

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2064

H. P. 1991

House of Representatives, January 13, 1978

Governor's Bill. Referred to the Committee on Judiciary. Sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Mr. Norris of Brewer.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Provide for Limited Guardianship.

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

Sec. 1. 18 MRSA §§ 3512 and 3513 are enacted to read:

§ 3512. Limited guardian

1. Definition. A limited guardian is one who possesses fewer than all of the legal duties and powers of a guardian and whose duties and powers have been specifically enumerated by court order.

2. Authority to appoint. The judge of probate shall have the power to appoint a limited guardian.

3. Contents of petition. In addition to any allegations required by law, a petition for limited guardianship shall include a statement of:

A. The nature and extent of the alleged disability and the specific areas of protection and assistance requested; and

B. The limitation of duties and powers requested to be included in the court's order of appointment as limited guardian.

4. Contents of order establishing limited guardianship. A court order establishing limited guardianship shall:

- A. Define the powers and duties of the limited guardian so as to permit the ward to care for himself and his property commensurate with his ability to do so; and**
- B. Specify all legal disabilities to which the ward is subject by reason of the order of limited guardianship.**

The powers and duties granted by the court to the limited guardian shall not exceed the powers and duties which may be granted guardians under this chapter.

5. Retained rights of the ward. A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been suspended by court order.

§ 3513. Temporary guardian

1. Definition. A temporary guardian is any guardian whose duties and powers have been granted by the court for a specific time period not to exceed 6 months.

2. Authority to appoint. The judge of probate shall have the power to appoint a temporary guardian.

3. Contents of petition for temporary guardianship. In addition to any allegations required by law, a petition for temporary guardianship shall include the requested term of the temporary guardianship.

4. Contents of order establishing temporary guardianship. A court order establishing temporary guardianship shall indicate the duration of the term of guardianship.

5. Termination. A temporary guardianship shall terminate at the end of the term designated by the court. The guardian shall file a final accounting with the court and shall dispose of any assets of the ward then in its hands as ordered by the court.

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 repealed and the following enacted in its place:

The public guardian may be nominated and appointed as guardian of those mentally retarded persons who have been determined under this subchapter to be

legally incompetent and in need of guardianship. Whenever the term “guardian” is used in this subchapter it shall include limited, temporary and special guardians.

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

The public guardian shall exercise supervisory authority over the ward in a manner which is least restrictive of the ward’s personal freedom consistent with the ward’s need for protective services. 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 § 3623, as enacted by PL 1969, c. 265, is amended to read:
§ 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, in whole or in part, of managing himself and his affairs independently and requires supervision and care.

Sec. 6. 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~~ 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. 7. 18 MRSA § 3626, first ¶, as enacted by PL 1969, c. 265, is amended by adding at the end the following new sentence:

When the public guardian is the petitioner, notice to the public guardian shall be satisfied by acknowledged receipt of the order of notice by the director or his designee.

Sec. 8. 18 MRSA § 3626, last ¶, as enacted by PL 1969, c. 265, is repealed and the following enacted in its place:

At the 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.

Sec. 9. 18 MRSA § 3627, as enacted by PL 1969, c. 265, is repealed and the following enacted in its place:

§ 3627. Findings of probate court

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

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

In every case in which the public guardian is appointed the court shall indicate, by order, the nature and extent of the ward's disabilities. The court shall adopt the guardianship plan as submitted or modified, under which the public guardian shall act, only if it is satisfied that the plan permits the ward to care for himself and his estate to an extent commensurate with his ability to do so.

Sec. 10. 18 MRSA § 3628, as last amended by PL 1977, c. 78, § 119, is further amended by inserting before the first paragraph the following new paragraph:

Whenever appropriate in order to comply with the court's order of appointment as guardian, the public guardian shall perform any or all of the functions contained in this section.

Sec. 11. 18 MRSA § 3628, 3rd sentence, as enacted by PL 1969, c. 265, is repealed and the following enacted in its place:

The public guardian may apply for, and effect the placement of, any ward in accordance with any laws and procedures applicable to the admission or commitment of any other person, 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. 12. 18 MRSA § 3628, as last amended by PL 1977, c. 78, § 119, is further amended by inserting after the 6th sentence the following:

Nothing in this section shall be construed to obligate the public guardian to provide legal counsel for a ward in any proceedings or to post bail for its ward, except insofar as the ward has sufficient income or estate for that purpose.

Sec. 13. 18 MRSA § 3630, as enacted by PL 1969, c. 265, is amended by adding at the end the following new sentences:

Special guardianship may be ordered before filing of the certificate and

guardianship plan required by sections 3623 and 3625 if the probate court has sufficient evidence before it to conclude that guardianship is appropriate and that exigent circumstances prevent the prior filing of the certificate and plan. In no case shall special guardianship be ordered unless the Bureau of Mental Retardation has been notified and given an opportunity to be heard.

Sec. 14. 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 those adults who have been determined under this subchapter to be incapacitated and in need of guardianship. Whenever the term “guardian” is used in this subchapter, it shall include limited, temporary and special guardians.

Sec. 15. 18 MRSA § 3640, as enacted by PL 1973, c. 631, § 1, is amended to read:

§ 3640. Definition

For the purpose of eligibility for guardianship under this subchapter, the phrase “incapacitated person” shall mean any person who is 18 years of age or over, and who is impaired 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 his person or property, except that this subchapter shall not include those persons who are provided for under subchapter III-A.

Sec. 16. 18 MRSA § 3642, first sentence, as amended by PL 1977, c. 528, § 2, is further 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, estate or both~~ 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. 17. 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, estate or both.~~

Sec. 18. 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 if it finds that:

1. Resident. The person is a resident of this State; and
2. Incapacitated. The person is incapacitated by reason of advanced age, physical or mental illness or incapacity or other cause to the extent that, in whole or in part, he lacks sufficient understanding or capacity 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 indicate, by order, its findings regarding the nature and extent of the ward's disabilities. The court shall adopt the guardianship plan as submitted or modified, under which the public guardian shall act, only if it is satisfied that the plan permits the ward to care for himself and his estate to an extent commensurate with his ability to do so.

Sec. 19. 18 MRSA § 3646, first ¶, as repealed and replaced by PL 1977, c. 528, § 5, is repealed and the following enacted in its place:

Except as otherwise specifically provided, the general provisions of this chapter relating to the powers and duties described in this section, are applicable to the public guardian acting under this subchapter.

Sec. 20. 18 MRSA § 3646, as repealed and replaced by PL 1977, c. 528, § 5, is amended by inserting at the beginning of the 2nd paragraph the following new sentence:

The public guardian shall perform those functions which are appropriate in order to comply with the court's order of appointment as guardian.

STATEMENT OF FACT

This bill provides for flexibility in guardianship proceedings. The ability to appoint a limited guardian will enable the probate court to tailor the guardianship to the ward's actual limitations and to authorize the guardian to exercise the least restrictive amount of control over the ward as is consistent with his need for supervision and protection. This tailoring will encourage the development of maximum selfreliance and independence in the ward rather than increasing his dependency. The ability to appoint a temporary guardian will help in situations where the proposed ward is faced with an extraordinary problem which is of limited duration. The bill also clarifies the duties of the public guardian and the procedures for obtaining public guardianship.