

Senate Study Bill 2278

Conference Committee Text

PAG LIN

1 1 Section 1. Section 237.13, subsection 1, paragraph b, Code
1 2 1995, is amended to read as follows:
1 3 b. A

~~guardian appointed on a voluntary petition of a ward~~

1 4

~~pursuant to section 633.557, or a~~

~~conservator appointed on a~~

1 5 voluntary petition of a ward pursuant to section 633.572,
1 6 provided the ward has an income that does not exceed one
1 7 hundred fifty percent of the current federal office of
1 8 management and budget poverty guidelines and who does not have
1 9 resources in excess of the criteria for resources under the
1 10 federal supplemental security income program. However, the
1 11 ward's ownership of one residence and one vehicle shall not be
1 12 considered in determining resources.

1 13 Sec. 2. Section [633.3](#), Code 1995, is amended by adding the
1 14 following new subsections:

1 15 NEW SUBSECTION. 9A. "Court evaluator" means a person with
1 16 knowledge of personal care skills, the problems associated
1 17 with disabilities and functional limitations, and the private
1 18 and public resources available to address the type of alleged
1 19 limitations of the proposed ward, including but not limited to
1 20 an attorney at law or a health care professional. "Court
1 21 evaluator" may include a staff representative of the place of
1 22 residence of a proposed ward if the proposed ward resides in a
1 23 health care facility, a hospital, a school, or a chemical
1 24 substance abuse facility, and if the staff representative has
1 25 the specified knowledge required under this subsection.

1 26 NEW SUBSECTION. 18A. "Functional limitations" means the
1 27 behavior or condition of a person which impairs the person's
1 28 ability to care for the person's personal safety or to attend
1 29 to or provide for necessities for the person.

1 30 NEW SUBSECTION. 20A. "Health care professional" means a
1 31 person licensed to practice medicine and surgery pursuant to
1 32 chapter 148, physical therapy pursuant to chapter 148A,
1 33 osteopathy pursuant to chapter 150, osteopathic medicine and
1 34 surgery pursuant to chapter 150A, nursing pursuant to chapter
1 35 152, psychology pursuant to chapter 154B, social work pursuant
2 1 to chapter 154C, or marital and family therapy or mental
2 2 health counseling pursuant to chapter 154D.

2 3 NEW SUBSECTION. 24A. "Legal settlement" means legal
2 4 settlement as acquired pursuant to section 252.16.

2 5 Sec. 3. Section [633.3](#), subsection 22, Code 1995, is
2 6 amended to read as follows:

2 7 22. Incompetent

~~includes~~

~~means the condition of any~~

2 8 person who has been adjudicated by a court to

~~be incapable of~~

2 9

~~managing the person's property, or caring for the person's own~~

2 10

~~self, or both~~

~~have a decision-making capacity which is so~~

2 11 impaired that the person is unable to care for the person's
2 12 personal safety or to attend to or provide for necessities for
2 13 the person such as food, shelter, clothing, or medical care,
2 14 without which physical injury or illness may occur.

2 15 Sec. 4. Section [633.12](#), Code 1995, is amended to read as
2 16 follows:

2 17 633.12 COUNTY OF JURISDICTION.

2 18 The court of each county shall have original and exclusive
2 19 jurisdiction to administer the estates of all persons who are
2 20 residents of the county, or who were residents at the time of
2 21 their death, and all nonresidents of the state who have
2 22 property, or who die leaving property in the county subject to
2 23 administration, or whose property is afterwards brought into
2 24 the county; to appoint conservators for nonresidents having
2 25 property in the county; and to appoint conservators and
2 26 guardians of residents of the county or of persons present in
2 27 the county.

2 28 Sec. 5. Section [633.22](#), subsection 1, Code 1995, is
2 29 amended to read as follows:

2 30 1. The appointment of personal representatives who are
2 31 residents of the state,

~~guardians and conservators for minors,~~

2 32 the fixing and determining of the amount of the bond, or
2 33 waiving the same when permitted by law or by will, and the
2 34 approval of any and all bonds given by fiduciaries in the
2 35 discharge of their duties.

3 1 Sec. 6. Section [633.552](#), Code 1995, is amended to read as
3 2 follows:

3 3 633.552 PETITION FOR APPOINTMENT OF GUARDIAN.

3 4 Any person may file with the clerk a verified petition for
3 5 the appointment of a guardian. The petition shall state the
3 6 following information so far as known to the petitioner.

3 7 1. The name,

~~age~~

~~date of birth, and post office address of~~

3 8 the proposed ward.

3 9 2. That the proposed ward is in either of the following
3 10 categories:

3 11

~~a. By reason of mental, physical or other incapacity is~~

3 12

~~unable to make or carry out important decisions concerning the~~

3 13

~~proposed ward's person or affairs, other than financial~~

3 14

~~affairs.~~

3 15

~~b.~~

- a. Is a minor.

3 16 b. Is a person whose decision-making capacity is so
3 17 impaired that the person is unable to care for the person's
3 18 personal safety or to attend to or provide for necessities for
3 19 the person such as food, shelter, clothing, or medical care
3 20 without which physical injury or illness might occur.

3 21 3. The name, telephone number, and post office address of
3 22 the proposed guardian,

~~and~~

- that such person is qualified to

3 23 serve in that capacity, and the identity of any ward for whom
3 24 the person is currently acting as guardian or seeking to
3 25 become guardian.

3 26 4. That the proposed ward is a resident of the state of
3 27 Iowa or is present in the state

~~, and that the ward's best~~

~~-~~

3 28

~~interests require the appointment of a guardian in this state~~

~~-~~

3 29 5. The name and address of the person or institution, if
3 30 any, having the care, custody, or control of the proposed
3 31 ward.

3 32 6. The name, telephone number, and post office address of
3 33 any nearest relatives or friends of the proposed ward as
3 34 follows:

3 35 a. If the proposed ward is a minor, all of the following,
4 1 if applicable:

4 2 (1) Any parent of the minor, if any.

