

SENATE BILL 277

IN THE SENATE

January 29, 1979

Introduced and referred to  
Committee on Judiciary.

April 20, 1979

Died in Committee.

1 *Amended* BILL NO. *277*  
 2 INTRODUCED BY *Van Valkenburg, plus name of Manuel Holmes*  
 3 *Bengton, George Holt*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
 5 APPOINTMENT OF LIMITED GUARDIANS FOR INCAPACITATED PERSONS;  
 6 SPECIFYING THE CONTENT OF A PETITION FOR APPOINTMENT OF A  
 7 GUARDIAN OF AN INCAPACITATED PERSON AND OF AN ORDER GRANTING  
 8 SUCH A PETITION; DESCRIBING THE POWERS AND DUTIES OF GENERAL  
 9 GUARDIANS AND LIMITED GUARDIANS; AND AMENDING SECTIONS  
 10 72-5-101, 72-5-316, AND 72-5-321, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 72-5-101, MCA, is amended to read:  
 14 "72-5-101. Definitions. Unless otherwise apparent from  
 15 the context, in this code the following definitions apply:

16 ~~(1) "Guardian" means both general and limited guardian~~  
 17 ~~unless otherwise specified.~~

18 ~~(1)(2) "Incapacitated person" means any person who is~~  
 19 ~~impaired by reason of mental illness, mental deficiency,~~  
 20 ~~physical illness or disability, advanced age, chronic use of~~  
 21 ~~drugs, chronic intoxication, or other cause (except~~  
 22 ~~minority) to the extent that he lacks sufficient~~  
 23 ~~understanding or capacity to make or communicate responsible~~  
 24 ~~decisions concerning his person or which cause has so~~  
 25 ~~impaired the person's judgment that he is incapable of~~

1 realizing and making a rational decision with respect to his  
 2 need for treatment.

3 ~~(2)(3) "Protective proceeding" means a proceeding~~  
 4 ~~under the provisions of 72-5-409 to determine that a person~~  
 5 ~~cannot effectively manage or apply his estate to necessary~~  
 6 ~~ends, either because he lacks the ability or is otherwise~~  
 7 ~~inconvenienced or because he is a minor, and to secure~~  
 8 ~~administration of his estate by a conservator or other~~  
 9 ~~appropriate relief.~~

10 ~~(3)(4) "Protected person" means a minor or other~~  
 11 ~~person for whom a conservator has been appointed or other~~  
 12 ~~protective order has been made.~~

13 ~~(4)(5) "Ward" means a person for whom a guardian has~~  
 14 ~~been appointed. A "minor ward" is a minor for whom a~~  
 15 ~~guardian has been appointed solely because of minority."~~

16 **NEW SECTION.** Section 2. Petition for appointment of  
 17 guardian for an incapacitated person. The petition for  
 18 appointment of a guardian shall contain:

- 19 (1) the name, residence, and mailing address of the
- 20 petitioner, his relationship to the alleged incapacitated
- 21 person, and his interest in the matter;
- 22 (2) the name, residence, and mailing address of the
- 23 alleged incapacitated person;
- 24 (3) the nature of his alleged incapacity;
- 25 (4) the approximate value and description of his

1 property, including any compensation, pension, insurance, or  
2 allowance to which he may be entitled, if the petition in  
3 any way affects such property;

4 (5) whether there is, in any state, a general guardian  
5 or limited guardian for the person or estate of the  
6 incapacitated person or a conservator of his property;

7 (6) the name, residence, and mailing address of the  
8 person whom the petitioner seeks to have appointed guardian;

9 (7) the names, addresses, and nature of relationship,  
10 so far as it is known or can be reasonably ascertained, of  
11 the persons most closely related by blood or marriage to the  
12 alleged incapacitated person;

13 (8) the name and address of the person or institution  
14 having the care and custody of the alleged incapacitated  
15 person;

16 (9) the reasons why the appointment of a guardian is  
17 sought and whether a general guardianship or limited  
18 guardianship is requested;

19 (10) the nature and degree of the alleged incapacity  
20 and the specific areas of protection and assistance  
21 requested, and the limitation of rights requested to be  
22 included in the order of appointment; and

23 (11) in cases where a limited guardianship is  
24 requested, the particular powers which the petition seeks to  
25 have vested in the limited guardian and the term for which

1 the limited guardianship is requested.

2 ~~NEW SECTION.~~ Section 3. Purposes for establishment of  
3 limited guardianship. A petition seeking the establishment  
4 of a limited guardianship must specify the particular powers  
5 the limited guardian is proposed to exercise and the  
6 particular areas of protection and assistance required. The  
7 appointment of a limited guardian may be made for the  
8 following purposes:

9 (1) to care for and maintain the alleged incapacitated  
10 person;

11 (2) to assert and protect the rights and best  
12 interests of the incapacitated person;

13 (3) to provide timely, informed consent to necessary  
14 medical procedures;

15 (4) to assist in the acquisition of necessary  
16 training, habilitation, and education for the incapacitated  
17 person; and

18 (5) to exercise any other powers, duties, or  
19 limitations in regard to the care of the incapacitated  
20 person or the management of his property, which the petition  
21 shall explicitly specify and which are no greater than the  
22 powers which a general guardian may exercise.

