

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend Chapter 20 of Title 21 of the District of Columbia Official Code to require counsel for an individual in a guardianship or protective proceeding to further the expressed wishes of the individual whenever possible and to require a guardian ad litem for an individual in a guardianship or protective proceeding to further the best interests of the individual; to require the court to review the adequacy of all guardianship orders within 3 years of the guardian's appointment by the court, and within every 3-year period thereafter; to require an individual appointed as a guardian to disclose his or her criminal history and to submit to local and federal criminal-history checks; to require that the court consider the qualifying criminal history of a potential guardian when selecting the person it deems best qualified to serve as a guardian; and to protect the rights of incapacitated individuals from unreasonable confinement or involuntary seclusion.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Guardianship Amendment Act of 2014".

Sec. 2. Chapter 20 of Title 21 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section 21-2045.01 to read as follows:

"§ 21-2045.01. Mandatory court review of guardianships."

(b) Section 21-2011 is amended as follows:

(1) The existing paragraph (1A) is redesignated paragraph (1B).

(2) A new paragraph (1A) is added to read as follows:

"(1A) "Case reviewer" means a social worker who is licensed in the District of Columbia and appointed by the court under § 21-2045.01(a)."

(c) Section 21-2033 is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Strike the phrase "to prosecute or defend the interest of individuals" and inserting the phrase "to prosecute or defend the best interests of individuals" in its place.

(B) Strike the phrase "to determine his or her interests" and inserting the phrase "to determine his or her best interests" in its place.

(2) Subsection (b) is amended as follows:

(A) The lead in language is designated as paragraph (1).

(B) Paragraphs (1), (2), and (3) are redesignated as subparagraphs (A), (B), and (C).

(C) The newly designated paragraph (1) is amended by striking the phrase “legitimate interests” and inserting the phrase “expressed wishes” in its place.

(B) The newly designated subparagraph (C) is amended by striking the phrase “further that individual’s interests” and inserting the phrase “further the subject of the guardianship’s expressed wishes” in its place.

(C) A new paragraph (2) is added to read as follows:

“(2) If the subject of the guardianship or protective proceeding is unconscious or otherwise wholly incapable of expressing his or her wishes, counsel shall advocate zealously for the result that is the least restrictive option in type, duration, and scope, consistent with the subject’s interests as determined by the guardian ad litem.”.

(d) Section 21-2043 is amended by adding new subsections (d-1) and (d-2) to read as follows:

“(d-1)(1) The court shall not appoint a guardian until the person to be appointed as a guardian has submitted to the court a statement, signed and sworn by the person to be appointed, stating whether or not he or she has been convicted of, has pleaded nolo contendere to, is on probation before judgment or placement of a case upon a stet docket for, or has been found not guilty by reason of insanity of, any of the following offenses and including the court and date of each such adjudication:

“(A) A lifetime registration offense, as defined in § 22-4001(6), or its equivalent in any other state or territory, including any attempt or conspiracy to commit such an offense;

“(B) A registration offense, as defined in § 22-4001(8), or its equivalent in any other state or territory, including any attempt or conspiracy to commit such an offense;

“(C) Any offense set forth in Chapters 8, 8A, 9A, 10, 11, 14, 15, and 32 of Title 22 of the District of Columbia Official Code, or its equivalent in any other state or territory, including any attempt or conspiracy to commit such an offense;

“(D) A dangerous crime, as defined § 23-1331(3), or its equivalent in any other state or territory, including any attempt or conspiracy to commit such an offense; or

“(E) A crime of violence, as defined in § 23-1331(4), or its equivalent in any other state or territory, including any attempt or conspiracy to commit such an offense.

“(2) In addition to the affirmation under paragraph (1) of this subsection, a guardian shall submit to the court:

“(A) Within 60 days after the guardianship appointment, the results of a criminal-history check from the Metropolitan Police Department (“MPD”), conducted no more than 90 days before the guardianship appointment; and

“(B) Within 180 days after the guardianship appointment, the results of a Federal Bureau of Investigation (“FBI”) fingerprint background check, conducted no more than 90 days before the guardianship appointment.

“(3) The results of all criminal-history checks and FBI fingerprint background checks and all signed, sworn statements, submitted pursuant to paragraphs (1) and (2) of this subsection, shall be made a part of the record of the case.

“(4) Emergency guardians, health-care guardians, and provisional guardians appointed under § 21-2046 are exempt from the requirements of paragraph (2) of this subsection.

“(5) If a guardian serves as a member of the Probate Division’s Fiduciary Panel of Attorneys, the guardian may satisfy the requirements of paragraph (2) of this subsection by submitting to the court the results of a criminal-history check conducted by MPD and a FBI fingerprint background check, each issued no more than 3 years before the guardianship appointment.”.