4 3 (2) Any adult with whom the minor resides, if any.

4 4 b. If the proposed ward is an adult, all of the following,
4 5 if applicable:

4 6 (1) Any spouse and adult children of the proposed ward, if
4 7 any.

4 8 (2) Any adult siblings and any parent of the proposed
4 9 ward, if any.

4 10 (3) Any person with whom the proposed ward resides, if
4 11 any.

4 12 7. If the proposed ward is an adult, the petition shall
4 13 include a brief description of the nature and degree of the
4 14 alleged incompetency including any functional limitations and
4 15 a description of any acts or behavior of the proposed ward
4 16 which warrant the appointment of a guardian.

4 17 8. Any standby, current, or prior guardianship, in any
4 18 state, concerning the proposed ward, including the name of the
4 19 guardian and the current status of the guardianship.

4 20 9. The name, telephone number, and post office address of
4 21 any agent designated under a durable power of attorney of
4 22 which the proposed ward is the principal. The petitioner
4 23 shall attach a copy of any power of attorney, if available.

4 24 10. Any other information which the petitioner believes
4 25 will assist the court in determining the need for the
4 26 appointment of a guardian.

4 27 Sec. 7. NEW SECTION. 633.552A EVALUATION OF PROPOSED
4 28 WARD.

4 29 An evaluation by a health care professional of the proposed
4 30 ward's physical and mental condition, including a description
4 31 of the nature, type, and extent of the proposed ward's
4 32 functional limitations, shall be attached to the petition or
4 33 filed with the court at least fourteen days prior to the
4 34 hearing on the petition.

4 35 Sec. 8. Section 633.554, Code 1995, is amended to read as
5 1 follows:

5 2 633.554 NOTICE

~~TO PROPOSED WARD~~

5 3 1. If the proposed ward is an adult

~~, notice~~

5 4 a. Notice of the filing of the petition shall be served
5 5 upon proposed ward in the manner of an original notice and the
5 6 content of the notice is governed by the rules of civil
5 7 procedure governing original notice.

5 8 b. Notice shall be provided to all persons designated in
5 9 the petition pursuant to section 633.552, subsections 6, 8, 9,
5 10 and 10, unless the person designated is the petitioner.

5 11 2. If the proposed ward is a minor, notice in the manner
5 12 of original notice shall be provided to the parents or
5 13 guardian of the proposed ward and to any adult persons with
5 14 whom the minor resides, unless the parent or adult person is
5 15 the petitioner.

5 16 3. If the proposed ward is a minor or if the proposed ward
5 17 is an adult under a standby petition and the court determines,
5 18 pursuant to section 633.561, subsection 1, that the proposed
5 19 ward is entitled to representation, notice in the manner of
5 20 original notice, or another form of notice ordered by the
5 21 court, given to the attorney appointed to represent the ward
5 22 is notice to the proposed ward.

5 23 Sec. 9. Section 633.555, Code 1995, is amended to read as
5 24 follows:

5 25 633.555 PLEADINGS AND TRIAL

~~RULES OF CIVIL PROCEDURE~~

5 26 EVALUATION.

5 27 1. After the petition has been filed, the court shall set
5 28 a date for hearing on the issue of incompetency, and shall
5 29 provide notice of the hearing in the manner provided for
5 30 notice of the filing of the petition pursuant to section
5 31 633.554.

5 32 2. The court may appoint a court evaluator who shall
5 33 submit a written report to the court following completion of
5 34 the court evaluator's duties. The court may appoint
5 35 additional court evaluators as necessary. The duties of the
6 1 court evaluator include all of the following:

6 2 a. Retaining a medical expert to evaluate the proposed
6 3 ward. If the petition includes an evaluation by a health care
6 4 professional who is a medical expert, the court evaluator may
6 5 submit the previously completed evaluation. The court
6 6 evaluator may review and inspect the records of any previously
6 7 completed evaluation or any other medical, psychological, or
6 8 psychiatric examinations of the proposed ward if the court
6 9 determines that the records will assist the court evaluator in
6 10 completing the report.

6 11 b. Meeting with the proposed ward and discussing, in a
6 12 manner which the proposed ward is reasonably expected to
6 13 understand, the nature and possible consequences of the
6 14 proceedings, the general powers and duties of a guardian, and
6 15 the rights of the proposed ward, including the right to
6 16 counsel.

6 17 c. Interviewing the petitioner, or, if the petitioner is a
6 18 facility or agency, an individual within the facility or
6 19 agency who is familiar with the proposed ward's condition,
6 20 affairs, and situation.

6 21 d. Interviewing other persons listed in the petition.

6 22 e. Interviewing or consulting with professionals having
6 23 specialized knowledge in the area of geriatrics or in the
6 24 proposed ward's alleged incompetency including functional
6 25 limitations including but not limited to mental retardation.

6 26 developmental disabilities, and chemical or substance abuse
6 27 dependency.

6 28 f. Preparing a report for the court, which is dated and
6 29 signed by the court evaluator, which includes all of the
6 30 following recommendations or information:

6 31 (1) The need for legal counsel for the proposed ward.

6 32 (2) The proposed ward's ability to be present at or to
6 33 participate in any hearing on the petition.

6 34 (3) Third-party assistance resources available to the
6 35 proposed ward and the sufficiency and reliability of the
7 1 resources to meet the proposed ward's needs.

7 2 (4) The functional limitations of the proposed ward with
7 3 respect to activities of daily living and any prognosis as to
7 4 the possibility of improvement or possibility of reversibility
7 5 of any physical or mental disability or chemical or substance
7 6 abuse dependency.

7 7 (5) The proposed ward's understanding and appreciation of
7 8 the nature and consequences of an inability to manage the
7 9 activities of daily living.

7 10 (6) The proposed ward's preferences, wishes, and values
7 11 with regard to managing the activities of daily living.

7 12 (7) The least restrictive form of intervention consistent
7 13 with the proposed ward's functional limitations and the
7 14 recommended extent of the powers to be assigned to the
7 15 guardian.

