

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 2ND CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL 1054

By: Williamson of the Senate

and

Peters and McAffrey of the
House

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9 2ND CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to guardian and ward; amending 30
11 O.S. 2001, Sections 3-101 and 4-105, which relate to
12 petition for appointment of guardian and inquiry of
13 proposed guardians; requiring certain investigation
14 and report; requiring certain disclosure; expanding
15 scope of certain requirement; requiring presentation
16 of certain document; requiring disclosure of certain
17 information; expanding scope of inquiry under certain
18 circumstances; making language gender neutral; and
19 declaring an emergency.

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

21 SECTION 1. AMENDATORY 30 O.S. 2001, Section 3-101, is
22 amended to read as follows:

23 Section 3-101. A. Any person interested in the welfare of a
24 person believed to be an incapacitated person or partially
incapacitated person may file a petition alleging that such person
is an incapacitated or partially incapacitated person, and request
the appointment of a guardian.

1 B. The petition shall be verified and shall specify:

2 1. The names and addresses of persons entitled to notice
3 pursuant to Section 3-110 of this title and to the attorney of the
4 subject of the proceeding, if any, and if known to the petitioner;

5 2. The nature and degree of the alleged incapacity;

6 3. The relief requested and the facts and reasons supporting
7 the need for such relief including, where applicable, a description
8 of any acts or behavior of the subject of the proceeding which gave
9 rise to the allegations; and

10 4. The estimated value of all intangible personal property of
11 the ward.

12 C. A copy of the results of any physical, psychological or
13 other appropriate professional evaluation of the condition of the
14 subject of the proceeding which has been completed within sixty (60)
15 days prior to the filing of the petition, may be attached to the
16 petition at the time it is filed.

17 D. A guardianship plan or plans substantially in the form
18 required by Section 3-120 or Section 3-122 of this title or both, as
19 appropriate, may be attached to the petition at the time it is filed
20 or may be submitted to the court at the time of the hearing.

21 E. Before making the appointment, the court may receive an
22 investigation and report regarding the background and home of the
23 prospective guardian. When required, the investigation and report
24 of the prospective guardian and placement restrictions and

1 requirements shall include a check for the petitioner and each adult
2 member of the petitioner's household establishing that there is no
3 record of a criminal conviction, protective order or pending
4 criminal charge. Additionally, the report shall include an Oklahoma
5 State Bureau of Investigation name-based criminal background check
6 for the petitioner and each adult member of the petitioner's
7 household establishing that no record of a criminal conviction
8 exists in the OSBI criminal history repository based on the search
9 criteria provided. The petitioner shall disclose the case name and
10 status of any civil or criminal matter in state or federal court,
11 including but not limited to bankruptcy adjudications, involving the
12 petitioner or any adult household member.

13 SECTION 2. AMENDATORY 30 O.S. 2001, Section 4-105, is
14 amended to read as follows:

15 Section 4-105. A. In conducting an inquiry to determine
16 whether a person is suitable to serve as a guardian, the court shall
17 determine if:

18 1. The person proposed to serve as guardian is a minor or an
19 incapacitated or partially incapacitated person;

20 2. The person proposed to serve as guardian ~~is a convicted~~
21 felon and each adult member of the proposed guardian's household has
22 a record of a criminal conviction, protective order, or pending
23 criminal charge. When requested by the court, the petitioner shall
24 present to the court an Oklahoma State Bureau of Investigation

1 (OSBI) criminal background check for the proposed guardian and any
2 adult household member evidencing no record of a criminal conviction
3 in the OSBI criminal history repository based on the search criteria
4 provided. The petitioner shall disclose the case name and status of
5 any civil or criminal matter in state or federal court involving the
6 proposed guardian or any adult household member of the proposed
7 guardian;

8 3. The person proposed to serve as guardian is insolvent or has
9 declared bankruptcy during five (5) years prior to the filing of the
10 pleading proposing such person to serve as guardian;

11 4. The person proposed to serve as guardian ~~is~~ is under any
12 financial obligation to the ward; or

13 5. There exists a conflict of interest which would preclude or
14 be substantially detrimental to the ability of the person to act in
15 the best interest of the subject of the proceeding if such person is
16 appointed.

17 B. No minor or incapacitated person shall be appointed guardian
18 of an incapacitated or partially incapacitated person.

19 C. If the person proposed to serve ~~is a convicted felon~~ has a
20 criminal conviction, protective order, pending criminal charge, or
21 other civil or criminal matter in state or federal court, the court
22 shall make further inquiry into the nature of ~~the felony~~ such
23 conviction, order, charge or matter and the surrounding
24 circumstances ~~surrounding the conviction~~. The court shall appoint

1 such person proposed to serve only upon determining that the facts
2 underlying the ~~conviction~~ circumstances do not give rise to a
3 reasonable belief that ~~that~~ the person proposed to serve will be
4 unfaithful to or neglectful of ~~his~~ the fiduciary and care
5 responsibilities of the guardian, and that the appointment is in the
6 best interest of the ward.

7 D. If the person proposed to serve as guardian or limited
8 guardian of the property of an incapacitated or partially
9 incapacitated person is insolvent or has declared bankruptcy within
10 five (5) years prior to the filing of the pleading proposing that
11 such person serve, the court shall appoint such person only after
12 giving due consideration to the nature and extent of the property of
13 the ward and the anticipated actions necessary to manage the estate
14 of the ward, and only upon a determination that such appointment is
15 in the best interest of the ward. Insolvency or bankruptcy shall
16 have no effect on the qualification of a person proposed to serve as
17 guardian or limited guardian of the person of an incapacitated or
18 partially incapacitated person.

19 E. If the person proposed to serve as guardian or limited
20 guardian of the property of an incapacitated or partially
21 incapacitated person is under any financial obligation to the ward,
22 the court shall make further inquiry into the nature and extent of
23 such obligation. The court shall appoint the person proposed to
24 serve only after a determination that such obligation will not

1 | impair the ability of the person proposed to serve to discharge ~~his~~
2 | the person's fiduciary responsibilities, and that the appointment is
3 | in the best interest of the ward. Being under financial obligation
4 | to the ward shall have no effect on the qualification of a person
5 | proposed to serve as guardian or limited guardian of the person of
6 | an incapacitated or partially incapacitated person.

7 | F. A current or potential conflict of interest which is not
8 | substantial and not likely to preclude or impair the ability of a
9 | person proposed to serve as a guardian acting in the best interest
10 | of ~~his~~ the person's ward shall not, by itself, disqualify such
11 | person from appointment.

12 | SECTION 3. It being immediately necessary for the preservation
13 | of the public peace, health and safety, an emergency is hereby
14 | declared to exist, by reason whereof this act shall take effect and
15 | be in full force from and after its passage and approval.

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