

SECOND REGULAR SESSION

HOUSE BILL NO. 2069

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REHDER.

5542H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 475.050 and 475.075, RSMo, and to enact in lieu thereof two new sections relating to guardianship appointments.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 475.050 and 475.075, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 475.050 and 475.075, to read as follows:

475.050. 1. Before appointing any other eligible person as guardian of an incapacitated person, or conservator of a disabled person, the court shall ~~[consider the suitability of appointing any of]~~ **appoint and give priority to** the following persons, **as listed**, who **are qualified under section 475.055, suitable, and** appear to be willing to serve, **and such persons shall be determined by the court to be deficient in his or her ability to serve prior to the court selecting another eligible person as guardian or conservator:**

(1) If the incapacitated or disabled person is, at the time of the hearing, able to make and communicate a reasonable choice, any eligible person nominated by the person;

(2) Any eligible person nominated in a durable power of attorney executed by the incapacitated or disabled person, or in an instrument in writing signed by the incapacitated or disabled person and by two witnesses who signed at the incapacitated or disabled person's request, before the inception of the person's incapacity or disability, at a time within five years before the hearing when the person was able to make and communicate a reasonable choice;

(3) The spouse, parents, adult children, adult brothers and sisters and other close adult relatives of the incapacitated or disabled person;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (4) Any other eligible person or, with respect to the estate only, any eligible organization
17 or corporation, nominated in a duly probated will of such a spouse or relative executed within
18 five years before the hearing.

19 **2. If the claim is made that a person given priority in subsection 1 of this section is**
20 **deficient due to substandard living conditions, the court shall require an investigation of**
21 **and report concerning the current or proposed living conditions of the incapacitated**
22 **person by the department of health and senior services prior to making a determination.**
23 **In order to find a person given priority deficient due to substandard living conditions, the**
24 **court shall make the findings that the current or proposed living conditions of the**
25 **incapacitated person are dangerous or unsanitary and materially affect the life, health, or**
26 **safety of the incapacitated person.**

27 **3.** Except for good cause shown, the court shall make its appointment in accordance with
28 the incapacitated or disabled person's most recent valid nomination of an eligible person
29 qualified to serve as guardian of the person or conservator of the estate. In the event there is not
30 brought to the attention of the court any such valid nomination executed within five years before
31 the hearing, then the court shall give consideration to the most recent valid nomination brought
32 to its attention, but the court shall not be required to follow such nomination.

33 **4. When the incapacitated or disabled person is in the custody of the children's**
34 **division, the court shall review and consider the incapacitated or disabled person's juvenile**
35 **court file when selecting an eligible person as guardian or conservator in accordance with**
36 **subsection 1 of this section.**

475.075. 1. Except as otherwise provided in section 475.062, when a petition for the
2 appointment of a guardian ad litem, guardian or conservator against any person, hereinafter
3 referred to as the respondent, is filed on grounds other than minority, the court, if satisfied that
4 there is good cause for the exercise of its jurisdiction, shall promptly set the petition for hearing.

5 2. The respondent shall be served in person with the following: A copy of the petition;
6 a written notice stating the time and place the proceeding will be heard by the court, the name
7 and address of appointed counsel, and the names and addresses of the witnesses who may be
8 called to testify in support of the petition; and with a copy of the respondent's rights as set forth
9 in subsections 7 and 8 of this section. The notice shall be signed by the judge or clerk of the
10 court and served in person on the respondent a reasonable time before the date set for the
11 hearing. The petition shall state the names and addresses of the spouse, parents, children who
12 have reached eighteen, any person serving as his guardian, conservator, limited guardian or
13 limited conservator, any person having power to act in a fiduciary capacity with respect to any
14 of the respondent's financial resources, and any person having his care and custody known to the
15 petitioner. Each person so listed shall be served with like notice ~~[in any manner permitted by~~

16 ~~section 472.100]~~ **by certified mail, addressed to the person to be notified, with all postage**
17 **charges prepaid, and return receipt requested.** If no such spouse, parent or child is known,
18 notice shall be given to at least one of his closest relatives who has reached eighteen. **A copy**
19 **of the notice shall also be published in a newspaper having general circulation within the**
20 **county in which the court is held. The notice shall be published at least seven days prior**
21 **to the petition hearing date. If there is no newspaper published in the county, notice shall**
22 **be published in a newspaper published in an adjoining county which has a general**
23 **circulation within the county in which the court is held.**

24 3. Upon the filing of a petition under the provisions of subsection 1 of this section or for
25 the approval on behalf of the respondent of a transaction pursuant to section 475.092 or for the
26 rendition of emergency medical treatment under the provisions of section 475.123, the court shall
27 immediately appoint an attorney to represent the respondent in the proceeding. The attorney
28 shall visit his client prior to the hearing. If the client is capable of understanding the matter in
29 question or of contributing to the advancement of the client's interest, the attorney shall obtain
30 from the client all possible aid. If the disability of a client compels the attorney to make
31 decisions for the client, the attorney shall consider all circumstances then prevailing and act with
32 care to safeguard and advance the interests of the client. The court shall allow a reasonable
33 attorney's fee for the services rendered, to be taxed as costs of the proceeding. The
34 court-appointed attorney may be permitted to withdraw if the respondent employs private counsel
35 who enters an appearance on behalf of said person.