7 16 (8) The financial resources and approximate value of the
7 17 proposed ward's property.

7 18 (9) The existence, if any, of persons financially
7 19 dependent on the proposed ward and the assistance they
7 20 require.

7 21 (10) The suitability of the petitioner in identifying and
7 22 meeting the needs of the proposed ward.

7 23 (11) Potential conflicts of interest, including but not
7 24 limited to, financial interests if any, existing between or
7 25 among family members and other interested parties.

7 26 (12) Additional parties who should be provided notice and
7 27 the opportunity to be heard.

7 28 (13) Any other issues to be addressed at the request of
7 29 the court.

7 30 g. The notes, records, and reports collected by the court
7 31 evaluator shall be available to the court, to the proposed
7 32 ward or the ward's legal counsel, to the petitioner or the
7 33 petitioner's legal counsel, and to any other person who the
7 34 court determines has a need.

7 35 h. The cost of the court evaluator and the expenses
8 1 associated with performing the evaluator's duties shall be
8 2 paid by the proposed ward, or, if the proposed ward is
8 3 indigent, by the county of legal settlement. If no county of
8 4 legal settlement exists, the costs shall be borne by the
8 5 state.

8 6 3. The proposed ward shall be present at any hearing on
8 7 the petition, unless there is good cause shown for the
8 8 absence. The hearing may be closed upon the request of the
8 9 proposed ward for good cause shown.

8 10 4. All other pleadings and the trial of the cause shall be
8 11 governed by the Rules of Civil Procedure. The cause shall be
8 12 tried as a law action, and either party shall be entitled to a
8 13 jury trial if demand is made therefor as provided by the Rules
8 14 of Civil Procedure.

8 15 Sec. 10. NEW SECTION. 633.555A JURISDICTION AND VENUE.

8 16 1. If the court appoints a guardian, the court shall
8 17 appoint a guardian who is a resident of this state.

8 18 2. Venue for a guardianship proceeding is in the district
8 19 court of the county of residence of the proposed ward or where
8 20 the proposed ward is present.

8 21 3. The court may transfer the proceeding to another court
8 22 if the court finds that it is in the interest of justice.

8 23 4. Any guardianship involving a minor shall meet the
8 24 requirements of the uniform child custody jurisdiction Act
8 25 pursuant to chapter 598A.
8 26 Sec. 11. Section [633.556](#), Code 1995, is amended to read as
8 27 follows:
8 28 633.556 APPOINTMENT OF GUARDIAN.
8 29

~~If the allegations of the petition as to the status of the~~

8 30

~~proposed ward and the necessity for the appointment of a~~

8 31

~~guardian are proved, the court may appoint a guardian.~~

8 32 The determination as to the appointment of a guardian, the
8 33 type of guardianship, and the specific areas of protection,
8 34 management, and assistance to be granted, shall be the
8 35 exclusive decision of the court. In order to appoint a
9 1 guardian, the court must find that the proposed ward meets the
9 2 criteria of section 633.552, subsection 2. In making the
9 3 determination, the court shall consider the proposed ward's
9 4 functional limitations and the extent to which any functional
9 5 limitations impair the proposed ward's ability to care for the
9 6 person's personal safety or to attend to or provide for
9 7 necessities. The court shall grant specific powers to the
9 8 guardian which constitute the least restrictive form of
9 9 intervention consistent with the findings regarding the
9 10 proposed ward's functional limitations. Prior to
9 11 establishing, modifying, or terminating a guardianship, the
9 12 court shall consider whether a guardianship pursuant to
9 13 section 633.635 is appropriate and whether third-party
9 14 assistance is available to meet a ward's or proposed ward's
9 15 need for necessities, if credible evidence of third-party
9 16 assistance is adduced from any source.

9 17 Sec. 12. NEW SECTION. 633.556A STANDARD OF PROOF AND
9 18 BURDEN OF PERSUASION.

9 19 1. The determination of incompetency of the proposed ward
9 20 or ward and the determination of the need for the appointment
9 21 of a guardian or of the modification or termination of a
9 22 guardianship shall be supported by clear and convincing
9 23 evidence.

9 24 2. The burden of persuasion is on the petitioner in an
9 25 initial proceeding to appoint a guardian. Following a prima
9 26 facie showing that the proposed ward or ward has some
9 27 decision-making capacity, the burden of persuasion is on the
9 28 guardian in a proceeding to modify or terminate a
9 29 guardianship.

9 30 Sec. 13. Section [633.559](#), Code 1995, is amended by adding
9 31 the following new unnumbered paragraph:

9 32 NEW UNNUMBERED PARAGRAPH. A person who is qualified and
9 33 suitable or who is nominated as a proposed guardian in a
9 34 standby petition may be appointed as the guardian of an adult
9 35 ward.

10 1 Sec. 14. Section [633.560](#), Code 1995, is amended by
10 2 striking the section and inserting in lieu thereof the
10 3 following:

10 4 633.560 GUARDIANSHIP - STANDBY BASIS.

10 5 1. An individual who has sufficient capacity to form a
10 6 preference may at any time nominate another person to act as
10 7 the individual's guardian on a standby basis.

10 8 2. The individual may execute a petition for the
10 9 appointment of a standby guardian upon the express condition
10 10 that the petition shall be acted upon by the court only upon

10 11 the occurrence of an event specified in the petition or if the
10 12 individual is determined to meet the criteria pursuant to
10 13 section 633.552, subsection 2, paragraph "b".

10 14 3. The standby petition may be deposited with the clerk of
10 15 the county in which the individual resides or with any other
10 16 person. The standby petition may be revoked at any time prior
10 17 to the appointment of a guardian by destruction of the
10 18 petition by the petitioner or by executing an acknowledged
10 19 instrument of revocation.

10 20 4. If the petition is filed with the clerk, the petition
10 21 may be brought for hearing upon the filing of a verified
10 22 statement that the requisite event has occurred or the
10 23 requisite criteria have been met. If the petition has not
10 24 been filed with the clerk, the petition may be brought for
10 25 hearing by filing with the clerk both the petition and the
10 26 verified statement.

