

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 315

S. P. 109

In Senate, January 23, 1969

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Mills of Franklin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Relating to the Guardianship of Mentally Retarded Persons.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 18, c. 501, sub-c. III-A, additional. Chapter 501 of Title 18 of the Revised Statutes is amended by adding a new subchapter III-A, to read as follows:

SUBCHAPTER III-A.

GUARDIANSHIP OF MENTALLY RETARDED PERSONS

§ 3621. Public Guardian; Bureau of Mental Retardation

The Bureau of Mental Retardation established under Title 34, section 2061, shall act as public guardian for mentally retarded persons as provided in this subchapter and whenever the term, "public guardian" is used in this subchapter it shall mean and refer to the Bureau of Mental Retardation.

§ 3622. Purpose and responsibility

The public guardian may be nominated and appointed as guardian of the person and estate of those mentally retarded persons who have been determined under this subchapter to be legally incompetent and in need of guardianship. The authority of the public guardian shall be exercised by the Director of Mental Retardation, whose office is established under Title 34, section 2062 and by any persons duly delegated by the Director of Mental Retardation to exercise such authority including a staff of competent social workers, or competent social workers assigned to the public guardian by the Department of Mental Health and Corrections. In the event that the Director of Mental

Retardation shall delegate administrative and supervisory authority over the functions of the public guardian to an individual, such individual shall be qualified therefor by reason of education or experience, or both, in administering to the needs of the mentally retarded.

§ 3623. Definition

For the purpose of eligibility for guardianship under this subchapter, the phrase "mentally retarded person" shall mean a person of any age who is certified to be mentally retarded by a licensed physician and a licensed psychologist, and who, in addition is mentally retarded to the degree that he is incapable of managing himself and his affairs independently and requires supervision and care.

§ 3624. Nomination

The public guardian shall be nominated in writing to act as guardian, by:

1. Relative or friend. A parent, relative or friend; or
2. Guardian or conservator. The guardian or the conservator for the mentally retarded person; or
3. Government officials. The commissioner of any state department, the head of any state institution, the overseers of the poor, welfare director or health officer of any municipality.

Such nomination may provide that the public guardian shall file a petition for its appointment to take effect at some date or occurrence in the future that may be fixed in the nomination and shall be accompanied by the certificate set forth in section 3623.

The public guardian shall accept or reject such nomination in writing. Its acceptance shall be binding upon it to file the petition either forthwith, or immediately following such date or occurrence for the appointment of the public guardian. Any such nomination to take effect in the future may be withdrawn by the nominator before such date or occurrence.

§ 3625. Petition

Pursuant to its nomination the public guardian shall, or in its discretion in any other case may, petition for its appointment to act as guardian of the person and estate of an alleged mentally retarded person by filing a written petition in the probate court for the county in which the alleged mentally retarded person resides, or in which his estate is located. Said petition shall be accompanied by the certificate set forth in section 3623, and by a detailed written guardianship plan prepared in accordance with the individual and specific needs of the alleged mentally retarded person.

In the event that the public guardian shall decline to accept a nomination filed under section 3624 the nominator or any other person authorized to nominate under section 3624 may petition the probate court as provided in this section for the appointment of the public guardian.

§ 3626. Notice and hearing

The probate court shall appoint a time and place for hearing and shall order that notice of the proceedings be given by serving the alleged mentally retarded person for whom a guardian is sought to be appointed with a copy of the petition and order of the court at least 14 days before the day of hearing. Like notice in hand, or by certified mail, shall be served upon the public guardian and upon the parent, spouse or next of kin and upon such other persons as the court may direct.

At such hearing the burden shall be on the petitioner to establish that the person for whom a guardian is sought to be appointed is mentally retarded to the degree that he is incapable of managing himself and his affairs independently, and requires supervision and care, of his person and estate.

§ 3627. Findings of probate court

Upon petition and hearing, as provided in this subchapter, the probate court shall appoint the public guardian as guardian of the person and estate if it shall find that:

1. Resident. The person is a resident of this State;
2. Retarded. The person is mentally retarded;
3. Incompetent. By reason of such mental retardation the person is incapable of managing himself and his affairs independently and requires supervision and care, of his person and estate and is, therefore, legally incompetent.

In every case in which the public guardian is appointed the court shall adopt the guardianship plan as submitted or modified, under which the public guardian shall act.

§ 3628. General duties of public guardian

It is the responsibility of the public guardian to care for and maintain its ward from his income, and if insufficient for the purpose, from the principal of his estate, and to obtain for the ward insofar as is practicable, education, training, treatment, employment or care, utilizing all available resources, services and facilities suited to the needs of the ward. The public guardian shall have custody of the person of the ward and shall determine the ward's place of residence. The public guardian may apply for, and effect the placement of, any ward in accordance with law, in an appropriate home, hospital or institution having facilities and staff adequate to provide care and supervision consistent with the needs of the ward. Any placement, if in a facility described in Title 22, sections 5, 1811, 3797 or Title 30, subchapter V, article 2, shall only be made if such facility is properly licensed. In the event that the license of any such facility shall be suspended or revoked, the public guardian, having any ward placed therein, shall remove such ward and effect an appropriate placement of the ward as soon as practicable after knowledge of suspension or revocation of the license. Except as otherwise specifically provided in this subchapter, the general provisions of this chapter relating to the powers and duties of guardians of adult persons are applicable to the public

guardian acting under this subchapter. The public guardian may apply for and receive on behalf of any ward, any benefits, grants or public aid to which such ward is entitled. The public guardian shall keep books of account or other records showing separately the principal amount received, increments thereto and disbursements therefrom for the benefit of any ward, together with the name of such ward, the source from which such money was received and the purpose for which the money was expended. The public guardian shall settle the accounts of his ward in accordance with section 3901.

