

1 **SENATE FLOOR VERSION**

2 February 27, 2024

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1751

6 By: Dossett

7 An Act relating to guardianship; amending 30 O.S.
8 2021, Section 1-114, which relates to powers of
9 court; authorizing court to require certain training;
10 amending 30 O.S. 2021, Sections 3-104, 3-111, and 3-
11 112, which relate to appointment of guardian or
12 limited guardian; requiring verification of
13 completion of certain training to be submitted to
14 court; requiring completion of certain training prior
15 to appointment as guardian for certain persons;
16 authorizing certain waiver by court; requiring
17 Department of Human Services to maintain certain
18 list; updating statutory language; updating statutory
19 references; and providing an effective date.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. AMENDATORY 30 O.S. 2021, Section 1-114, is
22 amended to read as follows:

23 Section 1-114. A. In all cases the court making the
24 appointment of a guardian has exclusive jurisdiction to control such
guardian in the management and disposition of the person and
property of the ward.

1 B. The court has jurisdiction over guardianship proceedings,
2 and has the following powers, which must be exercised in the manner
3 prescribed by statute, to:

4 1. Appoint and remove guardians for minors and for
5 incapacitated and partially incapacitated persons;

6 2. Compel any applicant for guardian to complete prerequisite
7 training;

8 3. Issue and revoke letters of guardianship;

9 ~~3.~~ 4. Control the conduct of guardians with regard to the care
10 and treatment provided to their wards;

11 ~~4.~~ 5. Control the conduct of guardians with regard to the
12 management of the financial resources of their wards, including but
13 not limited to the power to:

14 a. compel guardians to submit plans, reports, inventories
15 and accountings to the court,

16 b. compel payment and delivery by guardians of property
17 belonging to their wards,

18 c. order the payment of debts, the sale of property, and
19 order and regulate the distribution of property which
20 has been placed under the control or management of a
21 guardian, and

22 d. settle the accounts of guardians;

23 ~~5.~~ 6. Appoint appraisers of the property of wards;
24

1 ~~6.~~ 7. Compel the attendance of witnesses and the production of
2 documents and property;

3 ~~7.~~ 8. After a petition has been filed for appointment of a
4 guardian for a minor, make or modify any temporary order of
5 guardianship during the progress of the proceedings that would be in
6 the best interest of the ward. Any such temporary order may be
7 entered ex parte with written notice sent to all parties directing
8 them to appear before the court, at a time and place therein
9 specified, not more than twenty (20) days from the time of making
10 such order, to show cause why the order should not be granted for
11 temporary guardianship; and

12 ~~8.~~ 9. Exercise all powers conferred by the Oklahoma
13 Guardianship and Conservatorship Act, Section 1-101 et seq. of this
14 title, and to make such orders as may be necessary for the exercise
15 of ~~said~~ such powers.

16 C. The chief judge of each district court shall establish by
17 court rule a system for:

18 1. The filing of guardianship and conservatorship cases and
19 records which distinguish them from probate cases; and

20 2. Monitoring the filing of annual reports and inventories
21 required by this title for the purpose of assuring that the court
22 will be notified of annual reports as they fall due and whether or
23 not ~~said~~ such reports are filed.

24

1 SECTION 2. AMENDATORY 30 O.S. 2021, Section 3-104, is
2 amended to read as follows:

3 Section 3-104. A. The following priorities shall guide the
4 selection by the court of a guardian or limited guardian of an
5 incapacitated or partially incapacitated person from among those
6 eligible:

7 1. The individual or individuals nominated by the subject of
8 the proceeding pursuant to Section 3-102 of this title;

9 2. The current guardian or limited guardian appointed or
10 recognized by the appropriate court of any other jurisdiction in
11 which the incapacitated or partially incapacitated person resides;

12 3. An individual nominated by the will or by other writing of a
13 deceased parent, spouse, or an adult child who was serving as the
14 guardian or limited guardian of the subject of the proceeding;

15 4. The spouse of the subject of the proceeding;

16 5. An adult child of the subject of the proceeding;

17 6. A parent of the subject of the proceeding;

18 7. A sibling of the subject of the proceeding;

19 8. Any individual approved by the court with whom the subject
20 of the proceeding has been living for more than six (6) months prior
21 to the filing of the petition. Provided, that any owner, operator,
22 administrator or employee of a facility subject to the provisions of
23 the Nursing Home Care Act, the Residential Home Care Act or the
24 Group Homes for ~~the Developmentally Disabled or Physically~~

1 ~~Handicapped Persons Act~~ Persons with Developmental or Physical
2 Disabilities Act shall not be appointed guardian or limited guardian
3 of a resident of such facility unless the owner, operator,
4 administrator or employee is the spouse of the resident, or a
5 relative of the resident within the second degree of consanguinity
6 and is otherwise eligible for appointment; or

7 9. If applicable, an individual volunteer qualified for
8 appointment as a guardian of a veteran pursuant to the Veterans
9 Volunteer Guardianship Act.

10 B. When the guardian or limited guardian of an incapacitated or
11 partially incapacitated person is the guardian of property only, the
12 court may appoint an organization which is eligible to manage the
13 financial resources of an individual and has fiduciary powers, or
14 its successor in interest, when:

15 1. Such organization is nominated by the subject of the
16 proceeding pursuant to Section 3-102 of this title;

17 2. Such organization is nominated by a person eligible to make
18 such nomination pursuant to Section 3-103 of this title; or

19 3. The appointment of such organization is in the best interest
20 of the subject of the proceeding.

