

FIRST REGULAR SESSION

HOUSE BILL NO. 638

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLEY.

1574H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 475.040 and 475.120, RSMo, and to enact in lieu thereof two new sections relating to probate actions involving guardians.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 475.040 and 475.120, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 475.040 and 475.120, to read as follows:

475.040. If it appears to the court, acting on the petition of the guardian **filed under Missouri supreme court rule 52.02 or 52.12 or section 475.120**, the conservator, the respondent or of a ward over the age of fourteen, or on its own motion, at any time before the termination of the guardianship or conservatorship, that the proceeding was commenced in the wrong county, or that the domicile or residence of the ward or protectee has been changed to another county, or in case of conservatorship of the estate that it would be for the best interest of the ward or disabled person and his estate, the court [may] **shall** order the proceeding with all papers, files and a transcript of the proceedings transferred to the probate division of the circuit court of another county **unless the guardian objects to the court's venue being changed**. The court to which the transfer is made shall take jurisdiction of the case, place the transcript of record and proceed to the final settlement of the case as if the appointment originally had been made by it.

475.120. 1. The guardian of the person of a minor shall be entitled to the custody and control of the ward and shall provide for the ward's education, support and maintenance.

2. A guardian or limited guardian of an incapacitated person shall act in the best interest of the ward. A limited guardian of an incapacitated person shall have the powers and duties enumerated by the court in the adjudication order or any later modifying order.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

6 3. The general powers and duties of a guardian of an incapacitated person shall be to take
7 charge of the person of the ward and to provide for the ward's care, treatment, habilitation,
8 education, support and maintenance; and the powers and duties shall include, but not be limited
9 to, the following:

10 (1) Assure that the ward resides in the best and least restrictive setting reasonably
11 available;

12 (2) Assure that the ward receives medical care and other services that are needed **and**
13 **directly and regularly participate in any medical or other service that is provided to the**
14 **ward;**

15 (3) Promote and protect the **quality of life, treatment,** care, comfort, safety, health, and
16 welfare of the ward;

17 (4) Provide **and sign** required [consents] **consent papers, contracts, forms, and**
18 **documents** on behalf of the ward;

19 (5) **The right to file motions, pleadings, and other documents with the court having**
20 **jurisdiction over the guardianship and to appear before the court on the motions,**
21 **pleadings, or other documents filed, as a real party of interest, or a party having a legal or**
22 **other beneficial interest, without having to be represented by legal counsel;**

23 (6) **To act under Missouri supreme court rule 52.02 or 52.12, 42 U.S.C. Section**
24 **12203(a) or (b), and any other law authorizing the guardian to act for or on the ward's**
25 **behalf:**

26 (a) **In any administrative hearing or other process that is before an administrative**
27 **law judge, official, or employee of any department, division, agency, office, or body of the**
28 **state or that is before any administrative law judge, official, or employee of any county or**
29 **city government department, division, agency, office, or body; or**

30 (b) **In any civil litigation, under the guardian's name or as the duly appointed**
31 **guardian of the ward, without being required to file a motion to intervene or a motion to**
32 **be substituted for the ward;**

33 (7) **To accept any service of process or summons for and on behalf of the ward;**

34 (8) **To assist the ward in exercising his or her rights, liberties, or privileges under**
35 **the law, administrative or court order, decree, or adjudication, rule, or regulation;**

36 (9) **To maintain weekly and ongoing contact by telephone or by in-person visits with**
37 **the ward if the ward has been confined in any institution, building, office, facility, jail, or**
38 **prison that is operated by any city, county, or state department, division, agency, office,**
39 **official, employee, or body regardless of the duration, extent, or type of confinement;**

40 (10) **To exercise all powers and discharge all duties necessary or proper to implement**
41 **the provisions of this section and any other state or federal law applying to the duties or**

42 **authority of the guardian that allows or requires the guardian to act for or on behalf of the**
43 **ward.**

44 4. A guardian of an adult or minor ward is not obligated by virtue of such guardian's
45 appointment to use the guardian's own financial resources for the support of the ward. If the
46 ward's estate and available public benefits are inadequate for the proper care of the ward, the
47 guardian or conservator may apply to the county commission pursuant to section 475.370.

48 5. No guardian of the person shall have authority to seek admission of the guardian's
49 ward to a mental health or intellectual disability facility for more than thirty days for any purpose
50 without court order except as otherwise provided by law.

51 6. **A guardian or limited guardian shall not be restricted or prevented from**
52 **discharging any duty or authority under this section or that is authorized by any other law,**
53 **rule, or regulation without the party seeking to restrict or prevent the guardian or limited**
54 **guardian from discharging any duty or authority under this section first obtaining an**
55 **order from the court having jurisdiction over the guardianship upon a full, fair, and**
56 **impartial hearing being conducted with proper notice given to the guardian or limited**
57 **guardian and the ward. The guardian or limited guardian and the ward shall have the**
58 **right to be present for the hearing to testify, file motions, pleadings, and other documents;**
59 **to present and cross examine witnesses; and to present evidence. This subsection shall be**
60 **retroactively applied except if the court having jurisdiction over the guardianship has**
61 **already issued an order that restricts or prevents the guardian or limited guardian from**
62 **discharging any duty or authority under this section excluding any amendments to this**
63 **section occurring after the court order was issued.**

64 7. Only the director or chief administrative officer of a social service agency serving as
65 guardian of an incapacitated person, or such person's designee, is legally authorized to act on
66 behalf of the ward.

67 [7.] 8. A social service agency serving as guardian of an incapacitated person shall notify
68 the court within fifteen days after any change in the identity of the professional individual who
69 has primary responsibility for providing guardianship services to the incapacitated person.

70 [8.] 9. Any social service agency serving as guardian may not provide other services to
71 the ward.

✓