

FIRST REGULAR SESSION

HOUSE BILL NO. 1204

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EVANS.

2561H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 475.010, 475.045, 475.050, and 488.2300, RSMo, and to enact in lieu thereof five new sections relating to guardianships and conservatorships.

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

Section A. Sections 475.010, 475.045, 475.050, and 488.2300, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 475.010, 475.045,
3 475.050, 475.063, and 488.2300, to read as follows:

475.010. When used in this chapter, unless otherwise apparent from the context, the
2 following terms mean:

3 (1) "Adult", a person who has reached the age of eighteen years;

4 (2) "Claims", liabilities of the protectee arising in contract, in tort or otherwise, before
5 or after the appointment of a conservator, and liabilities of the estate which arise at or after the
6 adjudication of disability or after the appointment of a conservator of the estate, including
7 expenses of the adjudication and of administration. The term does not include demands or
8 disputes regarding title of the protectee to specific assets alleged to be included in the estate;

9 (3) "Conservator", one appointed by a court to have the care and custody of the estate
10 of a minor or a disabled person. A "limited conservator" is one whose duties or powers are
11 limited. The term "conservator", as used in this chapter, includes limited conservator unless
12 otherwise specified or apparent from the context;

13 (4) "Conservator ad litem", one appointed by the court in which particular litigation is
14 pending regarding the management of financial resources on behalf of a minor, a disabled
15 person, or an unborn person in that particular proceeding or as otherwise specified in this
16 chapter;

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.

17 (5) "Custodial parent", the parent of a minor who has been awarded sole or joint
18 physical custody of such minor, or the parent of an incapacitated person who has been
19 appointed as guardian of such person, by an order or judgment of a court of this state or of
20 another state or territory of the United States, or if there is no such order or judgment, the
21 parent with whom the minor or incapacitated person primarily resides;

22 (6) "Disabled" or "disabled person", one who is:

23 (a) Unable by reason of any physical, mental, or cognitive condition to receive and
24 evaluate information or to communicate decisions to such an extent that the person lacks
25 ability to manage the person's financial resources; or

26 (b) The term disabled or disabled person, as used in this chapter includes the terms
27 partially disabled or partially disabled person unless otherwise specified or apparent from the
28 context;

29 (7) "Eligible person" or "qualified person", a natural person, social service agency,
30 corporation or national or state banking organization qualified to act as guardian of the person
31 or conservator of the estate pursuant to the provisions of section 475.055;

32 (8) "Guardian", one appointed by a court to have the care and custody of the person of
33 a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers are
34 limited. A "standby guardian" is one approved by the court to temporarily assume the duties
35 of guardian of a minor or of an incapacitated person under section 475.046. The term
36 guardian, as used in this chapter, includes limited guardian and standby guardian unless
37 otherwise specified or apparent from the context;

38 (9) "Guardian ad litem", one appointed by a court, in which particular litigation is
39 pending on behalf of a minor, an incapacitated person, a disabled person, or an unborn person
40 in that particular proceeding or as otherwise specified in this code;

41 (10) "Habilitation", a process of treatment, training, care, or specialized attention that
42 seeks to enhance and maximize the ability of a person with an intellectual disability or a
43 developmental disability to cope with the environment and to live as determined by the
44 person as much as possible, as is appropriate for the person considering his or her physical
45 and mental condition and financial means;

46 (11) "Incapacitated person", one who is unable by reason of any physical, mental, or
47 cognitive condition to receive and evaluate information or to communicate decisions to such
48 an extent that the person, even with appropriate services and assistive technology, lacks
49 capacity to manage the person's essential requirements for food, clothing, shelter, safety or
50 other care such that serious physical injury, illness, or disease is likely to occur. The term
51 incapacitated person as used in this chapter includes the term partially incapacitated person
52 unless otherwise specified or apparent from the context;

53 (12) "Interested persons", spouses, children, parents, **persons acting as parents**,
54 adult members of a ward's or protectee's family, creditors or any others having a property
55 right or claim against the estate of a protectee being administered, trustees of a trust of which
56 the ward or protectee is a beneficiary, agents of a durable power of attorney for a ward or
57 protectee, and children of a protectee who may have a property right or claim against or an
58 interest in the estate of a protectee. This meaning may vary at different stages and different
59 parts of a proceeding and shall be determined according to the particular purpose and matter
60 involved;

