

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
SECOND REGULAR SESSION

(Filing No. H-1049)

COMMITTEE AMENDMENT "A" to H.P. 1991, L.D. 2064, Bill,
"AN ACT to Provide for Limited Guardianship."

Amend the Bill by striking out all of sections 1 to 14
and inserting in their place the following:

'Sec. 1. 18 MRSA §3512 is enacted to read:

§3512. Limited guardian

The judge may appoint a limited guardian with fewer
than all of the legal duties and powers of a guardian. The
specific powers and duties of a limited guardian shall be
enumerated in the decree or court order. A person for whom
a limited guardian has been appointed retains all legal
and civil rights except those which have been suspended by
the decree or order.

Sec. 2. 18 MRSA §3621, as amended by PL 1977, c. 502,
§1, is further amended by inserting at the end the following
new sentence:

The public guardian shall be ineligible to serve as guardian
if a suitable relative or other appropriate person is available
and is willing to assume the responsibilities of private
guardian.

Sec. 3. 18 MRSA §3622, first sentence, as enacted by PL 1969, c. 265, is amended to read:

The public guardian may be nominated and appointed as guardian of the person and estate or as a limited guardian of those mentally retarded persons who have been determined under this subchapter to be legally incompetent and in need of guardianship.

Sec. 4. 18 MRSA §3622, as amended by PL 1977, c. 502, §2, is further amended by adding at the end the following new sentence:

The appointment of a public guardian in no way enlarges the ward's right to services made available to all mentally retarded persons in the State.

Sec. 5. 18 MRSA §3625, first sentence, as enacted by PL 1969, c. 265, is amended to read:

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 or as a limited guardian 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.

Sec. 6. 18 MRSA §3626, as enacted by PL 1969, c. 265, is amended to read:

§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, unless he is the petitioner, 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, in whole or in part, of managing himself and his affairs independently, and requires supervision and care of his person and estate.

Sec. 7. 18 MRSA §3627, first ¶ and sub-§3, as enacted by PL 1969, c. 265, are amended to read:

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

3. Incompetent. By reason of such mental retardation the person is incapable of managing, in whole or in part, himself and his affairs independently and requires supervision and care, ~~of his person and estate~~ and is, therefore, legally incompetent.

Sec. 8. 18 MRSA §3628, 3rd sentence, as enacted by PL 1969, c. 265, is amended to read:

The public guardian may apply for, and effect the placement of,

any ward in accordance with law and the usual procedures for admission or commitment, in an appropriate home, hospital or institution having facilities and staff adequate to provide care and supervision consistent with the needs of the ward.

Sec. 9. 18 MRSA §3630, as enacted by PL 1969, c. 265, is repealed and the following enacted in its place:

§3630. Special guardian

The probate court may appoint the public guardian as special guardian of an alleged mentally retarded person if a proceeding under this subchapter is pending or an emergency prevents filing of a certificate or plan prior to the appointment. The special guardian may be appointed without notice to the ward, but the bureau shall be notified and given opportunity to be heard prior to its appointment as a special guardian. The special guardian may be appointed to act as guardian of the person and estate or as a limited guardian.

Sec. 10. 18 MRSA §3630-A is enacted to read:

§3630-A. Limited guardian

The probate court may appoint the public guardian as a limited guardian as provided in section 3512, and shall expressly enumerate the powers of that guardian in a court order or decree. A public guardian appointed as a limited guardian shall only have those duties or powers that are enumerated in the order or decree.

Sec. 11. 18 MRSA §3633, sub-§3 is enacted to read:

3. Limited guardian. Upon petition of the public guardian when the purposes of the guardianship are fulfilled.

Sec. 12. 18 MRSA §3639, first sentence, as amended by PL 1977, c. 528, §1, is repealed and the following enacted in its place:

The public guardian may be nominated and appointed as guardian of the person and estate, or as a limited guardian, of those adults who have been determined under this subchapter to be incapacitated and in need of guardianship.'

Further amend the ~~Bill~~ by renumbering section 15 to be section 13.

Further amend the ~~Bill~~ by striking out all of sections 16 to 20 and inserting in their place the following:

'Sec. 14. 18 MRSA §3642, first sentence, as amended by PL 1977, c. 528, §2, is repealed and the following enacted in its place:

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, or as a limited guardian, of an alleged incapacitated person by filing a written petition in the probate court for the county in which the alleged incapacitated person resides or in which his estate is located.

Sec. 15. 18 MRSA §3644, last ¶, as amended by PL 1977, c. 528, §4, is further amended to read:

At such hearing, the burden shall be upon the petitioner to establish that the person for whom a guardian is sought to be appointed is so incapacitated by reason of advanced age, physical or mental illness or incapacity or other causes that he is incapable, in whole or in part, of managing himself and his affairs independently, and requires care and supervision of his person, and estate or both, or as a limited guardian.

Sec. 16. 18 MRSA §3645, as enacted by PL 1973, c. 631, §1, is repealed and the following enacted in its place:

§3645. Findings of probate court

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

1. Resident. The person is a resident of this State;
2. Incapacitated. The person is incapacitated by reason of advanced age, physical or mental illness or incapacity, or other cause to the extent that he lacks sufficient understanding or capacity, in whole or in part, to make, communicate or implement responsible decisions concerning himself or his property.

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

Sec. 17. 18 MRSA §3648, as enacted by PL 1973, c. 631, §1, is repealed and the following enacted in its place:

§3648. Special guardian

The probate court may appoint the public guardian as special guardian of an alleged mentally retarded person if a proceeding under this subchapter is pending or an emergency prevents filing of a certificate or plan prior to the appointment. The special guardian may be appointed without notice to the ward, but the department shall be notified and given opportunity to be heard prior to its appointment as a special guardian. The special guardian may be appointed to act as guardian of the person and estate or as a limited guardian.

Sec. 18. 18 MRSA §3648-A is enacted to read:

§3648-A. Limited guardian

The probate court may appoint the public guardian as a limited guardian as provided in section 3512, and shall expressly enumerate the powers of that guardian in a court order or decree. A public guardian appointed as a limited guardian shall only have those duties and powers that are enumerated in the order or decree.

Sec. 19. 18 MRSA §3650-B, sub-§3, is enacted to read:

3. Limited guardian. Upon petition of the public guardian when the purposes of the guardianship are fulfilled.

Sec. 20. 18 MRSA §3650-B, last ¶, as enacted by PL 1973, c. 631, §1, is amended to read:

The public guardian shall not be discharged on its own petition until the court appoints the substitute guardian, ~~or~~ determines that no new guardian is required or/ determines that the purposes of the guardianship have been fulfilled.

Statement of Fact

This amendment simplifies the provisions of the bill, while still providing for the flexibility of a limited guardianship.

Reported by the Committee on Judiciary.

Reproduced and distributed under the direction of the Clerk of the House.
2/16/78

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