10 27 5. Following the filing of both the petition and the
10 28 verified statement, the court, without notice, may support the
10 29 person nominated as guardian or may set the petition for
10 30 hearing.

10 31 6. The powers of the guardian shall be limited to the
10 32 powers specified in the petition or by the court following a
10 33 hearing on the petition.

10 34 Sec. 15. Section [633.561](#), subsection 4, Code 1995, is
10 35 amended by adding the following new paragraph after paragraph

11 1 d and by relettering the subsequent paragraphs:
11 2 NEW PARAGRAPH. e. Provide notice to all persons
11 3 identified in the petition pursuant to section 633.552,
11 4 subsections 6, 8, 9, and 10. In the course of representation,
11 5 an attempt shall be made to identify and inform persons within
11 6 the categories specified in the petition who have not been
11 7 included in the petition. Notice may also be provided to any
11 8 other person who has information which will assist the court.

11 9 Sec. 16. Section [633.562](#), Code 1995, is amended to read as
11 10 follows:

11 11 633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

11 12 In a proceeding for the appointment of a guardian, the
11 13 proposed ward shall be given written notice which advises the
11 14 proposed ward that if a guardian is appointed, the guardian
11 15 may

~~, without court approval,
- make decisions regarding the
11 16 ward's personal safety or provide for~~

~~the care of the ward,~~

11 17

~~manage the ward's personal property and effects, assist the~~

11 18

~~ward in developing self reliance and receiving professional~~

11 19

~~care, counseling, treatment or services as needed, and ensure~~

11 20

~~that the ward receives necessary emergency medical services~~

11 21 necessities. The notice shall also advise the proposed ward
11 22 that, upon the court's approval, the guardian may

~~change the~~

-
11 23
.

~~ward's permanent residence to a more restrictive residence,~~

-
11 24
.

~~and~~

- arrange for major elective surgery or any other

11 25 nonemergency major medical procedure or consent to the

11 26 withholding or withdrawal of life-sustaining procedures

11 27 pursuant to chapter 144A. The notice shall clearly advise the

11 28 proposed ward in boldfaced type of a minimum size of

~~ten~~

-
11 29 fourteen points, of the right to counsel and the potential

11 30 deprivation of the proposed ward's civil rights.
.

~~In an~~

-
11 31
.

~~involuntary guardianship proceeding, the~~

- The notice shall be

11 32 served upon the proposed ward with the notice of the filing of

11 33 the petition as provided in section 633.554.

11 34 Sec. 17. Section [633.634](#), Code 1995, is amended to read as

11 35 follows:

12 1 633.634 COMBINATION OF

~~VOLUNTARY AND~~

- STANDBY PETITIONS

12 2 WITH

~~INVOLUNTARY~~

- PETITION FOR

~~HEARING~~

- APPOINTMENT OF GUARDIAN.

12 3 If prior to the time of hearing on a petition for the

12 4 appointment of a guardian or a conservator, a petition is

12 5 filed under the provisions of section

~~633.557~~

- 633.560,

12 6 633.572, or 633.591, the court shall combine the hearing on

12 7 such petitions and determine who shall be appointed guardian

12 8 or conservator, and such petition shall be triable to the

12 9 court.

12 10 Sec. 18. Section [633.635](#), Code 1995, is amended to read as

12 11 follows:

12 12 633.635 RESPONSIBILITIES OF GUARDIAN.

12 13
.

~~1. A guardian may be granted the following powers and~~

-
12 14
.

~~duties which may be exercised without prior court approval:~~

-
12 15
.

~~a. Providing for the care, comfort and maintenance of the~~

-
12 16
.

~~ward, including the appropriate training and education to~~

~~12 17~~

~~maximize the ward's potential.~~

~~12 18~~

~~b. Taking reasonable care of the ward's clothing,~~

~~12 19~~

~~furniture, vehicle and other personal effects.~~

~~12 20~~

~~c. Assisting the ward in developing maximum self reliance~~

~~12 21~~

~~and independence.~~

~~12 22~~

~~d. Ensuring the ward receives necessary emergency medical~~

~~12 23~~

~~services.~~

~~12 24~~

~~e. Ensuring the ward receives professional care,~~

~~12 25~~

~~counseling, treatment or services as needed.~~

~~12 26~~

~~f. Any other powers or duties the court may specify.~~

~~12 27~~

~~2. A guardian may be granted the following powers which~~

~~12 28~~

~~may only be exercised upon court approval:~~

~~12 29~~

~~a. Changing, at the guardian's request, the ward's~~

~~12 30~~

~~permanent residence if the proposed new residence is more~~

~~12 31~~

~~restrictive of the ward's liberties than the current~~

~~12 32~~

~~residence.~~

~~12 33~~

1. A guardian shall have only the powers specified by the

12 34 court, consistent with the findings of the court regarding the
12 35 proposed ward's or ward's functional limitations.

13 1 2. In addition to the powers of the guardian specified
13 2 pursuant to subsection 1, the guardian may be granted
13 3 additional powers, only with the prior approval of the court,
13 4 including any of the following:
13 5

~~b.~~

~~a.~~ Arranging the provision of major elective surgery or
13 6 any other nonemergency major medical procedure.
13 7

~~c.~~

~~b.~~

~~Consent~~

~~Consenting~~ to the withholding or withdrawal
13 8 of life-sustaining procedures in accordance with chapter 144A.
13 9

~~3. The court may take into account all available~~

~~13 10~~

~~information concerning the capabilities of the ward and any~~

~~13 11~~

~~additional evaluation deemed necessary, and may direct that~~

~~13 12~~

~~the guardian have only a specially limited responsibility for~~

~~13 13~~

~~the ward. In that event, the court shall state those areas of~~

~~13 14~~

~~responsibility which shall be supervised by the guardian and~~

~~13 15~~

~~all others shall be retained by the ward. The court may make~~

~~13 16~~

~~a finding that the ward lacks the capacity to contract a valid~~

~~13 17~~

~~marriage.~~

~~13 18~~

~~4. From time to time, upon a proper showing, the court may~~

~~13 19~~

~~alter the respective responsibilities of the guardian and the~~

~~13 20~~

~~ward, after notice to the ward and an opportunity to be heard.~~

13 21 3. A ward retains all rights not delegated to a guardian
13 22 by the court, including but not limited to any rights to legal
13 23 representation and the right to provide records to the ward's
13 24 attorney.

