  
4 extent reasonably feasible, including, when practicable, by encourag-  
5 ing and supporting the adult subject to guardianship in understanding  
6 the risks and benefits of health care options;

7 (b) Defer to a decision by an agent under a medical directive executed  
8 by the adult subject to guardianship and cooperate to the extent feasi-  
9 ble with the agent making the decision; and

10 (c) Take into account:

11 (i) The risks and benefits of treatment options; and

12 (ii) The current and previous wishes and values of the adult sub-  
13 ject to guardianship, if known or reasonably ascertainable by the  
14 guardian.

15 15-5-315. SPECIAL LIMITATIONS ON GUARDIAN'S POWER. (1) Unless au-  
16 thorized by the court by specific order, a guardian for an adult subject to  
17 guardianship does not have the power to revoke or amend a medical directive  
18 or power of attorney for finances executed by the adult subject to guardian-  
19 ship. If a medical directive is in effect, unless there is a court order to  
20 the contrary, a health care decision of an agent takes precedence over that  
21 of the guardian and the guardian shall cooperate with the agent to the extent  
22 feasible. If a power of attorney for finances is in effect, unless there  
23 is a court order to the contrary, a decision by the agent that the agent is  
24 authorized to make under the power of attorney for finances takes precedence  
25 over that of the guardian and the guardian shall cooperate with the agent to  
26 the extent feasible.

27 (2) A guardian for an adult subject to guardianship may not initiate the  
28 commitment of the adult subject to guardianship to a mental health facility  
29 except in accordance with the state's procedure for involuntary civil com-  
30 mitment.

31 (3) A guardian for an adult subject to guardianship may not restrict  
32 the ability of the adult subject to guardianship to communicate, visit, or  
33 interact with others, including receiving visitors and making or receiving  
34 telephone calls, personal mail, or electronic communications, including  
35 through social media, or participating in social activities, unless:

36 (a) Authorized by the court by specific order;

37 (b) A protective order or a protective arrangement instead of guardian-  
38 ship is in effect that limits contact between the adult subject to  
39 guardianship and a person; or

40 (c) The guardian has good cause to believe restriction is necessary  
41 because interaction with a specified person poses a risk of signifi-  
42 cant physical, psychological, or financial harm to the adult subject to  
43 guardianship and the restriction is:

44 (i) For a period of not more than seven (7) business days if the  
45 person has a family or preexisting social relationship with the  
46 adult subject to guardianship; or

47 (ii) For a period of not more than sixty (60) days if the person  
48 does not have a family or preexisting social relationship with the  
49 adult subject to guardianship.

1 (4) Except as otherwise provided in subsection (5) of this section, a  
2 guardian appointed for a person with a developmental disability shall have  
3 no authority to refuse or withhold consent for medically necessary treatment  
4 when the effect of withholding such treatment would seriously endanger the  
5 life or health and well-being of the individual subject to guardianship.  
6 To withhold or attempt to withhold consent for such treatment may be cause  
7 for removal of the guardian. Except as otherwise provided in subsection  
8 (8) of this section, no health care provider or caregiver shall, based on  
9 such guardian's direction or refusal to consent to care, withhold or with-  
10 draw such treatment for the individual subject to guardianship. If the  
11 health care provider cannot obtain valid consent for such medically nec-  
12 essary treatment from the guardian, the health care provider or caregiver  
13 shall provide the medically necessary treatment as authorized by section  
14 39-4504(1)(i), Idaho Code.

15 (5) A guardian appointed for a person with a developmental disability  
16 may consent to withholding or withdrawing treatment other than appropri-  
17 ate nutrition or hydration to the individual subject to guardianship, and  
18 a health care provider may withhold or withdraw such treatment in reliance  
19 on such consent, when in the reasonable medical judgment of the treating  
20 licensed independent practitioner, as defined in section 39-4502(13), Idaho  
21 Code, any of the following circumstances apply:

22 (a) The attending licensed independent practitioner and at least  
23 one (1) other licensed independent practitioner certifies that the  
24 individual subject to guardianship is chronically and irreversibly co-  
25 matose;

26 (b) The treatment would merely prolong dying, would not be effective in  
27 ameliorating or correcting all of the individual subject to guardian-  
28 ship's life-threatening conditions, or would otherwise be futile in  
29 terms of the survival of the individual subject to guardianship; or

30 (c) The treatment would be virtually futile in terms of the survival of  
31 the individual subject to guardianship and would be inhumane under such  
32 circumstances.

33 (6) Any person who has information that medically necessary treatment  
34 of a individual subject to guardianship has been withheld or withdrawn in  
35 violation of this section may report such information to adult protective  
36 services or to the Idaho protection and advocacy system for people with de-  
37 velopmental disabilities, which shall have the authority to investigate the  
38 report and in appropriate cases to seek a court order to ensure that medi-  
39 cally necessary treatment is provided. If adult protective services or the  
40 protection and advocacy system determines that the withholding of medical  
41 treatment violates the provisions of this section, it may petition the court  
42 for an ex parte order to provide or continue the medical treatment in ques-  
43 tion. If the court finds, based on affidavits or other evidence, that there  
44 is probable cause to believe that the withholding of medical treatment in a  
45 particular case violates the provisions of this section, and that the life or  
46 health of the individual subject to guardianship is endangered thereby, the  
47 court shall issue an ex parte order to continue or to provide the treatment  
48 until such time as the court can hear evidence from the parties involved. Pe-  
49 titions for court orders under this section shall be expedited by the courts

1 and heard as soon as possible. No bond shall be required of a petitioner un-  
2 der this section.

3 (7) No partial or total guardian or partial or total conservator ap-  
4 pointed under the provisions of this chapter may without specific approval  
5 of the court in a proceeding separate from that in which such guardian or con-  
6 servator was appointed:

7 (a) Consent to medical or surgical treatment, the effect of which per-  
8 manently prohibits the conception of children by the individual subject  
9 to guardianship unless the treatment or procedures are necessary to  
10 protect the physical health of the individual subject to guardianship  
11 and would be prescribed for a person who does not have a developmental  
12 disability; or

13 (b) Consent to experimental surgery, procedures, or medications.

14 (8) Nothing in this section shall affect the rights of a competent per-  
15 son or surrogate decision-maker to withhold or withdraw treatment pursuant  
16 to section 39-4514, Idaho Code, unless the person is a respondent as defined  
17 in this chapter.

18 15-5-316. GUARDIAN'S PLAN. A guardian's plan shall be done in accor-  
19 dance with Idaho supreme court rules.

20 15-5-317. GUARDIAN'S REPORT -- MONITORING OF GUARDIANSHIP. A  
21 guardian's report on care of the adult and monitoring of a guardianship shall  
22 be done in accordance with Idaho supreme court rules.

23 15-5-318. REMOVAL OF GUARDIAN FOR ADULT -- APPOINTMENT OF SUCCES-  
24 SOR. (1) The court may remove a guardian for an adult subject to guardianship  
25 for failure to perform the guardian's duties or for other good cause and ap-  
26 point a successor guardian to assume the duties of guardian.

27 (2) The court shall hold a hearing to determine whether to remove  
28 a guardian for an adult subject to guardianship and appoint a successor  
29 guardian upon:

30 (a) Petition of the adult subject to guardianship, the guardian, or a  
31 person interested in the welfare of the adult subject to guardianship  
32 that contains allegations that, if true, would support a reasonable  
33 belief that removal of the guardian and appointment of a successor  
34 guardian may be appropriate, but the court may decline to hold a hearing  
35 if a petition based on the same or substantially similar facts was filed  
36 during the preceding six (6) months;

37 (b) Communication from the adult subject to guardianship, the  
38 guardian, or a person interested in the welfare of the adult subject  
39 to guardianship that supports a reasonable belief that removal of the  
40 guardian and appointment of a successor guardian may be appropriate; or

41 (c) Determination by the court that a hearing would be in the best in-  
42 terest of the adult subject to guardianship.

43 (3) Notice of a petition under subsection (2) (a) of this section shall  
44 be given to the adult subject to guardianship, the guardian, and any other  
45 person as the court determines.

46 (4) An adult subject to guardianship who seeks to remove the guardian  
47 and have a successor guardian appointed has the right to choose an attor-

1 ney to represent the adult subject to guardianship in this matter. If the  
2 adult subject to guardianship is not represented by an attorney, the court  
3 shall appoint an attorney under the same conditions as in section 15-5-305,  
4 Idaho Code. The court shall award reasonable attorney's fees to the attorney  
5 for the adult subject to guardianship as provided in section 15-5-119, Idaho  
6 Code.

7 (5) In selecting a successor guardian for an adult subject to guardian-  
8 ship, the court shall follow the priorities under section 15-5-309, Idaho  
9 Code.

10 (6) No later than thirty (30) days after appointing a successor  
11 guardian, the court shall give notice of the appointment to the adult subject  
12 to guardianship and any person entitled to notice under section 15-5-310 (5),  
13 Idaho Code, or a subsequent order.

14 15-5-319. TERMINATION OR MODIFICATION OF GUARDIANSHIP FOR ADULT. (1)  
15 An adult subject to guardianship, the guardian for the adult subject to  
16 guardianship, or a person interested in the welfare of the adult subject to  
17 guardianship may petition for:

18 (a) Termination of the guardianship on the grounds that a basis for  
19 appointment under section 15-5-301, Idaho Code, does not exist or  
20 that termination would be in the best interest of the adult subject to  
21 guardianship or for other good cause; or

22 (b) Modification of the guardianship on the grounds that the extent of  
23 protection or assistance granted is not appropriate or for other good  
24 cause.

25 (2) The court shall hold a hearing to determine whether termination or  
26 modification of a guardianship for an adult subject to guardianship is ap-  
27 propriate upon:

28 (a) Petition under subsection (1) of this section that contains allega-  
29 tions that, if true, would support a reasonable belief that termination  
30 or modification of the guardianship may be appropriate, but the court  
31 may decline to hold a hearing if a petition based on the same or substan-  
32 tially similar facts was filed during the preceding six (6) months;

33 (b) Communication from the adult subject to guardianship, the  
34 guardian, or a person interested in the welfare of the adult subject  
35 to guardianship that supports a reasonable belief that termination or  
36 modification of the guardianship may be appropriate, including because  
37 the functional needs of the adult subject to guardianship or supports or  
38 services available to the adult subject to guardianship have changed;

39 (c) A report from a guardian or conservator that indicates that ter-  
40 mination or modification may be appropriate because the functional  
41 needs of the adult subject to guardianship or supports or services  
42 available to the adult subject to guardianship have changed or a pro-  
43 tective arrangement instead of guardianship or other less restrictive  
44 alternative for meeting the adult subject to guardianship's needs is  
45 available; or

46 (d) A determination by the court that a hearing would be in the best in-  
47 terest of the adult subject to guardianship.



1 (3) Notice of a petition under subsection (2) (a) of this section shall  
2 be given to the adult subject to guardianship, the guardian, and any other  
3 person as the court determines.

4 (4) Upon presentation of prima facie evidence for termination of a  
5 guardianship for an adult subject to guardianship, the court shall order  
6 termination unless it is proven that a basis for appointment of a guardian  
7 under section 15-5-301, Idaho Code, exists.

8 (5) The court shall modify the powers granted to a guardian for an adult  
9 subject to guardianship if the powers are excessive or inadequate due to a  
10 change in the abilities or limitations of the adult subject to guardianship,  
11 the adult subject to guardianship's supports, or other circumstances.

12 (6) Unless the court otherwise orders for good cause, before terminat-  
13 ing or modifying a guardianship for an adult subject to guardianship, the  
14 court shall follow the same procedures to safeguard the rights of the adult  
15 subject to guardianship that apply to a petition for guardianship.

16 (7) An adult subject to guardianship who seeks to terminate or modify  
17 the terms of the guardianship has the right to choose an attorney to repre-  
18 sent the adult subject to guardianship in the matter. If the adult subject  
19 to guardianship is not represented by an attorney, the court shall appoint an  
20 attorney under the same conditions as in section 15-5-305, Idaho Code. The  
21 court shall award reasonable attorney's fees to the attorney for the adult  
22 subject to guardianship as provided in section 15-5-119, Idaho Code.

23 15-5-320. DESIGNATION OF BOARDS OF COMMUNITY GUARDIAN. After making  
24 a determination that there exists a need within a county for a guardian for  
25 those persons in need of guardianship and for whom there is no person or cor-  
26 poration qualified and willing to act in such capacity, the board of county  
27 commissioners may create and budget for, within the county, a board of commu-  
28 nity guardian. The board of county commissioners of one (1) or more counties  
29 within a judicial district may jointly create and budget for a board of com-  
30 munity guardian within that district.

31 15-5-321. BOARD OF COMMUNITY GUARDIAN STRUCTURE -- POWERS AND DU-  
32 TIES. (1) Any board of community guardian that is created within a county or  
33 counties in a judicial district shall operate under the laws of the state of  
34 Idaho, including the Idaho guardianship, conservatorship, and trust laws.

35 (2) A board of community guardian shall consist of no fewer than seven  
36 (7) and no more than eleven (11) members who are representatives of commu-  
37 nity interests involving persons needing guardians or conservators as de-  
38 fined in this chapter. Members shall be appointed by the board of county com-  
39 missioners that created the board of community guardian under section 15-5-  
40 320, Idaho Code.

41 (3) The terms of the members of the board shall be for four (4) years and  
42 shall be staggered. A number of members equaling or most closely exceeding  
43 fifty percent (50%) shall initially be appointed for three (3) years. Any  
44 vacancy created by resignation or expiration of term shall be filled in the  
45 same manner as the original appointment.

46 (4) A member shall continue to serve on the board until that person's  
47 successor is appointed.

48 (5) The board shall meet not less than once each quarter.

1 (6) No person shall be a member of a board who is also an employee of the  
2 district court or the clerk of the district court in the judicial district  
3 where the board is formed.

4 (7) A board member having previously provided or currently providing  
5 services to a person under guardianship shall disclose such to the board and  
6 abstain from any decision or action taken concerning that particular person  
7 under guardianship.

8 (8) Board members and officers shall serve without pay.

9 (9) Each board shall elect its own chairman and other officers.

10 (10) A board, in those instances when a guardian or conservator is re-  
11 quired and no qualified family member or other qualified person has volun-  
12 teered to serve, may:

13 (a) Locate a qualified person to serve as guardian or conservator; or

14 (b) Petition the court to be appointed as guardian or conservator.

15 (11) The board shall have all the powers and duties where applicable by  
16 court order and other provisions of this chapter and in addition shall:

17 (a) Locate and recommend to the court, where necessary, that a visitor  
18 be appointed;

19 (b) Have access to all confidential records, including abuse reg-  
20 istry reports that may be maintained by state or private agencies or  
21 institutions, which records concern a person for whom the board acts as  
22 guardian or conservator. The name of the person reporting the alleged  
23 abuse shall be subject to disclosure according to the provisions of  
24 chapter 1, title 74, Idaho Code;

25 (c) Review and monitor the services provided by public and private  
26 agencies to any individual subject to guardianship or conservatorship  
27 for whom the board acts as guardian or conservator and determine the  
28 continued need for those services;

29 (d) Assess a fee for services developed pursuant to this part; and

30 (e) Have the power, subject to the approval of the board of county com-  
31 missioners, to adopt such rules as are necessary to carry out the duties  
32 and responsibilities of the board.

33 (12) When a board serves as guardian or conservator, it shall be compen-  
34 sated as other guardians or conservators pursuant to Idaho law. If, at the  
35 time the board is appointed as guardian or conservator, the person for whom  
36 the board is to act has no funds, the court may waive the payment of fees.

37 (13) When a board serves as guardian or conservator, there is created,  
38 at the time of filing of the order of appointment, a lien in favor of the board  
39 against any real property owned by the individual subject to guardianship or  
40 conservatorship, enforceable only upon the termination of the guardianship or  
41 conservatorship, for all fees that were incurred throughout the duration  
42 of the services and that were not paid prior to termination. All fees in-  
43 curred throughout the duration of the services and that were not paid prior  
44 to the termination of services shall relate back to the effective date of the  
45 lien. The board shall record a notice of said lien within thirty (30) days  
46 of filing of the order of appointment. Such liens shall be recorded in every  
47 county where property subject to the lien is located. The notice shall con-  
48 tain at least the following information:

49 (a) Full court heading of the action in which the appointment was made;

50 (b) The effective date of the lien;

1 (c) The name and address of the board; and

2 (d) Any limitations or terms regarding the fees covered by the lien con-  
3 tained in the order of appointment.

4 (14) The court may postpone or arrange for gradual repayment of the fees  
5 if the court finds that the immediate repayment would create a hardship on  
6 the individual subject to guardianship.

7 (15) No member of a board of community guardian, employee of the board,  
8 or visitor appointed at the request of such board shall be liable for civil  
9 damages by reason of authorizing medical treatment or surgery for the person  
10 for whom the board is appointed, if the board member, employee, or visitor,  
11 after medical consultation with the person's physician, acts in good faith,  
12 is not negligent, and acts within the limits established for the guardian or  
13 conservator by the court. No such person shall be liable, by reason of his  
14 authorization, for injury to the person for whom the guardian or conservator  
15 has been appointed, which injury results from the negligence or other acts  
16 of a third person, if the court has authorized the giving of medical consent  
17 by the board or the individual members of the board. No such person shall be  
18 liable in the performance of acts done in good faith within the scope of his  
19 authority as long as the act is not of a wanton or grossly negligent nature.  
20 The board of community guardian shall be deemed to be a governmental entity  
21 for the purposes of application of the Idaho tort claims act.

22 15-5-322. BOARD OF COMMUNITY GUARDIAN ANNUAL REPORT. (1) Each board of  
23 community guardian shall report annually in writing to the board of county  
24 commissioners, and in the case of a multicounty board, to each participating  
25 county, its activities for the preceding year, which report shall contain:

26 (a) A fiscal report that adequately reflects the financial operation of  
27 the board;

28 (b) The number of volunteer guardians obtained by the board;

29 (c) The number of persons for whom the board is acting as guardian;

30 (d) Recommendations for improving guardianship services in the dis-  
31 trict; and

32 (e) Such other matters as may be determined advisable by the board of  
33 community guardian or the board of county commissioners.

34 (2) The report shall be filed no later than April 1 of each year and  
35 shall cover the preceding calendar year.

36 (3) The board of county commissioners shall review each report and  
37 shall determine whether to dissolve or continue the board of community  
38 guardian in the county. Where there is a multicounty board of community  
39 guardian, the boards of county commissioners of all concerned counties shall  
40 concur in a decision to dissolve the board of community guardian.

41 SECTION 6. That Chapter 5, Title 15, Idaho Code, be, and the same is  
42 hereby amended by the addition thereto of a NEW PART, to be known and desig-  
43 nated as Part 4, Chapter 5, Title 15, Idaho Code, and to read as follows:

44 PART 4  
45 CONSERVATORSHIP

46 15-5-401. BASIS FOR APPOINTMENT OF CONSERVATOR. (1) Upon petition and  
47 after notice and hearing, the court may appoint a conservator for the prop-

erty or financial affairs of a minor if the court finds by a preponderance of evidence that appointment of a conservator is in the minor's best interest, and:

(a) If the minor has a parent, the court gives weight to any recommendation of the parent whether an appointment is in the minor's best interest; and

(b) Either:

(i) The minor owns funds or other property requiring management or protection that otherwise cannot be provided;

(ii) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(iii) Appointment is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor.

(2) Upon petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a respondent if the court finds by clear and convincing evidence that:

(a) The respondent is unable to manage property or financial affairs because:

(i) The respondent is limited in ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance, or supported decision-making; or

(ii) The respondent is missing, detained, or unable to return to the United States;

(b) Appointment is necessary to:

(i) Avoid harm to the respondent or significant dissipation of the property of the respondent; or

(ii) Obtain or provide funds or other property needed for the support, care, education, health, or welfare of the respondent or of an individual entitled to the respondent's support; and

(c) The respondent's identified needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative.

(3) The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship, or other less restrictive alternative would meet the needs of the respondent.

15-5-402. PETITION FOR APPOINTMENT OF CONSERVATOR. (1) The following may petition for the appointment of a conservator:

(a) The respondent for whom the order is sought;

(b) A person interested in the estate, financial affairs, or welfare of the respondent, including a person that would be adversely affected by lack of effective management of property or financial affairs of the respondent; or

(c) The guardian of the respondent.

1 (2) A petition under subsection (1) of this section shall state the pe-  
2 titioner's name, principal residence, current street address, if differ-  
3 ent, relationship to the respondent, interest in the appointment, the name  
4 and address of any attorney representing the petitioner, and, to the extent  
5 known, the following:

6 (a) The respondent's name, age, principal residence, current street  
7 address, if different, and, if different, address of the dwelling in  
8 which it is proposed the respondent will reside if the petition is  
9 granted;

10 (b) The name and address of the respondent's:

11 (i) Spouse or, if the respondent has none, an adult with whom the  
12 respondent has shared household responsibilities for more than  
13 six (6) months in the twelve (12) month period before the filing of  
14 the petition;

15 (ii) Adult children or, if none, each parent and adult sibling of  
16 the respondent or, if none, at least one (1) adult nearest in kin-  
17 ship to the respondent who can be found with reasonable diligence;  
18 and

19 (iii) Adult stepchildren whom the respondent actively parented  
20 during the stepchildren's minor years and with whom the respondent  
21 had an ongoing relationship during the two (2) years immediately  
22 before the filing of the petition;

23 (c) The name and current address of each of the following, if applica-  
24 ble:

25 (i) A person responsible for the care or custody of the respon-  
26 dent;

27 (ii) Any attorney currently representing the respondent;

28 (iii) The representative payee appointed by the social security  
29 administration for the respondent;

30 (iv) A guardian or conservator acting for the respondent in this  
31 state or another jurisdiction;

32 (v) A trustee or custodian of a trust or custodianship of which  
33 the respondent is a beneficiary;

34 (vi) The fiduciary appointed for the respondent by the department  
35 of veterans affairs;

36 (vii) An agent designated under a medical directive in which the  
37 respondent is identified as the principal;

38 (viii) An agent designated under a power of attorney for finances  
39 in which the respondent is identified as the principal;

40 (ix) A person known to have routinely assisted the respondent with  
41 decision-making in the six (6) month period immediately before the  
42 filing of the petition;

43 (x) Any proposed conservator, including a person nominated by the  
44 respondent, if the respondent is twelve (12) years of age or older;  
45 and

46 (xi) If the individual for whom a conservator is sought is a minor:  
47 1. An adult not otherwise listed with whom the minor re-  
48 sides; and

49 2. Each person not otherwise listed that had primary care  
50 or custody of the minor for at least sixty (60) days during

- 1           the two (2) years immediately before the filing of the peti-  
2           tion or for at least seven hundred thirty (730) days during  
3           the five (5) years immediately before the filing of the peti-  
4           tion;
- 5       (d) A general statement of the respondent's property with an estimate  
6       of its value, including any insurance or pension, and the source and  
7       amount of other anticipated income or receipts;
- 8       (e) The reason conservatorship is necessary, including a brief de-  
9       scription of:
- 10       (i) The nature and extent of the respondent's alleged need;
- 11       (ii) If the petition alleges the respondent is missing, detained,  
12       or unable to return to the United States, the relevant circum-  
13       stances, including the time and nature of the disappearance or  
14       detention and any search or inquiry concerning the respondent's  
15       whereabouts;
- 16       (iii) Any protective arrangement instead of conservatorship or  
17       other less restrictive alternative for meeting the respondent's  
18       alleged need that has been considered or implemented;
- 19       (iv) If no protective arrangement or other less restrictive al-  
20       ternative has been considered or implemented, the reason it has  
21       not been considered or implemented; and
- 22       (v) The reason a protective arrangement or other less restrictive  
23       alternative is insufficient to meet the respondent's need;
- 24       (f) Whether the petitioner seeks a limited conservatorship or a full  
25       conservatorship;
- 26       (g) If the petitioner seeks a full conservatorship, the reason a lim-  
27       ited conservatorship or protective arrangement instead of conservator-  
28       ship is not appropriate;
- 29       (h) If the petition includes the name of a proposed conservator, the  
30       reason the proposed conservator should be appointed;
- 31       (i) If the petition is for a limited conservatorship, a description of  
32       the property to be placed under the conservator's control and any re-  
33       quested limitation on the authority of the conservator;
- 34       (j) Whether the respondent needs an interpreter, translator, or other  
35       form of support to communicate effectively with the court or understand  
36       court proceedings; and
- 37       (k) The name and address of an attorney representing the petitioner, if  
38       any.