“(d-2)(1) It is presumed not to be in the best interests of an incapacitated individual to appoint as guardian a person who has been convicted of an offense identified in subsection (d-1)(1) or found, pursuant to an investigation by law enforcement or a government agency, to have inflicted harm upon a child, elderly individual, or person with a disability.

“(2) When determining whether it is in the best interest of the incapacitated individual for a person to be appointed as a guardian who has been convicted or found to have inflicted harm as set forth in paragraph (1) of this subsection, the Court shall consider the following:

“(A) The prior relationship, if any, of the proposed guardian to the incapacitated individual;

“(B) The nature of the offense;

“(C) The date of the offense;

“(D) Evidence of the rehabilitation of the proposed guardian.”.

(e) Section 21-2044(a) is amended by striking the phrase “incapacitated individual’s current mental and adaptive limitations” and inserting the phrase “incapacitated individual’s current mental and adaptive limitations, the incapacitated individual’s ability to improve his or her condition,” in its place.

(f) A new section 21-2045.01 is added to read as follows:

“§ 21-2045.01. Mandatory court review of guardianships.”

“(a)(1) Within the 3-year period after the appointment of a guardian and within every 3-year period thereafter in which a guardian remains appointed, the court shall appoint a case reviewer, who shall be a social worker licensed in the District of Columbia, to investigate the continued need for the guardian.

“(2) Within 6 months after the case reviewer’s appointment, the case reviewer shall submit to the court a report containing the results of the case reviewer’s investigation.

“(b) The case reviewer may be assisted in his or her investigation by a team of students enrolled in a master of social work program accredited by the Council on Social Work

Education, but the case reviewer must supervise the students and submit the final report to the court.

“(c) The case reviewer’s report submitted pursuant to subsection (a)(2) of this section shall include:

“(1) An updated medical or psychological report or statement by a licensed professional that addresses the current capacity of the ward;

“(2) A statement setting forth the ward’s expressed preferences regarding the continued scope and duration of ward’s guardianship, including his or her preference with respect to whether a replacement guardian should be appointed. If the ward is unable or unwilling to express his or her preferences, the case reviewer shall note that the ward is unable or unwilling to do so;

“(3) Any statements made by a ward or any other interested party requesting continuation, modification, or termination of the ward’s guardianship; and

“(4) The case reviewer’s opinion as to whether the operative guardianship order is the least restrictive guardianship order that is appropriate for the ward and the bases for that opinion.

“(d) No more than 10 days after the case reviewer’s submission of the report to the court pursuant to subsection (a)(2) of this section, and at least 30 days before any court hearing ordered pursuant to subsection (e)(2) of this section, a copy of the report shall be:

“(1) Served personally on the ward; and

“(2) Delivered to the guardian; and

“(3) Delivered to all interested parties and persons who have filed a request for notice under § 21-2034; and

“(4) Accompanied by a written statement that advises the recipient that he or she may submit written objections to the report and its recommendations, and may petition the court at any time to modify or terminate the guardianship.

“(e) No more than 90 days after submission of the case reviewer’s report to the court pursuant to subsection (a)(2) of this section, the court shall:

“(1) Review the case reviewer’s report and any objection filed;

“(2) Hold a hearing if the ward requests a hearing, the case reviewer recommends modification or termination of the guardianship or removal of the guardian, or the court determines that a hearing is otherwise appropriate; and

“(3) Based upon the record, determine whether the guardianship continues to be the least restrictive to the ward in duration and scope, taking into account factors including the ward’s current mental and adaptive limitations, the ward’s ability to improve his or her condition, or any other consideration relevant to the appointment of a guardian under § 21-2044(a), and determine whether the guardianship should be continued in its present form, be modified, or be terminated.

“(f) Nothing in this section shall limit the power of the court to terminate a guardianship pursuant to § 21-2049.

“(g) Nothing in this section shall prevent the ward or other interested parties from

requesting a hearing at any time or appealing court orders as otherwise permitted by law.

“(h) This section shall apply to all guardianships in which a guardian is appointed on or after January 1, 2015.”

(g) Section 21-2047.01 is amended as follows:

(1) Paragraph 5 is amended by striking the phrase “acquittal; or” and inserting the phrase “acquittal;” in its place.

(2) Paragraph (6) is amended by striking the phrase “the court.” and inserting the phrase “the court; or” in its place.

(3) A new paragraph (7) is added to read as follows:

“(7) To impose unreasonable confinement or involuntary seclusion, including forced separation from other persons or the restriction of the incapacitated individual’s access to email, phone calls, and mail, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.”

(h) Section 21-2060(a) is amended by striking the phrase “As approved by order of the court, any visitor” and inserting the phrase “As approved by order of the court, any case reviewer, visitor” in its place.

**Sec. 3. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**Sec. 4. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia