

An Act

ENROLLED SENATE
BILL NO. 198

By: Rosino of the Senate

and

Lawson of the House

An Act relating to the Oklahoma Guardianship and Conservatorship Act; amending 30 O.S. 2011, Sections 1-111, as amended by Section 28, Chapter 475, O.S.L. 2019 and 3-111 (30 O.S. Supp. 2020, Section 1-111), which relate to definitions and court order appointing guardian; modifying definitions; requiring court to make certain determinations; authorizing dismissal of action under certain circumstances; requiring court order to include specified finding; establishing requirements for certain guardianships; making language gender neutral; and providing an effective date.

SUBJECT: Guardianship of incapacitated person

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

SECTION 1. AMENDATORY 30 O.S. 2011, Section 1-111, as amended by Section 28, Chapter 475, O.S.L. 2019 (30 O.S. Supp. 2020, Section 1-111), is amended to read as follows:

Section 1-111. A. As used in the Oklahoma Guardianship and Conservatorship Act:

1. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to an incapacitated person, partially incapacitated person, or a minor by a guardian or other person responsible for providing these services;

2. "Confidential information" means medical records, physical, psychological or other evaluations of a ward or subject of the proceeding, initial and subsequent guardianship plans, reports of guardians, limited guardians and conservators submitted to the court in connection with a proceeding pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act;

3. "Court" means a judge of the district court assigned to hear probate matters or assigned to the division of the district court designated to exercise probate jurisdiction;

4. "Estate" means the property of the person whose affairs are subject to a guardianship proceeding;

5. "Evaluation" means a professional assessment of:

- a. the ability of an adult to receive and evaluate information effectively or communicate decisions,
- b. the impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for ~~his~~ the individual's physical health or safety, or to manage ~~his~~ the individual's financial resources, and
- c. the services necessary to provide for the ward;

6. "Exploitation" means an unjust or improper use of the resources of an incapacitated person, a partially incapacitated person~~7~~ or a minor for the profit or advantage, pecuniary or otherwise, of a person other than an incapacitated person, a partially incapacitated person~~7~~ or a minor through the use of undue influence, coercion, harassment, duress, deception, false representation~~7~~ or false pretense;

7. A "guardian of an incapacitated person" means a person who has been appointed by a court to serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of the person are met, to manage the estate or financial resources of the person, or both;

8. "Guardian ad litem" means, with respect to a guardianship proceeding, a person appointed by the court to assist the subject of the proceeding in making decisions with regard to the guardianship proceeding, or to make the decisions when the subject of the proceeding is wholly incapable of making the decisions even with assistance;

9. "Guardianship plan" means the plan for the care and treatment of a ward, the plan for the management of the financial resources of a ward, or both;

10. "Guardianship proceeding" means a proceeding for the appointment of a guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a ward;

11. "Guardianship report" means any report required by the provisions of Sections 4-305 and 4-306 of this title;

12. "Incapacitated person" means a person eighteen (18) years of age or older:

- a. who is impaired by reason of:
 - (1) mental illness as defined by Section 1-103 of Title 43A of the Oklahoma Statutes,
 - (2) intellectual or developmental disability as defined by Section 1430.2 of Title 10 of the Oklahoma Statutes,
 - (3) physical illness or disability,
 - (4) drug or alcohol dependency as defined by Section 3-403 of Title 43A of the Oklahoma Statutes, or
 - (5) such other similar cause, and
- b. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person:

- (1) lacks the capacity to meet essential requirements for ~~his~~ physical health or safety, or
- (2) is unable to manage ~~his~~ financial resources.

Whenever in the Oklahoma Statutes the term "incompetent person" appears and refers to a person who has been found by a district court to be an incompetent person because of an impairment or condition described in this paragraph it shall have the same meaning as "incapacitated person" but shall not include a person who is a partially incapacitated person;

13. "Least restrictive ~~dispositional~~ alternative" means ~~the form of assistance that least interferes with the legal ability of an incapacitated or partially incapacitated person to act in his own behalf~~ an approach to meeting the needs of an individual that restricts fewer rights of the individual than would the appointment of a guardian or conservator including, but not limited to, supported decision making, appropriate technological assistance, appointment of a representative payee and appointment of an agent by the individual including under a power of attorney for health care or finances;

14. "Intangible personal property" means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, and other assets of a similar nature;

15. "Letters" means a document issued by the court subsequent to the appointment of a guardian which designates the name of the guardian and specifies the authority and powers of the guardian. Such document shall be endorsed thereon with the oath of the guardian that he or she will perform the duties of his or her office as guardian according to law;

16. A "limited guardian" means a person appointed by the court to serve as the guardian of a partially incapacitated person and who is authorized by the court to exercise only:

- a. some of the powers of a guardian of the person or whose power as guardian of the person extends only to

certain matters pertaining to the care or control of the ward as specified by the court, or

