

ENROLLED HOUSE
BILL NO. 1354

By: Vaughn, Davis and Graves of
the House

and

Coffee of the Senate

An Act relating to guardian and ward; amending 30 O.S. 1991, Sections 3-115, as amended by Section 4, Chapter 234, O.S.L. 1994, 4-303, as amended by Section 2, Chapter 115, O.S.L. 1992, and 4-404 (30 O.S. Supp 2000, Sections 3-115 and 4-303), which relate to appointment of special guardians and to reports submitted by guardians and limited guardians; deleting language relating to time period for duration of special guardianship; clarifying language; authorizing the court to waive certain required reports and fees; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 30 O.S. 1991, Section 3-115, as amended by Section 4, Chapter 234, O.S.L. 1994 (30 O.S. Supp. 2000, Section 3-115), is amended to read as follows:

Section 3-115. A. The court may appoint a special guardian for a person who appears to be or has been found to be an incapacitated or partially incapacitated person when it appears:

1. There is imminent danger that the health or safety of said person will be seriously impaired or that the financial resources of said person will be seriously damaged or dissipated unless immediate action is taken; and

2. No other person appears to have authority to act in the circumstances or the guardian previously appointed is unable to or refuses to take action.

~~Except as otherwise provided by this section, the appointment of a special guardian shall be for a period not to exceed ten (10) days.~~

B. The request for appointment of a special guardian may be included in the petition to appoint a guardian or by separate petition, either of which must be verified.

C. The court may appoint an attorney, separate and apart from the petitioner's attorney, for the subject of the proceeding who does not have legal representation and either cannot afford a

private attorney or cannot retain counsel due to incapacity and may proceed to hear the petition as same pertains to appointment of a special guardian with or without notice. If notice is required, the notice shall set a time for hearing on the petition within seventy-two (72) hours. Notice shall be served on:

1. The subject of the proceeding;
2. The attorney of the subject of the proceeding, if any;
3. The spouse of the subject of the proceeding, if any, and if the spouse is not the petitioner; and
4. At least one other adult relative of the subject of the proceeding or any other person who is not the petitioner, as directed by the court.

Notice shall be personally served in the manner as the court directs on the subject of the proceeding and on other persons receiving notice as directed by the court.

D. The court may without notice appoint a special guardian upon the filing of the petition, upon presentation of evidence of the incapacity of the subject of the proceeding, upon a showing that an immediate or reasonably foreseeable serious physical harm to the subject of the proceeding or serious impairment of the financial resources of said person will result from a delay, and upon presentation of a proposed emergency plan of care for the subject of the proceeding. Whenever a special guardian is immediately appointed as provided by this subsection, the court shall cause a copy of the petition, order and letters of special guardianship to be served on:

1. The subject of the proceeding;
2. The spouse of the subject of the proceeding, if any, if the spouse is not the petitioner; and
3. At least one other adult relative of the subject of the proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other person who is not the petitioner, as directed by the court.

The notice shall be served in the manner the court directs.

E. The court shall grant the special guardian only those powers necessary to act with respect to the particular emergency, as determined by the court. The special guardian shall be granted only powers to accomplish acts that are both supported by the proposed emergency plan of care and found necessary by the court. Power to change the place of residence of the subject of the proceeding shall be specifically granted by the court upon a showing that the needs of the subject of the proceeding cannot be met within such subject's present residential arrangements. The court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the special guardian. The letters for a special guardian shall state that the person is a special guardian, the date of the expiration of the special guardianship, and the specific power or powers of the special guardian.

F. The appointment of a special guardian shall be effective from the date of appointment until a guardian is appointed pursuant to Section 1-112 of this title, or for thirty (30) days, whichever is less.

G. The court shall not require bond if the appointment is over the person only, and may require or waive bond if the appointment is as to the property of the ward.

H. The authority of any guardian or limited guardian previously appointed by the court is suspended with regard to the powers granted to the special guardian, but not otherwise, for as long as a special guardian has authority as provided by this section.

I. The court may remove a special guardian at any time. The special guardian shall file a report showing all actions taken during the special guardianship and shall make any other report the court requires.

SECTION 2. AMENDATORY 30 O.S. 1991, Section 4-303, as amended by Section 2, Chapter 115, O.S.L. 1992 (30 O.S. Supp. 2000, Section 4-303), is amended to read as follows:

Section 4-303. A. Except as otherwise provided by subsection B of this section, a guardian or limited guardian of the property shall, upon the expiration of a year from the time of ~~his~~ appointment, and at least annually thereafter, present ~~his~~ accounts to the court for settlement and allowance as part of ~~his~~ the guardianship report as required by Section 4-306 of this title.

B. 1. In addition, a guardian or limited guardian of the property shall:

- a. present accounts whenever the court requires that such report or accounts be presented, and
- b. with ~~his~~ the annual report of ~~his~~ accounts, report any changes of property listed on the inventory required by Section 4-301 of this title. The report shall state the compensation requested by the guardian and for ~~his~~ the attorneys.

2. If there has been a significant change in the physical or mental condition of the ward, or the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection A of this section.

3. Except as otherwise directed by the court or required by the Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.), the provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the property of a ward if the ward's financial resources or assets, other than a homestead, are worth less than Forty Thousand Dollars (\$40,000.00) if a bond has been posted, or are worth less than Ten Thousand Dollars (\$10,000.00) regardless of whether or not a bond has been posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.

C. In addition to the reports required by subsections A and B of this section, a guardian or limited guardian shall submit a report:

1. If the ward is an incapacitated or partially incapacitated person, when there is a significant change in the capacity of the ward to meet the essential requirements for ~~his~~ the physical health or safety of the ward or to manage ~~his~~ the financial resources of the ward;

2. If the ward is a minor, any significant change in the condition of the minor or in the condition of the estate of the minor;

3. When the guardian or limited guardian resigns or is removed; and

4. When the guardianship is terminated.

D. 1. ~~A~~ Unless waived at the discretion of the court, a guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file a report on the guardianship of the person pursuant to Section 4-305 of this title.

2. ~~A~~ Unless waived at the discretion of the court, or not required by Section 21.5 of Title 10 of the Oklahoma Statutes, a guardian of the person of a minor ward shall file such reports of the guardianship of the person of the ward as required by the court in such form as the court may require.

3. A guardian or limited guardian of the property of a ward shall file a report on the guardianship of the property pursuant to Section 4-306 of this title.

E. The court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same person or organization is required to file reports as to both the person and the property of a ward, the reports may be consolidated.

~~F.~~ G. An accounting information submitted by a guardian or limited guardian of the property of a ward shall be verified and shall be rendered in the same manner as required by Title 58 of the Oklahoma Statutes with respect to an information of an estate of a decedent. Such information shall also set forth any charges to the property of the ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the property of the ward placed under the control of the guardian or limited guardian.

~~G.~~ H. In addition to other specified information any order of the court approving an annual guardianship plan and report shall include the date certain by which the guardian shall file the next annual report.

SECTION 3. AMENDATORY 30 O.S. 1991, Section 4-404, is amended to read as follows:

Section 4-404. A. No costs shall be required by the court clerk in any guardianship proceeding where the proceeding is for the purpose of appointing a guardian to approve or authorize the ward to enter the armed forces of the United States.

B. If the court waives the report, the court may waive the fee for the filing of the annual guardianship report required by Section 152 of Title 28 of the Oklahoma Statutes, for a guardian or limited guardian of the person of an incapacitated or partially incapacitated person or for a guardian of the person of a minor.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 18th day of May, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the 24th day of May, 2001.

Presiding Officer of the Senate