13 25 Sec. 19. NEW SECTION. 633.668A GUARDIAN EDUCATION
13 26 REQUIREMENTS.

13 27 1. A ward is entitled to a guardian whom the court
13 28 determines to be sufficiently competent to perform the duties
13 29 of a guardian necessary to protect the interests of the ward.

13 30 2. A person appointed by the court as guardian shall
13 31 receive a minimum of two hours of instruction and training
13 32 related to, but not limited to, all of the following:

13 33 a. The legal duties and responsibilities of a guardian.

13 34 b. The rights of a ward.

13 35 c. The availability of local resources to aid the ward.

14 1 d. The preparation of habilitation plans and annual
14 2 guardianship reports.

14 3 3. A person appointed by the court as a guardian shall
14 4 complete the two required hours of instruction and training
14 5 within the three-month period following the appointment as
14 6 guardian. The instruction and training shall be completed
14 7 through a course approved by the Iowa supreme court.

14 8 4. Expenses incurred by the guardian in satisfying the
14 9 education and training requirements under this section may be
14 10 reimbursed by the ward's estate.

14 11 5. The court, for good cause shown, may waive the
14 12 education and training requirements or may impose additional
14 13 education and training requirements.

14 14 Sec. 20. Section [633.669](#), subsection 2, Code 1995, is
14 15 amended to read as follows:

14 16 2. Reports required by this section must include:

14 17 a. The current mental and physical condition of the ward,
14 18 including the necessity for any physical, dental, or mental
14 19 health examinations to determine the current needs of the
14 20 ward.

14 21 b. The present living arrangement of the ward, including a
14 22 description of each residence where the ward has resided
14 23 during the reporting period as well as a statement as to the
14 24 suitability of the ward's current residence in meeting the
14 25 needs of the ward.

14 26 c. A summary of the medical, educational, vocational,
14 27 dental, habilitative, and other professional services provided
14 28 for the ward and a plan for provision of those services during
14 29 the subsequent year.

14 30 d. A description of the guardian's visits with and
14 31 activities on behalf of the ward.

14 32 e. A recommendation as to the need for continued
14 33 guardianship and any recommendations relating to the scope of
14 34 the guardianship.

14 35 f. A statement of the social and personal services
15 1 utilized by the ward, including the social skills of the ward
15 2 and maintenance of interpersonal relationships.

15 3

~~f.~~

- g. Other information requested by the court or useful
15 4 in the opinion of the guardian.

15 5 Sec. 21. Section [633.669](#), Code 1995, is amended by adding
15 6 the following new subsections:

15 7 NEW SUBSECTION. 7. If the annual report sets forth any
15 8 reason for modification of the powers authorized by the court,
15 9 the guardian shall make an application for modification within
15 10 ten days of the filing of the report and shall provide notice
15 11 to the persons entitled to notice in accordance with section
15 12 633.554.

15 13 NEW SUBSECTION. 8. Any interested person may request a
15 14 hearing on the report. The court may order the guardian to

15 15 attend the hearing on the report on the court's own motion or
15 16 on the petition of any interested person.

15 17 Sec. 22. NEW SECTION. 633.669A EXAMINATION OF INITIAL
15 18 AND ANNUAL REPORTS.

15 19 1. Within thirty days of the filing of the initial and
15 20 annual reports, the chief judge of the judicial district shall
15 21 examine, or cause to be examined by a person designated by the
15 22 presiding judge, all reports filed by the guardian.

15 23 2. a. If the guardian fails to file the initial or annual
15 24 report, the person authorized to examine the report shall
15 25 demand that the guardian file the report within fifteen days
15 26 after the service of the demand upon the guardian. A copy of
15 27 the demand shall be served upon the guardian by certified
15 28 mail.

15 29 b. If the person authorized to examine the report
15 30 determines that a more complete or satisfactory report should
15 31 be filed, the person authorized to examine the report shall
15 32 demand that the guardian file a revised report within fifteen
15 33 days of the service of the demand upon the guardian. A copy
15 34 of the demand shall be served upon the guardian by certified
15 35 mail.

16 1 c. If the guardian fails to comply with a demand under
16 2 this subsection, the court may enter an order requiring
16 3 compliance with the demand and may deny or reduce the amount
16 4 of compensation of the guardian or may remove the guardian.

16 5 Sec. 23. Section 633.675, Code 1995, is amended to read as
16 6 follows:

16 7 633.675 CAUSE FOR MODIFICATION OR TERMINATION.

16 8 A guardianship shall cease or shall be subject to
16 9 modification, and a conservatorship shall terminate, upon the
16 10 occurrence of any of the following circumstances:

16 11 1. If the ward is a minor, when the ward reaches full age.

16 12 2. The death of the ward.

16 13 3.