39       15-5-403. NOTICE AND HEARING FOR APPOINTMENT OF CONSERVATOR. (1) Upon  
40       filing of a petition under section 15-5-402, Idaho Code, for appointment of  
41       a conservator, and after completion of any required training or background  
42       checks, the court shall set a date, time, and place for a hearing on the peti-  
43       tion.

44       (2) A copy of the petition and notice of a hearing on the petition shall  
45       be served personally on the respondent. If the respondent's whereabouts are  
46       unknown or personal service cannot be made, service on the respondent shall  
47       be made as provided by the Idaho supreme court rules. The notice shall in-  
48       form the respondent of the respondent's rights at the hearing, including the  
49       right to an attorney and to attend the hearing. The notice shall include a

1 description of the nature, purpose, and consequences of granting the peti-  
2 tion. The court may not grant a petition for appointment of a conservator if  
3 notice substantially complying with the provisions of this subsection is not  
4 served on the respondent.

5 (3) In a proceeding on a petition under section 15-5-402, Idaho  
6 Code, the notice required under subsection (2) of this section shall be  
7 given to the persons required to be listed in the petition under section  
8 15-5-402(2) (a) through (c), Idaho Code, and any other person interested in  
9 the respondent's welfare as the court determines. Failure to give notice  
10 under the provisions of this subsection does not preclude the court from  
11 appointing a conservator.

12 (4) After the appointment of a conservator, notice of a hearing on a pe-  
13 tition for an order under this part, together with a copy of the petition,  
14 shall be given to:

15 (a) The individual subject to conservatorship, if the person is twelve  
16 (12) years of age or older and not missing, detained, or unable to return  
17 to the United States;

18 (b) The conservator; and

19 (c) Any other person as the court determines.

20 15-5-404. ORDER TO PRESERVE OR APPLY PROPERTY WHILE PROCEEDING PEND-  
21 ING. While a petition under section 15-5-402, Idaho Code, is pending, after  
22 preliminary hearing and without notice to others, the court may issue an or-  
23 der to preserve and apply property of the respondent as required for the sup-  
24 port of the respondent or an individual who is in fact dependent on the re-  
25 spondent. The court may appoint a master to assist in implementing the or-  
26 der.

27 15-5-405. APPOINTMENT AND ROLE OF EVALUATION COMMITTEE OR VISI-  
28 TOR. (1) Upon filing of a petition under section 15-5-402, Idaho Code, for  
29 appointment of a conservator for an adult with a developmental disability,  
30 the court shall appoint an evaluation committee to conduct an evaluation.

31 (2) Upon filing of a petition under section 15-5-402, Idaho Code, for  
32 appointment of a conservator for an adult without a developmental disabili-  
33 ty, the court shall appoint a visitor to conduct an evaluation.

34 (3) The appointment and role of an evaluation committee or visitor un-  
35 der this section shall be conducted in accordance with Idaho supreme court  
36 rules.

37 15-5-406. APPOINTMENT AND ROLE OF ATTORNEY. (1) Unless the respondent  
38 in a proceeding for appointment of a conservator is represented by an attor-  
39 ney, the court shall appoint an attorney to represent the respondent, re-  
40 gardless of the respondent's ability to pay.

41 (2) An attorney representing the respondent in a proceeding for ap-  
42 pointment of a conservator shall:

43 (a) Make reasonable efforts to ascertain the respondent's wishes;

44 (b) Advocate for the respondent's wishes to the extent reasonably as-  
45 certainable; and

1 (c) If the respondent's wishes are not reasonably ascertainable, advo-  
2 cate for the result that is the least restrictive in type, duration, and  
3 scope, consistent with the respondent's interests.

4 (3) The court shall appoint an attorney to represent a parent of a minor  
5 who is the subject of a proceeding under section 15-5-402, Idaho Code, if:

6 (a) The parent objects to appointment of a conservator;

7 (b) The court determines that counsel is needed to ensure that consent  
8 to appointment of a conservator is informed; or

9 (c) The court otherwise determines the parent needs representation.

10 15-5-407. PROFESSIONAL EVALUATION. (1) At or before a hearing on a  
11 petition for conservatorship for an adult, the court shall order a profes-  
12 sional evaluation of the respondent:

13 (a) If the respondent requests the evaluation; or

14 (b) In other cases, if the court finds it does not have sufficient in-  
15 formation to determine the respondent's needs and abilities without the  
16 evaluation.

17 (2) If the court orders an evaluation under subsection (1) of this  
18 section, the respondent shall be examined by a licensed physician, psy-  
19 chologist, social worker, or other individual appointed by the court who  
20 is qualified to evaluate the respondent's alleged cognitive and functional  
21 abilities and limitations and who will not be advantaged or disadvantaged by  
22 a decision to grant the petition or otherwise have a conflict of interest.  
23 The individual conducting the evaluation promptly shall file a report in a  
24 record with the court. Unless otherwise directed by the court, the report  
25 shall contain:

26 (a) A description of the nature, type, and extent of the respondent's  
27 cognitive and functional abilities and limitations with regard to the  
28 management of the respondent's property and financial affairs;

29 (b) An evaluation of the respondent's mental and physical condition  
30 and, if appropriate, educational potential, adaptive behavior, and  
31 social skills;

32 (c) A prognosis for improvement with regard to the ability to manage the  
33 respondent's property and financial affairs; and

34 (d) The date of the examination on which the report is based.

35 (3) A respondent may decline to participate in an evaluation ordered  
36 under subsection (1) of this section.

37 15-5-408. ATTENDANCE AND RIGHTS AT HEARING. (1) Except as otherwise  
38 provided in subsection (2) of this section, a hearing under section 15-5-  
39 403, Idaho Code, may not proceed unless the respondent attends the hearing.  
40 If it is not reasonably feasible for the respondent to attend a hearing at the  
41 location court proceedings typically are held, the court shall make reason-  
42 able efforts to hold the hearing at an alternative location convenient to the  
43 respondent or allow the respondent to attend the hearing using real-time au-  
44 dio-visual technology.

45 (2) A hearing under section 15-5-403, Idaho Code, may proceed without  
46 the respondent in attendance if the court finds by clear and convincing evi-  
47 dence that:



1 (a) The respondent consistently and repeatedly has refused to attend  
 2 the hearing after having been fully informed of the right to attend and  
 3 the potential consequences of failing to attend;

4 (b) There is no practicable way for the respondent to attend and partic-  
 5 ipate in the hearing even with appropriate supportive services or tech-  
 6 nological assistance; or

7 (c) The respondent is a minor who has received proper notice and atten-  
 8 dance would be harmful to the minor.

9 (3) The respondent may be assisted in a hearing under section 15-5-403,  
 10 Idaho Code, by a person or persons of the respondent's choosing, assistive  
 11 technology, or an interpreter or translator, or a combination of these sup-  
 12 ports. If assistance would facilitate the respondent's participation in the  
 13 hearing, but is not otherwise available to the respondent, the court shall  
 14 make reasonable efforts to provide it.

15 (4) The respondent has a right to choose an attorney to represent the  
 16 respondent at a hearing under section 15-5-403, Idaho Code.

17 (5) At a hearing under section 15-5-403, Idaho Code, the respondent  
 18 may:

19 (a) Present evidence and subpoena witnesses and documents;

20 (b) Examine witnesses, including any court-appointed evaluator, any  
 21 member of the evaluation committee, and the visitor; and

22 (c) Otherwise participate in the hearing.

23 (6) Unless excused by the court for good cause, a proposed conservator  
 24 shall attend a hearing under section 15-5-403, Idaho Code.

25 (7) A hearing under section 15-5-403, Idaho Code, shall be closed upon  
 26 request of the respondent and a showing of good cause.

27 (8) Any person may request to participate in a hearing under section  
 28 15-5-403, Idaho Code. The court may grant the request, with or without a  
 29 hearing, upon determining that the best interest of the respondent will be  
 30 served. The court may impose appropriate conditions on the person's partic-  
 31 ipation.

32 15-5-409. CONFIDENTIALITY OF RECORDS. The confidentiality of records  
 33 in a proceeding for a conservatorship shall be maintained in accordance with  
 34 Idaho supreme court rules.

35 15-5-410. WHO MAY BE CONSERVATOR -- ORDER OF PRIORITY. (1) The court  
 36 may appoint an individual, except as set forth in this part, or a person with  
 37 general power to serve as conservator, as conservator of the estate of the  
 38 respondent. The following are entitled to consideration for appointment in  
 39 the order listed:

40 (a) An individual or person nominated by the respondent if the respon-  
 41 dent is twelve (12) or more years of age and has, in the opinion of the  
 42 court, sufficient mental capacity to make an intelligent choice;

43 (b) The individual or person nominated as conservator of the respon-  
 44 dent in the financial power of attorney for the respondent, or if no such  
 45 nomination is made therein, the individual or person nominated as agent  
 46 therein, provided that:

47 (i) If co-conservators or co-agents, as appropriate, are nomi-  
 48 nated, the court may consider whether appointment of co-conserva-

1           tors is in the best interest of the respondent or whether a sole  
2 conservator should be appointed;

3           (ii) If several individuals or persons are nominated in order of  
4 priority, the court shall consider such nominations in that order  
5 of priority; and

6           (iii) If more than one (1) financial power of attorney made by  
7 the respondent exists, the court shall determine which financial  
8 power of attorney is appropriate to be the basis for nomination of  
9 a conservator;

10          (c) The spouse of the respondent;

11          (d) An adult child of the respondent;

12          (e) A conservator, guardian of property, or other like fiduciary, but  
13 not a fiduciary serving only as a trustee, appointed or recognized by  
14 the appropriate court of any other jurisdiction in which the respondent  
15 resides;

16          (f) A parent of the respondent or a person nominated by the will of a  
17 deceased parent;

18          (g) Any relative of the respondent with whom the respondent has resided  
19 for more than six (6) months prior to the filing of the petition; or

20          (h) A person nominated by the respondent who is caring for or paying  
21 benefits to the respondent.

22          (2) A person in priority of subsection (1) (c) through (g) of this sec-  
23 tion may nominate in writing a person to serve in his stead. With respect  
24 to persons having equal priority, the court is to select the one who is best  
25 qualified of those willing to serve. The court for good cause may pass over a  
26 person having priority and appoint a person having less priority or no prior-  
27 ity.

28          (3) No convicted felon shall be appointed as a conservator of the estate  
29 of a respondent unless the court finds by clear and convincing evidence that  
30 such appointment is in the best interest of the respondent.

31          (4) A person that provides paid services to the respondent, or an indi-  
32 vidual who is employed by a person that provides paid services to the respon-  
33 dent, or is the spouse, parent, or child of an individual who provides or is  
34 employed to provide paid services to the respondent, may not be appointed as  
35 conservator unless:

36           (a) The individual is related to the respondent by blood, marriage, or  
37 adoption; or

38           (b) The court finds by clear and convincing evidence that the person is  
39 the best qualified person available for appointment and the appointment  
40 is in the best interest of the respondent.

41          (5) An owner, operator, or employee of a long-term care institution at  
42 which the respondent is receiving care may not be appointed as conservator  
43 unless the owner, operator, or employee is related to the respondent by  
44 blood, marriage, or adoption.

45          15-5-411. ORDER OF APPOINTMENT OF CONSERVATOR. (1) A court order  
46 appointing a conservator for a minor shall include findings to support ap-  
47 pointment of a conservator and, if a full conservatorship is granted, the  
48 reason a limited conservatorship would not meet the identified needs of the  
49 minor.

1 (2) A court order appointing a conservator for an adult respondent  
2 shall:

3 (a) Include a specific finding that clear and convincing evidence has  
4 established that the identified needs of the respondent cannot be met  
5 by a protective arrangement instead of conservatorship or other less  
6 restrictive alternative, including use of appropriate supportive ser-  
7 vices, technological assistance, or supported decision-making; and

8 (b) Include a specific finding that clear and convincing evidence es-  
9 tablished the respondent was given proper notice of the hearing on the  
10 petition.

11 (3) A court order establishing a full conservatorship for an individ-  
12 ual subject to conservatorship shall state the basis for granting a full con-  
13 servatorship and include specific findings to support the conclusion that a  
14 limited conservatorship would not meet the functional needs of the individ-  
15 ual subject to conservatorship.

16 (4) A court order establishing a limited conservatorship shall state  
17 the specific property placed under the control of the conservator and the  
18 powers granted to the conservator.

19 (5) The court, as part of an order establishing a conservatorship,  
20 shall identify any person that subsequently is entitled to:

21 (a) Notice of the rights of the individual subject to conservatorship  
22 under section 15-5-412(2), Idaho Code;

23 (b) Notice of a sale of or surrender of a lease to the primary dwelling  
24 of the individual subject to conservatorship;

25 (c) Notice that the conservator has delegated a power that requires  
26 court approval under section 15-5-414, Idaho Code, or substantially all  
27 powers of the conservator;

28 (d) Notice that the conservator will be unavailable to perform the con-  
29 servator's duties for more than one (1) month;

30 (e) A copy of the conservator's plan under section 15-5-419, Idaho  
31 Code, and the conservator's report under section 15-5-423, Idaho Code;

32 (f) Access to court records relating to the conservatorship;

33 (g) Notice of a transaction involving a substantial conflict between  
34 the conservator's fiduciary duties and personal interests;

35 (h) Notice of the death or significant change in the condition of the  
36 individual subject to conservatorship;

37 (i) Notice that the court has limited or modified the powers of the con-  
38 servator; and

39 (j) Notice of the removal of the conservator.

40 (6) If an individual subject to conservatorship is an adult, the spouse  
41 and adult children of the individual subject to conservatorship are entitled  
42 under subsection (5) of this section to notice unless the court determines  
43 notice would be contrary to the preferences or prior directions of the indi-  
44 vidual subject to conservatorship or not in the best interest of the individ-  
45 ual subject to conservatorship.

46 (7) If the individual subject to conservatorship is a minor, each par-  
47 ent and adult sibling of the minor is entitled under subsection (5) of this  
48 section to notice unless the court determines notice would not be in the best  
49 interest of the minor.

1 15-5-412. NOTICE OF ORDER OF APPOINTMENT -- RIGHTS. (1) A conservator  
2 appointed under section 15-5-411, Idaho Code, shall give to the individual  
3 subject to conservatorship and to all other persons given notice under sec-  
4 tion 15-5-403, Idaho Code, a copy of the order of appointment, together with  
5 notice of the right to request termination or modification. The order and  
6 notice shall be given not later than fourteen (14) days after the appoint-  
7 ment.

8 (2) Not later than thirty (30) days after appointment of a guardian un-  
9 der section 15-5-309, Idaho Code, the court shall give to the individual sub-  
10 ject to conservatorship, to the guardian, and to any other person entitled to  
11 notice under section 15-5-310(5), Idaho Code, or under a subsequent order,  
12 a statement of the rights of the individual subject to conservatorship and  
13 the procedures to seek relief if the individual subject to conservatorship  
14 is denied those rights. The statement shall be communicated:

15 (a) In a form and manner that is accessible and understandable by the  
16 recipient, through the use of assistive technology if necessary;

17 (b) In plain language; and

18 (c) To the extent feasible, in a language in which the recipient is pro-  
19 ficient.

20 (3) A statement issued under subsection (2) of this section shall no-  
21 tify the individual subject to conservatorship of the right to:

22 (a) Seek termination or modification of the conservatorship, or re-  
23 moval of the conservator, and to choose an attorney to represent the  
24 individual subject to conservatorship in such matters;

25 (b) Participate in decision-making to the extent reasonably feasible;

26 (c) Receive a copy of the conservator's plan under section 15-5-419,  
27 Idaho Code, the conservator's inventory under section 15-5-420, Idaho  
28 Code, and the conservator's report under section 15-5-423, Idaho Code;  
29 and

30 (d) Object to the conservator's inventory, plan, or report.

31 (4) If a conservator is appointed pursuant to section  
32 15-5-401(2)(a)(ii), Idaho Code, and the individual subject to conserva-  
33 torship is missing, notice under this section to the individual subject to  
34 conservatorship is not required.

35 15-5-413. EMERGENCY CONSERVATOR. (1) On its own, or upon petition by a  
36 person interested in a respondent's welfare after a petition has been filed  
37 under section 15-5-402, Idaho Code, the court may appoint an emergency con-  
38 servator for the respondent if the court finds:

39 (a) Appointment of an emergency conservator is likely to prevent sub-  
40 stantial and irreparable harm to the respondent's property or financial  
41 interests;

42 (b) No other person appears to have authority and willingness to act in  
43 the circumstances; and

44 (c) There is reason to believe that a basis for appointment of a conser-  
45 vator under section 15-5-401, Idaho Code, exists.

46 (2) The duration of authority of an emergency conservator may not ex-  
47 ceed ninety (90) days, and the emergency conservator may exercise only the  
48 powers specified in the order of appointment. The emergency conservator's  
49 authority may be extended once for not more than ninety (90) days if the court

1 finds that the conditions for appointment of an emergency conservator under  
2 subsection (1) of this section continue.

3 (3) Immediately upon filing of a petition for an emergency conserva-  
4 tor, the court shall appoint an attorney to represent the respondent in the  
5 proceeding. Except as otherwise provided in subsection (4) of this section,  
6 reasonable notice of the date, time, and place of a hearing on the petition  
7 shall be given to the respondent, the respondent's attorney, and any other  
8 person as the court determines.

9 (4) The court may appoint an emergency conservator without notice to  
10 the respondent and any attorney for the respondent only if the court finds  
11 from an affidavit or testimony that the respondent's property or financial  
12 interests will be substantially and irreparably harmed before a hearing with  
13 notice on the appointment can be held. If the court appoints an emergency  
14 conservator without giving notice under subsection (3) of this section, the  
15 court shall give notice of the appointment not later than forty-eight (48)  
16 hours after the appointment to:

17 (a) The respondent;

18 (b) The respondent's attorney; and

19 (c) Any other person as the court determines.

20 (5) Not later than seven (7) days after the appointment, the court shall  
21 hold a hearing on the appropriateness of the appointment.

22 (6) Appointment of an emergency conservator under this section is not  
23 a determination that a basis exists for appointment of a conservator under  
24 section 15-5-401, Idaho Code.

25 (7) The court may remove an emergency conservator appointed under this  
26 section at any time. The emergency conservator shall make any report the  
27 court requires.

28 15-5-414. POWERS OF CONSERVATOR REQUIRING COURT APPROVAL. (1) Except  
29 as otherwise ordered by the court, a conservator shall give notice to per-  
30 sons entitled to notice under section 15-5-403(4), Idaho Code, and receive  
31 specific authorization by the court before the conservator may exercise with  
32 respect to the conservatorship the power to:

33 (a) Make a gift, except a gift of de minimis value;

34 (b) Sell, encumber an interest in, or surrender a lease to the primary  
35 dwelling of the individual subject to conservatorship;

36 (c) Convey, release, or disclaim a contingent or expectant interest in  
37 property, including marital property, and any right of survivorship in-  
38 cident to joint tenancy or tenancy by the entirety or community property  
39 with right of survivorship;

40 (d) Exercise or release a power of appointment;

41 (e) Create a revocable or irrevocable trust of property of the conser-  
42 vatorship estate, whether or not the trust extends beyond the duration  
43 of the conservatorship, or revoke or amend a trust revocable by the in-  
44 dividual subject to conservatorship;

45 (f) Exercise a right to elect an option or change a beneficiary under an  
46 insurance policy or annuity or surrender the policy or annuity for its  
47 cash value;

1 (g) Exercise a right to an elective share in the estate of a deceased  
 2 spouse of the individual subject to conservatorship or renounce or dis-  
 3 claim a property interest;

4 (h) Grant a creditor priority for payment over creditors of the same or  
 5 higher class if the creditor is providing property or services used to  
 6 meet the basic living and care needs of the individual subject to con-  
 7 servatorship and preferential treatment otherwise would be impermissi-  
 8 ble under section 15-5-428 (5), Idaho Code; and

9 (i) Acquire an undivided interest in property in which the conservator,  
 10 in a fiduciary capacity, holds an undivided interest.

11 (2) In approving a conservator's exercise of a power listed in subsec-  
 12 tion (1) of this section, the court shall consider primarily the decision the  
 13 individual subject to conservatorship would make if able, to the extent the  
 14 decision can be ascertained.

15 (3) To determine under subsection (2) of this section the decision the  
 16 individual subject to conservatorship would make if able, the court shall  
 17 consider the individual subject to conservatorship's prior or current di-  
 18 rections, preferences, opinions, values, and actions, to the extent actu-  
 19 ally known or reasonably ascertainable by the conservator. The court also  
 20 shall consider:

21 (a) The financial needs of the individual subject to conservatorship  
 22 and individuals who are in fact dependent on the individual subject to  
 23 conservatorship for support, and the interests of creditors of the in-  
 24 dividual subject to conservatorship;

25 (b) Possible reduction of income, estate, inheritance, or other tax li-  
 26 abilities;

27 (c) Eligibility for governmental assistance;

28 (d) The previous pattern of giving or level of support provided by the  
 29 individual subject to conservatorship;

30 (e) Any existing estate plan or lack of estate plan of the individual  
 31 subject to conservatorship;

32 (f) The life expectancy of the individual subject to conservatorship  
 33 and the probability the conservatorship will terminate before the indi-  
 34 vidual subject to conservatorship's death; and

35 (g) Any other relevant factor.

36 (4) A conservator may not revoke or amend a power of attorney for fi-  
 37 nances executed by the individual subject to conservatorship. If a power of  
 38 attorney for finances is in effect, a decision of the agent takes precedence  
 39 over that of the conservator, unless the court orders otherwise.

40 15-5-415. PETITION FOR ORDER AFTER APPOINTMENT. An individual subject  
 41 to conservatorship or a person interested in the welfare of the individual  
 42 subject to conservatorship may petition for an order:

43 (1) Requiring the conservator to furnish a bond or collateral or ad-  
 44 ditional bond or collateral or allowing a reduction in a bond or collateral  
 45 previously furnished;

46 (2) Requiring an accounting for the administration of the conservator-  
 47 ship estate;

48 (3) Directing distribution;

1 (4) Removing the conservator and appointing a temporary or successor  
2 conservator;

3 (5) Modifying the type of appointment or powers granted to the conser-  
4 vator if the extent of protection or management previously granted is ex-  
5 cessive or insufficient to meet the individual subject to conservatorship's  
6 needs, including because the individual subject to conservatorship's abili-  
7 ties or supports have changed;

8 (6) Rejecting or modifying the conservator's plan under section 15-5-  
9 419, Idaho Code, the conservator's inventory under section 15-5-420, Idaho  
10 Code, or the conservator's report under section 15-5-423, Idaho Code; or

11 (7) Granting other appropriate relief.