- b. certain powers as guardian of the property over the estate or financial resources of the ward, or whose powers as guardian of the property extend only to some portion of the estate or financial resources of the ward;

17. "Manage financial resources" or "manage the estate" means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs;

18. "Meet the essential requirements for physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury is more likely than not to occur;

19. "Minor" means a person under eighteen (18) years of age;

20. "Neglect" means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor who is unable to protect the person's own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury;

21. "Organization" means a corporation, trust, business trust, partnership, association, or other legal entity;

22. "Partially incapacitated person" means an incapacitated person whose impairment is only to the extent that without the assistance of a limited guardian the person is unable to:

- a. meet the essential requirements for ~~his~~ physical health or safety, or
- b. manage all of ~~his~~ the person's financial resources or to engage in all of the activities necessary for the

effective management of ~~his~~ the person's financial resources.

A finding that an individual is a partially incapacitated person shall not constitute a finding of legal incompetence. A partially incapacitated person shall be legally competent in all areas other than the area or areas specified by the court in its dispositional or subsequent orders. Such person shall retain all legal rights and abilities other than those expressly limited or curtailed in the orders;

23. "Party" means the person or entity filing a petition, application, motion, acceptance of a testamentary nomination, or objection; the subject of a guardianship proceeding; and the guardian, the guardian ad litem and the conservator, if any such persons have been appointed;

24. "Person" means an individual;

25. "Property" means real property, personal property, income, any interest in such real or personal property and includes anything that may be the subject of ownership;

26. "Restrictions on the legal capacity of a person to act in ~~his~~ the person's own behalf" means powers of an incapacitated or partially incapacitated person which are assigned to a guardian;

27. "Subject of the proceeding" means a minor or an adult:

- a. who is the subject of a petition requesting the appointment of a guardian, limited guardian or special guardian,
- b. for whom a guardian or limited guardian has been appointed by the court, or
- c. an adult for whom a conservator is requested or appointed; ~~and~~

28. "Supported decision making" means assistance from one or more persons chosen by an individual in understanding the nature and consequences of potential personal and financial decisions to enable

the individual to make such decisions, and in communicating such decisions if consistent with the wishes of the individual; and

29. "Surcharge" means the imposition of personal liability by a court on a guardian or limited guardian for willful or negligent misconduct in the administration of the estate or other financial resources of a ward.

B. 1. Nothing in this section shall be construed to mean an incapacitated person, a partially incapacitated person, or a minor is abused or neglected for the sole reason that a guardian or other person responsible, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of the person or minor in their trust, and, in the case of an adult, in accordance with the practices of or the express consent of the incapacitated or partially incapacitated person.

2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a minor, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or welfare.

SECTION 2. AMENDATORY 30 O.S. 2011, Section 3-111, is amended to read as follows:

Section 3-111. A. At the hearing on the petition the court shall determine whether or not it is necessary to appoint a guardian of the person, property or both. If a guardian is needed, the court shall determine:

1. When a general or limited guardian of the person of the subject of the proceeding is requested, the essential requirements for the health and safety of the subject of the proceeding and the skills and knowledge necessary to meet those requirements;

2. When a general or limited guardian of the property of the subject of the proceeding is requested, the type and amount of the financial resources of the subject of the proceeding, the essential

requirements for managing the financial resources, and the skills and knowledge necessary to manage the financial resources;

3. The nature and extent of the incapacity of the subject of the proceeding, if any; and

4. Whether by clear and convincing evidence the subject of the proceeding is an incapacitated or partially incapacitated person.

B. If after a full hearing and examination upon such petition, the court finds by clear and convincing evidence that the subject of the proceeding is an incapacitated or partially incapacitated person, the court shall ~~appoint a guardian or limited guardian and shall issue an order appointing a guardian. The court shall explain on the record the facts and reasons supporting the decision not to impose any~~ determine the extent of the incapacity and the feasibility of less restrictive alternatives to guardianship to meet the needs of the subject of the proceeding. Upon such determination, the court may:

1. Dismiss the action if the court finds that less restrictive alternatives to guardianship are feasible and adequate to meet the needs of the subject of the proceeding; or

2. Appoint a guardian or limited guardian. An order making such an appointment shall include a specific finding that it was established by clear and convincing evidence that the identified needs of the subject of the proceeding require a guardianship instead of less restrictive alternatives.

C. Guardianship for an incapacitated person shall be:

1. Used only as is necessary to promote and protect the well-being of the person and his or her property;

2. Designed to encourage the development of maximum self-reliance and independence of the person; and

3. Ordered only to the extent required by the actual mental, physical and adaptive limitations of the person.

SECTION 3. This act shall become effective November 1, 2021.

Passed the Senate the 8th day of March, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____