

1 **** BILL NO. ****

2 INTRODUCED BY ****

3 BY REQUEST OF THE ****

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REPORTING REQUIREMENTS FOR GUARDIANS OF
6 ADULTS; PROVIDING FOR ANNUAL REPORTING BY GUARDIANS; AMENDING SECTION 72-5-321, MCA;
7 AND PROVIDING AN APPLICABILITY DATE."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 72-5-321, MCA, is amended to read:

12 **"72-5-321. Powers and duties of guardian of incapacitated person.** (1) The powers and duties of
13 a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to
14 report the condition of the incapacitated person and of the estate that has been subject to the guardian's
15 possession and or control, as required by the court or by court rule annually for the preceding year. A copy of
16 the report must be served upon the ward's parent, child, or sibling if that person has made an effective request
17 under 72-5-318.

18 (2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the
19 ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third
20 persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the
21 foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

22 (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction
23 relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward
24 and may establish the ward's place of residence within or outside of this state.

25 (b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and
26 maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without
27 regard to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's
28 clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property

of the ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. This subsection (2)(c) does not authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order. The court may not grant that authority if it conflicts with the ward's wishes to the extent that those wishes can be determined. To determine the ward's wishes, the court shall determine by a preponderance of evidence if the ward's substituted judgment, as applied to the ward's current circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.

(d) If a conservator for the estate of the ward has not been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that person's duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward. However, the full guardian may not use funds from the ward's estate for room and board that the full guardian, the full guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any excess for the ward's needs.

(e) ~~Unless waived by the court, a~~ full guardian is required to report the condition of the ward and of the estate which has been subject to the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this chapter, and the full guardian must account to the

1 conservator for funds expended.

2 (3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court
3 shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.

4 (4) Any full guardian of one for whom a conservator also has been appointed shall control the custody
5 and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control
6 those aspects of the custody and care of the ward over which the limited guardian is given authority by the
7 order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive
8 reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon
9 between the guardian and the conservator, provided the amounts agreed upon are reasonable under the
10 circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may
11 request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's
12 care and maintenance.

13 (5) Except as provided in subsection (6), a full guardian or limited guardian may not involuntarily
14 commit for mental health treatment or for treatment of a developmental disability or for observation or
15 evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-
16 5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed.
17 This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters
18 20 and 21.

19 (6) (a) If the court has found that a ward has a primary diagnosis of a major neurocognitive disorder,
20 as defined in the fifth edition of the diagnostic and statistical manual of mental disorders adopted by the
21 American psychiatric association, and because of this disorder the ward is unwilling or unable to give informed
22 consent to treatment, a full guardian or limited guardian may seek admission of the ward for stabilization and
23 treatment to a hospital, skilled nursing facility, or another appropriate treatment facility other than the Montana
24 state hospital.

25 (b) If the ward is admitted to the Montana mental health nursing care center, the court shall review
26 every 90 days whether the Montana mental health nursing care center is the appropriate placement for the
27 ward or whether a less restrictive alternative placement exists.

28 (7) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian,

upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

NEW SECTION. Section 2. Applicability. [This act] applies to guardianships in existence on or after [the effective date of this act]. A person appointed as a limited guardian prior to the enactment of [this act] shall file the person's first annual report [INSERT WHEN]. A person appointed as a full guardian prior to the enactment of [this act] for whom a court has waived the annual reporting requirement shall file the person's first annual report [INSERT WHEN].

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