12 15-5-416. BOND -- ALTERNATIVE ASSET-PROTECTION ARRANGEMENT. (1) Ex-  
13 cept as otherwise provided in subsection (3) of this section, the court shall  
14 require a conservator to furnish a bond with a surety the court specifies, or  
15 require an alternative asset-protection arrangement, conditioned on faith-  
16 ful discharge of all duties of the conservator. The court may waive the re-  
17 quirement only if the court finds that a bond or other asset-protection ar-  
18 rangement is not necessary to protect the interests of the individual sub-  
19 ject to conservatorship. Except as otherwise provided in subsection (3) of  
20 this section, the court may not waive the requirement if the conservator is  
21 in the business of serving as a conservator and is being paid for the service.

22 (2) Unless the court directs otherwise, the bond required under this  
23 section shall be in the amount of the aggregate capital value of the conser-  
24 vatorship estate, plus one (1) year's estimated income, less the value of  
25 property deposited under an arrangement requiring a court order for its re-  
26 moval and real property the conservator lacks power to sell or convey without  
27 specific court authorization. The court, in place of surety on a bond, may  
28 accept collateral for the performance of the bond, including a pledge of se-  
29 curities or a mortgage of real property.

30 (3) A regulated financial-service institution qualified to do trust  
31 business in this state is not required to give a bond under this section.

32 15-5-417. TERMS AND REQUIREMENTS OF BOND. (1) The following rules ap-  
33 ply to the bond required under section 15-5-416, Idaho Code:

34 (a) Except as otherwise provided by the bond, the surety and the conser-  
35 vator are jointly and severally liable;

36 (b) By executing a bond provided by a conservator, the surety submits  
37 to the personal jurisdiction of the court that issued letters of office  
38 to the conservator in a proceeding relating to the duties of the conser-  
39 vator in which the surety is named as a party. Notice of the proceeding  
40 shall be given to the surety at the address shown in the records of the  
41 court in which the bond is filed and any other address of the surety then  
42 known to the person required to provide the notice;

43 (c) Upon petition of a successor conservator or person affected by  
44 a breach of the obligation of the bond, a proceeding may be brought  
45 against the surety for breach of the obligation of the bond; and

46 (d) A proceeding against the bond may be brought until liability under  
47 the bond is exhausted.

1 (2) A proceeding may not be brought under this section against a surety  
2 of a bond on a matter as to which a proceeding against the conservator is  
3 barred.

4 (3) If a bond under section 15-5-416, Idaho Code, is not renewed by the  
5 conservator, the surety or sureties immediately shall give notice to the  
6 court and the individual subject to conservatorship.

7 15-5-418. DUTIES OF CONSERVATOR. (1) A conservator is a fiduciary and  
8 has duties of prudence and loyalty to the individual subject to conservator-  
9 ship.

10 (2) A conservator shall promote the self-determination of the individ-  
11 ual subject to conservatorship and, to the extent feasible, encourage the  
12 individual subject to conservatorship to participate in decisions, act on  
13 the individual subject to conservatorship's own behalf, and develop or re-  
14 gain the capacity to manage the individual subject to conservatorship's per-  
15 sonal affairs.

16 (3) In making a decision for an individual subject to conservatorship,  
17 the conservator shall make the decision the conservator reasonably believes  
18 the individual subject to conservatorship would make if able, unless doing  
19 so would fail to preserve the resources needed to maintain the individual  
20 subject to conservatorship's well-being and lifestyle or otherwise unrea-  
21 sonably harm or endanger the welfare or personal or financial interests of  
22 the individual subject to conservatorship. To determine the decision the  
23 individual subject to conservatorship would make if able, the conservator  
24 shall consider the individual subject to conservatorship's prior or current  
25 directions, preferences, opinions, values, and actions, to the extent actu-  
26 ally known or reasonably ascertainable by the conservator.

27 (4) If a conservator cannot make a decision under subsection (3) of  
28 this section because the conservator does not know and cannot reasonably  
29 determine the decision the individual subject to conservatorship probably  
30 would make if able, or the conservator reasonably believes the decision the  
31 individual subject to conservatorship would make would fail to preserve  
32 resources needed to maintain the individual subject to conservatorship's  
33 well-being and lifestyle or otherwise unreasonably harm or endanger the  
34 welfare or personal or financial interests of the individual subject to con-  
35 servatorship, the conservator shall act in accordance with the best interest  
36 of the individual subject to conservatorship. In determining the best in-  
37 terest of the individual subject to conservatorship, the conservator shall  
38 consider:

39 (a) Information received from professionals and persons that demon-  
40 strate sufficient interest in the welfare of the individual subject to  
41 conservatorship;

42 (b) Other information the conservator believes the individual subject  
43 to conservatorship would have considered if the individual subject to  
44 conservatorship were able to act; and

45 (c) Other factors a reasonable person in the circumstances of the in-  
46 dividual subject to conservatorship would consider, including conse-  
47 quences for others.



1           (5) Except when inconsistent with the conservator's duties under sub-  
2 sections (1) through (4) of this section, a conservator shall invest and man-  
3 age the conservatorship estate as a prudent investor would, by considering:

4           (a) The circumstances of the individual subject to conservatorship and  
5 the conservatorship estate;

6           (b) General economic conditions;

7           (c) The possible effect of inflation or deflation;

8           (d) The expected tax consequences of an investment decision or strat-  
9 egy;

10          (e) The role of each investment or course of action in relation to the  
11 conservatorship estate as a whole;

12          (f) The expected total return from income and appreciation of capital;

13          (g) The need for liquidity, regularity of income, and preservation or  
14 appreciation of capital; and

15          (h) The special relationship or value, if any, of specific property to  
16 the individual subject to conservatorship.

17          (6) The propriety of a conservator's investment and management of the  
18 conservatorship estate is determined in light of the facts and circumstances  
19 existing when the conservator decides or acts and not by hindsight.

20          (7) A conservator shall make a reasonable effort to verify facts rele-  
21 vant to the investment and management of the conservatorship estate.

22          (8) A conservator that has special skills or expertise, or is named con-  
23 servator in reliance on the conservator's representation of special skills  
24 or expertise, has a duty to use the special skills or expertise in carrying  
25 out the conservator's duties.

26          (9) In investing, selecting specific property for distribution, and  
27 invoking a power of revocation or withdrawal for the use or benefit of the  
28 individual subject to conservatorship, a conservator shall consider any es-  
29 tate plan of the individual subject to conservatorship known or reasonably  
30 ascertainable to the conservator and may examine the will or other donative,  
31 nominative, or appointive instrument of the individual.

32          (10) A conservator shall maintain insurance on the insurable real and  
33 personal property of the individual subject to conservatorship, unless the  
34 conservatorship estate lacks sufficient funds to pay for insurance or the  
35 court finds:

36           (a) The property lacks sufficient equity; or

37           (b) Insuring the property would unreasonably dissipate the conserva-  
38 torship estate or otherwise not be in the best interest of the individ-  
39 ual subject to conservatorship.

40          (11) If a power of attorney for finances is in effect, a conservator  
41 shall cooperate with the agent to the extent feasible.

42          (12) A conservator has access to and authority over a digital asset of  
43 the individual subject to conservatorship to the extent provided in chapter  
44 14, title 15, Idaho Code, the revised uniform fiduciary access to digital as-  
45 sets act, or court order.

46          (13) A conservator for an adult individual subject to conservatorship  
47 shall notify the court if the condition of the adult individual subject to  
48 conservatorship has changed so that the adult individual subject to conser-  
49 vatorship is capable of exercising rights previously removed. The notice  
50 shall be given immediately on learning of the change.

1           15-5-419. CONSERVATOR'S PLAN. A plan required of a conservator ap-  
2 pointed pursuant to this part shall conform to Idaho supreme court rules.

3           15-5-420. INVENTORY -- RECORDS. (1) Not later than ninety (90) days  
4 after appointment, a conservator shall prepare and file with the appointing  
5 court a detailed inventory of the conservatorship estate, together with an  
6 oath or affirmation that the inventory is believed to be complete and accu-  
7 rate as far as information permits.

8           (2) A conservator shall give notice of the filing of an inventory to the  
9 individual subject to conservatorship, any person entitled to notice under  
10 section 15-5-411(5), Idaho Code, or a subsequent order, and any other person  
11 as the court determines. The notice shall be given not later than seven (7)  
12 days after the filing.

13           (3) A conservator shall keep records of the administration of the con-  
14 servatorship estate and make them available for examination upon reasonable  
15 request of the individual subject to conservatorship, a guardian for the in-  
16 dividual subject to conservatorship, or any other person as the conservator  
17 or the court determines.

18           15-5-421. ADMINISTRATIVE POWERS OF CONSERVATOR NOT REQUIRING COURT  
19 APPROVAL. (1) Except as otherwise provided in section 15-5-414, Idaho Code,  
20 or qualified or limited in the court's order of appointment and stated in the  
21 letters of office, a conservator has all powers granted in this section and  
22 any additional power granted to a trustee by law of this state other than this  
23 chapter.

24           (2) A conservator, acting reasonably and consistent with the fiduciary  
25 duties of the conservator to accomplish the purpose of the conservatorship,  
26 without specific court authorization or confirmation, may with respect to  
27 the conservatorship estate:

28           (a) Collect, hold, and retain property, including property in which the  
29 conservator has a personal interest and real property in another state,  
30 until the conservator determines disposition of the property should be  
31 made;

32           (b) Receive additions to the conservatorship estate;

33           (c) Continue or participate in the operation of a business or other en-  
34 terprise;

35           (d) Invest assets;

36           (e) Deposit funds or other property in a financial institution, includ-  
37 ing one operated by the conservator;

38           (f) Acquire or dispose of property, including real property in another  
39 state, for cash or on credit, at public or private sale, and manage, de-  
40 velop, improve, exchange, partition, change the character of, or aban-  
41 don property;

42           (g) Make ordinary or extraordinary repairs or alterations in a build-  
43 ing or other structure, demolish any improvement, or raze an existing or  
44 erect a new party wall or building;

45           (h) Subdivide or develop land, dedicate land to public use, make or ob-  
46 tain the vacation of a plat and adjust a boundary, adjust a difference  
47 in valuation of land, exchange or partition land by giving or receiving

- 1 consideration, and dedicate an easement to public use without consider-  
2 ation;
- 3 (i) Enter for any purpose into a lease of property as lessor or lessee,  
4 with or without an option to purchase or renew, for a term within or ex-  
5 tending beyond the term of the conservatorship;
- 6 (j) Enter into a lease or arrangement for exploration and removal of  
7 minerals or other natural resources or a pooling or unitization agree-  
8 ment;
- 9 (k) Grant an option involving disposition of property or accept or ex-  
10 ercise an option for the acquisition of property;
- 11 (l) Vote a security, in person or by general or limited proxy;
- 12 (m) Pay a call, assessment, or other sum chargeable or accruing against  
13 or on account of a security;
- 14 (n) Sell or exercise a stock subscription or conversion right;
- 15 (o) Consent, directly or through a committee or agent, to the reorgani-  
16 zation, consolidation, merger, dissolution, or liquidation of a corpo-  
17 ration or other business enterprise;
- 18 (p) Hold a security in the name of a nominee or in other form without  
19 disclosure of the conservatorship so that title to the security may pass  
20 by delivery;
- 21 (q) Insure:
- 22 (i) The conservatorship estate, in whole or in part, against dam-  
23 age or loss in accordance with section 15-5-418(10), Idaho Code;  
24 and
- 25 (ii) The conservator against liability with respect to a third  
26 person;
- 27 (r) Borrow funds, with or without security, to be repaid from the con-  
28 servatorship estate or otherwise;
- 29 (s) Advance funds for the protection of the conservatorship estate or  
30 the individual subject to conservatorship and for all expenses, losses,  
31 and liability sustained in the administration of the conservatorship  
32 estate or because of holding any property for which the conservator has  
33 a lien on the conservatorship estate;
- 34 (t) Pay or contest a claim, settle a claim by or against the conser-  
35 vatorship estate or the individual subject to conservatorship by com-  
36 promise, arbitration, or otherwise, or release, in whole or in part, a  
37 claim belonging to the conservatorship estate to the extent the claim is  
38 uncollectible;
- 39 (u) Pay a tax, assessment, compensation for the conservator or any  
40 guardian, and other expense incurred in the collection, care, adminis-  
41 tration, and protection of the conservatorship estate;
- 42 (v) Pay a sum distributable to the individual subject to conservator-  
43 ship or an individual who is in fact dependent on the individual subject  
44 to conservatorship by paying the sum to the distributee or for the use of  
45 the distributee:
- 46 (i) To the guardian for the distributee;
- 47 (ii) To the custodian of the distributee under the uniform trans-  
48 fers to minors act or custodial trustee under the uniform custo-  
49 dial trust act; or

- 1 (iii) If there is no guardian, custodian, or custodial trustee,  
2 to a relative or other person having physical custody of the dis-  
3 tributee;
- 4 (w) Bring or defend an action, claim, or proceeding in any jurisdiction  
5 for the protection of the conservatorship estate or the conservator in  
6 the performance of the conservator's duties;
- 7 (x) Structure the finances of the individual subject to conservator-  
8 ship to establish eligibility for a public benefit, including by making  
9 gifts consistent with the individual's preferences, values, and prior  
10 directions, if the conservator's action does not jeopardize the indi-  
11 vidual subject to conservatorship's welfare and otherwise is consis-  
12 tent with the conservator's duties; and
- 13 (y) Execute and deliver any instrument that will accomplish or facili-  
14 tate the exercise of a power of the conservator.

15 15-5-422. DISTRIBUTION FROM CONSERVATORSHIP ESTATE. Except as other-  
16 wise provided in section 15-5-414, Idaho Code, or qualified or limited in  
17 the court's order of appointment and stated in the letters of conservator-  
18 ship, and unless contrary to a conservator's plan under section 15-5-419,  
19 Idaho Code, the conservator may expend or distribute income or principal of  
20 the conservatorship estate without specific court authorization or confir-  
21 mation for the support, care, education, health, or welfare of the individ-  
22 ual subject to conservatorship or an individual who is in fact dependent on  
23 the individual subject to conservatorship, including the payment of child or  
24 spousal support, in accordance with the following rules:

25 (1) The conservator shall consider a recommendation relating to the ap-  
26 propriate standard of support, care, education, health, or welfare for the  
27 individual subject to conservatorship or individual who is dependent on the  
28 individual subject to conservatorship, made by a guardian for the individual  
29 subject to conservatorship, if any, and, if the individual subject to con-  
30 servatorship is a minor, a recommendation made by a parent of the minor.

31 (2) The conservator acting in compliance with the conservator's duties  
32 under section 15-5-418, Idaho Code, is not liable for an expenditure or dis-  
33 tribution made based on a recommendation under subsection (1) of this sec-  
34 tion unless the conservator knows or should have known the expenditure or  
35 distribution is not in the best interest of the individual subject to conser-  
36 vatorship.

37 (3) In making an expenditure or distribution under this section, the  
38 conservator shall consider:

39 (a) The size of the conservatorship estate, the estimated duration  
40 of the conservatorship, and the likelihood the individual subject to  
41 conservatorship, at some future time, may be fully self-sufficient and  
42 able to manage the individual subject to conservatorship's financial  
43 affairs and the conservatorship estate;

44 (b) The accustomed standard of living of the individual subject to con-  
45 servatorship and an individual who is dependent on the individual sub-  
46 ject to conservatorship;

47 (c) Other funds or sources used for the support of the individual sub-  
48 ject to conservatorship; and

1 (d) The preferences, values, and prior directions of the individual  
2 subject to conservatorship.

3 (4) Funds expended or distributed under this section may be paid by the  
4 conservator to any person, including the individual subject to conservator-  
5 ship, as reimbursement for expenditures the conservator might have made, or  
6 in advance for services to be provided to the individual subject to conserva-  
7 torship or an individual who is dependent on the individual subject to con-  
8 servatorship if it is reasonable to expect the services will be performed  
9 and advance payment is customary or reasonably necessary under the circum-  
10 stances.

11 15-5-423. CONSERVATOR'S REPORT AND ACCOUNTING -- MONITORING. A con-  
12 servator's report and accounting and the monitoring of a conservatorship  
13 shall be done in accordance with Idaho supreme court rules.

14 15-5-424. ATTEMPTED TRANSFER OF PROPERTY BY INDIVIDUAL SUBJECT TO  
15 CONSERVATORSHIP. (1) The interest of an individual subject to conservator-  
16 ship in property included in the conservatorship estate is not transferable  
17 or assignable by the individual subject to conservatorship and is not  
18 subject to levy, garnishment, or similar process for claims against the in-  
19 dividual subject to conservatorship unless allowed under section 15-5-428,  
20 Idaho Code.

21 (2) If an individual subject to conservatorship enters into a contract  
22 after having the right to enter the contract removed by the court, the con-  
23 tract is void against the individual subject to conservatorship and the in-  
24 dividual subject to conservatorship's property but is enforceable against  
25 the person that contracted with the individual subject to conservatorship.

26 (3) A person other than the conservator that deals with an individual  
27 subject to conservatorship with respect to property included in the con-  
28 servatorship estate is entitled to protection provided by law of this state  
29 other than this chapter.

30 15-5-425. TRANSACTION INVOLVING CONFLICT OF INTEREST. A transaction  
31 involving a conservatorship estate that is affected by a substantial con-  
32 flict between the conservator's fiduciary duties and personal interests is  
33 voidable unless the transaction is authorized by court order after notice to  
34 persons entitled to notice under section 15-5-411(5), Idaho Code, or a sub-  
35 sequent order. A transaction affected by a substantial conflict includes a  
36 sale, encumbrance, or other transaction involving the conservatorship es-  
37 tate entered into by the conservator, an individual with whom the conserva-  
38 tor resides, the spouse, descendant, sibling, agent, or attorney of the con-  
39 servator, or a corporation or other enterprise in which the conservator has a  
40 substantial beneficial interest.

41 15-5-426. PROTECTION OF PERSON DEALING WITH CONSERVATOR. (1) A person  
42 that assists or deals with a conservator in good faith and for value in any  
43 transaction, other than a transaction requiring a court order under section  
44 15-5-414, Idaho Code, is protected as though the conservator properly exer-  
45 cised any power in question. Knowledge by a person that the person is deal-  
46 ing with a conservator alone does not require the person to inquire into the

1 existence of authority of the conservator or the propriety of the conserva-  
2 tor's exercise of authority, but restrictions on authority stated in letters  
3 of office, or otherwise provided by law, are effective as to the person. A  
4 person that pays or delivers property to a conservator is not responsible for  
5 proper application of the property.

6 (2) Protection under subsection (1) of this section extends to a pro-  
7 cedural irregularity or jurisdictional defect in the proceeding leading to  
8 the issuance of letters of office and does not substitute for protection for  
9 a person that assists or deals with a conservator provided by comparable pro-  
10 visions in law of this state other than this chapter relating to a commercial  
11 transaction or simplifying a transfer of securities by a fiduciary.

12 15-5-427. DEATH OF INDIVIDUAL SUBJECT TO CONSERVATORSHIP. (1) If an  
13 individual subject to conservatorship dies, the conservator shall deliver  
14 to the court for safekeeping any will of the individual subject to conserva-  
15 torship in the conservator's possession and inform the personal representa-  
16 tive named in the will if feasible, or if not feasible, a beneficiary named in  
17 the will, of the delivery.

18 (2) If forty (40) days after the death of an individual subject to con-  
19 servatorship no personal representative has been appointed and no applica-  
20 tion or petition for appointment is before the court, the conservator may ap-  
21 ply to exercise the powers and duties of a personal representative to admin-  
22 ister and distribute the decedent's estate. The conservator shall give no-  
23 tice to a person nominated as personal representative by a will of the dece-  
24 dent of which the conservator is aware. The court may grant the application  
25 if there is no objection and endorse the letters of office to note that the  
26 individual formerly subject to conservatorship is deceased and the conser-  
27 vator has acquired the powers and duties of a personal representative.

28 (3) Issuance of an order under this section has the effect of an order  
29 of appointment of a personal representative under section 15-3-307, Idaho  
30 Code, and parts 6 through 10 of chapter 3, title 15, Idaho Code.

31 (4) Upon the death of an individual subject to conservatorship, the  
32 conservator shall conclude the administration of the conservatorship estate  
33 as provided in section 15-5-431, Idaho Code.

34 15-5-428. PRESENTATION AND ALLOWANCE OF CLAIM. (1) A conservator may  
35 pay, or secure by encumbering property included in the conservatorship es-  
36 tate, a claim against the conservatorship estate or the individual subject  
37 to conservatorship arising before or during the conservatorship upon pre-  
38 sentation and allowance in accordance with the priorities under subsection  
39 (4) of this section. A claimant may present a claim by:

40 (a) Sending or delivering to the conservator a statement in a record of  
41 the claim, indicating its basis, the name and address of the claimant,  
42 and the amount claimed; or

43 (b) Filing the claim with the court, in a form acceptable to the court,  
44 and sending or delivering a copy of the claim to the conservator.

45 (2) A claim under subsection (1) of this section is presented on receipt  
46 by the conservator of the statement of the claim or the filing with the court  
47 of the claim, whichever first occurs. A presented claim is allowed if it is  
48 not disallowed in whole or in part by the conservator in a record sent or de-

1 delivered to the claimant not later than sixty (60) days after its presenta-  
 2 tion. Before payment, the conservator may change an allowance of the claim  
 3 to a disallowance in whole or in part, but not after allowance under a court  
 4 order or order directing payment of the claim. Presentation of a claim tolls  
 5 the running of a statute of limitations that has not expired relating to the  
 6 claim until thirty (30) days after its disallowance.

7 (3) A claimant whose claim under subsection (1) of this section has not  
 8 been paid may petition the court to determine the claim at any time before it  
 9 is barred by a statute of limitations, and the court may order its allowance,  
 10 payment, or security by encumbering property included in the conservator-  
 11 ship estate. If a proceeding is pending against the individual subject to  
 12 conservatorship at the time of appointment of the conservator or is initi-  
 13 ated thereafter, the moving party shall give the conservator notice of the  
 14 proceeding if it could result in creating a claim against the conservator-  
 15 ship estate.

16 (4) If a conservatorship estate is likely to be exhausted before all ex-  
 17 isting claims are paid, the conservator shall distribute the estate in money  
 18 or in kind in payment of claims in the following order:

19 (a) Costs and expenses of administration;

20 (b) A claim of the federal or state government having priority under law  
 21 other than this chapter;

22 (c) A claim incurred by the conservator for support, care, education,  
 23 health, or welfare previously provided to the individual subject to  
 24 conservatorship or an individual who is in fact dependent on the indi-  
 25 vidual subject to conservatorship;

26 (d) A claim arising before the conservatorship; and

27 (e) All other claims.