~~—A~~

~~— In the case of a conservatorship, upon a~~

~~16 14 determination by the court that the ward is competent and
16 15 capable of managing the ward's property and affairs, and that
16 16 the continuance of the~~

~~— guardianship or~~

~~— conservatorship would~~

~~16 17 not be in the ward's best interests.~~

~~16 18 4. In the case of a guardianship, upon a determination by
16 19 the court that the ward is not incompetent. Additionally, the
16 20 court shall consider the availability of third-party
16 21 assistance in meeting the ward's necessities if credible
16 22 evidence of such assistance is provided by any source.~~

~~16 23 5. Upon the disability, illness, or death of the guardian.~~

~~16 24 6. Upon the removal of the ward from this state or if
16 25 reasonable access to the ward by the guardian is not possible.~~

~~16 26~~

~~—4.~~

~~— 7. Upon determination by the court that the~~

~~16 27 conservatorship or guardianship is no longer necessary for any
16 28 other reason.~~

~~16 29 Sec. 24. Section 633.679, Code 1995, is amended to read as
16 30 follows:~~

~~16 31 633.679 PETITION TO MODIFY OR TERMINATE.~~

~~16 32 At any time after the appointment of a guardian or
16 33 conservator, the person under guardianship or conservatorship,
16 34 the guardian, the conservator, or any interested party may
16 35 apply to the court by petition~~

~~—, alleging that the person is no~~

~~longer a proper subject thereof, and~~
~~asking that the~~

17 2 guardianship or conservatorship be modified or terminated.
17 3 Upon the filing of a petition, the court may order
17 4 modification or termination of the guardianship, the
17 5 conservatorship, or both. Prior to the issuance of the order,
17 6 notice of the petition to modify or terminate shall be
17 7 provided to all persons entitled to notice pursuant to section
17 8 633.554 and all persons entitled to notice shall be provided
17 9 the opportunity to provide evidence supporting continuance,
17 10 modification, or termination or the conservatorship or
17 11 guardianship at a hearing on the petition. The action shall
17 12 be triable as a proceeding in equity. The ward is entitled to
17 13 representation in the same manner as provided in section
17 14 633.561 and the court shall make every reasonable effort to
17 15 enable the ward to be present and to participate in the
17 16 proceedings. In making a determination, the court may appoint
17 17 a court evaluator to investigate the situation. A
17 18 determination to continue, modify, or terminate a guardianship
17 19 or conservatorship shall be based upon clear and convincing
17 20 evidence. The burden of persuasion in the continuation,
17 21 modification, or termination of a guardianship or
17 22 conservatorship is on the petitioner. In a petition to
17 23 terminate a guardianship or conservatorship, a ward shall make
17 24 a prima facie showing that the ward has decision-making
17 25 capacity. Following the initial showing by the ward, the
17 26 guardian or conservator shall have the burden of persuasion to
17 27 demonstrate by clear and convincing evidence any incompetency
17 28 on the part of the ward.

17 29 Sec. 25. NEW SECTION. 633.680A PETITION TO REMOVE
17 30 GUARDIAN OR CONSERVATOR - BASIS FOR REMOVAL.

17 31 Upon a petition by any interested person or on the court's
17 32 own motion, the court may remove a guardian or conservator or
17 33 order other appropriate relief if the guardian or conservator
17 34 meets any of the following:

- 17 35 1. Is acting under letters secured by material
18 1 misrepresentation or mistake, whether fraudulent or innocent.
- 18 2 2. Is incapacitated or is suffering from an illness,
18 3 including substance abuse, which affects fitness for office,
18 4 or is a ward in this state or any other jurisdiction.
- 18 5 3. Is convicted of a crime which reflects on fitness for
18 6 office.
- 18 7 4. Wastes or mismanages the estate, unreasonably withholds
18 8 distributions or makes distributions in a negligent manner, or
18 9 otherwise abuses powers or fails to discharge duties.
- 18 10 5. Neglects the care and custody of the ward.
- 18 11 6. Has an interest adverse to the faithful performance of
18 12 duties such that there is a substantial risk that the guardian
18 13 or conservator will fail to properly perform specified duties.
- 18 14 7. Fails to file reports or accountings when required, or
18 15 fails to comply with any order of court.
- 18 16 8. Acts in a manner which threatens the personal or
18 17 financial security of a co-guardian or co-conservator or
18 18 endangers surety on the bond.
- 18 19 9. Fails to file sufficient bond after being ordered by
18 20 the court to do so.
- 18 21 10. Avoids service of process or notice.
- 18 22 11. Becomes incapable of or unsuitable for the discharge
18 23 of duties.
- 18 24 12. Is not acting in the best interests of the ward.

18 25 Sec. 26. NEW SECTION. 633.682A COURT EVALUATOR EDUCATION
18 26 REQUIREMENTS.

18 27 A ward or proposed ward is entitled to a court evaluator
18 28 whom the court finds to be sufficiently capable of performing

18 29 the duties of a court evaluator necessary to ensure that all
18 30 the relevant information regarding a petition for the
18 31 appointment, modification, or termination of a guardian comes
18 32 before the court and to assist the court in reaching a
18 33 decision regarding the appointment, modification, or
18 34 termination of a guardian. A person appointed as a court
18 35 evaluator shall complete a training program approved by the
19 1 Iowa supreme court. The supreme court may waive some or all
19 2 requirements if the proposed court evaluator demonstrates an
19 3 educational background or experience sufficient to meet the
19 4 requirements. The training program shall include all of the
19 5 following:

19 6 1. The legal duties and responsibilities of the court
19 7 evaluator.

19 8 2. The rights of a ward with an emphasis on due process
19 9 rights to aid the court evaluator in determining
19 10 recommendations regarding the appointment of counsel and the
19 11 conduct of the hearing.

19 12 3. The available resources to aid the ward or proposed
19 13 ward.

19 14 4. An orientation relating to medical terminology,
19 15 particularly medical terminology related to the diagnostic and
19 16 assessment procedures used to characterize the extent and
19 17 reversibility of any impairment.

19 18 5. Entitlements.

19 19 6. Psychological and social concerns relating to disabled
19 20 elders and frail elders as defined by rule of the department
19 21 of elder affairs.

19 22 Sec. 27. NEW SECTION. 633.682B FILING.

19 23 The supreme court administrator shall establish a system of
19 24 notification for the following:

19 25 1. The filing of guardianship cases and records which
19 26 distinguish these cases from probate cases.

19 27 2. Monitoring the filing of annual reports to assure that
19 28 the court will be notified of annual reports as the reports
19 29 become due and whether the reports are filed.

19 30 Sec. 28. NEW SECTION. 633.682C CREATION OF OFFICE OF
19 31 PUBLIC GUARDIAN - APPOINTMENTS, POWERS, DUTIES, COSTS.