61 (13) "Least restrictive alternative", with respect to the guardianship order and the
62 exercise of power by the guardian, a course of action or an alternative that allows the
63 incapacitated person to live, learn, and work with minimum restrictions on the person, as are
64 appropriate for the person considering his or her physical and mental condition and financial
65 means. Least restrictive alternative also means choosing the decision or approach that:

66 (a) Places the least possible restriction on the person's personal liberty and exercise of
67 rights and that promotes the greatest possible inclusion of the person into his or her
68 community, as is appropriate for the person considering his or her physical and mental
69 condition and financial means; and

70 (b) Is consistent with meeting the person's essential requirements for health, safety,
71 habilitation, treatment, and recovery and protecting the person from abuse, neglect, and
72 financial exploitation;

73 (14) "Manage financial resources", either those actions necessary to obtain,
74 administer, and dispose of real and personal property, intangible property, business property,
75 benefits, income or any assets, or those actions necessary to prevent waste, loss or dissipation
76 of property, or those actions necessary to provide for the care and support of such person or
77 anyone legally dependent upon such person by a person of ordinary skills and intelligence
78 commensurate with his or her training and education;

79 (15) "Minor", any person who is under the age of eighteen years;

80 (16) "Parent", the biological or adoptive mother or father of a child whose parental
81 rights have not been terminated under chapter 211, including:

82 (a) A person registered as the father of the child by reason of an unrevoked notice of
83 intent to claim paternity under section 192.016;

84 (b) A person who has acknowledged paternity of the child and has not rescinded that
85 acknowledgment under section 193.215; and

86 (c) A person presumed to be the natural father of the child under section 210.822;

87 (17) "Partially disabled person", one who is unable by reason of any physical, mental,
88 or cognitive condition to receive and evaluate information or to communicate decisions to

89 such an extent that such person lacks capacity to manage, in part, his or her financial
90 resources;

91 (18) "Partially incapacitated person", one who is unable by reason of any physical,
92 mental, or cognitive condition to receive and evaluate information or to communicate
93 decisions to the extent that such person lacks capacity to meet, in part, essential requirements
94 for food, clothing, shelter, safety, or other care without court-ordered assistance;

95 (19) **"Persons acting as parents" or "person acting as a parent", a person, other**
96 **than a parent, who has physical custody of the child or has had physical custody for a**
97 **period of six consecutive months, including any temporary absence, immediately prior**
98 **to the commencement of the guardianship or conservatorship under this chapter;**

99 (20) **"Physical custody", the physical care and supervision of a child;**

100 (21) "Protectee", a person for whose estate a conservator or limited conservator has
101 been appointed or with respect to whose estate a transaction has been authorized by the court
102 under section 475.092 without appointment of a conservator or limited conservator;

103 ~~[(20)]~~ (22) "Seriously ill", a significant likelihood that a person will become
104 incapacitated or die within twelve months;

105 ~~[(21)]~~ (23) "Social service agency", a charitable organization organized and
106 incorporated as a not-for-profit corporation under the laws of this state and which qualifies as
107 an exempt organization within the meaning of Section 501(c)(3), or any successor provision
108 thereto of the federal Internal Revenue Code;

109 ~~[(22)]~~ (24) "Standby guardian", one who is authorized to have the temporary care and
110 custody of the person of a minor or of an incapacitated person under the provisions of section
111 475.046;

112 ~~[(23)]~~ (25) "Treatment", the prevention, amelioration or cure of a person's physical
113 and mental illnesses or incapacities;

114 ~~[(24)]~~ (26) "Ward", a minor or an incapacitated person for whom a guardian, limited
115 guardian, or standby guardian has been appointed.

475.045. 1. Except in cases where they fail or refuse to give required security or are
2 adjudged unfit for the duties of guardianship or conservatorship, or waive their rights to be
3 appointed, the following persons, if otherwise qualified, shall be appointed as guardians or
4 conservators of minors:

5 (1) The parent or parents of the minor, except as provided in section 475.030 **or**
6 **475.050;**

7 (2) **A person acting as a parent for the minor entering adult guardianship or**
8 **conservatorship;**

9 **(3)** If any minor over the age of fourteen years has no qualified parent living, a person
10 nominated by the minor, unless the court finds appointment contrary to the best interests of
11 the minor;

12 ~~[(3)]~~ **(4)** Where both parents of a minor are dead, any person appointed under this
13 section or section 475.046 by the will of the last surviving parent, who has not been adjudged
14 unfit or incompetent for the duties of guardian or conservator.