28 (5) Preference may not be given in the payment of a claim under subsec-  
 29 tion (4) of this section over another claim of the same class. A claim due and  
 30 payable may not be preferred over a claim not due unless:

31 (a) Doing so would leave the conservatorship estate without sufficient  
 32 funds to pay the basic living and health care expenses of the individual  
 33 subject to conservatorship; and

34 (b) The court authorizes the preference under section 15-5-414(1) (h),  
 35 Idaho Code.

36 (6) If assets of a conservatorship estate are adequate to meet all ex-  
 37 isting claims, the court, acting in the best interest of the individual sub-  
 38 ject to conservatorship, may order the conservator to grant a security in-  
 39 terest in the conservatorship estate for payment of a claim at a future date.

40 15-5-429. PERSONAL LIABILITY OF CONSERVATOR. (1) Except as otherwise  
 41 agreed by a conservator, the conservator is not personally liable for a con-  
 42 tract properly entered into in a fiduciary capacity in the course of adminis-  
 43 tration of the conservatorship estate unless the conservator fails to reveal  
 44 the conservator's representative capacity in the contract or before enter-  
 45 ing into the contract.

46 (2) A conservator is personally liable for an obligation arising from  
 47 control of property of the conservatorship estate or an act or omission oc-  
 48 ccurring in the course of administration of the conservatorship estate only  
 49 if the conservator is personally at fault.

1 (3) A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate, or a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

7 (4) A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification or another appropriate proceeding or action.

10 15-5-430. REMOVAL OF CONSERVATOR -- APPOINTMENT OF SUCCESSOR. (1) The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

14 (2) The court shall hold a hearing to determine whether to remove a conservator and appoint a successor upon:

16 (a) Petition of the individual subject to conservatorship, the conservator, or a person interested in the welfare of the individual subject to conservatorship that contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six (6) months;

23 (b) Communication from the individual subject to conservatorship, the conservator, or a person interested in the welfare of the individual subject to conservatorship that supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

26 (c) Determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

30 (3) Notice of a petition under subsection (2) (a) of this section shall be given to the individual subject to conservatorship, the conservator, and any other person as the court determines.

33 (4) An individual subject to conservatorship who seeks to remove the conservator and have a successor appointed has the right to choose an attorney to represent the individual subject to conservatorship in this matter. If the individual subject to conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 15-5-406, Idaho Code. The court shall award reasonable attorney's fees to the attorney as provided in section 15-5-119, Idaho Code.

39 (5) In selecting a successor conservator, the court shall follow the priorities under section 15-5-410, Idaho Code.

42 (6) Not later than thirty (30) days after appointing a successor conservator, the successor conservator shall give notice of the appointment to the individual subject to conservatorship and any person entitled to notice under section 15-5-411 (5), Idaho Code, or a subsequent order.

46 15-5-431. TERMINATION OR MODIFICATION OF CONSERVATORSHIP. (1) A conservatorship for a minor terminates on the earliest of:

48 (a) A court order terminating the conservatorship;



- 1 (b) The minor:  
2 (i) Becoming an adult; or  
3 (ii) If the minor consents, or the court finds by clear and con-  
4 vincing evidence that substantial harm to the minor's interests is  
5 otherwise likely, attaining twenty-one (21) years of age;  
6 (c) Emancipation of the minor; or  
7 (d) Death of the minor.  
8 (2) A conservatorship for an adult individual subject to conservator-  
9 ship terminates on order of the court or when the adult individual subject to  
10 conservatorship dies.  
11 (3) An individual subject to conservatorship, the conservator, or a  
12 person interested in the welfare of the individual subject to conservator-  
13 ship may petition for:  
14 (a) Termination of the conservatorship on the grounds that a basis for  
15 appointment under section 15-5-401, Idaho Code, does not exist or ter-  
16 mination would be in the best interest of the individual subject to con-  
17 servatorship or for other good cause; or  
18 (b) Modification of the conservatorship on the grounds that the extent  
19 of protection or assistance granted is not appropriate or for other good  
20 cause.  
21 (4) The court shall hold a hearing to determine whether termination or  
22 modification of a conservatorship is appropriate upon:  
23 (a) Petition under subsection (3) of this section that contains alle-  
24 gations that, if true, would support a reasonable belief that termi-  
25 nation or modification of the conservatorship may be appropriate, but  
26 the court may decline to hold a hearing if a petition based on the same  
27 or substantially similar facts was filed within the preceding six (6)  
28 months;  
29 (b) A communication from the individual subject to conservatorship,  
30 the conservator, or a person interested in the welfare of the individ-  
31 ual subject to conservatorship that supports a reasonable belief that  
32 termination or modification of the conservatorship may be appropriate,  
33 including because the functional needs of the individual subject to  
34 conservatorship or supports or services available to the individual  
35 subject to conservatorship have changed;  
36 (c) A report from a guardian or conservator that indicates that termi-  
37 nation or modification may be appropriate because the functional needs  
38 or supports or services available to the individual subject to conser-  
39 vatorship have changed or a protective arrangement instead of conserva-  
40 torship or other less restrictive alternative is available; or  
41 (d) A determination by the court that a hearing would be in the best in-  
42 terest of the individual subject to conservatorship.  
43 (5) Notice of a petition under subsection (3) of this section shall be  
44 given to the individual subject to conservatorship, the conservator, and any  
45 such other person as the court determines.  
46 (6) Upon presentation of prima facie evidence for termination of a con-  
47 servatorship, the court shall order termination unless it is proven that a  
48 basis for appointment of a conservator under section 15-5-401, Idaho Code,  
49 exists.

1 (7) The court shall modify the powers granted to a conservator if the  
2 powers are excessive or inadequate due to a change in the abilities or limi-  
3 tations of the individual subject to conservatorship, supports given to the  
4 individual subject to conservatorship, or other circumstances.

5 (8) Unless the court otherwise orders for good cause, before terminat-  
6 ing a conservatorship, the court shall follow the same procedures to safe-  
7 guard the rights of the individual subject to conservatorship that apply to a  
8 petition for conservatorship.

9 (9) An individual subject to conservatorship who seeks to terminate or  
10 modify the terms of the conservatorship has the right to choose an attorney  
11 to represent the individual subject to conservatorship in the matter. If  
12 the individual is not represented by an attorney, the court shall appoint an  
13 attorney under the same conditions as in section 15-5-406, Idaho Code. The  
14 court shall award reasonable attorney's fees to the attorney as provided in  
15 section 15-5-119, Idaho Code.

16 (10) Upon termination of a conservatorship other than by reason of the  
17 death of the individual subject to conservatorship, property of the conser-  
18 vatorship estate passes to the individual formerly subject to conservator-  
19 ship. The order of termination shall direct the conservator to file a final  
20 report and petition for discharge on approval by the court of the final re-  
21 port.

22 (11) Upon termination of a conservatorship by reason of the death of  
23 the individual subject to conservatorship, the conservator promptly shall  
24 file a final report and petition for discharge on approval by the court of  
25 the final report. Upon approval of the final report, the conservator shall  
26 proceed expeditiously to distribute the conservatorship estate to the in-  
27 dividual subject to conservatorship's estate or as otherwise ordered by the  
28 court. The conservator may take reasonable measures necessary to preserve  
29 the conservatorship estate until distribution can be made.

30 (12) The court shall issue a final order of discharge on the approval  
31 by the court of the final report and satisfaction by the conservator of any  
32 other condition the court imposed on the conservator's discharge.

33 15-5-432. TRANSFER FOR BENEFIT OF MINOR WITHOUT APPOINTMENT OF CON-  
34 SERVATOR. (1) Unless a person required to transfer funds or other property  
35 to a minor knows that a conservator for the minor has been appointed or a pro-  
36 ceeding is pending for conservatorship, the person may transfer an amount  
37 or value not exceeding fifteen thousand dollars (\$15,000) in a twelve (12)  
38 month period to:

39 (a) A person that has care or custody of the minor and with whom the mi-  
40 nor resides;

41 (b) A guardian for the minor;

42 (c) A custodian under the uniform transfers to minors act or uniform  
43 gifts to minors act, chapter 8, title 68, Idaho Code; or

44 (d) A financial institution as a deposit in an interest-bearing account  
45 or certificate solely in the name of the minor and shall give notice to  
46 the minor of the deposit.

47 (2) A person that transfers funds or other property under the provi-  
48 sions of this section is not responsible for its proper application.

1           (3) A person that receives funds or other property for a minor under  
 2 subsection (1) (a) or (b) of this section may apply it only to the support,  
 3 care, education, health, or welfare of the minor and may not derive a per-  
 4 sonal financial benefit from it, except for reimbursement for necessary ex-  
 5 penses. Funds not applied for such purposes shall be preserved for the fu-  
 6 ture support, care, education, health, or welfare of the minor and the bal-  
 7 ance, if any, transferred to the minor when the minor becomes an adult or oth-  
 8 erwise is emancipated.

9           15-5-433. MINORS COMPROMISE -- PROCEDURE. (1) When a minor has a claim  
 10 for money against a third person, the persons listed below have the right to  
 11 petition for a compromise of the claim in the following order of priority:

- 12           (a) An appointed conservator of the minor;
- 13           (b) A guardian of the minor, if appointed;
- 14           (c) Either or both parents, provided that:
  - 15               (i) If the parents are living separate and apart, then the parent
  - 16               who has been awarded primary physical custody; or
  - 17               (ii) If no custody award has been made, then the parent with whom
  - 18               the minor is living;
- 19           (d) A de facto custodian; and
- 20           (e) Any other legal representative.

21           (2) The court for good cause may pass over a person having priority un-  
 22 der subsection (1) of this section and appoint a person having less priority  
 23 or no priority; provided that the court shall not pass over a parent or par-  
 24 ents unless the court concludes that the parent or parents are incapable or  
 25 unwilling to act reasonably and in the best interest of the minor. Such pro-  
 26 posed compromise is not effective until it is approved by the district court  
 27 of the county where the minor resides or, if the minor is not a resident of  
 28 the state of Idaho, by the district court of the county where the claim arose,  
 29 upon verified petition, filed with the court.

30           (3) A verified petition made pursuant to this section shall include the  
 31 following:

- 32           (a) The name, age, and residence of the minor;
- 33           (b) The facts that bring the minor within the purview of this section,  
 34 including the circumstances that make it a claim for money, the name of  
 35 the third person against whom the claim is made, and, if the claim is the  
 36 result of an accident, the date, place, and facts of the accident;
- 37           (c) The names and residence of the parents or guardian of the minor;
- 38           (d) The name and residence of the person or persons having physical cus-  
 39 tody or control of the minor;
- 40           (e) The name and residence of the petitioner, the relationship of the  
 41 petitioner to the minor, and the basis of the petitioner's right to com-  
 42 promise the claim;
- 43           (f) The total amount of proceeds of the proposed compromise, the ap-  
 44 portionment of those proceeds, and whether the fees and expenses are to  
 45 be deducted before or after the calculation of any contingency fee, in-  
 46 cluding the amount to be used for:
  - 47               (i) Attorney's fees and whether the attorney's fees are fixed or
  - 48               contingent fees;
  - 49               (ii) Medical expenses; or

- 1 (iii) Other expenses;
- 2 (g) Whether the petitioner believes the acceptance of this compromise  
3 is in the best interest of the minor;
- 4 (h) That the petitioner has been advised and understands that accep-  
5 tance of the compromise will bar the minor from seeking further relief  
6 from the third person offering the compromise;
- 7 (i) If the claim involves a personal injury suffered by the minor, a  
8 summary of:
- 9 (i) The injury, prognosis, treatment, and progress of recovery of  
10 the minor; and
- 11 (ii) The amount of medical expenses incurred to date, the nature  
12 and amount of medical expenses that have been paid and by whom, any  
13 amount owing for medical expenses, and an estimate of the amount of  
14 medical expenses that may be incurred in the future; and
- 15 (j) The policy limits of the insurance contract, if applicable.
- 16 (4) If the minor's claim is less than ten thousand dollars (\$10,000) and  
17 the court is satisfied after review of the verified petition that the compro-  
18 mise is reasonable and in the best interest of the minor, the court may ap-  
19 prove the compromise or set a hearing. If the minor's claim is ten thousand  
20 dollars (\$10,000) or more, the court shall set a hearing for approval of the  
21 compromise.
- 22 (5) If the court finds the compromise is reasonable and in the best in-  
23 terest of the minor, the court may approve such compromise and may direct  
24 that money be paid:
- 25 (a) To the parents, guardian, trustee, conservator, legal representa-  
26 tive, or the designated payee thereof in accordance with the provisions  
27 of this chapter;
- 28 (b) Subject to the provisions of an appropriate protective order; or
- 29 (c) In accordance with the provisions of chapter 14, title 68, Idaho  
30 Code.
- 31 (6) No filing fee shall be charged for the filing of any petition under  
32 the provisions of this section.

33 SECTION 7. That Chapter 5, Title 15, Idaho Code, be, and the same is  
34 hereby amended by the addition thereto of a NEW PART, to be known and desig-  
35 nated as Part 5, Chapter 5, Title 15, Idaho Code, and to read as follows:

36 PART 5  
37 OTHER PROTECTIVE ARRANGEMENTS

- 38 15-5-501. AUTHORITY FOR PROTECTIVE ARRANGEMENT. (1) Under this part,  
39 a court:
- 40 (a) Upon receiving a petition for a guardianship for an adult may order  
41 a protective arrangement instead of guardianship as a less restrictive  
42 alternative to guardianship; and
- 43 (b) Upon receiving a petition for a conservatorship for an individual  
44 may order a protective arrangement instead of conservatorship as a less  
45 restrictive alternative to conservatorship.
- 46 (2) A person interested in an adult's welfare, including the adult or  
47 a conservator for the adult, may petition under this part for a protective  
48 arrangement instead of guardianship.

1 (3) The following persons may petition under this part for a protective  
2 arrangement instead of conservatorship:

3 (a) The individual for whom the protective arrangement is sought;

4 (b) A person interested in the property, financial affairs, or welfare  
5 of the individual, including a person that would be affected adversely  
6 by lack of effective management of property or financial affairs of the  
7 individual; and

8 (c) The guardian for the individual.

9 15-5-502. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP  
10 FOR ADULT. (1) After the hearing on a petition under section 15-5-302, Idaho  
11 Code, for a guardianship or under section 15-5-501(2), Idaho Code, for a  
12 protective arrangement instead of guardianship, the court may issue an order  
13 under subsection (2) of this section for a protective arrangement instead of  
14 guardianship if the court finds by clear and convincing evidence that:

15 (a) The respondent lacks the ability to meet essential requirements for  
16 physical health, safety, or self-care because the respondent is unable  
17 to receive and evaluate information or make or communicate decisions,  
18 even with appropriate supportive services, technological assistance,  
19 or supported decision-making; and

20 (b) The respondent's identified needs cannot be met by a less restric-  
21 tive alternative.

22 (2) If the court makes the findings under subsection (1) of this sec-  
23 tion, the court, instead of appointing a guardian, may:

24 (a) Authorize or direct a transaction necessary to meet the respon-  
25 dent's need for health, safety, or care, including:

26 (i) A particular medical treatment or refusal of a particular  
27 medical treatment;

28 (ii) A move to a specified place of dwelling; or

29 (iii) Visitation or supervised visitation between the respondent  
30 and another person;

31 (b) Restrict access to the respondent by a specified person whose ac-  
32 cess places the respondent at serious risk of physical, psychological,  
33 or financial harm; and

34 (c) Order other arrangements on a limited basis that are appropriate.

35 (3) In deciding whether to issue an order under this section, the court  
36 shall consider the factors under sections 15-5-313 and 15-5-314, Idaho Code,  
37 that a guardian shall consider when making a decision on behalf of an adult  
38 subject to guardianship.

39 15-5-503. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATOR-  
40 SHIP FOR ADULT OR MINOR. (1) After the hearing on a petition under section  
41 15-5-402, Idaho Code, for conservatorship for an adult or under section  
42 15-5-501(3), Idaho Code, for a protective arrangement instead of conserva-  
43 torship for an adult, the court may issue an order under subsection (3) of  
44 this section for a protective arrangement instead of conservatorship for the  
45 adult if the court finds by clear and convincing evidence that:

46 (a) The adult is unable to manage property or financial affairs be-  
47 cause:

- 1 (i) The adult is limited in the ability to receive and evaluate  
2 information or make or communicate decisions, even with appropri-  
3 ate supportive services, technological assistance, or supported  
4 decision-making; or  
5 (ii) The adult is missing, detained, or unable to return to the  
6 United States;
- 7 (b) An order under subsection (3) of this section is necessary to:  
8 (i) Avoid harm to the adult or significant dissipation of the  
9 property of the adult; or  
10 (ii) Obtain or provide funds or other property needed for the sup-  
11 port, care, education, health, or welfare of the adult or an indi-  
12 vidual entitled to the adult's support; and  
13 (c) The respondent's identified needs cannot be met by a less restric-  
14 tive alternative.
- 15 (2) After the hearing on a petition under section 15-5-402, Idaho Code,  
16 for conservatorship for a minor or under section 15-5-501(3), Idaho Code,  
17 for a protective arrangement instead of conservatorship for a minor, the  
18 court may issue an order under subsection (3) of this section for a protec-  
19 tive arrangement instead of conservatorship for the minor if the court finds  
20 by a preponderance of the evidence that the arrangement is in the minor's  
21 best interest, and:  
22 (a) If the minor has a parent, the court gives weight to any recommenda-  
23 tion of the parent whether an arrangement is in the minor's best inter-  
24 est;
- 25 (b) Either:  
26 (i) The minor owns money or property requiring management or pro-  
27 tection that otherwise cannot be provided;  
28 (ii) The minor has or may have financial affairs that may be put at  
29 unreasonable risk or hindered because of the minor's age; or  
30 (iii) The arrangement is necessary or desirable to obtain or pro-  
31 vide funds or other property needed for the support, care, educa-  
32 tion, health, or welfare of the minor; and  
33 (c) The order under subsection (3) of this section is necessary or des-  
34 irable to obtain or provide money needed for the support, care, educa-  
35 tion, health, or welfare of the minor.
- 36 (3) If the court makes the findings under subsection (1) or (2) of this  
37 section, the court, instead of appointing a conservator, may:  
38 (a) Authorize or direct a transaction necessary to protect the finan-  
39 cial interest or property of the respondent, including:  
40 (i) An action to establish eligibility for benefits;  
41 (ii) Payment, delivery, deposit, or retention of funds or prop-  
42 erty;  
43 (iii) Sale, mortgage, lease, or other transfer of property;  
44 (iv) Purchase of an annuity;  
45 (v) Entry into a contractual relationship, including a contract  
46 to provide for personal care, supportive services, education,  
47 training, or employment;  
48 (vi) Addition to or establishment of a trust;

1 (vii) Ratification or invalidation of a contract, trust, will, or  
 2 other transaction, including a transaction related to the prop-  
 3 erty or business affairs of the respondent; or

4 (viii) Settlement of a claim; or

5 (b) Restrict access to the respondent's property by a specified person  
 6 whose access to the property places the respondent at serious risk of  
 7 financial harm.

8 (4) After the hearing on a petition under section 15-5-501(1)(b) or  
 9 (3), Idaho Code, whether or not the court makes the findings under subsection  
 10 (1) or (2) of this section, the court may issue an order to restrict access to  
 11 the respondent or the respondent's property by a specified person that the  
 12 court finds by clear and convincing evidence:

13 (a) Through fraud, coercion, duress, or the use of deception and con-  
 14 trol caused or attempted to cause an action that would have resulted in  
 15 financial harm to the respondent or the respondent's property; and

16 (b) Poses a serious risk of substantial financial harm to the respon-  
 17 dent or the respondent's property.

18 (5) Before issuing an order under subsection (3) or (4) of this section,  
 19 the court shall consider the factors under section 15-5-418, Idaho Code,  
 20 that a conservator shall consider when making a decision on behalf of an in-  
 21 dividual subject to conservatorship.

22 (6) Before issuing an order under subsection (3) or (4) of this section  
 23 for a respondent who is a minor, the court shall also consider the best inter-  
 24 est of the minor, the preference of the parents of the minor, and the prefer-  
 25 ence of the minor, if the minor is twelve (12) years of age or older.

26 15-5-504. PETITION FOR PROTECTIVE ARRANGEMENT. A petition for a pro-  
 27 tective arrangement instead of guardianship or conservatorship shall state  
 28 the petitioner's name, principal residence, current street address, if dif-  
 29 ferent, relationship to the respondent, interest in the protective arrange-  
 30 ment, the name and address of any attorney representing the petitioner, and,  
 31 to the extent known, the following:

32 (1) The respondent's name, age, principal residence, current street  
 33 address, if different, and, if different, address of the dwelling in which  
 34 it is proposed the respondent will reside if the petition is granted;

35 (2) The name and address of the respondent's:

36 (a) Spouse or, if the respondent has none, an adult with whom the re-  
 37 spondent has shared household responsibilities for more than six (6)  
 38 months in the twelve (12) month period before the filing of the peti-  
 39 tion;

40 (b) Adult children or, if none, each parent and adult sibling of the re-  
 41 spondent or, if none, at least one (1) adult nearest in kinship to the  
 42 respondent who can be found with reasonable diligence; and

43 (c) Adult stepchildren whom the respondent actively parented during  
 44 the stepchildren's minor years and with whom the respondent had an on-  
 45 going relationship in the two (2) year period immediately before the  
 46 filing of the petition;

47 (3) The name and current address of each of the following, if applica-  
 48 ble:

49 (a) A person responsible for the care or custody of the respondent;

- 1 (b) Any attorney currently representing the respondent;
- 2 (c) The representative payee appointed by the social security adminis-
- 3 tration for the respondent;
- 4 (d) A guardian or conservator acting for the respondent in this state or
- 5 another jurisdiction;
- 6 (e) A trustee or custodian of a trust or custodianship of which the re-
- 7 spondent is a beneficiary;
- 8 (f) The fiduciary appointed for the respondent by the department of
- 9 veterans affairs;
- 10 (g) An agent designated under a medical directive in which the respon-
- 11 dent is identified as the principal;
- 12 (h) An agent designated under a power of attorney for finances in which
- 13 the respondent is identified as the principal;
- 14 (i) A person nominated as guardian or conservator by the respondent if
- 15 the respondent is twelve (12) years of age or older;
- 16 (j) A person nominated as guardian by the respondent's parent or spouse
- 17 in a will or other signed record;
- 18 (k) A person known to have routinely assisted the respondent with deci-
- 19 sion-making in the six (6) month period immediately before the filing of
- 20 the petition; and
- 21 (l) If the respondent is a minor:
  - 22 (i) An adult not otherwise listed with whom the respondent re-
  - 23 sides; and
  - 24 (ii) Each person not otherwise listed that had primary care or
  - 25 custody of the respondent for at least sixty (60) days during the
  - 26 two (2) years immediately before the filing of the petition or for
  - 27 at least seven hundred thirty (730) days during the five (5) years
  - 28 immediately before the filing of the petition;
- 29 (4) The nature of the protective arrangement sought;
- 30 (5) The reason the protective arrangement sought is necessary, includ-
- 31 ing a brief description of:
  - 32 (a) The nature and extent of the respondent's alleged need;
  - 33 (b) Any less restrictive alternative for meeting the respondent's al-
  - 34 leged need that has been considered or implemented;
  - 35 (c) If no less restrictive alternative has been considered or imple-
  - 36 mented, the reason less restrictive alternatives have not been consid-
  - 37 ered or implemented; and
  - 38 (d) The reason other less restrictive alternatives are insufficient to
  - 39 meet the respondent's alleged need;
- 40 (6) The name and current address, if known, of any person with whom the
- 41 petitioner seeks to limit the respondent's contact;
- 42 (7) Whether the respondent needs an interpreter, translator, or other
- 43 form of support to communicate effectively with the court or understand
- 44 court proceedings;
- 45 (8) If a protective arrangement instead of guardianship is sought and
- 46 the respondent has property other than personal effects, a general statement
- 47 of the respondent's property with an estimate of its value, including any in-
- 48 surance or pension, and the source and amount of any other anticipated income
- 49 or receipts; and



1 (9) If a protective arrangement instead of conservatorship is sought,  
2 a general statement of the respondent's property with an estimate of its  
3 value, including any insurance or pension, and the source and amount of other  
4 anticipated income or receipts.

