



IDAHO JUDICIARY

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THE IDAHO SUPREME COURT'S LEGISLATIVE PRIORITIES AND DEFECTS IN THE LAW FOR THE 2017 LEGISLATIVE SESSION

The following have been identified as the Court's legislative priorities for the 2017 legislative session:

1. Proposals from the Guardianship and Conservatorship Committee

The Supreme Court's Guardianship and Conservatorship Committee has proposed several areas in which the statutes could be improved to better serve the needs of minors, incapacitated persons, and persons with developmental disabilities.

- In *Doe I v. Doe II*, 160 Idaho 311, 372 P.3d 366 (2016), the Court held that the current statutes permit the appointment of only a single guardian for a minor. The legislation that is being proposed would permit the appointment of co-guardians for minors, incapacitated persons, and persons with developmental disabilities. To ensure that co-guardians would be appointed only when appropriate and that such appointments do not result in conflicts between the co-guardians that would have an adverse effect, the legislation would provide that: (1) a court is not required to appoint co-guardians, but may do so when the court finds it would best serve the interests of the minor, incapacitated person, or person with a developmental disability; (2) no more than two co-guardians may be appointed; (3) the parents of an incapacitated person would have preference in the appointment of co-guardians unless the court finds that the parents are unwilling or unable to serve in that capacity; (4) the court may appoint co-guardians only if it finds that the persons who are appointed will work cooperatively to serve the best interests of the minor, incapacitated person, or person with a developmental disability; and (5) when making such an appointment, the court must specify whether the guardians may act independently, must act jointly in some specified matters but may act independently in others, or must act jointly.
- It may be necessary to appoint a temporary guardian when it is necessary to immediately protect the affected person's interests while a petition for guardianship is pending, or when there is substantial evidence that the appointed guardian is not properly performing the duties of a guardian. The proposed legislation would clarify the procedures for the appointment of a temporary guardian for a minor or an incapacitated person and the powers and duties of a temporary guardian. The legislation would provide explicit authority for the appointment of a temporary guardian for a person with a developmental disability.
- The legislation would also delete the requirements in statute for the contents of a visitor report and an evaluation committee report. These requirements would be placed in court rule, allowing greater flexibility in the modification of these requirements.

2. Amendments to statutes addressing name changes

The statutes addressing name changes, I.C. § 7-801 et seq., use some archaic language and are unclear in several respects. The Court is proposing amendments that would modernize these statutes and clarify who can file for a name change on behalf of a person under 18 years of age, who needs to be notified of the hearing on the name change, and how notice of the hearing is to be given.

3. Issues relating to jury service

The statutes relating to jury service contain some unclear and somewhat contradictory provisions, particularly with regard to how to proceed against prospective jurors who fail to appear for service and the penalties for such failure. The Court is proposing amendments to clarify these provisions and make them more consistent.

4. Additional Judicial Resources – Legislative Policy Considerations

The need for additional judicial resources continues in distinct parts of the State, whether this is for additional judgeships or increased Senior Judge days. While the number of total case filings fluctuates or even decreases, other factors place significant demands on judicial resources. Many civil cases are increasingly complex, and the number of felony cases is increasing. Coupled with this are other challenges, such as a significant increase in self-represented litigants, the need to provide access to courts for non-English speaking persons, and an increase in the number of problem-solving courts.

An additional challenge is that the demand for judicial resources around the state is materially influenced by demographic shifts. Idaho's population is significantly condensing primarily to six counties: Ada, Canyon, Kootenai, Bonneville, Bannock, and Twin Falls. The current statutory requirement that at least one magistrate judge reside in each of Idaho's 44 counties presents significant challenges in meeting these shifting demands.

In 1967, exactly 50 years ago, Legislative efforts began to reform Idaho's then existing lower courts (probate, justice, and city courts) and to establish the current Magistrates Division of the District Court. Idaho's existing statutory policy of requiring a resident magistrate judge in each of its 44 counties was enacted in the 1969 Legislative session with an effective date of January 11, 1971. (I.C. § 1-2205).

For the Legislative Session of 2017, the Supreme Court received a request for one new magistrate judge in Bonneville County, as well as requests for additional Senior Judge days in two other judicial districts. The Court elected to present the request for a new magistrate judgeship in the alternative in order to seek policy guidance from the 2017 Idaho Legislature and the Governor on whether I.C. § 1-2205 is still the desired policy of this state.

Much has changed in 50 years, and the statutorily required residence of magistrate judgeships – significantly removed from where the primary needs exist – comes at a significant cost to both the taxpayers and the Judiciary.

The Court recognizes there are pros and cons to both sides of this policy decision, and believes it is prudent to ask the Legislature for policy guidance on whether to seek additional new judicial resources or, in the alternative, be provided the statutory opportunity to relocate resources when vacancies occur.

\$124,900 General Funds (for 9 months in FY2018)

Or in the alternative, amend I.C. § 1-2205

Defects in the Law for the 2017 Legislative Session

1. Corrections to SB 1328a

At the 2016 Legislative Session the Legislature enacted SB 1328a, making several needed revisions to the Child Protective Act. Some minor errors in that bill need to be corrected. For instance, the definition of “protective order” in I.C. § 16-1602(34) makes reference to I.C. § 16-1615(5)(f), a subsection that no longer exists and the language of which was moved to I.C. § 16-1615(8). That definition also states that protective orders are issued prior to adjudicatory hearings, although I.C. § 16-1619(10) permits the issuing of a protective order following an adjudicatory hearing. The proposed legislation would correct these errors.

2. Classification of the offense of interference with a funeral procession

Some confusion has arisen from the fact that I.C. § 49-2706 provides that a person who commits the offense of interference with a funeral procession “shall be guilty of a misdemeanor and upon conviction be punished by a fine not to exceed one hundred dollars (\$100).” There is no provision for a jail term, raising a question as to why this offense should not be classified as an infraction. The Legislature may wish to consider amending the statute to make this offense an infraction unless the interference is intentional, in which case it might be classified as a misdemeanor carrying a possible jail term.

3. Clarification of the provisions of I.C. § 19-2604

This statute addresses the circumstances in which a conviction of an offense can be reduced from a felony to a misdemeanor or be set aside. Some of its provisions are in need of clarification. In particular, the eligibility of relief for a defendant who has been convicted of a misdemeanor and sentenced to serve time in jail, with part of the jail term being suspended, is unclear. The Court will propose legislation to clarify this part of the statute.

4. Correction and updating of I.C. § 1-907 regarding the powers and duties of Administrative District Judges

Subsection (h) of this statute lists as one of the powers and duties of administrative district judges “promulgating a schedule of offenses for which magistrates and clerks of court or other designated persons may accept written appearances, waivers of trial, and pleas of guilty, and establishing a schedule of fines and bails therefor.” These matters are now addressed in Supreme Court rules. Consequently, subsection (h) is obsolete and should be deleted.



Mission Statement of the Idaho Courts

*As the Third Branch of
Government, we provide
access to justice by ensuring
fair processes and the timely,
impartial resolution of cases.*

The Idaho Courts stand for:
Integrity
Fairness
Independence
Respect
Excellence
Innovation

The Idaho Courts strive to:

**Provide Timely,
Impartial Case
Resolution through
Legally Fair Procedures**

Ensure Access to Justice

**Promote Effective,
Innovative Services**

**Increase Public Trust
and Confidence in
Idaho Courts**

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