15 2. Unfitness of any of the persons mentioned in subsection 1 for the duties of
16 guardianship or conservatorship may be adjudged by the court after due notice and hearing.

17 3. If no appointment is made under subsection 1 of this section, the court shall
18 appoint as guardian or conservator of a minor the most suitable person who is willing to serve
19 and whose appointment serves the best interests of the child to a stable and permanent
20 placement.

 475.050. 1. Before appointing any other eligible person as guardian of an
2 incapacitated person, or conservator of a disabled person, the court shall consider the
3 suitability of appointing any of the following persons, listed in the order of priority, who
4 appear to be willing to serve:

5 (1) If the incapacitated or disabled person is, at the time of the hearing, able to make
6 and communicate a reasonable choice, any eligible person nominated by the person;

7 (2) Any eligible person nominated in a durable power of attorney executed by the
8 incapacitated or disabled person, or in an instrument in writing signed by the incapacitated or
9 disabled person and by two witnesses who signed at the incapacitated or disabled person's
10 request, before the inception of the person's incapacity or disability;

11 (3) The spouse, parents, **persons acting as parents**, adult children, adult brothers and
12 sisters and other close adult relatives of the incapacitated or disabled person;

13 (4) Any other eligible person or, with respect to the estate only, any eligible
14 organization or corporation, nominated in a duly probated will of such a spouse or relative.

15 2. The court shall not appoint an unrelated third party as a guardian or conservator
16 unless there is no relative suitable and willing to serve or if the appointment of a relative or
17 nominee is otherwise contrary to the best interests of the incapacitated or disabled person. If
18 the incapacitated or disabled person is a minor under the care of the children's division **or a**
19 **person acting as a parent** and is entering adult guardianship or conservatorship, it shall be a
20 rebuttable presumption that he or she has no relative suitable and willing to serve as guardian
21 or conservator.

22 3. Except for good cause shown, the court shall make its appointment in accordance
23 with the incapacitated or disabled person's most recent valid nomination of an eligible person
24 qualified to serve as guardian of the person or conservator of the estate.

25 4. Except for those individuals specified in subdivisions (1) and (2) of this subsection,
26 the court shall require all guardians and conservators who are seeking appointment and who
27 have a fiduciary responsibility to a ward, an incapacitated person, or a disabled person to
28 submit at their own expense to a background screening that shall include the disqualification
29 lists of the departments of mental health, social services, and health and senior services; the
30 abuse and neglect registries for adults and children; a Missouri criminal record review; and
31 the sexual offender registry. Individuals seeking appointment as a conservator shall also
32 submit, at their own expense, to a credit history investigation. The nominated guardian or
33 conservator shall file the results of the reports with the court at least ten days prior to the
34 appointment hearing date unless waived or modified by the court for good cause shown by an
35 affidavit filed simultaneously with the petition for appointment or in the event the protected
36 person requests an expedited hearing. **Unless requested by any party**, the provisions of this
37 subsection shall not apply to:

38 (1) Public administrators; or

39 (2) The ward's, incapacitated person's, or disabled person's spouse, parents, **persons**
40 **acting as parents**, children who have reached eighteen years of age, or siblings who have
41 reached eighteen years of age.

42 5. Guardians certified by a national accrediting organization may file proof of
43 certification in lieu of the requirements of subsections 4 and 6 of this section.

44 6. An order appointing a guardian or conservator shall not be signed by the judge
45 until such reports have been filed with the court and reviewed by the judge, who shall
46 consider the reports in determining whether to appoint a guardian or conservator. Such
47 reports, or lack thereof, shall be certified either by an affidavit or by obtaining a certified copy
48 of the reports. No reports or national criminal history record check shall be required by the
49 court upon the application of a petitioner for an emergency temporary guardianship or
50 emergency temporary conservatorship. The court may waive the requirements of this
51 subsection for good cause shown. If appointed, a guardian or conservator may petition the
52 court for reimbursement of the reasonable expenses of the credit history investigation and
53 background screenings.