5 15-5-505. NOTICE AND HEARING. (1) Upon filing of a petition under sec-  
6 tion 15-5-501, Idaho Code, the court shall set a date, time, and place for a  
7 hearing on the petition.

8 (2) A copy of a petition under section 15-5-501, Idaho Code, and no-  
9 tice of a hearing on the petition shall be served personally on the respon-  
10 dent. The notice shall inform the respondent of the respondent's rights at  
11 the hearing, including the right to an attorney and to attend the hearing.  
12 The notice shall include a description of the nature, purpose, and conse-  
13 quences of granting the petition. The court may not grant the petition if  
14 notice substantially complying with this subsection is not served on the re-  
15 spondent.

16 (3) In a proceeding on a petition under section 15-5-501, Idaho Code,  
17 the notice required under subsection (2) of this section shall be given to  
18 the persons required to be listed in the petition under section 15-5-504(1)  
19 through (3), Idaho Code, and any other person interested in the respondent's  
20 welfare as the court determines. Failure to give notice under this subsec-  
21 tion does not preclude the court from granting the petition.

22 (4) After the court has ordered a protective arrangement under this  
23 part, notice of a hearing on a petition filed under this section, together  
24 with a copy of the petition, shall be given to the respondent and any other  
25 person as the court determines.

26 15-5-506. APPOINTMENT AND ROLE OF EVALUATION COMMITTEE OR VISI-  
27 TOR. (1) Upon filing of a petition under section 15-5-501, Idaho Code, for an  
28 adult with a developmental disability, the court may appoint an evaluation  
29 committee to conduct an evaluation.

30 (2) Upon filing of a petition under section 15-5-501, Idaho Code, for an  
31 adult without a developmental disability, the court may appoint a visitor to  
32 conduct an evaluation.

33 (3) The appointment and role of an evaluation committee or visitor un-  
34 der this section shall be conducted in accordance with Idaho supreme court  
35 rules.

36 15-5-507. APPOINTMENT AND ROLE OF ATTORNEY. (1) Unless the respondent  
37 in a proceeding under this part is represented by an attorney, the court  
38 shall appoint an attorney to represent the respondent, regardless of the  
39 respondent's ability to pay.

40 (2) An attorney representing the respondent in a proceeding under this  
41 part shall:

42 (a) Make reasonable efforts to ascertain the respondent's wishes;

43 (b) Advocate for the respondent's wishes to the extent reasonably as-  
44 certainable; and

45 (c) If the respondent's wishes are not reasonably ascertainable, advo-  
46 cate for the result that is the least restrictive alternative in type,  
47 duration, and scope, consistent with the respondent's interests.

1 (3) The court shall appoint an attorney to represent a parent of a minor  
2 who is the subject of a proceeding under this part if:

- 3 (a) The parent objects to the entry of an order for a protective ar-  
4 rangement instead of guardianship or conservatorship;  
5 (b) The court determines that counsel is needed to ensure that consent  
6 to the entry of an order for a protective arrangement is informed; or  
7 (c) The court otherwise determines the parent needs representation.

8 15-5-508. PROFESSIONAL EVALUATION. (1) At or before a hearing on a pe-  
9 tition under this part for a protective arrangement, the court shall order a  
10 professional evaluation of the respondent:

- 11 (a) If the respondent requests the evaluation; or  
12 (b) In other cases, unless the court finds that it has sufficient in-  
13 formation to determine the respondent's needs and abilities without the  
14 evaluation.

15 (2) If the court orders an evaluation under subsection (1) of this sec-  
16 tion, the respondent shall be examined by a licensed physician, psycholo-  
17 gist, social worker, or other individual appointed by the court who is qual-  
18 ified to evaluate the respondent's alleged cognitive and functional abili-  
19 ties and limitations and will not be advantaged or disadvantaged by a deci-  
20 sion to grant the petition or otherwise have a conflict of interest. The in-  
21 dividual conducting the evaluation promptly shall file a report in a record  
22 with the court. Unless otherwise directed by the court, the report shall  
23 contain:

- 24 (a) A description of the nature, type, and extent of the respondent's  
25 cognitive and functional abilities and limitations;  
26 (b) An evaluation of the respondent's mental and physical condition  
27 and, if appropriate, educational potential, adaptive behavior, and  
28 social skills;  
29 (c) A prognosis for improvement, including with regard to the ability  
30 to manage the respondent's property and financial affairs if a limita-  
31 tion in that ability is alleged, and recommendation for the appropriate  
32 treatment, support, or habilitation plan; and  
33 (d) The date of the examination on which the report is based.

34 (3) The respondent may decline to participate in an evaluation ordered  
35 under subsection (1) of this section.

36 15-5-509. ATTENDANCE AND RIGHTS AT HEARING. (1) Except as otherwise  
37 provided in subsection (2) of this section, a hearing under this part may not  
38 proceed unless the respondent attends the hearing. If it is not reasonably  
39 feasible for the respondent to attend a hearing at the location court pro-  
40 ceedings typically are held, the court shall make reasonable efforts to hold  
41 the hearing at an alternative location convenient to the respondent or allow  
42 the respondent to attend the hearing using real-time audio-visual technol-  
43 ogy.

44 (2) A hearing under this part may proceed without the respondent in at-  
45 tendance if the court finds by clear and convincing evidence that:

- 46 (a) The respondent consistently and repeatedly has refused to attend  
47 the hearing after having been fully informed of the right to attend and  
48 the potential consequences of failing to attend;

1 (b) There is no practicable way for the respondent to attend and par-  
 2 ticipate in the hearing even with appropriate supportive services and  
 3 technological assistance; or

4 (c) The respondent is a minor who has received proper notice and atten-  
 5 dance would be harmful to the minor.

6 (3) The respondent may be assisted in a hearing under this part by a per-  
 7 son or persons of the respondent's choosing, assistive technology, or an in-  
 8 terpreter or translator, or a combination of these supports. If assistance  
 9 would facilitate the respondent's participation in the hearing, but is not  
 10 otherwise available to the respondent, the court shall make reasonable ef-  
 11 forts to provide it.

12 (4) The respondent has a right to choose an attorney to represent the  
 13 respondent at a hearing under this part.

14 (5) At a hearing under this part, the respondent may:

15 (a) Present evidence and subpoena witnesses and documents;

16 (b) Examine witnesses, including any court-appointed evaluator, any  
 17 member of an evaluation committee, and the visitor; and

18 (c) Otherwise participate in the hearing.

19 (6) A hearing under this part shall be closed upon request of the re-  
 20 spondent and a showing of good cause.

21 (7) Any person may request to participate in a hearing under this part.  
 22 The court may grant the request, with or without a hearing, upon determining  
 23 that the best interest of the respondent will be served. The court may impose  
 24 appropriate conditions on the person's participation.

25 15-5-510. NOTICE OF ORDER. The petitioner shall give notice of an or-  
 26 der under this part to the individual who is subject to the protective ar-  
 27 rangement instead of guardianship or conservatorship, a person whose access  
 28 to the individual is restricted by the order, and any other person as the  
 29 court determines.

30 15-5-511. CONFIDENTIALITY OF RECORDS. The confidentiality of records  
 31 in a proceeding for a protective arrangement shall be maintained in accor-  
 32 dance with Idaho supreme court rules.

33 15-5-512. APPOINTMENT OF MASTER. The court may appoint a master to as-  
 34 sist in implementing a protective arrangement under this part. The master  
 35 has the authority conferred by the order of appointment and serves until dis-  
 36 charged by court order.

37 SECTION 8. That Chapter 5, Title 15, Idaho Code, be, and the same is  
 38 hereby amended by the addition thereto of a NEW PART, to be known and desig-  
 39 nated as Part 6, Chapter 5, Title 15, Idaho Code, and to read as follows:

40 PART 6  
 41 FORMS [RESERVED]

42 SECTION 9. That Chapter 5, Title 15, Idaho Code, be, and the same is  
 43 hereby amended by the addition thereto of a NEW PART, to be known and desig-  
 44 nated as Part 7, Chapter 5, Title 15, Idaho Code, and to read as follows:

PART 7  
MISCELLANEOUS PROVISIONS

1  
2  
3       15-5-701. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and  
4       construing this uniform act, consideration shall be given to the need to pro-  
5       mote uniformity of the law with respect to its subject matter among states  
6       that enact it.

7       15-5-702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL  
8       COMMERCE ACT. This chapter modifies, limits, or supersedes the electronic  
9       signatures in global and national commerce act, 15 U.S.C. 7001 et seq., but  
10      does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C.  
11      7001(c), or authorize electronic delivery of any of the notices described in  
12      section 103(b) of that act, 15 U.S.C. 7003(b).

13      15-5-703. APPLICABILITY. This act applies to:

14      (1) A proceeding for appointment of a guardian or conservator or for  
15      a protective arrangement instead of guardianship or conservatorship com-  
16      menced after January 1, 2026; and

17      (2) A guardianship, conservatorship, or protective arrangement in-  
18      stead of guardianship or conservatorship in existence on January 1, 2026,  
19      unless the court finds application of a particular provision of this act  
20      would substantially interfere with the effective conduct of the proceeding  
21      or prejudice the rights of a party, in which case the particular provision of  
22      this act does not apply and the superseded law applies.

23      15-5-704. SEVERABILITY. If any provision of this act or its applica-  
24      tion to any person or circumstance is held invalid, the invalidity does not  
25      affect other provisions or applications of this act that can be given effect  
26      without the invalid provision or application, and to this end, the provi-  
27      sions of this act are severable.

28      SECTION 10. That Section 15-1-201, Idaho Code, be, and the same is  
29      hereby amended to read as follows:

30      15-1-201. GENERAL DEFINITIONS. Subject to additional definitions  
31      contained in the subsequent chapters which are applicable to specific chap-  
32      ters or parts, and unless the context otherwise requires, in this code:

33      (1) "Application" means a written request to the registrar for an order  
34      of informal probate or appointment under part 3 of chapter 3 of this code.

35      (2) "Augmented estate" means the estate described in section 15-2-202,  
36      Idaho Code.

37      (3) "Beneficiary," as it relates to trust beneficiaries, includes a  
38      person who has any present or future interest, vested or contingent, and also  
39      includes the owner of an interest by assignment or other transfer and as it  
40      relates to a charitable trust, includes any person entitled to enforce the  
41      trust.

42      (4) "Child" includes any individual entitled to take as a child under  
43      this code by intestate succession from the parent whose relationship is in-  
44      volved and excludes any person who is only a stepchild, a foster child, a  
45      grandchild or any more remote descendant.

1 (5) "Claims," in respect to estates of decedents and protected persons,  
2 includes liabilities of the decedent or protected person whether arising in  
3 contract, in tort or otherwise, and liabilities of the estate which arise  
4 at or after the death of the decedent or after the appointment of a conser-  
5 vator, including funeral expenses and expenses of administration. The term  
6 does not include estate or inheritance taxes, other tax obligations arising  
7 from activities or transactions of the estate, demands or disputes regarding  
8 title of a decedent or protected person to specific assets alleged to be in-  
9 cluded in the estate.

10 (6) "Community property" is as defined in section 32-906, Idaho Code.

11 (7) "Conservator" means a person who is appointed by a court to manage  
12 the estate of a protected person and includes limited conservators as de-  
13 scribed by section 15-5-420, Idaho Code.

14 (8) "Court" means the court or branch having jurisdiction in matters  
15 relating to the affairs of decedents, minors, incapacitated and disabled  
16 persons. This court in this state is known as the district court.

17 (9) "Determination of heirship of community property" shall mean that  
18 determination required by the provisions of section 15-3-303, Idaho Code,  
19 upon an application for informal probate not accompanied by presentation of  
20 a will.

21 (10) "Determination of heirship" shall mean that determination of heir-  
22 ship required by section 15-3-409, Idaho Code, upon a finding of intestacy.

23 (11) "Devise," when used as a noun, means a testamentary disposition of  
24 real or personal property and when used as a verb, means to dispose of real or  
25 personal property by will.

26 (12) "Devisee" means any person designated in a will to receive a de-  
27 vise. In the case of a devise to an existing trust or trustee, or to a trustee  
28 or trust described by will, the trust or trustee is the devisee and the bene-  
29 ficiaries are not devisees.

30 (13) "Disability," with respect to an individual, means any mental or  
31 physical impairment which substantially limits one (1) or more major life  
32 activities of the individual including, but not limited to, self-care, man-  
33 ual tasks, walking, seeing, hearing, speaking, learning, or working, or a  
34 record of such an impairment, or being regarded as having such an impairment.  
35 Disability shall not include transvestism, transsexualism, pedophilia,  
36 exhibitionism, voyeurism, other sexual behavior disorders, or substance use  
37 disorders, compulsive gambling, kleptomania, or pyromania. Sexual prefer-  
38 ence or orientation is not considered an impairment or disability. Whether  
39 an impairment substantially limits a major life activity shall be determined  
40 without consideration of the effect of corrective or mitigating measures  
41 used to reduce the effects of the impairment.

42 (14) "Distributee" means any person who has received property of a dece-  
43 dent from his personal representative other than as a creditor or purchaser.  
44 A testamentary trustee is a distributee only to the extent of distributed as-  
45 sets or increment thereto remaining in his hands. A beneficiary of a tes-  
46 tamentary trust to whom the trustee has distributed property received from  
47 a personal representative is a distributee of the personal representative.  
48 For the purpose of this provision "testamentary trustee" includes a trustee  
49 to whom assets are transferred by will, to the extent of the devised assets.

1 (15) "Emancipated minor" shall mean any male or female who has been mar-  
2 ried.

3 (16) "Estate" means all property of the decedent, including community  
4 property of the surviving spouse subject to administration, property of  
5 trusts, and property of any other person whose affairs are subject to this  
6 code as it exists from time to time during administration.

7 (17) "Exempt property" means that property of a decedent's estate which  
8 is described in section 15-2-403, Idaho Code.

9 (18) "Fiduciary" includes personal representative, guardian, conser-  
10 vator and trustee.

11 (19) "Foreign personal representative" means a personal representative  
12 of another jurisdiction.

13 (20) "Formal proceedings" means those conducted before a judge with no-  
14 tice to interested persons.

15 (21) "Guardian" means a person who has qualified as a guardian of a minor  
16 or incapacitated person pursuant to testamentary or court appointment and  
17 includes limited guardians as described by section 15-5-304, Idaho Code, but  
18 excludes one who is merely a guardian ad litem.

19 (22) "Heirs" means those persons, including the surviving spouse, who  
20 are entitled under the statutes of intestate succession to the property of a  
21 decedent.

22 (23) "~~Incapacitated person" is as defined in section 15-5-101, Idaho~~  
23 ~~Code.~~ means any person who is impaired, except by minority, to the extent  
24 that he lacks sufficient understanding or capacity to make or communicate  
25 responsible decisions concerning his person, provided, that the term shall  
26 not refer to a person with a developmental disability as defined in section  
27 66-402(5), Idaho Code, and provided further that:

28 (a) "Incapacity" means a legal, not a medical, disability and shall  
29 be measured by function limitations, and it shall be construed to mean  
30 or refer to any person who has suffered, is suffering, or is likely to  
31 suffer substantial harm due to an inability to provide for his personal  
32 needs for food, clothing, shelter, health care, or safety or an inabil-  
33 ity to manage his property or financial affairs;

34 (b) Inability to provide for personal needs or to manage property shall  
35 be evidenced by acts or occurrences, or statements that strongly in-  
36 dicade imminent acts or occurrences. Material evidence of inability  
37 shall have occurred within twelve (12) months prior to the filing of the  
38 petition for guardianship or conservatorship;

39 (c) Isolated instances of simple negligence or improvidence, lack of  
40 resources, or any act, occurrence, or statement, if that act, occur-  
41 rence, or statement is the product of an informed judgment, shall not  
42 constitute evidence of inability to provide for personal needs or to  
43 manage property; and

44 (d) "Informed judgment" means a choice made by a person who has the  
45 ability to make such a choice and who makes it voluntarily after all  
46 relevant information necessary to making the decision has been provided  
47 and who understands that he is free to choose or refuse any alternative  
48 available and who clearly indicates or expresses the outcome of his  
49 choice.

1 (24) "Informal proceedings" means those conducted without notice to in-  
2 terested persons by an officer of the court acting as a registrar for probate  
3 of a will or appointment of a personal representative.

4 (25) "Interested person" includes heirs, devisees, children, spouses,  
5 creditors, beneficiaries and any others having a property right in or claim  
6 against a trust estate or the estate of a decedent, ward or protected per-  
7 son which may be affected by the proceeding. It also includes persons hav-  
8 ing priority for appointment as personal representative, and other fiducia-  
9 ries representing interested persons. The meaning as it relates to partic-  
10 ular persons may vary from time to time and must be determined according to  
11 the particular purposes of, and matter involved in, any proceeding. In a  
12 guardianship or conservatorship proceeding, it also includes any government-  
13 tal agency paying or planning to pay benefits to the ward or protected per-  
14 son and any public or charitable agency that regularly concerns itself with  
15 methods for preventing unnecessary or overly intrusive court intervention  
16 in the affairs of persons for whom protective orders may be sought and that  
17 seeks to participate in the proceedings.

18 (26) "Issue" of a person means all his lineal descendants of all genera-  
19 tions, with the relationship of parent and child at each generation being de-  
20 termined by the definitions of child and parent contained in this code.

21 (27) "Lease" includes an oil, gas, or other mineral lease.

22 (28) "Letters" includes letters testamentary, letters of guardianship,  
23 letters of administration, and letters of conservatorship.

24 (29) "Minor" means a male under eighteen (18) years of age or a female  
25 under eighteen (18) years of age.

26 (30) "Mortgage" means any conveyance, agreement or arrangement in which  
27 property is used as security.

28 (31) "Nonresident decedent" means a decedent who was domiciled in an-  
29 other jurisdiction at the time of his death.

30 (32) "Organization" includes a corporation, government or governmental  
31 subdivision or agency, business trust, estate, trust, partnership or asso-  
32 ciation, two (2) or more persons having a joint or common interest, or any  
33 other legal entity.

34 (33) "Parent" includes any person entitled to take, or who would be en-  
35 titled to take if the child died without a will, as a parent under this code  
36 by intestate succession from the child whose relationship is in question and  
37 excludes any person who is only a stepparent, foster parent, or grandparent.

38 (34) "Person" means an individual, a corporation, business trust, es-  
39 tate, trust, partnership, limited liability company, association, joint  
40 venture, public corporation, government, governmental subdivision, agency,  
41 or instrumentality, or any other legal or commercial entity.

42 (35) "Personal representative" includes executor, administrator, suc-  
43 cessor personal representative, special administrator, and persons who per-  
44 form substantially the same function under the law governing their status.  
45 "General personal representative" excludes special administrator.

46 (36) "Petition" means a written request to the court for an order after  
47 notice.

48 (37) "Proceeding" includes action at law and suit in equity.

49 (38) "Property" includes both real and personal property or any inter-  
50 est therein and means anything that may be the subject of ownership.

- 1 (39) "Protected person" is as defined in section 15-5-101, Idaho Code.  
2 (40) "Protective proceeding" is as defined in section 15-5-101, Idaho  
3 Code.  
4 (41) "Quasi-community property" is the property defined by section  
5 15-2-201, Idaho Code.  
6 (42) "Registrar" refers to magistrates or judges of the district court  
7 who shall perform the functions of registrar as provided in section 15-1-  
8 307, Idaho Code.  
9 (43) "Security" includes any note, stock, treasury stock, bond, debenture,  
10 evidence of indebtedness, certificate of interest or participation in  
11 an oil, gas or mining title or lease or in payments out of production under  
12 such a title or lease, collateral trust certificate, transferable share,  
13 voting trust certificate or, in general, any interest or instrument commonly  
14 known as a security, or any certificate of interest or participation, any  
15 temporary or interim certificate, receipt or certificate of deposit for, or  
16 any warrant or right to subscribe to or purchase, any of the foregoing.  
17 (44) "Separate property" is as defined in section 32-903, Idaho Code.  
18 (45) "Settlement," in reference to a decedent's estate, includes the  
19 full process of administration, distribution and closing.  
20 (46) "Settlor" includes grantor, trustor, and words of similar import.  
21 (47) "Special administrator" means a personal representative as described  
22 by sections 15-3-614 through 15-3-618, Idaho Code.  
23 (48) "State" includes any state of the United States, the District of  
24 Columbia, the Commonwealth of Puerto Rico, and any territory or possession  
25 subject to the legislative authority of the United States.  
26 (49) "Successor personal representative" means a personal representative,  
27 other than a special administrator, who is appointed to succeed a previously  
28 appointed personal representative.  
29 (50) "Successors" means those persons, other than creditors, who are  
30 entitled to property of a decedent under his will or this code.  
31 (51) "Supervised administration" refers to the proceedings described  
32 in part 5, chapter 3, of this code.  
33 (52) "Testacy proceeding" means a proceeding to establish a will or determine  
34 intestacy.  
35 (53) "Trust" includes any express trust, private or charitable, with  
36 additions thereto, wherever and however created. It also includes a trust  
37 created or determined by judgment or decree under which the trust is to be  
38 administered in the manner of an express trust. "Trust" excludes other constructive  
39 trusts, and it excludes resulting trusts, conservatorships, personal representatives,  
40 trust accounts as defined in chapter 6 of this code, custodial arrangements pursuant  
41 to chapter 8, title 68, Idaho Code, business trusts providing for certificates to be  
42 issued to beneficiaries, common trust funds, voting trusts, security arrangements,  
43 liquidation trusts, and trusts for the primary purpose of paying debts, dividends,  
44 interest, salaries, wages, profits, pensions, or employee benefits of any kind,  
45 and any arrangement under which a person is nominee or escrowee for another.  
46 (54) "Trustee" includes an original, additional, or successor trustee, whether  
47 or not appointed or confirmed by court.  
48 (55) "Ward" is as defined in section 15-5-101, Idaho Code.  
49



1 (56) "Will" is a testamentary instrument and includes codicil and any  
2 testamentary instrument which merely appoints an executor or revokes or re-  
3 vises another will.

4 SECTION 11. That Section 15-12-108, Idaho Code, be, and the same is  
5 hereby amended to read as follows:

6 15-12-108. NOMINATION OF CONSERVATOR -- RELATION OF AGENT TO COURT-  
7 APPOINTED FIDUCIARY. (1) In a power of attorney, a principal may nominate a  
8 conservator of the principal's estate for consideration by the court if pro-  
9 tective proceedings for the principal's estate are thereafter commenced.

