

Unofficial Draft Copy -- SB 202-1

As of: 2020/07/02 05:00:39

Drafter: Alexis Sandru, 406-444-4026

67th Legislature

PD 0001

**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CONSIDERATION OF LESS RESTRICTIVE
ALTERNATIVES IN ADULT GUARDIANSHIP PROCEEDINGS; AMENDING SECTIONS 72-5-305, 72-5-316,
AND 72-5-319, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 72-5-305, MCA, is amended to read:

"72-5-305. Definitions. In this part, unless the context requires otherwise, the following definitions
apply:

(1) "Full guardian" means a guardian who possesses all the legal duties and powers enumerated in
72-5-321.

(2) "Guardian" includes a full guardian and a limited guardian.

(3) "Less restrictive alternative" means an approach to meeting an individual's needs that restricts
fewer rights of the individual than would the appointment of a guardian. The term includes supported
decisionmaking, appropriate technological assistance, appointment of a representative payee, and appointment
of an agent by the individual, including appointment under a health care power of attorney or a power of
attorney for finances.

(3)(4) "Limited guardian" means a guardian who possesses fewer than all of the legal duties and
powers of a full guardian and whose rights, powers, and duties have been specifically enumerated by the court.

(5) "Supported decisionmaking" means assistance from one or more persons of an individual's
choosing in understanding the nature and consequences of potential personal and financial decisions, which
enables the individual to make the decisions, and in communicating a decision once made if consistent with the
individual's wishes."

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Section 2. Section 72-5-316, MCA, is amended to read:

"72-5-316. Findings -- order of appointment. (1) If the court is satisfied that the person for whom a

guardianship is sought is incapacitated, that the identified needs of the person cannot be met by a less

restrictive alternative, and that judicial intervention in the person's personal freedom of action and decision is

necessary to meet essential requirements for the person's physical health or safety, it may appoint a full

guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the

order. If the court is satisfied that the allegedly incapacitated person could handle the essential requirements for

physical health or safety if the person's financial resources were managed by another, it shall order that the

petition be treated as a petition for a protective order under Title 72, chapter 5, part 4, and proceed accordingly.

Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent

with the specific provisions of this part. In issuing its order, the court shall make specific findings of fact.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and

may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court

determines that a limited guardianship or conservatorship is all that is required for the care and protection of the

incapacitated person. The order must specify whether a full or limited guardianship is being created. In the case

of a limited guardianship, the order must specify the particular powers and duties vested in the limited guardian

and the period for which the limited guardianship is created.

(3) An incapacitated person may not be limited in the exercise of any civil or political rights except

those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's

order specifically provides for the limitations. The order must state that all rights not specifically limited are

retained by the incapacitated person."

Section 3. Section 72-5-319, MCA, is amended to read:

"72-5-319. Contents of petition for appointment of guardian. (1) The petition for appointment of a

guardian must contain:

(a) the name, residence, and mailing address of the petitioner, the petitioner's relationship to the

alleged incapacitated person, and the petitioner's interest in the matter;

(b) the name, residence, and mailing address of the alleged incapacitated person;

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(c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated

person, the approximate value and description of the property, including any compensation, pension, insurance,

or allowance to which the person may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the

incapacitated person or a conservator of the person's property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have

appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be

ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged

incapacitated person;

(i) the reasons why the appointment of a guardian is sought, including:

(i) any less restrictive alternatives for meeting the alleged incapacitated person's needs that have been considered or implemented or, if no less restrictive alternatives have been considered or implemented, the reason why; and

(ii) the reason why a less restrictive alternative is insufficient to meet the alleged incapacitated person's need;

(i) and whether a limited guardianship or full guardianship is requested;

(j)(k) the facts supporting the allegations of incapacity and the need for a guardian;

(k)(l) the specific areas of protection and assistance requested and the limitation of rights requested

to be included in the order of appointment;

(m) in the case of a petition for limited guardianship, the particular powers and areas of authority

that the petition seeks to have vested in the limited guardian as provided in 72-5-320 and the term for which the

limited guardianship is requested;

(n) in the case of a petition for full guardianship, the length of time the guardianship is expected to

last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the

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1 petitioner believes that the requisites of that section are met and that the appointment of a temporary guardian,
2 pending the completion of guardianship proceedings, is necessary to protect the welfare of the alleged
3 incapacitated person. The facts requiring appointment of a temporary guardian must be stated with specificity."

4
5 NEW SECTION. Section 4. Applicability. [This act] applies to guardianship proceedings
6 commenced on or after [the effective date of this act].

7

8 - END -

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