21 C. The court shall make reasonable inquiry to determine whether
22 the person or organization proposed to serve as the guardian or
23 limited guardian of an incapacitated or partially incapacitated
24 person is suitable and will exercise the powers and carry out the

1 duties and responsibilities of guardian or limited guardian in the
2 best interest of the ward. The court shall require verification or
3 attestation of completion of prerequisite training specific to the
4 needs of the ward to be filed in the case or submitted to the court
5 prior to appointment of the guardian, unless waived by the court.

6 The court shall also inquire of the proposed guardian of the person
7 of the ward as to how the guardian proposes to provide for the care
8 of the ward, and of the proposed guardian of the estate of the ward
9 as to how the guardian proposes to manage the property of the ward
10 and to provide for the ward's financial care. The court shall make
11 such orders with respect thereto as the court deems to be for the
12 best interest of the ward.

13 D. A public agency shall not be appointed to serve as guardian
14 for an adult except as provided in Section 1415 of Title 10 and
15 Section 10-108 of Title 43A of the Oklahoma Statutes.

16 SECTION 3. AMENDATORY 30 O.S. 2021, Section 3-111, is
17 amended to read as follows:

18 Section 3-111. A. At the hearing on the petition the court
19 shall determine whether or not it is necessary to appoint a guardian
20 of the person, property or both. If a guardian is needed, the court
21 shall determine:

22 1. When a general or limited guardian of the person of the
23 subject of the proceeding is requested, the essential requirements
24

1 for the health and safety of the subject of the proceeding and the
2 skills and knowledge necessary to meet those requirements;

3 2. When a general or limited guardian of the property of the
4 subject of the proceeding is requested, the type and amount of the
5 financial resources of the subject of the proceeding, the essential
6 requirements for managing the financial resources and the skills and
7 knowledge necessary to manage the financial resources;

8 3. The nature and extent of the incapacity of the subject of
9 the proceeding, if any; and

10 4. Whether by clear and convincing evidence the subject of the
11 proceeding is an incapacitated or partially incapacitated person.

12 B. If after a full hearing and examination upon such petition,
13 the court finds by clear and convincing evidence that the subject of
14 the proceeding is an incapacitated or partially incapacitated
15 person, the court shall determine the extent of the incapacity and
16 the feasibility of less restrictive alternatives to guardianship to
17 meet the needs of the subject of the proceeding. Upon such
18 determination, the court may:

19 1. Dismiss the action if the court finds that less restrictive
20 alternatives to guardianship are feasible and adequate to meet the
21 needs of the subject of the proceeding; or

22 2. Appoint a guardian or limited guardian who has completed any
23 prerequisite training specific to the needs of the ward, unless
24 waived by the court. An order making such an appointment shall

1 include a specific finding that it was established by clear and
2 convincing evidence that the identified needs of the subject of the
3 proceeding require a guardianship instead of less restrictive
4 alternatives.

5 C. Guardianship for an incapacitated person shall be:

6 1. Used only as is necessary to promote and protect the well-
7 being of the person and his or her property;

8 2. Designed to encourage the development of maximum self-
9 reliance and independence of the person; and

10 3. Ordered only to the extent required by the actual mental,
11 physical and adaptive limitations of the person.

12 SECTION 4. AMENDATORY 30 O.S. 2021, Section 3-112, is
13 amended to read as follows:

14 Section 3-112. A. Whenever the court finds the subject of the
15 proceeding to be an incapacitated person the court shall appoint:

16 1. A general guardian of the person; and

17 2. As the court determines to be necessary and appropriate, a
18 guardian of the property of the ward.

19 B. Whenever the court finds the subject of the proceeding to be
20 a partially incapacitated person the court shall appoint, as
21 necessary and appropriate for ~~said~~ the person:

22 1. A limited guardian of the person; ~~or~~

23 2. A general or a limited guardian of the property of ~~said~~ the
24 person; or

1 3. A limited guardian of the person and a general or limited
2 guardian of the property of ~~said~~ the person.

3 C. The court may appoint the same or separate persons to serve
4 as guardian or limited guardian of the person and guardian or
5 limited guardian of the property of a ward.

6 D. Unless waived by the court, any person who is to serve as a
7 guardian or limited guardian of the person or the property of a ward
8 whom the court finds to be an incapacitated or partially
9 incapacitated adult shall submit verification or attestation of
10 completion of prerequisite training. Such training shall be
11 specific to assisting persons with Alzheimer's disease, dementia, or
12 similar neurological conditions including but not limited to
13 understanding Alzheimer's disease, communication techniques, and
14 resources available for care if the ward is over sixty (60) years of
15 age, or earlier if the person is diagnosed with such a condition.

16 E. A list of approved training programs shall be maintained by
17 the Department of Human Services. Programs not included on the list
18 must be submitted for approval to the Department prior to
19 guardianship determination.

20 SECTION 5. This act shall become effective November 1, 2024.

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
22 February 27, 2024 - DO PASS AS AMENDED BY CS

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