10 (2) If, after a principal executes a power of attorney, a court appoints  
11 a conservator of the principal's estate or other fiduciary charged with the  
12 management of some or all of the principal's property, including appointment  
13 of a temporary conservator pursuant to section ~~15-5-407A~~ 15-5-125, Idaho  
14 Code, the agent is accountable to the fiduciary as well as to the principal.  
15 The power of attorney is terminated unless otherwise ordered by the court.

16 SECTION 12. That Section 18-211, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 18-211. EXAMINATION OF DEFENDANT -- APPOINTMENT OF PSYCHIATRISTS AND  
19 LICENSED PSYCHOLOGISTS -- HOSPITALIZATION -- REPORT. (1) Whenever there  
20 is reason to doubt the defendant's fitness to proceed as set forth in sec-  
21 tion 18-210, Idaho Code, the court shall appoint at least one (1) qualified  
22 psychiatrist or licensed psychologist or shall request the director of the  
23 department of health and welfare to designate at least one (1) qualified  
24 psychiatrist or licensed psychologist to examine and report upon the mental  
25 condition of the defendant to assist counsel with defense or understand the  
26 proceedings. The appointed examiner shall also evaluate whether the defen-  
27 dant lacks capacity to make informed decisions about treatment. The costs  
28 of examination shall be paid by the defendant if he is financially able. The  
29 determination of ability to pay shall be made in accordance with chapter 8,  
30 title 19, Idaho Code.

31 (2) Within three (3) days, excluding Saturdays, Sundays and legal hol-  
32 idays, of the appointment or designation, the examiner shall determine the  
33 best location for the examination. If practical, the examination shall be  
34 conducted locally on an outpatient basis.

35 (3) If the examiner determines that confinement is necessary for pur-  
36 poses of the examination, the court may order the defendant to be confined to  
37 a jail, a hospital, or other suitable facility for that purpose for a period  
38 not exceeding thirty (30) days. The order of confinement shall require the  
39 county sheriff to transport the defendant to and from the facility and shall  
40 notify the facility of any known medical, behavioral, or security require-  
41 ments of the defendant. The court, upon request, may make available to the  
42 examiner any court records relating to the defendant.

43 (4) In such examination, any method may be employed that is accepted by  
44 the examiner's profession for the examination of those alleged not to be com-  
45 petent to assist counsel in their defense.

46 (5) Upon completion of the examination, a report shall be submitted to  
47 the court and shall include the following:

1 (a) A description of the nature of the examination;  
 2 (b) A diagnosis or evaluation of the mental condition of the defendant;  
 3 (c) An opinion as to the defendant's capacity to understand the pro-  
 4 ceedings against him and to assist in his own defense;  
 5 (d) An opinion whether the defendant lacks the capacity to make in-  
 6 formed decisions about treatment. "Lack of capacity to make informed  
 7 decisions about treatment" means the defendant's inability, by reason  
 8 of his mental condition, to achieve a rudimentary understanding of the  
 9 purpose, nature, and possible significant risks and benefits of treat-  
 10 ment, after conscientious efforts at explanation.

11 (6) If the examination cannot be conducted by reason of the unwilling-  
 12 ness of the defendant to participate therein, the report shall so state and  
 13 shall include, if possible, an opinion as to whether such unwillingness of  
 14 the defendant was the result of mental disease or defect.

15 (7) The report of the examination shall be filed with the clerk of the  
 16 court, who shall cause copies to be delivered to the prosecuting attorney and  
 17 to counsel for the defendant.

18 (8) When the defendant wishes to be examined by an expert of his own  
 19 choice, such examiner shall be permitted to have reasonable access to the de-  
 20 fendant for the purpose of examination.

21 (9) In the event a defendant is suspected of being developmentally  
 22 disabled, the examination shall proceed with those experts set out in  
 23 ~~subsection (7) of~~ section 66-402(6), Idaho Code.

24 (10) In addition to the psychiatrist, licensed psychologist, or evalua-  
 25 tion committee, the court may appoint additional experts to examine the de-  
 26 fendant.

27 (11) If, at any time during the examination process, the examiner has  
 28 reason to believe that the defendant's alleged incompetency may be the  
 29 result of a developmental disability and the matter has not already been  
 30 referred to an evaluation committee for review, the examiner shall immedi-  
 31 ately notify the court. The court shall then appoint an evaluation committee  
 32 or shall order the department of health and welfare to designate, within  
 33 two (2) business days, an evaluation committee consistent with section  
 34 66-402(7)(6), Idaho Code.

35 (12) If the defendant lacks capacity to make informed decisions about  
 36 treatment, as defined in section 66-317, Idaho Code, the court may authorize  
 37 consent to be given pursuant to section 66-322, Idaho Code. If the defen-  
 38 dant lacks capacity to make informed decisions as defined in ~~subsection (9)~~  
 39 ~~of~~ section 66-402(8), Idaho Code, the court may authorize consent to be given  
 40 pursuant to ~~sections 66-404 and 66-405~~ chapter 5, title 15, Idaho Code.

41 (13) If the defendant was confined solely for the purpose of examina-  
 42 tion, he shall be released from the facility within three (3) days, excluding  
 43 Saturdays, Sundays and legal holidays, following notification of completion  
 44 of the examination.

45 SECTION 13. That Section 18-212, Idaho Code, be, and the same is hereby  
 46 amended to read as follows:

47 18-212. DETERMINATION OF FITNESS OF DEFENDANT TO PROCEED -- SUSPEN-  
 48 SION OF PROCEEDING AND COMMITMENT OF DEFENDANT -- POSTCOMMITMENT HEAR-  
 49 ING. (1) When the defendant's fitness to proceed is drawn in question, the

1 issue shall be determined by the court. The court shall also determine,  
2 based on the examiner's findings, whether the defendant lacks capacity to  
3 make informed decisions about treatment. If neither the prosecuting attor-  
4 ney nor counsel for the defendant contests the finding of the report filed  
5 pursuant to section 18-211, Idaho Code, the court may make the determination  
6 on the basis of such report. If the finding is contested, the court shall  
7 hold a hearing on the issue. If the report is received in evidence upon such  
8 hearing, the party who contests the finding thereof shall have the right to  
9 summon and to cross-examine the psychiatrist or licensed psychologist who  
10 submitted the report and to offer evidence upon the issue.

11 (2) If the court determines that the defendant lacks fitness to pro-  
12 ceed, the proceeding against him shall be suspended, except as provided in  
13 subsections (5) and (6) of this section, and the court shall commit him to  
14 the custody of the director of the department of health and welfare, for a  
15 period not exceeding ninety (90) days, for care and treatment at an appro-  
16 priate facility of the department of health and welfare or, if the defendant  
17 is found to be dangerously mentally ill as defined in section 66-1305, Idaho  
18 Code, to the department of correction for a period not exceeding ninety (90)  
19 days. The order of commitment shall include the finding by the court whether  
20 the defendant lacks capacity to make informed decisions about treatment.  
21 For purposes of this section, "facility" shall mean a state hospital, insti-  
22 tution, mental health center, or those facilities enumerated in ~~subsection~~  
23 ~~(8) of~~ section 66-402(7), Idaho Code, equipped to evaluate or rehabilitate  
24 such defendants. The order of commitment shall require the county sheriff to  
25 transport the defendant to and from the facility and require an evaluation  
26 of the defendant's mental condition at the time of admission to the facility  
27 and a progress report on the defendant's mental condition. The progress  
28 report shall include an opinion whether the defendant is fit to proceed, or  
29 if not, whether there is a substantial probability the defendant will be fit  
30 to proceed within the foreseeable future. If the report concludes that there  
31 is a substantial probability that the defendant will be fit to proceed in  
32 the foreseeable future, the court may order the continued commitment of the  
33 defendant for an additional one hundred eighty (180) days. If at any time the  
34 director of the facility to which the defendant is committed determines that  
35 the defendant is fit to proceed, such determination shall be reported to the  
36 court.

37 (3) If during a commitment under this section a defendant who has the  
38 capacity to make informed decisions about treatment refuses any and all  
39 treatment, or the only treatment available to restore competency for trial,  
40 the court shall, within seven (7) days, excluding weekends and holidays,  
41 of receiving notice of the defendant's refusal from the facility, conduct  
42 a hearing on whether to order involuntary treatment or order such other  
43 terms and conditions as may be determined appropriate. The burden shall be  
44 on the state to demonstrate grounds for involuntary treatment including,  
45 but not limited to: the prescribed treatment is essential to restore the  
46 defendant's competency, the medical necessity and appropriateness of the  
47 prescribed treatment, no less intrusive treatment alternative exists to  
48 render the defendant competent for trial, and other relevant information.  
49 If each of these findings is made by the court, treatment shall be ordered  
50 consistent with the findings.

1 (4) Each report shall be filed with the clerk of the court, who shall  
2 cause copies to be delivered to the prosecuting attorney and to counsel for  
3 the defendant. Upon receipt of a report, the court shall determine, after a  
4 hearing if a hearing is requested, the disposition of the defendant and the  
5 proceedings against him. If the court determines that the defendant is fit  
6 to proceed, the proceeding shall be resumed. If at the end of the initial  
7 ninety (90) days the court determines that the defendant is unfit and there  
8 is not a substantial probability the defendant will be fit to proceed within  
9 the foreseeable future or if the defendant is not fit to proceed after the  
10 expiration of the additional one hundred eighty (180) days, involuntary com-  
11 mitment proceedings shall be instituted pursuant to either section 66-329 or  
12 66-406, Idaho Code, in the court in which the criminal charge is pending.

13 (5) In its review of commitments pursuant to section 66-337, Idaho  
14 Code, the department of health and welfare shall determine whether the de-  
15 fendant is fit to proceed with trial. The department of health and welfare  
16 shall review its commitments pursuant to chapter 4, title 66, Idaho Code,  
17 and may recommend that the defendant is fit to proceed with trial. If the  
18 district court which committed the defendant pursuant to section 66-406,  
19 Idaho Code, agrees with the department's recommendation and finds the condi-  
20 tions which justified the order pursuant to section 66-406, Idaho Code, do  
21 not continue to exist, criminal proceedings may resume. If the defendant is  
22 fit to proceed, the court in which the criminal charge is pending shall be  
23 notified and the criminal proceedings may resume. If, however, the court is  
24 of the view that so much time has elapsed, excluding any time spent free from  
25 custody by reason of the escape of the defendant, since the commitment of  
26 the defendant that it would be unjust to resume the criminal proceeding, the  
27 court may dismiss the charge.

28 (6) If a defendant escapes from custody during his confinement, the di-  
29 rector shall immediately notify the court from which committed, the pros-  
30 ecuting attorney and the sheriff of the county from which committed. The  
31 court shall forthwith issue an order authorizing any health officer, peace  
32 officer, or the director of the institution from which the defendant escaped  
33 to take the defendant into custody and immediately return him to his place of  
34 confinement.

35 SECTION 14. That Section 18-3302, Idaho Code, be, and the same is hereby  
36 amended to read as follows:

37 18-3302. CONCEALED WEAPONS. (1) The legislature hereby finds that the  
38 people of Idaho have reserved for themselves the right to keep and bear arms  
39 while granting the legislature the authority to regulate the carrying of  
40 weapons concealed. The provisions of this chapter regulating the carrying  
41 of weapons must be strictly construed so as to give maximum scope to the  
42 rights retained by the people.

43 (2) As used in this chapter:

44 (a) "Concealed weapon" means any deadly weapon carried on or about the  
45 person in a manner not discernible by ordinary observation;

46 (b) "Deadly weapon" means:

47 (i) Any dirk, dirk knife, bowie knife, dagger or firearm;

- 1           (ii) Any other weapon, device, instrument, material or substance  
2           that is designed and manufactured to be readily capable of causing  
3           death or serious bodily injury; or  
4           (iii) Any other weapon, device, instrument, material or substance  
5           that is intended by the person to be readily capable of causing  
6           death or serious bodily injury.
- 7       (c) The term "deadly weapon" does not include:  
8           (i) Any knife, cleaver or other instrument that is intended by the  
9           person to be used in the processing, preparation or eating of food;  
10           (ii) Any knife with a blade six (6) inches or less; or  
11           (iii) Any taser, stun-gun, pepper spray or mace;
- 12       (d) "Firearm" means any weapon that will, is designed to, or may readily  
13       be converted to expel a projectile by the action of an explosive;
- 14       (e) "Loaded" means:  
15           (i) For a firearm capable of using fixed ammunition, that live  
16           ammunition is present in:  
17               1. The chamber or chambers of the firearm;  
18               2. Any internal magazine of the firearm; or  
19               3. A detachable magazine inserted in the firearm;  
20           (ii) For a firearm that is not capable of using fixed ammunition,  
21           that the firearm contains:  
22               1. A propellant charge; and  
23               2. A priming cap or primer cap.
- 24       (3) No person shall carry concealed weapons on or about his person with-  
25       out a license to carry concealed weapons, except:  
26           (a) In the person's place of abode or fixed place of business;  
27           (b) On property in which the person has any ownership or leasehold in-  
28           terest;  
29           (c) On private property where the person has permission to carry con-  
30           cealed weapons from any person with an ownership or leasehold interest;  
31           (d) Outside the limits of or confines of any city, if the person is eigh-  
32           teen (18) years of age or older and is not otherwise disqualified from  
33           being issued a license under subsection (11) of this section.
- 34       (4) Subsection (3) of this section shall not apply to restrict or pro-  
35       hibit the carrying or possession of:  
36           (a) Any deadly weapon located in plain view;  
37           (b) Any lawfully possessed shotgun or rifle;  
38           (c) Any deadly weapon concealed in a motor vehicle;  
39           (d) A firearm that is not loaded and is secured in a case;  
40           (e) A firearm that is disassembled or permanently altered such that it  
41           is not readily operable; and  
42           (f) Any deadly weapon concealed by a person who:  
43               (i) Is over eighteen (18) years of age;  
44               (ii) Is a citizen of the United States or a current member of the  
45               armed forces of the United States; and  
46               (iii) Is not disqualified from being issued a license under para-  
47               graphs (b) through (n) of subsection (11) of this section.
- 48       (5) The requirement to secure a license to carry concealed weapons un-  
49       der this section shall not apply to the following persons:  
50           (a) Officials of a city, county or the state of Idaho;

1 (b) Any publicly elected Idaho official;

2 (c) Members of the armed forces of the United States or of the national  
3 guard when in performance of official duties;

4 (d) Criminal investigators of the attorney general's office and crim-  
5 inal investigators of a prosecuting attorney's office, prosecutors and  
6 their deputies;

7 (e) Any peace officer as defined in section 19-5101(d), Idaho Code, in  
8 good standing;

9 (f) Retired peace officers or detention deputies with at least ten (10)  
10 years of service with the state or a political subdivision as a peace of-  
11 ficer or detention deputy and who have been certified by the peace offi-  
12 cer standards and training council;

13 (g) Any person who has physical possession of his valid license or per-  
14 mit authorizing him to carry concealed weapons from another state; and

15 (h) Any person who has physical possession of a valid license or permit  
16 from a local law enforcement agency or court of the United States autho-  
17 rizing him to carry concealed weapons.

18 (6) The sheriff of the county of the applicant's residence or, if the  
19 applicant has obtained a protection order pursuant to chapter 63, title 39,  
20 Idaho Code, the sheriff of a county where the applicant is temporarily resid-  
21 ing may issue a temporary emergency license for good cause pending review of  
22 an application made under subsection (7) of this section. Temporary emer-  
23 gency licenses must be easily distinguishable from regular licenses. A tem-  
24 porary emergency license shall be valid for not more than ninety (90) days.

25 (7) The sheriff of a county, on behalf of the state of Idaho, must,  
26 within ninety (90) days after the filing of a license application by any per-  
27 son who is not disqualified as provided herein from possessing or receiving  
28 a firearm under state or federal law, issue a license to the person to carry  
29 concealed weapons on his person within this state. Such license shall be  
30 valid for five (5) years from the date of issuance.

31 (8) The sheriff must make license applications readily available at the  
32 office of the sheriff, at other public offices in his or her jurisdiction and  
33 on the website of the Idaho state police. The license application shall be  
34 in a form to be prescribed by the director of the Idaho state police and must  
35 meet the following requirements:

36 (a) The license application shall require the applicant's name, ad-  
37 dress, description, signature, date of birth, place of birth, military  
38 status, citizenship and the driver's license number or state identi-  
39 fication card number if used for identification in applying for the  
40 license. Provided however, that if the applicant is not a United States  
41 citizen and is legally in the United States, the application must also  
42 require any alien or admission number issued to the applicant by United  
43 States immigration and customs enforcement or any successor agency;

44 (b) The license application may ask the applicant to disclose his  
45 social security number but must indicate that disclosure of the appli-  
46 cant's social security number is optional; and

47 (c) The license application must contain a warning that substantially  
48 reads as follows:

1 CAUTION: Federal law and state law on the possession of weapons and  
2 firearms differ. If you are prohibited by federal law from possess-  
3 ing a weapon or a firearm, you may be prosecuted in federal court. A  
4 state permit is not a defense to a federal prosecution.

5 (9) The sheriff may require the applicant to demonstrate familiarity  
6 with a firearm and must accept any one (1) of the following as evidence of the  
7 applicant's familiarity with a firearm:

8 (a) Completion of any hunter education or hunter safety course approved  
9 by the department of fish and game or a similar agency of another state;

10 (b) Completion of any national rifle association firearms safety or  
11 training course or any national rifle association hunter education  
12 course or any equivalent course;

13 (c) Completion of any firearms safety or training course or class  
14 available to the general public offered by a law enforcement agency,  
15 community college, college, university, or private or public institu-  
16 tion or organization or firearms training school utilizing instructors  
17 certified by the national rifle association or the Idaho state police;

18 (d) Completion of any law enforcement firearms safety or training  
19 course or class offered for security guards, investigators, special  
20 deputies, or offered for any division or subdivision of a law enforce-  
21 ment agency or security enforcement agency;

22 (e) Evidence of equivalent experience with a firearm through partici-  
23 pation in organized shooting competition or military service;

24 (f) A current license to carry concealed weapons pursuant to this sec-  
25 tion, unless the license has been revoked for cause;

26 (g) Completion of any firearms training or safety course or class con-  
27 ducted by a state-certified or national rifle association-certified  
28 firearms instructor; or

29 (h) Other training that the sheriff deems appropriate.

30 (10) Any person applying for original issuance of a license to carry  
31 concealed weapons must submit his fingerprints with the completed license  
32 application. Within five (5) days after the filing of an application, the  
33 sheriff must forward the applicant's completed license application and fin-  
34 gerprints to the Idaho state police. The Idaho state police must conduct a  
35 national fingerprint-based records check, an inquiry through the national  
36 instant criminal background check system and a check of any applicable state  
37 database, including a check for any mental health records for conditions or  
38 commitments that would disqualify a person from possessing a firearm under  
39 state or federal law, and return the results to the sheriff within sixty  
40 (60) days. If the applicant is not a United States citizen, an immigration  
41 alien query must also be conducted through United States immigration and  
42 customs enforcement or any successor agency. The sheriff shall not issue  
43 a license before receiving the results of the records check and must deny a  
44 license if the applicant is disqualified under any of the criteria listed  
45 in subsection (11) of this section. The sheriff may deny a license to carry  
46 concealed weapons to an alien if background information is not attainable or  
47 verifiable.

48 (11) A license to carry concealed weapons shall not be issued to any per-  
49 son who:

1 (a) Is under twenty-one (21) years of age, except as otherwise provided  
2 in this section;

3 (b) Is formally charged with a crime punishable by imprisonment for a  
4 term exceeding one (1) year;

5 (c) Has been adjudicated guilty in any court of a crime punishable by  
6 imprisonment for a term exceeding one (1) year;

7 (d) Is a fugitive from justice;

8 (e) Is an unlawful user of marijuana or any depressant, stimulant or  
9 narcotic drug, or any controlled substance as defined in 21 U.S.C. 802;

10 (f) Is currently suffering from or has been adjudicated as having suf-  
11 fered from any of the following conditions, based on substantial evi-  
12 dence:

13 (i) Lacking mental capacity as defined in section 18-210, Idaho  
14 Code;

15 (ii) Mentally ill as defined in section 66-317, Idaho Code;

16 (iii) Gravely disabled as defined in section 66-317, Idaho Code;  
17 or

18 (iv) An incapacitated person as defined in section ~~15-5-101~~ 15-1-  
19 201, Idaho Code;

20 (g) Has been discharged from the armed forces under dishonorable condi-  
21 tions;

22 (h) Has received a withheld judgment or suspended sentence for a crime  
23 punishable by imprisonment for a term exceeding one (1) year, unless the  
24 person has successfully completed probation;

25 (i) Has received a period of probation after having been adjudicated  
26 guilty of, or received a withheld judgment for, a misdemeanor offense  
27 that has as an element the intentional use, attempted use or threatened  
28 use of physical force against the person or property of another, unless  
29 the person has successfully completed probation;

30 (j) Is an alien illegally in the United States;

31 (k) Is a person who having been a citizen of the United States has re-  
32 nounced his or her citizenship;

33 (l) Is free on bond or personal recognizance pending trial, appeal or  
34 sentencing for a crime that would disqualify him from obtaining a con-  
35 cealed weapons license;

36 (m) Is subject to a protection order issued under chapter 63, title  
37 39, Idaho Code, that restrains the person from harassing, stalking or  
38 threatening an intimate partner of the person, or child of the intimate  
39 partner or person, or engaging in other conduct that would place an  
40 intimate partner in reasonable fear of bodily injury to the partner or  
41 child; or

42 (n) Is for any other reason ineligible to own, possess or receive a  
43 firearm under the provisions of Idaho or federal law.

44 (12) In making a determination in relation to an applicant's eligibil-  
45 ity under subsection (11) of this section, the sheriff shall not consider:

46 (a) A conviction, guilty plea or adjudication that has been nullified  
47 by expungement, pardon, setting aside or other comparable procedure by  
48 the jurisdiction where the conviction, guilty plea or adjudication oc-  
49 curred or in respect of which conviction, guilty plea or adjudication  
50 the applicant's civil right to bear arms either specifically or in com-



1            bination with other civil rights has been restored under operation of  
2            law or legal process; or

3            (b) Except as provided for in subsection (11) (f) of this section, an  
4            adjudication of mental defect, incapacity or illness or an involuntary  
5            commitment to a mental institution if the applicant's civil right to  
6            bear arms has been restored under operation of law or legal process.

7            (13) A license to carry concealed weapons must be in a form substan-  
8            tially similar to that of the Idaho driver's license and must meet the  
9            following specifications:

10           (a) The license must provide the licensee's name, address, date of  
11           birth and the driver's license number or state identification card num-  
12           ber if used for identification in applying for the license;

13           (b) The license must bear the licensee's signature and picture; and

14           (c) The license must provide the date of issuance and the date on which  
15           the license expires.

16           (14) Upon issuing a license under the provisions of this section, the  
17           sheriff must notify the Idaho state police within three (3) business days on  
18           a form or in a manner prescribed by the Idaho state police. Information re-  
19           lating to an applicant or licensee received or maintained pursuant to this  
20           section by the sheriff or Idaho state police is confidential and exempt from  
21           disclosure under section 74-105, Idaho Code.

