

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 HOUSE BILL 2605

By: Echols

7 AS INTRODUCED

8 An Act relating to guardian and ward; amending 30
9 O.S. 2011, Section 3-113, which relates to court
10 order appointing guardian; including court
11 determination for capacity of ward to receive hospice
12 program services; amending 30 O.S. 2011, Section 3-
13 119, which relates to limitations on guardian powers;
14 updating act name; modifying exception for power of
15 guardian to consent to certain procedures; and
16 providing an effective date.

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

16 SECTION 1. AMENDATORY 30 O.S. 2011, Section 3-113, is
17 amended to read as follows:

18 Section 3-113. A. The order appointing a guardian, based upon
19 evidence adduced, shall set forth:

- 20 1. The determinations made by the court at the hearing;
- 21 2. The name and address of the individual, if any, appointed to
22 serve as the limited guardian or guardian;
- 23 3. The specific limitations imposed upon the ward, if the ward
24 is a partially incapacitated person;

1 4. Any authority granted a guardian of the person of the ward
2 to change the place of abode of the ward outside of the state or
3 county without the prior permission of the court; and

4 5. Whenever the court determines a review hearing is necessary
5 or desirable, the date of the review hearing.

6 B. In establishing the specific limitations on the legal
7 activities of a ward for whom a limited guardian of the person is
8 appointed, the court shall make specific determinations regarding
9 the capacity of the subject of the proceeding, including but not
10 limited to determining whether the ward retains sufficient capacity:

11 1. To vote;

12 2. To serve as a juror;

13 3. To operate a motor vehicle;

14 4. To be licensed or continue to practice any profession of the
15 ward; and

16 5. To make personal medical decisions including but not limited
17 to decisions to withhold or withdraw life-sustaining procedures, to
18 receive hospice services through a home or inpatient hospice
19 program, to donate organs, to undergo elective surgery, or to
20 consent to routine or necessary medical or other professional care,
21 treatment or advice.

22 C. In establishing the specific limitations on the legal
23 abilities of a ward for whom a limited guardian of the property is
24 appointed, the court shall make specific determinations regarding

1 the capacity of the subject of the proceeding, including but not
2 limited to determining whether the ward retains sufficient capacity
3 to:

- 4 1. Appoint an agent to act on his behalf;
- 5 2. Enter into contracts;
- 6 3. Grant conveyances; or
- 7 4. Make gifts of property.

8 D. If not submitted with the petition or at the hearing, the
9 guardian or limited guardian shall submit a guardianship plan as
10 required by Section 3-120 or 3-122 of this title, or both, as
11 appropriate and a copy of said plan shall be mailed to those persons
12 entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of
13 subsection A of Section 3-110 of this title. The guardianship plan
14 as approved by the court shall be made a part of the order of the
15 court. Said plan may be modified as provided by this act.

16 E. The court may, in its discretion, make such further orders
17 as the court deems necessary for the best interest of the ward for
18 care of the ward and maintenance or management of the ward's
19 property, including but not limited to:

- 20 1. Order the guardian of the property of the ward to provide
21 the ward from such property with specified amounts of money,
22 monthly, or from time to time, which the ward may dispose of as the
23 ward shall determine and for which, other than a showing of the
24 amounts paid to the ward, the guardian will not be required to

1 account. Such order may be modified upon application of the
2 guardian or any interested person, and a hearing conducted thereon,
3 with notice of the hearing on such application to be given to those
4 persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of
5 subsection A of Section 3-110 of this title and shall be given as
6 provided in Section 3-110 of this title; and

7 2. The amount of the bond as required by Section 4-201 of this
8 title.

9 SECTION 2. AMENDATORY 30 O.S. 2011, Section 3-119, is
10 amended to read as follows:

11 Section 3-119. A guardian shall have no powers except as
12 provided by the Oklahoma Statutes or given to such guardian in the
13 orders in the guardianship proceeding. This limitation of powers
14 includes but is not limited to the following:

15 1. No guardian shall have the power to consent on behalf of the
16 ward to the withholding or withdrawal of life-sustaining procedures
17 as ~~defined by~~ provided in the Oklahoma ~~Rights of the Terminally Ill~~
18 ~~or Persistently Unconscious~~ Advance Directive Act from the ward,
19 except:

- 20 a. with specific authorization of the court ~~having~~
21 ~~jurisdiction over the guardianship proceedings. Such~~
22 in the order appointing a guardian as provided in
23 paragraph 5 of subsection B of Section 3-113 of this
24 title. If this authorization is not granted in the

1 order, authorization ~~must~~ shall be granted in a
2 separate order ~~and only at such time when the ward is~~
3 ~~in need of life-sustaining treatment~~ of the court
4 having jurisdiction over the guardianship proceedings,

- 5 b. as authorized by an advance directive executed
6 pursuant to the Oklahoma ~~Rights of the Terminally Ill~~
7 ~~or Persistently Unconscious~~ Advance Directive Act, or
8 c. as authorized by a consent not to resuscitate made
9 pursuant to the Oklahoma Do-Not-Resuscitate Act;

10 2. No guardian or court having jurisdiction of the guardianship
11 proceeding shall have the power to consent on behalf of the ward or
12 order the consent on behalf of the ward to the termination or
13 relinquishment of parental rights of the ward;

14 3. Except in an emergency and only as necessary to preserve the
15 life of the ward, no guardian shall have the power to consent on
16 behalf of the ward to an abortion, psychosurgery, removal of a
17 bodily organ, performance of any experimental biomedical or
18 behavioral procedure, or participation in any biomedical or
19 behavioral experiment, except with specific authorization of the
20 court having jurisdiction of the guardianship proceeding;

21 4. No guardian shall have the power to prohibit the marriage or
22 divorce of a ward except with specific authorization of the court
23 having jurisdiction of the guardianship proceeding; and
24

1 5. No guardian shall have the power to consent on behalf of the
2 ward to placement of the ward in a facility or institution to which
3 a person without a guardian would have to be committed pursuant to
4 the laws of this state absent formal commitment proceedings in which
5 the ward has independent counsel.

6 SECTION 3. This act shall become effective November 1, 2019.

7
8 COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH AND FAMILY
9 SERVICES, dated 02/07/2019 - DO PASS.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24