23 Section 4. Section 72-5-316, MCA, is amended to read:

24 "72-5-316. Findings -- order of appointment. The court  
25 may appoint a general or limited guardian as requested if it

1 is satisfied that the person for whom a guardian is sought  
 2 is incapacitated and that the appointment is necessary or  
 3 desirable as a means of providing continuing care and  
 4 supervision of the person of the incapacitated person. The  
 5 court may not invest a guardian with powers or duties beyond  
 6 those sought in the petition, and may, upon petition for a  
 7 general guardianship, create a limited guardianship when the  
 8 court determines that a limited guardianship is all that is  
 9 required for the care and protection of the incapacitated  
 10 person. The order shall specify whether a general or a  
 11 limited guardianship is being created. No incapacitated  
 12 person shall be deprived of any civil or political rights,  
 13 except those which are clearly inconsistent with the  
 14 exercise of the powers granted the guardian, unless the  
 15 order specifically provides such deprivation. In such cases,  
 16 the order must describe with specificity the limitations  
 17 placed upon the civil and political rights of the  
 18 incapacitated person. The order must contain specific  
 19 findings of fact. Alternatively, the court may dismiss the  
 20 proceeding or enter any other appropriate order not  
 21 inconsistent with the specific provisions of this part."

22 Section 5. Section 72-5-321, MCA, is amended to read:

23 "72-5-321. Powers and duties of guardian of  
 24 incapacitated person. (1) The powers and duties of a limited  
 25 guardian are those specified in the order appointing the

1 guardian. The limited guardian is required to report the  
 2 condition of the incapacitated person and of the estate  
 3 which has been subject to his possession and control, as  
 4 required by the court or by court rule.

5 ¶(2) A general guardian of an incapacitated person  
 6 has the same powers, rights, and duties respecting his ward  
 7 that a parent has respecting his unemancipated minor child,  
 8 except that a guardian is not liable to third persons for  
 9 acts of the ward solely by reason of the parental  
 10 relationship. In particular and without qualifying the  
 11 foregoing, a general guardian has the following powers and  
 12 duties, except as modified by order of the court:

13 (a) To the extent that it is consistent with the terms  
 14 of any order by a court of competent jurisdiction relating  
 15 to detention or commitment of the ward, he is entitled to  
 16 custody of the person of his ward and may establish the  
 17 ward's place of abode within or without this state.

18 (b) If entitled to custody of his ward, he shall make  
 19 provision for the care, comfort, and maintenance of his ward  
 20 and whenever appropriate arrange for his training and  
 21 education. Without regard to custodial rights of the ward's  
 22 person, he shall take reasonable care of his ward's  
 23 clothing, furniture, vehicles, and other personal effects  
 24 and commence protective proceedings if other property of his  
 25 ward is in need of protection.

1 (c) A general guardian may give any consents or  
2 approvals that may be necessary to enable the ward to  
3 receive medical or other professional care, counsel,  
4 treatment, or service.

5 (d) If no conservator for the estate of the ward has  
6 been appointed, he may:

7 (i) institute proceedings to compel any person under a  
8 duty to support the ward or to pay sums for the welfare of  
9 the ward to perform his duty;

10 (ii) receive money and tangible property deliverable to  
11 the ward and apply the money and property for support, care,  
12 and education of the ward; but he may not use funds from his  
13 ward's estate for room and board which he, his spouse,  
14 parent, or child have furnished the ward unless a charge for  
15 the service is approved by order of the court made upon  
16 notice to at least one of the next of kin of the incompetent  
17 ward, if notice is possible. He must exercise care to  
18 conserve any excess for the ward's needs.

19 (e) A general guardian is required to report the  
20 condition of his ward and of the estate which has been  
21 subject to his possession or control, as required by the  
22 court or court rule.

23 (f) If a conservator has been appointed, all of the  
24 ward's estate received by the general guardian in excess of  
25 those funds expended to meet current expenses for support,

1 care, and education of the ward must be paid to the  
2 conservator for management as provided in this code, and the  
3 general guardian must account to the conservator for funds  
4 expended.

5 ~~(2)(3)~~ Any guardian of one for whom a conservator also  
6 has been appointed shall control the custody and care of the  
7 ward, and A limited guardian of a person for whom a  
8 conservator has been appointed shall control those aspects  
9 of the custody and care of the ward over which he is given  
10 authority by the order establishing the limited  
11 guardianship. The guardian is entitled to receive reasonable  
12 sums for his services and for room and board furnished to  
13 the ward as agreed upon between him and the conservator,  
14 provided the amounts agreed upon are reasonable under the  
15 circumstances. The guardian authorized to oversee such  
16 aspects of the incapacitated person's care may request the  
17 conservator to expend the ward's estate by payment to third  
18 persons or institutions for the ward's care and maintenance.

19 (4) No guardian may involuntarily commit for mental  
20 health treatment, observation, or evaluation a ward who is  
21 himself unwilling or unable to give informed consent to such  
22 commitment, except as provided in 72-5-322, unless the  
23 procedures for involuntary commitment set forth in Title 53,  
24 chapter 21, are followed.

25 (5) Nothing in this chapter allows a guardian to

1 consent to:

2 (a) therapy or other procedure which induces  
3 convulsion;

4 (b) surgery solely for the purpose of psychosurgery;

5 (c) amputation, except to protect the life of the  
6 ward;

7 (d) other psychiatric or mental health procedures  
8 which are intrusive on the person's body integrity, physical  
9 freedom of movement, or rights as established by the  
10 constitution and laws of the United States or the state of  
11 Montana."

-End-