36 4. The court may direct that the respondent be examined by a physician or licensed
37 psychologist or other appropriate professional designated by the court, and may allow a
38 reasonable fee for the services rendered, to be taxed as costs in the proceeding. The
39 court-appointed physician, licensed psychologist or other professional shall, prior to
40 examination, explain to the respondent in simple language, the following:

- 41 (1) Incapacity or disability as defined in section 475.010;
- 42 (2) That the purpose of the examination is to produce evidence which may be used to
43 determine whether the respondent is incapacitated, disabled or partially incapacitated or disabled;
- 44 (3) That respondent has the right to remain silent;
- 45 (4) That anything respondent says may be used at the court hearing, and in making the
46 determination of incapacity or disability.

47 5. The court-appointed physician, licensed psychologist or other professional shall
48 submit his report in writing to the court and to counsel for all parties.

49 6. If prima facie proof of partial or complete incapacity or disability is made, a physician
50 or licensed psychologist is competent and may be compelled to testify as to information acquired
51 from the respondent, despite otherwise applicable testimonial privileges. Evidence received

52 under this subsection which would otherwise be privileged may not be used in any other civil
53 action or criminal proceeding without the consent of the holder of the privilege.

54 7. The petitioner has the burden of proving incapacity, partial incapacity, disability, or
55 partial disability by clear and convincing evidence.

56 8. The respondent shall have the following rights in addition to those elsewhere
57 specified:

58 (1) The right to be represented by an attorney;

59 (2) The right to have a jury trial;

60 (3) The right to present evidence in his behalf;

61 (4) The right to cross-examine witnesses who testify against him;

62 (5) The right to remain silent;

63 (6) The right to have the hearing opened or closed to the public as he elects;

64 (7) The right to a hearing conducted in accordance with the rules of evidence in civil
65 proceedings, except as modified by this chapter;

66 (8) The right to be present at the hearing.

67 9. If the court finds that the respondent possesses capacity to meet his essential
68 requirements for food, clothing, shelter, safety and other care or that he possesses the ability to
69 manage his financial resources, it shall deny the petition. On the other hand, if the court finds that
70 the capacity of the respondent to receive and evaluate information or to communicate decisions
71 is impaired to such an extent as to render him incapable of meeting some or all of his essential
72 requirements for food, clothing, shelter, safety or other care so that serious physical injury,
73 illness, or disease is likely to occur, or that the ability of the respondent to receive and evaluate
74 information or to communicate decisions is impaired to such an extent so as to render him unable
75 to manage some or all of his financial resources, it shall make and recite in its order detailed
76 findings of fact stating:

77 (1) The extent of his physical and mental incapacity to care for his person;

78 (2) The extent of his physical and mental disability to manage his financial resources;

79 (3) Whether or not he requires placement in a supervised living situation and, if so, the
80 degree of supervision needed;

81 (4) Whether or not his financial resources require supervision and, if so, the nature and
82 extent of supervision needed.

83 10. If the court finds the respondent to be in some degree incapacitated or disabled, or
84 both, the court, in determining the degree of supervision necessary, shall apply the least
85 restrictive environment principle as defined in this chapter and shall not restrict his personal
86 liberty or his freedom to manage his financial resources to any greater extent than is necessary
87 to protect his person and his financial resources. The court shall consider whether or not the

88 respondent may be fully protected by the rendition of temporary protective services provided by
89 a private or public agency or agencies; or by the appointment of a guardian or conservator ad
90 litem; or by the appointment of a limited guardian or conservator; or, as a last resort, by the
91 appointment of a guardian or conservator. The limitations imposed upon the authority of the
92 guardian or conservator as set forth in the findings of the court shall be stated in the letters of the
93 guardian or conservator and shall be set forth in the notice of first publication of letters of
94 conservatorship granted.

95 11. If an alleged incapacitated or disabled person has no guardian or conservator and an
96 emergency exists which presents a substantial risk that serious physical harm will occur to his
97 person or irreparable damage will occur to his property because of his failure or inability to
98 provide for his essential human needs or to protect his property, the court may, with notice to
99 such person's attorney, as provided in subsection 3 of this section, and service of notice upon
100 such person as provided in subsection 2 of this section, and, with or without notice to other
101 persons interested in the proceeding, after hearing, appoint a guardian or conservator ad litem
102 for a specified period not to exceed thirty days and for specified purposes. Orders appointing the
103 guardian or conservator ad litem may be modified upon motion and hearing. After hearing and
104 a showing of continuing emergency need, orders appointing the guardian or conservator ad litem
105 may be extended from time to time, not to exceed thirty days each. A guardian or conservator
106 ad litem may be removed at any time and shall make any report the court requires. Proceedings
107 under this subsection shall not be employed as alternative to proceedings for the involuntary
108 detention and treatment of a mentally ill person under the provisions of chapter 632.

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