Upon the termination of the guardianship, the public guardian shall file with the court its final accounting, and shall make disposition of any assets of any such ward then in its hands as ordered by the court. This section shall not abrogate any powers or duties vested by law in the head of any public institution, or vested by the settlor of a trust in the trustee thereof, for the benefit of any ward under the guardianship of the public guardian.

§ 3629. Bond and compensation

The public guardian shall not be required to file bonds in individual guardianships, but shall give a surety bond for the joint benefit of the wards placed under the guardianship of the public guardian and the State of Maine, with a surety company or companies authorized to transact business within the State of Maine, in an amount not less than the total value of all assets held by the public guardian, which amount shall be computed at the end of each state fiscal year and approved by the judge of the probate court for Kennebec County. At no time shall the bond of the public guardian be less than \$5,000.

The public guardian shall receive such reasonable fees for its services as guardian as the probate court may allow. The fees so allowed shall be allocated to a trust account from which may be drawn expenses for filing fees, bond premiums, court costs and other expenses required in the administration of the functions of the public guardian. No fees thus received shall inure to the benefit of any employee of the public guardian. Any balance in the trust account at the end of a fiscal year shall not lapse but shall be carried forward from year to year and used for the purposes provided for in this section.

§ 3630. Special guardian

Pending any proceeding under this subchapter, the probate court may appoint the public guardian as special guardian for the alleged mentally retarded person as provided in section 3510, and may order guardianship of the person as well as of the estate.

§ 3631. Grounds for removal

The probate court shall have exclusive power to remove the public guardian when:

1. Failure to perform. It has failed to perform any duties imposed by law; or
2. Interests jeopardized. For any reason the interests of the person for whom he has been appointed guardian under this subchapter are likely to be jeopardized by a continuance in office.

§ 3632. Removal of public guardian

The probate court on its own motion may, or on the petition of any interested person alleging adequate grounds for removal shall, order the public guardian to appear and show cause why it should not be removed, or when necessary to protect the ward, may summarily remove it. Upon removal, the court may appoint a new guardian for the ward. The public guardian summarily removed may apply by petition to have the decree of removal vacated and to be reinstated, and if the court vacates the removal and reinstates it, the court shall make any order appropriate to accomplish the reinstatement.

§ 3633. Discharge of guardian

The probate court shall have exclusive power to discharge, by appropriate order, the public guardian as follows:

1. Ward or guardian. Upon petition by the ward or the public guardian after receiving evidence that the ward no longer requires a guardian; or
2. Public guardian. Upon petition of the public guardian while the ward still requires guardianship, accompanied by a petition for the appointment of a new guardian.

The public guardian shall not be discharged on its own petition until the court appoints a substitute guardian or determines that no new guardian is required.

§ 3634. Review

The public guardian at least annually, and at any time when ordered by the probate court, shall review the case of every person for whom the public guardian is acting as guardian under this subchapter. A report of each review shall be filed with the probate court. Each review shall contain an examination and evaluation of the guardianship plan and recommendations for a modification thereof, as deemed appropriate or necessary.

§ 3635. Determination of need for guardianship of persons in institutions and residence facilities

Whenever a mentally retarded minor has been admitted to the Pineland Hospital and Training Center or to any other state-operated institution or residence facility for the mentally retarded, and has not been discharged therefrom, the head thereof shall, within 6 months prior to the 21st birthday of such mentally retarded person, cause him to be examined to ascertain whether such person will, by reason of mental retardation, be in need of guardianship on attainment of his majority. If, in the opinion of the examiner such need will exist, the institutional or residence facility head may advise in writing the parent, next of kin, or guardian of such minor of the need to institute proceedings for appointment of a guardian. In the event no guardian has been appointed, or no guardianship proceedings are pending when such minor has attained age 21, or the institutional or residence facility head shall have determined that nomination of the public guardian is advisable in lieu of petition for guardianship by any of such persons, such institutional or resi-

dence facility head shall nominate the public guardian to serve as guardian of such mentally retarded person as provided in this subchapter.

Prior to release of any mentally retarded person from the Pineland Hospital and Training Center, or from any other state-operated institution, or residence facility for the mentally retarded, the head thereof shall cause such person to be examined to ascertain whether such person will, by reason of mental retardation, be in need of guardianship upon release from such institution or residence facility, and if in the opinion of such examiner such need will exist upon release, the institutional or residence facility head may advise in writing the parent or next of kin of such mentally retarded person of the need to institute proceedings for appointment of a guardian. If neither the parent nor next of kin is willing to institute proceedings for the appointment of a guardian for such mentally retarded person, or the institutional or residence facility head shall have determined that nomination of the public guardian is advisable in lieu of petition for guardianship by any of such persons, the institutional or residence facility head shall, prior to the release of such mentally retarded person, nominate the public guardian as provided in this subchapter.

§ 3636. Exclusiveness

When the probate court has appointed the public guardian under this subchapter, no other guardian shall be appointed during the continuation of such guardianship.

§ 3637. Consent to autopsy, burial

The public guardian, in the absence of next of kin, may authorize the performance of an autopsy upon the body of any deceased ward. The public guardian, in the absence of next of kin, or in the event the next of kin refuse to assume responsibility therefor, shall cause any deceased ward to be suitably buried and shall have authority to expend funds of the ward for that purpose, and in the event the ward is without funds at the time of death the public guardian shall cause him to be suitably buried at public expense, as in the case of the burial of any other deceased indigent person.