19 32 1. The general assembly finds that private guardianship is
19 33 inadequate if there is no willing and responsible person
19 34 available to serve as guardian for an incompetent person, and
19 35 if the incompetent person does not have adequate income or
20 1 wealth for the compensation of a private guardian. It is the
20 2 intent of the general assembly to establish the office of
20 3 public guardian for the purpose of providing guardianship
20 4 services for incompetent persons when no private guardian is
20 5 available. The general assembly further finds that
20 6 alternatives to guardianship and less intrusive means of
20 7 assistance should always be explored before a person's
20 8 incompetency rights are limited through an adjudication of
20 9 incapacity. A public guardian shall be provided only to
20 10 persons whose needs cannot be met through less drastic means
20 11 of intervention.

20 12 2. The chief judge of the judicial district, after
20 13 consultation with the other judges within the district and
20 14 with appropriate advocacy groups and individuals and
20 15 organizations with knowledge of the needs of incompetent
20 16 persons, may establish, within the judicial district, an
20 17 office of public guardian and create a list of persons best
20 18 qualified to serve as the public guardian. The public
20 19 guardian shall have knowledge of the legal process and
20 20 knowledge of social services available to meet the needs of
20 21 incompetent persons. A nonprofit corporation may be appointed
20 22 a public guardian only if all of the following conditions are
20 23 met:

20 24 a. The corporation provides no services other than
20 25 guardianship.

20 26 b. The corporation has been granted tax-exempt status from
20 27 the United States internal revenue service.

20 28 c. The corporation maintains a staff of professionally
20 29 qualified individuals to carry out the guardianship functions.

20 30 3. The chief judge shall appoint the public guardian. A
20 31 public guardian shall meet the qualifications for a guardian
20 32 prescribed in section 633.668A.

20 33 4. If a district does not require a full-time public
20 34 guardian, a part-time guardian may be appointed at reduced
20 35 compensation.

21 1 5. A public guardian shall not hold any other public
21 2 position in any city, county, or state government or federal
21 3 agency, or any other position which would create a conflict of
21 4 interest.

21 5 6. A public guardian may serve as a guardian of a person
21 6 adjudicated incompetent under this chapter under the following
21 7 conditions and with the following powers:

21 8 a. No other person is willing and qualified to serve as
21 9 guardian.

21 10 b. The public guardian is vested with all the powers and
21 11 duties of a guardian under this chapter, except as otherwise
21 12 provided by law.

21 13 c. The public guardian may employ sufficient staff to
21 14 carry out the duties of the office.

21 15 d. The public guardian may delegate to assistants and
21 16 other members of the staff the powers and duties of the office
21 17 of public guardian, except as otherwise limited by law. The
21 18 public guardian shall retain ultimate responsibility for the
21 19 discharge of duties and responsibilities.

21 20 e. To the extent that the guardian is granted
21 21 responsibilities pursuant to section 633.635.

21 22 7. a. Each public guardian shall annually prepare a
21 23 budget for the operation of the office to be submitted to the
21 24 chief judge of the district for inclusion in the courts'
21 25 budget request. This shall not be construed to preclude the
21 26 financing of the office of the public guardian through local
21 27 funding sources.

21 28 b. All costs of administration of the office of public
21 29 guardian, including filing fees, shall be paid through
21 30 expenditure of the budget of the office of public guardian.
21 31 In any proceeding for appointment of a public guardian, or in
21 32 any proceeding involving the estate of a ward for whom a
21 33 public guardian has been appointed guardian, the court may
21 34 waive any court costs or filing fees.

21 35 Sec. 29. Sections 633.557 and 633.680, Code 1995, are
22 1 repealed.

22 2 EXPLANATION

22 3 This bill amends the portions of the Code relating to
22 4 guardianship. The bill includes many changes based upon the
22 5 Iowa Supreme Court decision in In Re Guardianship of Hedin,
22 6 528 N.W.2d 567 (Iowa 1995). In Hedin, the court held all of
22 7 the following:

22 8 1. In proceedings to establish, modify, or terminate a
22 9 guardianship, the district court may make a finding of
22 10 incompetency only if the ward's or proposed ward's decision-
22 11 making capacity is so impaired that the ward is unable to care
22 12 for the ward's or proposed ward's personal safety or to attend
22 13 to and provide for such necessities as food, shelter,
22 14 clothing, and medical care, without which physical injury or
22 15 illness may occur. Additionally, in making the determination
22 16 of incompetency, the court is required to consider credible
22 17 evidence from any source of the effect of third-party
22 18 assistance.

22 19 2. In determining whether a guardianship is to be
22 20 established, modified, or terminated, the district court shall
22 21 consider if a limited guardianship is appropriate.

22 22 3. The standard of proof for determining incompetency in a

22 23 proceeding to establish, modify, or terminate a guardianship
22 24 is clear and convincing evidence.

22 25 4. The burden of persuasion is on the party petitioning
22 26 for guardianship and remains with the guardian in proceedings
22 27 to modify or terminate the guardianship. If the ward
22 28 petitions to terminate the guardianship, the ward must make a
22 29 prima facie showing that the ward has some decision-making
22 30 capacity. Once the prima facie showing is made, the guardian
22 31 has the burden of persuasion to show by clear and convincing
22 32 evidence that the ward is incompetent.

22 33 The bill provides definitions of "court evaluator",
22 34 "functional limitations", "health care professional", and
22 35 "legal settlement", and redefines the term "incompetent" to
23 1 reflect the holding of the court.

23 2 The bill amends the section relating to the petition for
23 3 guardianship to include new information and to change the
23 4 basis upon which a person is alleged to require a guardian:
23 5 that the person is a minor or that the person is incompetent
23 6 as redefined in the bill. The new information required also
23 7 includes the providing of the names and addresses of
23 8 additional interested parties and of any additional
23 9 information which might assist the court in making its
23 10 determination. The bill requires that an evaluation by a
23 11 health care professional of the proposed ward's physical and
23 12 mental condition be attached to the petition or provided at
23 13 least 14 days prior to the hearing on the petition.