**475.063. 1. A petition for emergency and full orders regarding a minor entering
2 adult guardianship or conservatorship shall be filed as provided under this chapter.**

3 **2. (1) A clerk of a court shall make available to a petitioner uniform forms
4 adopted by the Missouri supreme court for a proceeding under this section.**

5 **(2) Except as otherwise provided by law, a clerk under the supervision of a
6 circuit clerk shall provide assistance to a petitioner who is not represented by counsel
7 with the procedures for filing all forms and pleadings necessary for the presentation of
8 the petitioner's petition under this section. Notice of the fact that a clerk will provide**

9 **such assistance shall be conspicuously posted in the clerk's office. The location of the**
10 **office where a petition may be filed shall be conspicuously posted in the court building.**
11 **The performance of duties prescribed in this section shall not constitute the practice of**
12 **law as defined in section 484.010.**

13 **(3) All duties of the clerk prescribed in this section shall be performed without**
14 **cost to the petitioner. The Missouri supreme court may promulgate rules as necessary**
15 **to govern conduct of a court clerk under this chapter and provide forms for petitions**
16 **and written instructions on completing all forms and pleadings necessary for the**
17 **presentation of the petition to the court.**

18 **3. No filing fees, court costs, or bond shall be assessed to the petitioner in an**
19 **action commenced under this section.**

20 **4. Any expenses incurred by the clerk under this section may be reimbursed**
21 **from moneys deposited into a family services and justice fund under section 488.2300.**

488.2300. 1. A "Family Services and Justice Fund" is hereby established in each
2 county or circuit with a family court, for the purpose of aiding with the operation of the
3 family court divisions and services provided by those divisions. In circuits or counties having
4 a family court, the circuit clerk shall charge and collect a surcharge of thirty dollars in all
5 proceedings falling within the jurisdiction of the family court. The surcharge shall not be
6 charged when no court costs are otherwise required, shall not be charged against the petitioner
7 for actions filed pursuant to the provisions of chapter 455, but may be charged to the
8 respondent in such actions, shall not be charged to a government agency and shall not be
9 charged in any proceeding when costs are waived or are to be paid by the state, county or
10 municipality.

11 2. In juvenile proceedings under chapter 211, a judgment of up to thirty dollars may
12 be assessed against the child, parent or custodian of the child, in addition to other amounts
13 authorized by law, in informal adjustments made under the provisions of sections 211.081 and
14 211.083, and in an order of disposition or treatment under the provisions of section 211.181.
15 The judgment may be ordered paid to the clerk of the circuit where the assessment is
16 imposed.

17 3. All sums collected pursuant to this section and section 487.140 shall be payable to
18 the various county family services and justice funds.

19 **4. Nothing in this section prohibits the general assembly from appropriating**
20 **moneys into the various county family services and justice funds to be expended for the**
21 **purposes provided for in this section.**

22 **5. Any moneys in the family services and justice fund not expended for salaries of**
23 **commissioners, family court administrators and family court staff shall be used toward**
24 **funding the enhanced services provided as a result of the establishment of a family court;**

25 however, it shall not replace or reduce the current and ongoing responsibilities of the counties
26 to provide funding for the courts as required by law. Moneys collected for the family services
27 and justice fund shall be expended for the benefit of litigants and recipients of services in the
28 family court, with priority given to **fees incurred under subsection 5 or 7 of section 475.075**
29 **or expenses incurred under section 475.063, and to** services such as guardians ad litem,
30 mediation, counseling, home studies, psychological evaluation and other forms of alternative
31 dispute-resolution services. Expenditures shall be made at the discretion of the presiding
32 judge or family court administrative judge, as designated by the circuit and associate circuit
33 judges en banc, for the implementation of the family court system as set forth in this section.
34 No moneys from the family services and justice fund may be used to pay for mediation in any
35 cause of action in which domestic violence is alleged.

36 ~~[5-]~~ **6.** From the funds collected pursuant to this section and retained in the family
37 services and justice fund, each circuit or county in which a family court commissioner in
38 addition to those commissioners existing as juvenile court commissioners on August 28,
39 1993, have been appointed pursuant to sections 487.020 to 487.040 shall pay to and
40 reimburse the state for the actual costs of that portion of the salaries of family court
41 commissioners appointed pursuant to the provisions of sections 487.020 to 487.040.

42 ~~[6-]~~ **7.** No moneys deposited in the family services and justice fund may be expended
43 for capital improvements.

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