22           (15) The fee for original issuance of a license shall be twenty dollars  
23           (\$20.00), which the sheriff must retain for the purpose of performing the du-  
24           ties required in this section. The sheriff may collect the actual cost of any  
25           additional fees necessary to cover the cost of processing fingerprints law-  
26           fully required by any state or federal agency or department, and the actual  
27           cost of materials for the license lawfully required by any state agency or  
28           department, which costs must be paid to the state. The sheriff must provide  
29           the applicant with a copy of the results of the fingerprint-based records  
30           check upon request of the applicant.

31           (16) The fee for renewal of the license shall be fifteen dollars  
32           (\$15.00), which the sheriff must retain for the purpose of performing the du-  
33           ties required in this section. The sheriff may collect the actual cost of any  
34           additional fees necessary to cover the processing costs lawfully required by  
35           any state or federal agency or department, and the actual cost of materials  
36           for the license lawfully required by any state agency or department, which  
37           costs must be paid to the state.

38           (17) Every license that is not, as provided by law, suspended, revoked  
39           or disqualified in this state shall be renewable at any time during the  
40           ninety (90) day period before its expiration or within ninety (90) days after  
41           the expiration date. The sheriff must mail renewal notices ninety (90) days  
42           prior to the expiration date of the license. The sheriff shall require the  
43           licensee applying for renewal to complete an application. The sheriff must  
44           submit the application to the Idaho state police for a records check of state  
45           and national databases. The Idaho state police must conduct the records  
46           check and return the results to the sheriff within thirty (30) days. The  
47           sheriff shall not issue a renewal before receiving the results of the records  
48           check and must deny a license if the applicant is disqualified under any of  
49           the criteria provided in this section. A renewal license shall be valid for  
50           a period of five (5) years. A license so renewed shall take effect on the ex-

1     piration date of the prior license. A licensee renewing ninety-one (91) days  
2     to one hundred eighty (180) days after the expiration date of the license  
3     must pay a late renewal penalty of ten dollars (\$10.00) in addition to the  
4     renewal fee unless waived by the sheriff, except that any licensee serving  
5     on active duty in the armed forces of the United States during the renewal  
6     period shall not be required to pay a late renewal penalty upon renewing  
7     ninety-one (91) days to one hundred eighty (180) days after the expiration  
8     date of the license. After one hundred eighty-one (181) days, the licensee  
9     must submit an initial application for a license and pay the fees prescribed  
10    in subsection (15) of this section. The renewal fee and any penalty shall  
11    be paid to the sheriff for the purpose of enforcing the provisions of this  
12    chapter. Upon renewing a license under the provisions of this section, the  
13    sheriff must notify the Idaho state police within five (5) days on a form or  
14    in a manner prescribed by the Idaho state police.

15       (18) No city, county or other political subdivision of this state shall  
16    modify or add to the requirements of this section, nor shall a city, county  
17    or political subdivision ask the applicant to voluntarily submit any infor-  
18    mation not required in this section. A civil action may be brought to enjoin  
19    a wrongful refusal to issue a license or a wrongful modification of the re-  
20    quirements of this section. The civil action may be brought in the county in  
21    which the application was made or in Ada county at the discretion of the peti-  
22    tioner. Any person who prevails against a public agency in any action in the  
23    courts for a violation of this section must be awarded costs, including rea-  
24    sonable attorney's fees incurred in connection with the legal action.

25       (19) A county sheriff, deputy sheriff or county employee who issues a  
26    license to carry a concealed weapon under this section shall not incur any  
27    civil or criminal liability as the result of the performance of his duties in  
28    compliance with this section.

29       (20) The sheriff of a county shall issue a license to carry a con-  
30    cealed weapon to those individuals between the ages of eighteen (18) and  
31    twenty-one (21) years who, except for the age requirement contained in sec-  
32    tion 18-3302K(4), Idaho Code, would otherwise meet the requirements for  
33    issuance of a license under section 18-3302K, Idaho Code. Licenses issued  
34    to individuals between the ages of eighteen (18) and twenty-one (21) years  
35    under this subsection shall be easily distinguishable from licenses issued  
36    pursuant to subsection (7) of this section. A license issued pursuant to  
37    this subsection after July 1, 2016, shall expire on the twenty-first birth-  
38    day of the licensee. A licensee, upon attaining the age of twenty-one (21)  
39    years, shall be allowed to renew the license under the procedure contained in  
40    section 18-3302K(9), Idaho Code. Such renewal license shall be issued as an  
41    enhanced license pursuant to the provisions of section 18-3302K, Idaho Code.

42       (21) A person carrying a concealed weapon in violation of the provisions  
43    of this section shall be guilty of a misdemeanor.

44       (22) The sheriff of the county where the license was issued or the sher-  
45    iff of the county where the person resides shall have the power to revoke a  
46    license subsequent to a hearing in accordance with the provisions of chapter  
47    52, title 67, Idaho Code, for any of the following reasons:

48       (a) Fraud or intentional misrepresentation in the obtaining of a li-  
49    cense;

1 (b) Misuse of a license, including lending or giving a license to an-  
2 other person, duplicating a license or using a license with the intent  
3 to unlawfully cause harm to a person or property;

4 (c) The doing of an act or existence of a condition that would have been  
5 grounds for the denial of the license by the sheriff;

6 (d) The violation of any of the terms of this section; or

7 (e) The applicant is adjudicated guilty of or receives a withheld judg-  
8 ment for a crime that would have disqualified him from initially receiv-  
9 ing a license.

10 (23) A person twenty-one (21) years of age or older who presents a valid  
11 license to carry concealed weapons is exempt from any requirement to undergo  
12 a records check at the time of purchase or transfer of a firearm from a feder-  
13 ally licensed firearms dealer. Provided however, a temporary emergency li-  
14 cense issued pursuant to subsection (6) of this section shall not exempt the  
15 holder of the license from any records check requirement.

16 (24) The attorney general must contact the appropriate officials in  
17 other states for the purpose of establishing, to the extent possible, recog-  
18 nition and reciprocity of the license to carry concealed weapons by other  
19 states, whether by formal agreement or otherwise. The Idaho state police  
20 must keep a copy and maintain a record of all such agreements and reciprocity  
21 recognitions, which must be made available to the public.

22 (25) Nothing in subsection (3) or (4) of this section shall be construed  
23 to limit the existing rights of a private property owner, private tenant,  
24 private employer, or private business entity. The provisions of this sub-  
25 section shall not apply to any property owned by the state of Idaho or its  
26 political subdivisions that is normally and habitually open to the public.  
27 Such limitation on the application of this subsection shall supersede *Hern-*  
28 *don v. City of Sandpoint*, 531 P.3d 1125 (Idaho 2023).

29 (a) Such limitation on the application of this subsection shall apply  
30 whether such property is leased, rented, licensed, loaned, permitted,  
31 or occupied, whether for consideration or not.

32 (b) Any restriction on the carrying of concealed weapons pursuant to  
33 this subsection may only be invoked for public property owned by the  
34 state or its political subdivisions when the use of such property is for  
35 a private event by invitation only, for a commercial event that charges  
36 admission, or for any other event with restricted access whether admis-  
37 sion is charged or not. For any such private event, commercial event,  
38 or other event, it must appear to a reasonable person that the general  
39 public does not have unrestricted access to the designated public prop-  
40 erty, or any subset of such property, that is normally and habitually  
41 open to the public.

42 (c) Nothing in this subsection relieves any political subdivision of  
43 the state of Idaho of its duties to convey or manage public property in  
44 accordance with Idaho law.

45 (d) Nothing in this subsection alters or amends the provisions of sec-  
46 tion 18-3302C or 18-3309, Idaho Code.

47 (26) The provisions of this section are hereby declared to be severable  
48 and if any provision of this section or the application of such provision to  
49 any person or circumstance is declared invalid for any reason, such declara-  
50 tion shall not affect the validity of remaining portions of this section.

1 SECTION 15. That Section 19-2914A, Idaho Code, be, and the same is  
2 hereby amended to read as follows:

3 19-2914A. BAIL ENFORCEMENT AGENTS. (1) As used in this section, "bail  
4 enforcement agent" or "agent" means a person who:

5 (a) Is empowered to arrest or surrender a defendant at any time before  
6 the exoneration of bail; and

7 (b) Meets the requirements of this section.

8 (2) Requirements. An agent must:

9 (a) Be eighteen (18) years of age or older;

10 (b) Be a citizen or legal resident of the United States;

11 (c) Not have been adjudicated as having suffered from any of the follow-  
12 ing conditions, based on substantial evidence:

13 (i) Lacking mental capacity as defined in section 18-210, Idaho  
14 Code;

15 (ii) Mentally ill as defined in section 66-317, Idaho Code;

16 (iii) Gravely disabled as defined in section 66-317, Idaho Code;

17 or

18 (iv) An incapacitated person as defined in section ~~15-5-101~~ 15-1-  
19 201, Idaho Code; and

20 (d) Not be a fugitive from justice.

21 (3) Required items and information. During an arrest pursuant to sec-  
22 tion 19-2914, Idaho Code, a bail enforcement agent must possess:

23 (a) An affidavit extending the authority to arrest the defendant;

24 (b) The name, last known address, and photograph of the defendant;

25 (c) The name and principal address of the surety insurance company, its  
26 bail agent, or the person posting a property bond or cash deposit that is  
27 empowering the bail enforcement agent to arrest the defendant; and

28 (d) A valid driver's license or other photographic identifying docu-  
29 ment or information.

30 (4) Identification. A badge shall be worn by bail enforcement agents  
31 that is designed exclusively for bail enforcement agents. The badge must  
32 clearly delineate the title of "bail enforcement agent" directly on and be-  
33 low the badge.

34 (5) Notification to the sheriff. Prior to making a planned apprehen-  
35 sion, an agent must first provide notice to the county sheriff of the county  
36 within which the planned apprehension is to occur.

37 (6) Prohibitions. Upon appointment, until either revocation of ap-  
38 pointment or the exoneration of bail, an agent may not:

39 (a) Represent himself as a peace officer or an employee of any depart-  
40 ment of a federal, state, or local law enforcement agency;

41 (b) Wear any uniform that would represent the agent as a peace officer  
42 or an employee of any department of a federal, state, or local govern-  
43 ment;

44 (c) Use a fictitious name that would represent the agent as a peace of-  
45 ficer or an employee of a department of a federal, state, or local gov-  
46 ernment; or

47 (d) Carry a weapon, unless in compliance with all state and federal  
48 laws.

1 (7) Penalty. Any person who violates the provisions of subsection (2),  
 2 (3), (4), or (5) of this section for the first offense shall be liable for a  
 3 misdemeanor penalty of a fine not to exceed one thousand dollars (\$1,000).  
 4 For any second or subsequent offense, the person shall be subject to a misde-  
 5 meanor penalty not to exceed six (6) months in jail and a fine not to exceed  
 6 one thousand dollars (\$1,000). Any person who fails to obtain authority from  
 7 a surety insurance company or its bail agent, or the person posting a prop-  
 8 erty bond or cash deposit in accordance with section 19-2914, Idaho Code, or  
 9 a similar law of another state, or who attempts to arrest or surrender a de-  
 10 fendant without meeting the requirements of subsection (2) of this section,  
 11 or who violates the provisions of subsection (6) of this section, is guilty  
 12 of a misdemeanor.

13 (8) Requirements for prosecution. Venue for prosecution for a viola-  
 14 tion under the provisions of this section shall be in the county where the  
 15 violation occurred, and such prosecution will be handled by the prosecuting  
 16 attorney of such county. A prosecution for a violation of this section must  
 17 be commenced within the time limitations set forth in section 19-403, Idaho  
 18 Code.

19 (9) A bail agent who appoints a bail enforcement agent is required to  
 20 keep a copy of the bail enforcement agent's appointment and may rely thereon  
 21 that the bail enforcement agent has met the requirements of this section.

22 SECTION 16. That Section 19-4204, Idaho Code, be, and the same is hereby  
 23 amended to read as follows:

24 19-4204. APPLICATION FOR WRIT OF HABEAS CORPUS BY A PERSON NOT A PRIS-  
 25 ONER. (1) Application for a writ of habeas corpus by a person not a prisoner  
 26 shall be made by filing a petition for writ of habeas corpus in the district  
 27 court of the county in which the person is restrained.

28 (2) The petition must be verified by the oath or affirmation of the  
 29 party applying for the writ and shall specify:

30 (a) That the person is unlawfully restrained of his liberty;

31 (b) The identity and address of the person restraining the subject of  
 32 the petition;

33 (c) The name and address of the place in which the person is restrained;

34 (d) A description of the facts which make the restraint illegal; and

35 (e) The theory of law upon which relief is sought, if known.

36 (3) Application under this section may be made by a guardian on behalf  
 37 of a minor or by a guardian on behalf of an incapacitated person as defined in  
 38 section ~~15-5-101~~ 15-1-201, Idaho Code.

39 SECTION 17. That Section 19-4207, Idaho Code, be, and the same is hereby  
 40 amended to read as follows:

41 19-4207. APPLICATION FOR WRIT OF HABEAS CORPUS ON BEHALF OF ANOTHER. A  
 42 petition for writ of habeas corpus may only be filed by a person described in  
 43 section 19-4203, Idaho Code, or his attorney, except that a petition may be  
 44 filed on behalf of an aggrieved person who is a minor, or on behalf of a person  
 45 who is incapacitated as defined by section ~~15-5-101~~ 15-1-201, Idaho Code, by  
 46 the aggrieved person's legal guardian.

1 SECTION 18. That Section 19-5703, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 19-5703. ADDRESS CONFIDENTIALITY PROGRAM -- APPLICATION -- CERTIFI-  
4 CATION. (1) An adult person, a parent or a guardian acting on behalf of a mi-  
5 nor, or a guardian appointed pursuant to section ~~15-5-304~~ 15-5-309, Idaho  
6 Code, acting on behalf of an incapacitated person, may apply to the secretary  
7 of state to have an address designated by the secretary of state serve as the  
8 person's address or the address of the minor or incapacitated person. The  
9 secretary of state shall approve an application if it is filed in the manner  
10 and on the form prescribed by the secretary of state and if it contains:

11 (a) A sworn statement by the applicant that the applicant has good rea-  
12 son to believe:

13 (i) That the applicant, or the minor or incapacitated person on  
14 whose behalf the application is made, is a victim of domestic vio-  
15 lence, stalking, rape or malicious harassment, or any other crime  
16 listed in section 19-5701, Idaho Code; and

17 (ii) That the applicant fears for his or her safety or his or her  
18 children's safety, or the safety of the minor or incapacitated  
19 person on whose behalf the application is made;

20 (b) A designation of the secretary of state as agent for purposes of  
21 service of process and for the purpose of receipt of mail;

22 (c) The mailing address where the applicant can be contacted by the sec-  
23 retary of state, and the telephone number or numbers where the applicant  
24 can be called by the secretary of state; and

25 (d) The address or addresses that the applicant requests not be dis-  
26 closed.

27 (2) If the applicant alleges that the basis for the application is that  
28 the applicant, or the minor or incapacitated person on whose behalf the ap-  
29 plication is made, is a victim of domestic violence, sexual assault or human  
30 trafficking, the application must be accompanied by evidence including, but  
31 not limited to, any of the following:

32 (a) Police, court, or other government agency records or files;

33 (b) Documentation from a domestic violence or sexual assault program or  
34 facility if the person is alleged to be a victim of domestic violence,  
35 sexual assault or human trafficking;

36 (c) Documentation from a legal, clerical, medical or other profes-  
37 sional from whom the applicant or person on whose behalf the application  
38 is made has sought assistance in dealing with the alleged domestic vio-  
39 lence, sexual assault or human trafficking; and

40 (d) A certified copy of a no contact order or a temporary or permanent  
41 civil protection order.

42 (3) If the applicant alleges that the basis for the application is that  
43 the applicant, or the minor or incapacitated person on whose behalf the ap-  
44 plication is made, is a victim of stalking or malicious harassment, the ap-  
45 plication must be accompanied by evidence including, but not limited to, any  
46 of the following:

47 (a) Police, court or other government agency records or files;

48 (b) Documentation from a legal, clerical, medical or other profes-  
49 sional from whom the applicant or person on whose behalf the application

1 is made has sought assistance in dealing with the alleged stalking or  
2 malicious harassment; and

3 (c) A certified copy of a no contact order or a temporary or permanent  
4 civil protection order.

5 (4) Applications shall be filed with the office of the secretary of  
6 state.

7 (5) Upon filing a properly completed application, the secretary of  
8 state shall certify the applicant as a program participant. Applicants  
9 shall be certified for four (4) years following the date of filing unless the  
10 certification is withdrawn or invalidated before that date. The application  
11 may be renewed at the end of four (4) years.

12 (6) A person who falsely attests in an application that disclosure of  
13 the applicant's address would endanger the applicant's safety or the safety  
14 of the applicant's children, or the minor or incapacitated person on whose  
15 behalf the application is made, or who knowingly provides false or incorrect  
16 information upon making an application, shall be punishable under section  
17 18-5414, Idaho Code, or other applicable statutes.

18 SECTION 19. That Section 19-6009, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 19-6009. RIGHT TO COUNSEL OF INDIGENT PERSON -- REPRESENTATION AT ALL  
21 STAGES OF CRIMINAL AND COMMITMENT PROCEEDINGS -- PAYMENT. (1) An indigent  
22 person who is being detained by a law enforcement officer, who is confined  
23 or is the subject of hospitalization proceedings pursuant to section 18-212,  
24 66-322, 66-326, 66-329, ~~66-404~~ or 66-406, Idaho Code, or who is under formal  
25 charge of having committed, or is being detained under a conviction of, a se-  
26 rious crime is entitled:

27 (a) To be represented by an attorney to the same extent as a person hav-  
28 ing his own counsel is so entitled; and

29 (b) To be provided with the necessary services and facilities of repre-  
30 sentation, including investigation and other preparation. The attor-  
31 ney, services and facilities, and the court costs shall be provided at  
32 public expense to the extent that the person is, at the time the court  
33 determines indigency pursuant to section 19-6011, Idaho Code, unable to  
34 provide for their payment.

35 (2) An indigent person who is entitled to be represented by an attorney  
36 under subsection (1) of this section is entitled:

37 (a) To be counseled and defended at all stages of the matter beginning  
38 with the earliest time when a person providing his own counsel would be  
39 entitled to be represented by an attorney and including revocation of  
40 probation;

41 (b) To be represented in any appeal;

42 (c) To be represented in any other post-conviction or post-commitment  
43 proceeding that the attorney or the indigent person considers appro-  
44 priate, unless the court in which the proceeding is brought determines  
45 that it is not a proceeding that a reasonable person with adequate means  
46 would be willing to bring at his own expense and is therefore a frivolous  
47 proceeding.

48 (3) Upon a finding of indigency, representation by an attorney under  
49 subsection (1) of this section shall include the following cases, excluding

1 those cases where the state appellate public defender has jurisdiction pur-  
 2 suant to section 19-5905, Idaho Code, and excluding those cases of guardian  
 3 ad litem representation pursuant to section 16-1614(4), Idaho Code:

4 (a) Felony and misdemeanor cases;

5 (b) Actions arising under the Idaho juvenile corrections act, chapter  
 6 5, title 20, Idaho Code;

7 (c) Proceedings under the uniform post-conviction procedure act, chap-  
 8 ter 49, title 19, Idaho Code;

9 (d) Civil contempt proceedings where incarceration is sought;

10 (e) Actions arising under the child protective act, chapter 16, title  
 11 16, Idaho Code; and

12 (f) Appeals from adjudicatory decrees or orders under section 16-1625,  
 13 Idaho Code.

14 (4) An indigent person's right to a benefit under subsection (1) or (2)  
 15 of this section is unaffected by his having provided a similar benefit at his  
 16 own expense, or by his having waived it, at an earlier stage.

17 SECTION 20. That Section 19-6010, Idaho Code, be, and the same is hereby  
 18 amended to read as follows:

19 19-6010. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL. (1)  
 20 If a person who is being detained by a law enforcement officer, or who is con-  
 21 fined or who is the subject of hospitalization proceedings pursuant to sec-  
 22 tion 66-322, 66-326, 66-329, ~~66-404~~ or 66-406, Idaho Code, or who is under  
 23 formal charge of having committed, or is being detained under a conviction  
 24 of, a serious crime, is not represented by an attorney under conditions in  
 25 which a person having his own counsel would be entitled to be so represented,  
 26 the law enforcement officers concerned, upon commencement of detention, or  
 27 the court, upon formal charge or hearing, as the case may be, shall:

28 (a) Clearly inform him of his right to counsel and of the right of an  
 29 indigent person to be represented by an attorney at public expense; and

30 (b) If the person detained or charged does not have an attorney, notify  
 31 the indigent defense provider or trial court concerned, as the case may  
 32 be, that he is not so represented. As used in this subsection, the term  
 33 "commencement of detention" includes the taking into custody of a pro-  
 34 bationer.

35 (2) Upon commencement of any later judicial proceeding relating to the  
 36 same matter including, but not limited to, preliminary hearing, arraign-  
 37 ment, trial, any post-conviction proceeding or post-commitment proceeding,  
 38 the presiding officer shall clearly inform the person so detained or charged  
 39 of his right to counsel and of the right of an indigent person to be repre-  
 40 sented by an attorney at public expense. Provided, the appointment of an  
 41 attorney at public expense in uniform post-conviction procedure act pro-  
 42 ceedings shall be in accordance with section 19-4904, Idaho Code.

43 (3) If a court determines that the person is entitled to be represented  
 44 by an attorney at public expense, it shall promptly notify the state public  
 45 defender.

46 (4) Upon notification by the court, the state public defender shall  
 47 represent the person with respect to whom the notification is made.



1 SECTION 21. That Section 31-3201G, Idaho Code, be, and the same is  
2 hereby amended to read as follows:

3 31-3201G. GUARDIANSHIP AND CONSERVATORSHIP PROJECT FUND. (1) In ad-  
4 dition to any other filing and reporting fees applicable to guardianships  
5 and conservatorships, the court shall charge the following fees:

6 (a) Fifty dollars (\$50.00) for filing cases involving guardianships or  
7 conservatorships;

8 (b) Forty-one dollars (\$41.00) for reports required to be filed with  
9 the court by conservators; and

10 (c) Twenty-five dollars (\$25.00) for reports required to be filed with  
11 the court by guardians.

12 (2) The additional fees set forth in paragraphs (a), (b) and (c) of sub-  
13 section (1) of this section shall be paid to the county treasurer, who shall  
14 pay such fees to the state treasurer for deposit in the guardianship and con-  
15 servatorship project fund, which is hereby created in the state treasury.  
16 The fund shall be administered by the Idaho supreme court and shall consist  
17 of fees as provided in this section, ~~any moneys recovered pursuant to section~~  
18 ~~15-5-314(2), Idaho Code,~~ and any funds as may be appropriated by the legisla-  
19 ture, grants, donations and moneys from other sources.

20 (3) Moneys in the fund shall be expended exclusively for the develop-  
21 ment of a project which shall be designed to improve reporting and monitoring  
22 systems and processes for the protection of persons and their assets where a  
23 guardian or conservator has been appointed. Elements of the project may in-  
24 clude, but are not limited to, the following:

25 (a) The adoption of standards of practice for guardians;

26 (b) A requirement that guardians be registered;

27 (c) Consideration of an office of the public guardian in counties in  
28 which the project operates;

29 (d) A review of the strengths of Idaho law regarding the treatment and  
30 care of developmentally disabled persons; and

31 (e) If federal or grant funding is available, funding for adult protec-  
32 tion services to seek guardians in cases for which volunteers cannot be  
33 enlisted.

34 (4) The supreme court shall report annually to the senate judiciary and  
35 rules committee and the house judiciary, rules and administration committee  
36 regarding the progress of the project.

37 SECTION 22. That Section 32-1806, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 32-1806. STATUTORY CONSTRUCTION. (1) Nothing in this chapter shall be  
40 construed to affect any delegation of powers made pursuant to section ~~15-5-~~  
41 ~~104~~ 15-5-124, Idaho Code.

42 (2) Nothing in this chapter shall be construed as invalidating the pro-  
43 visions of the child protective act in chapter 16, title 16, Idaho Code, or  
44 shall modify the burden of proof at any stage of proceedings under the child  
45 protective act. Nothing in this chapter shall be construed to modify any ex-  
46 isting, compelling governmental interest.

1 SECTION 23. That Section 39-4504, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 39-4504. PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS. (1) Consent  
4 for the furnishing of health care services to any person who is not then ca-  
5 pable of giving such consent as provided in this chapter or who is a minor may  
6 be given or refused in the order of priority set forth hereafter; provided  
7 however, that the surrogate decision-maker shall have sufficient comprehen-  
8 sion as required to consent to his or her own health care services pursuant to  
9 the provisions of section 39-4503, Idaho Code; and provided further that the  
10 surrogate decision-maker shall not have authority to consent to or refuse  
11 health care services contrary to such person's advance care planning docu-  
12 ment or wishes expressed by such person while the person was capable of con-  
13 senting to his or her own health care services:

14 (a) The court-appointed guardian of such person;

15 (b) The person named in another person's advance care planning document  
16 as the health care agent of such person pursuant to section 39-4510,  
17 Idaho Code, or a similar document authorized by this chapter if the  
18 conditions in such advance care planning document for authorizing the  
19 agent to act have been satisfied;

20 (c) If married, the spouse of such person;

21 (d) An adult child of such person;

22 (e) A parent of such person;

23 (f) The person named in a delegation of parental authority executed  
24 pursuant to section ~~15-5-104~~ 15-5-128, Idaho Code;

25 (g) Any relative of such person;

26 (h) Any other competent individual representing himself or herself to  
27 be responsible for the health care of such person; or

28 (i) If the person presents a medical emergency or there is a substantial  
29 likelihood of his or her life or health being seriously endangered by  
30 withholding or delay in the rendering of health care services to such  
31 person and the person has not communicated and is unable to communicate  
32 his or her wishes, the attending health care provider may, in his or  
33 her discretion, authorize or provide such health care services, as he  
34 or she deems appropriate, and all persons, agencies, and institutions  
35 thereafter furnishing the same, including such health care provider,  
36 may proceed as if informed valid consent therefor had been otherwise  
37 duly given.

38 (2) No person who, in good faith, gives consent or authorization for the  
39 provision of health care services to another person as provided by this chap-  
40 ter shall be subject to civil liability therefor.

41 (3) No health care provider who, in good faith, obtains consent from a  
42 person pursuant to either section 39-4503 or 39-4504(1), Idaho Code, shall  
43 be subject to civil liability therefor.

44 SECTION 24. That Section 56-214, Idaho Code, be, and the same is hereby  
45 amended to read as follows:

46 56-214. AWARD OF PUBLIC ASSISTANCE -- INELIGIBILITY UPON TRANSFER OF  
47 PROPERTY. Upon the completion of the investigation, the state department  
48 shall determine whether the applicant is eligible for public assistance un-

1 der the provisions of this act, the type and amount of public assistance he  
2 shall receive, and the date upon which such public assistance shall begin.  
3 Public assistance shall be paid in the manner prescribed by the state depart-  
4 ment.

5 (1) Assistance to families with children shall not be granted under  
6 this act to any person who within six (6) months prior to applying for or  
7 at any time during which such assistance is received, has either made an  
8 assignment or transfer of property for the purpose of rendering himself  
9 eligible for assistance under this act, or who has divested himself of any  
10 interest in property without adequate consideration which interest or pro-  
11 ceeds therefrom could reasonably be expected to contribute to the support  
12 and maintenance of such person and his family, except that any person who is  
13 ineligible for public assistance due solely to such assignment or transfer  
14 shall become eligible provided:

15 (a) There is a showing that such person has caused such property to be  
16 assigned or transferred back to him; or

17 (b) There is a showing that the person to whom such property is as-  
18 signed or transferred has, subsequent to such assignment or transfer,  
19 met subsistence and medical care costs exclusive of any obligation for  
20 support, of such person or family, according to the department's as-  
21 sistance standard, equal to, or in excess of, the market value of the  
22 property so assigned or transferred; or

23 (c) There is a showing that the subsistence and medical care costs of  
24 such person, according to the department's assistance standard, subse-  
25 quent to such assignment or transfer, equal or exceed the market value  
26 of the property so assigned or transferred.

27 (2) Eligibility for old age assistance under section 56-207, Idaho  
28 Code, or aid to the blind under section 56-208, Idaho Code, or aid to the dis-  
29 abled under section 56-209a, Idaho Code, shall be determined by continuing  
30 to consider as available any resource that was transferred prior to July 1,  
31 1988, until such resource is fully accounted for under the provisions of sec-  
32 tion 1613(c) of the social security act as such section read on June 30, 1988.

33 (3) Eligibility for medical assistance under section 56-209b, Idaho  
34 Code, shall continue to apply the rules of the director of the department  
35 of health and welfare concerning transfer of property as such rules read on  
36 October 29, 1988, to transfers that occur prior to July 1, 1989, to persons  
37 other than to the spouse of the person receiving or applying for medical as-  
38 sistance, and to interspousal transfers that occur prior to October 1, 1989.

39 (4) The provisions of section 1917(c) of the social security act as  
40 amended by public law 100-360 and further amended by public law 100-485 and  
41 as hereafter amended shall apply as of July 1, 1989, to transfers of assets  
42 other than to the spouse, and as of October 1, 1989, to transfers between  
43 spouses, except that such provisions shall not apply either to transfers  
44 that occurred before July 1, 1988, or to transfers that have been fully  
45 accounted for under subsection (3) of this section. Notwithstanding the  
46 foregoing, any transfer of assets not otherwise specifically permitted by  
47 federal law or rule of the department not for fair market value is presumed  
48 to be for the purpose of sheltering assets to qualify for medical assis-  
49 tance. Such assets transferred shall be counted as available in determining  
50 eligibility, and will subject the applicant to penalties prescribed by the

1 director, unless the applicant for assistance can demonstrate by clear and  
2 convincing evidence that the transfer was intended for another purpose.

3 (5) Any funds, securities, accounts, contracts and all other property  
4 held in or transferred to a special needs trust as provided in chapter 14, ti-  
5 tle 68, Idaho Code, ~~section 15-5-409, Idaho Code, and section 15-5-409a and~~  
6 chapter 5, title 15, Idaho Code, shall not be considered by the state depart-  
7 ment in determining whether the applicant is eligible for public assistance  
8 under the provisions of this act, so long as the action is permitted under the  
9 provisions of section 1917(c) and (d) of the social security act, as amended.

10 (6) If any provision of this section or the application thereof to any  
11 person or circumstance is held invalid, such invalidity shall not affect  
12 other provisions or applications of the section that can be given effect  
13 without the invalid provisions or applications, and to this end the provi-  
14 sions of this section are severable.

15 SECTION 25. That Section 59-1317, Idaho Code, be, and the same is hereby  
16 amended to read as follows:

17 59-1317. RIGHTS TO BENEFITS INALIENABLE. (1) The right of a person to  
18 any benefits under this chapter and the money in any fund created by this  
19 chapter shall not be assignable or subject to execution, garnishment or at-  
20 tachment or to the operation of any bankruptcy or insolvency law.

21 (2) Notwithstanding subsection (1) of this section, the benefits of  
22 a member or alternate payee shall be subject to garnishment, execution, or  
23 wage withholding under chapter 12, title 7, Idaho Code, for the enforcement  
24 of an order for the support of a minor child.

25 (3) Notwithstanding subsection (1) of this section, prior to July 1,  
26 1998, should a court order direct distribution or partial distribution of a  
27 member benefit defined in either chapter 13, title 59, Idaho Code, or chap-  
28 ter 14, title 72, Idaho Code, be made to the member's spouse or former spouse,  
29 that member's full benefit entitlement will be forwarded to the court for  
30 distribution.

31 (4) Notwithstanding subsection (1) of this section, on or after July 1,  
32 1998, should a court order direct distribution or partial distribution of a  
33 member's benefit defined in either chapter 13, title 59, Idaho Code, or chap-  
34 ter 14, title 72, Idaho Code, be made to the member's spouse or former spouse,  
35 the court order must be an approved domestic retirement order and shall com-  
36 ply with the requirements of sections 59-1319 and 59-1320, Idaho Code.

37 (5) Notwithstanding subsection (1) of this section, should a court or-  
38 der establish a trust pursuant to ~~section 15-5-409~~ chapter 5, title 15, Idaho  
39 Code, the full benefit entitlement will be forwarded to the trustee, naming  
40 the trustee as payee.

41 SECTION 26. That Section 63-3022E, Idaho Code, be, and the same is  
42 hereby amended to read as follows:

43 63-3022E. HOUSEHOLD DEDUCTION FOR DEPENDENTS SIXTY-FIVE YEARS OF AGE  
44 OR OLDER OR PERSONS WITH DEVELOPMENTAL DISABILITIES. (1) An additional de-  
45 duction from taxable income shall be allowed in the case of an individual  
46 who maintains a household, which includes as an immediate member of the fam-  
47 ily residing in that household, one (1) or more individuals sixty-five (65)

1 years of age or older, or a person with developmental disabilities as defined  
 2 in ~~subsection (5) of~~ section 66-402(4), Idaho Code, regardless of the age  
 3 of the person when such developmental disability appeared, each of whom re-  
 4 ceives more than one-half (1/2) of his or her support for the year from the  
 5 individual who maintains the household. The amount of the deduction shall be  
 6 one thousand dollars (\$1,000) for each individual sixty-five (65) years of  
 7 age or older or with developmental disabilities.

8 (2) There shall not be allowed more than three (3) deductions of one  
 9 thousand dollars (\$1,000) under the provisions of this section on any one (1)  
 10 return.

11 (3) No deductions shall be allowed under this section for the person(s)  
 12 in whose name(s) the income tax return is filed except as set forth in subsec-  
 13 tion (4) of this section.

14 (4) A deduction of one thousand dollars (\$1,000) shall be allowed un-  
 15 der this section for a person with a developmental disability, as defined in  
 16 ~~subsection (5) of~~ section 66-402(4), Idaho Code, who is filing his own re-  
 17 turn.

18 SECTION 27. That Section 63-3025D, Idaho Code, be, and the same is  
 19 hereby amended to read as follows:

20 63-3025D. PAYMENT FOR DEPENDENTS SIXTY-FIVE YEARS OF AGE OR OLDER OR  
 21 PERSONS WITH DEVELOPMENTAL DISABILITIES. (1) In lieu of the deduction from  
 22 taxable income allowed by section 63-3022E, Idaho Code, a resident individ-  
 23 ual who maintains a household, which includes as an immediate member of the  
 24 family residing in that household, one (1) or more individuals sixty-five  
 25 (65) years of age or older or individuals with developmental disabilities,  
 26 as defined in ~~subsection (5) of~~ section 66-402(4), Idaho Code, regardless  
 27 of the age of the person when such developmental disability appeared, each  
 28 of whom receives more than one-half (1/2) of his or her support for the year  
 29 from the individual who maintains the household, shall be entitled to a pay-  
 30 ment from the refund account of one hundred dollars (\$100) for each such el-  
 31 derly member of the family or family member with a developmental disability.  
 32 Any such payment shall be paid to such individual only upon his making appli-  
 33 cation therefor at such time and in such manner as may be prescribed by the  
 34 state tax commission.

35 (2) No more than three (3) such payments shall be made under the provi-  
 36 sions of this section to any one (1) individual in any calendar year.

37 (3) No payment may be claimed under the provisions of this section by  
 38 the individual himself except as set forth in subsection (4) of this section.

39 (4) A credit of one hundred dollars (\$100) shall be allowed under  
 40 this section for a person with a developmental disability as defined in  
 41 ~~subsection (5) of~~ section 66-402(4), Idaho Code, who is filing his own tax  
 42 return.

43 SECTION 28. That Section 66-356, Idaho Code, be, and the same is hereby  
 44 amended to read as follows:

45 66-356. RELIEF FROM FIREARMS DISABILITIES. (1) A court that:

46 (a) Orders commitment pursuant to section 66-329, Idaho Code;

1 (b) Orders commitment or treatment pursuant to section 66-406, Idaho  
2 Code;

3 (c) Appoints a guardian pursuant to section 66-322, Idaho Code, or sec-  
4 tion ~~15-5-304~~ 15-5-309, Idaho Code;

5 (d) Appoints a conservator pursuant to section ~~15-5-407(b)~~ 15-5-410,  
6 Idaho Code; or

7 ~~(e) Appoints a guardian or conservator pursuant to section 66-404,~~  
8 ~~Idaho Code; or~~

9 ~~(f)~~ (e) Finds a defendant incompetent to stand trial pursuant to  
10 section 18-212, Idaho Code, shall make a finding as to whether the sub-  
11 ject of the proceeding is a person to whom the provisions of 18 U.S.C.  
12 922(d) (4) and (g) (4) apply. If the court so finds, the clerk of the  
13 court shall forward a copy of the order to the Idaho state police, which  
14 in turn shall forward a copy to the federal bureau of investigation, or  
15 its successor agency, for inclusion in the national instant criminal  
16 background check system database.

17 (2) A person who is subject to an order, including an appointment or  
18 finding described in subsection (1) of this section, may petition the mag-  
19 istrate division of the court that issued such order, or the magistrate  
20 division of the district court of the county where the individual resides,  
21 to remove the person's firearms-related disabilities as provided in sec-  
22 tion 105(a) of P.L. 110-180. A copy of the petition for relief shall also be  
23 served on the director of the department of health and welfare and the pros-  
24 ecuting attorney of the county in which the original order, appointment or  
25 finding occurred, and such department and office may, as it deems appropri-  
26 ate, appear, support, object to and present evidence relevant to the relief  
27 sought by the petitioner. The court shall receive and consider evidence,  
28 including evidence offered by the petitioner, concerning:

29 (a) The circumstances of the original order, appointment or finding;

30 (b) The petitioner's mental health and criminal history records, if  
31 any;

32 (c) The petitioner's reputation; and

33 (d) Changes in the petitioner's condition or circumstances relevant to  
34 the relief sought.

35 The court shall grant the petition for relief if it finds by a preponderance  
36 of the evidence that the petitioner will not be likely to act in a manner dan-  
37 gerous to public safety and that the granting of the relief would not be con-  
38 trary to the public interest. The petitioner may appeal a denial of the re-  
39 quested relief, and review on appeal shall be de novo. A person may file a  
40 petition for relief under this section no more than once every two (2) years.

41 (3) When a court issues an order granting a petition for relief under  
42 subsection (2) of this section, the clerk of the court shall immediately for-  
43 ward a copy of the order to the Idaho state police, which in turn shall imme-  
44 diately forward a copy to the federal bureau of investigation, or its succes-  
45 sor agency, for inclusion in the national instant criminal background check  
46 system database.

47 SECTION 29. That Section 66-402, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

49 66-402. DEFINITIONS. As used in this chapter:

1 (1) "Adult" means an individual eighteen (18) years of age or older.

2 ~~(2) "Artificial life-sustaining procedures" means any medical proce-~~  
3 ~~dure or intervention that utilizes mechanical means to sustain or supplant~~  
4 ~~a vital function. Artificial life-sustaining procedures shall not include~~  
5 ~~the administration of medication, and it shall not include the performance~~  
6 ~~of any medical procedure deemed necessary to alleviate pain, or any proce-~~  
7 ~~dure that could be expected to result in the recovery or long-term survival~~  
8 ~~of the patient and his restoration to consciousness.~~

9 ~~(3) (2) "Department" means the Idaho department of health and welfare.~~

10 ~~(4) (3) "Director" means the director of the department of health and~~  
11 ~~welfare.~~

12 ~~(5) (4) "Developmental disability" means a chronic disability of a per-~~  
13 ~~son that appears before the age of twenty-two (22) and:~~

14 (a) Is attributable to an impairment, such as intellectual disability,  
15 cerebral palsy, epilepsy, autism or other condition found to be closely  
16 related to or similar to one (1) of these impairments that requires sim-  
17 ilar treatment or services, or is attributable to dyslexia resulting  
18 from such impairments; and

19 (b) Results in substantial functional limitations in three (3) or more  
20 of the following areas of major life activity: self-care, receptive and  
21 expressive language, learning, mobility, self-direction, capacity for  
22 independent living, or economic self-sufficiency; and

23 (c) Reflects the need for a combination and sequence of special, in-  
24 terdisciplinary or generic care, treatment or other services that are  
25 of lifelong or extended duration and individually planned and coordi-  
26 nated.

27 ~~(6) (5) "Emancipated minor" means an individual between fourteen (14)~~  
28 ~~and eighteen (18) years of age who has been married or whose circumstances~~  
29 ~~indicate that the parent-child relationship has been renounced.~~

30 ~~(7) (6) "Evaluation committee" means an interdisciplinary team of~~  
31 ~~at least three (3) individuals designated by the director or his designee~~  
32 ~~to evaluate an individual as required by the provisions of this chapter.~~  
33 ~~Each committee must include a physician licensed to practice medicine in~~  
34 ~~the state of Idaho, a licensed social worker or a licensed professional~~  
35 ~~counselor, and a clinical psychologist or such other individual who has a~~  
36 ~~master's degree in psychology as designated by the department director. In~~  
37 ~~a proceeding governed by ~~section 66-404~~ chapter 5, title 15, Idaho Code, a~~  
38 ~~licensed independent practitioner may be used instead of a physician. Each~~  
39 ~~committee member must be specially qualified by training and experience in~~  
40 ~~the diagnosis and treatment of persons with a developmental disability.~~

41 ~~(8) (7) "Facility" means the southwest Idaho treatment center, a nurs-~~  
42 ~~ing facility, an intermediate care facility, an intermediate care facility~~  
43 ~~for people with intellectual disabilities, a licensed residential or as-~~  
44 ~~sisted living facility, a group foster home, other organizations licensed to~~  
45 ~~provide twenty-four (24) hour care, treatment and training to the develop-~~  
46 ~~mentally disabled, a mental health center, or an adult and child development~~  
47 ~~center.~~

48 ~~(9) (8) "Lacks capacity to make informed decisions" means the inabil-~~  
49 ~~ity, by reason of developmental disability, to achieve a rudimentary under-~~  
50 ~~standing of the purpose, nature, and possible risks and benefits of a deci-~~

1 sion, after conscientious efforts at explanation, but shall not be evidenced  
2 by improvident decisions within the discretion allowed nondevelopmentally  
3 disabled individuals.

4 ~~(10)~~ (9) "Licensed independent practitioner" or "LIP" means:

5 ~~(a)~~ A licensed physician or physician assistant pursuant to section  
6 54-1803, Idaho Code; or

7 ~~(b)~~ A licensed advanced practice registered nurse pursuant to section  
8 54-1402 is as defined in section 39-4502 (13), Idaho Code.

9 ~~(11)~~ (10) "Likely to injure himself or others" means:

10 (a) A substantial risk that physical harm will be inflicted by the re-  
11 spondent upon his own person as evidenced by threats or attempts to com-  
12 mit suicide or inflict physical harm on himself; or

13 (b) A substantial risk that physical harm will be inflicted by the re-  
14 spondent upon another as evidenced by behavior that has caused such harm  
15 or that places another person or persons in reasonable fear of sustain-  
16 ing such harm; or

17 (c) That the respondent is unable to meet essential requirements for  
18 physical health or safety.

19 ~~(12)~~ "Manage financial resources" means the actions necessary to ob-  
20 tain, administer and dispose of real, personal, intangible or business prop-  
21 erty, benefits and/or income.

22 ~~(13)~~ (11) "Meet essential requirements for physical health or safety"  
23 means the actions necessary to provide health care, food, clothing, shelter,  
24 personal hygiene and/or other care without which serious physical injury or  
25 illness would occur.

26 ~~(14)~~ (12) "Minor" means an individual under age eighteen (18) years.

27 ~~(15)~~ (13) "Protection and advocacy system" means the agency designated  
28 by the governor of the state of Idaho to provide advocacy services for people  
29 with disabilities pursuant to 42 U.S.C. 6042.

30 ~~(16)~~ (14) "Respondent" means the individual subject to judicial pro-  
31 ceedings authorized by the provisions of this chapter.

32 SECTION 30. That Section [66-404](#), Idaho Code, be, and the same is hereby  
33 repealed.

34 SECTION 31. That Section [66-404A](#), Idaho Code, be, and the same is hereby  
35 repealed.

36 SECTION 32. That Section [66-405](#), Idaho Code, be, and the same is hereby  
37 repealed.

38 SECTION 33. That Section 66-408, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40 66-408. PETITION FOR REEXAMINATION OF ORDER OF GUARDIANSHIP OR  
41 COMMITMENT. All respondents admitted to a residential facility upon appli-  
42 cation of their parent or guardian or committed to the director shall be  
43 entitled to an annual review of their placement by an evaluation committee  
44 upon request therefor by the respondent, the respondent's guardian or at-  
45 torney. In addition, all respondents committed pursuant to section 66-406,  
46 Idaho Code, ~~or for whom an order for guardianship or conservatorship has been~~



1 ~~issued pursuant to section 66-405, Idaho Code,~~ shall be entitled to a reex-  
2 amination of the order for or conditions of their commitment, ~~guardianship~~  
3 ~~or conservatorship~~ on their own petition, or that of their legal guardian,  
4 parent, attorney or friend, to the district court of the county in which the  
5 order was issued or in which they are found. Upon receipt of the petition,  
6 the court shall determine whether the conditions justifying the order or its  
7 conditions continue to exist.

8 SECTION 34. That Section 66-415, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 66-415. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP OR CONSERVA-  
11 TORSHIP. The receipt and acceptance of a foreign guardianship or conserva-  
12 torship of a developmentally disabled person shall be regulated as set forth  
13 under chapter ~~9~~ 13, title 15, Idaho Code.

14 SECTION 35. That Section 66-416, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 66-416. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO A FOREIGN JU-  
17 RISDICTION. The transfer of a guardianship or conservatorship of a develop-  
18 mentally disabled person to a foreign jurisdiction shall be regulated as set  
19 forth under chapter ~~10~~ 13, title 15, Idaho Code.

20 SECTION 36. That Section 66-417, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 66-417. TEMPORARY RECOGNITION OF FOREIGN GUARDIANSHIP OR CONSERVA-  
23 TORSHIP OF DEVELOPMENTALLY DISABLED PERSON. The temporary recognition of a  
24 foreign guardianship or conservatorship of a developmentally disabled per-  
25 son shall be regulated as set forth under chapter ~~11~~ 13, title 15, Idaho Code.

26 SECTION 37. That Section 68-1404, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 68-1404. INCOMPETENT PERSONS. References in this chapter to "incompe-  
29 tent person," shall be deemed to include persons for whom a conservator may  
30 be appointed pursuant to section ~~15-5-401~~ 15-5-410, Idaho Code.

31 SECTION 38. This act shall be in full force and effect on and after Jan-  
32 uary 1, 2026.