23 14 The notice provisions include that if the proposed ward is
23 15 an adult, notice of the filing of the petition is to be
23 16 provided to the proposed ward and to all persons included in
23 17 the petition as interested parties; if the proposed ward is a
23 18 minor, notice is to be provided to the parents or guardian and
23 19 to any adult person with whom the minor resides unless any of
23 20 these is the petitioner.

23 21 The bill amends the pleadings and trial portion of the
23 22 proceedings to include provisions which allow the court to
23 23 appoint a court evaluator to provide for the evaluation of the
23 24 proposed ward to carry out additional information-gathering
23 25 duties to assist the court in its determination. The costs of
23 26 the court evaluator are to be paid by the proposed ward or if
23 27 the proposed ward is indigent, by the county of legal
23 28 settlement and if there is no county of legal settlement, then
23 29 by the state. The bill requires that the proposed ward be
23 30 present at the hearing unless good cause is shown for the
23 31 absence and provides that the hearing may be closed upon
23 32 request of the proposed ward for good cause shown.

23 33 The bill provides that if a guardian is appointed, the
23 34 court shall appoint a resident of this state as guardian, that
23 35 venue for the proceeding is in the district court of the
24 1 county of residence of the proposed ward or where the proposed
24 2 ward is present, that the court may transfer the proceeding to
24 3 another court if in the interest of justice, and that any
24 4 guardianship involving a minor is to meet the requirements of
24 5 the uniform child custody jurisdiction Act.

24 6 Regarding the appointment of a guardian, instead of the
24 7 current provision that if the allegations of the petition for
24 8 the appointment of a guardian are proved, the court may
24 9 appoint a guardian, the bill provides that it is the exclusive
24 10 decision of the court to make a determination as to the
24 11 appointment of a guardian, the type of guardianship, and the
24 12 specific areas of protection, management, and assistance to be
24 13 granted the guardian. The court is directed to make its
24 14 determination based upon its consideration of the proposed
24 15 ward's functional limitations, is to grant specific powers to
24 16 the guardian which are the least restrictive, and is to
24 17 consider a limited guardianship and the appropriateness of
24 18 third-party assistance.

24 19 The bill provides that the determination of incompetence of

24 20 a proposed ward and the determination of the appointment of a
24 21 guardian is to be supported by clear and convincing evidence.
24 22 Regarding the burden of persuasion, in an initial proceeding
24 23 to appoint a guardian, the burden of persuasion is on the
24 24 petitioner and in a proceeding to modify or terminate a
24 25 guardianship, following a prima facie showing that the ward
24 26 has some decision-making capacity, the burden is on the
24 27 guardian to prove by clear and convincing evidence the ward's
24 28 incompetency, if any.

24 29 The bill provides that in the preference as to appointment
24 30 of a guardian for an adult ward, any person who is qualified
24 31 and suitable or any person nominated by a ward in a standby
24 32 guardianship petition may be appointed. The bill replaces the
24 33 current standby guardianship language by stating that any
24 34 person with sufficient capacity to form a preference may
24 35 petition for a standby guardianship. The bill provides that
25 1 the petition must specify the event or conditions which must
25 2 occur for the petition to be filed, provides for deposit of
25 3 the petition, provides for revocation of the petition prior to
25 4 the appointment of a guardian, provides for the filing upon
25 5 the receipt by the clerk of court of both the petition and a
25 6 verified statement that the event or condition has occurred,
25 7 provides for the appointment of the person nominated as
25 8 guardian without a hearing or the setting of the petition for
25 9 hearing, and provides that the powers of the guardian are to
25 10 be limited to only those powers expressed in the petition or
25 11 only those powers specified by the court following a hearing
25 12 on the petition.

25 13 The bill provides that an attorney appointed to represent a
25 14 proposed ward, in addition to existing duties, is to provide
25 15 notice to all interested parties specified in the petition and
25 16 to notify other interested parties not included in the
25 17 petition but who are identified during the course of the
25 18 representation.

25 19 The notification of guardianship powers provisions are
25 20 amended to limit the powers of the guardian to making
25 21 decisions regarding the ward's personal safety or providing
25 22 for necessities and including powers which must receive
25 23 approval including arranging for major elective surgery or any
25 24 other nonemergency major medical procedure or consent to the
25 25 withholding or withdrawal of life-sustaining procedures. The
25 26 notice provided to the proposed ward is to be in 14 point type
25 27 rather than the existing 10 point.

25 28 The bill deletes the provisions for the appointment of a
25 29 guardian under a voluntary guardianship petition, so that a
25 30 guardian may only be appointed under involuntary or standby
25 31 provisions.

25 32 The bill amends the provisions which specify the powers
25 33 which may be granted to a guardian by limiting the powers
25 34 without court approval to those powers specified by the court,
25 35 consistent with the findings of the court regarding the ward's
26 1 or proposed ward's functional limitations and by limiting the
26 2 powers with court approval to those related to major elective
26 3 surgery or nonemergency major medical procedures and
26 4 consenting to the withholding or withdrawal of life-sustaining
26 5 procedures. The bill also specifies that the ward retains all
26 6 rights not delegated to the guardian by the court.

26 7 The bill provides new requirements for education of a
26 8 guardian which consist of a minimum of two hours of
26 9 instruction and training in specified subjects, to be
26 10 completed by the guardian within the three-month period
26 11 following the appointment. The bill provides for waiver of
26 12 the education requirements for good cause shown and provides
26 13 for payment of expenses by the ward's estate.

26 14 The bill expands the reporting requirements of the
26 15 guardian, provides that if an annual report sets forth any
26 16 reason for modification of the powers authorized, the guardian

26 17 is to make application for modification within 10 days of the
26 18 filing of the report and provide notice of the filing to all
26 19 interested parties, and provides that any interested party may
26 20 request a hearing on the report. The bill includes new
26 21 provisions for the examination of the initial and annual
26 22 reports by the chief judge of the judicial district or a
26 23 designee of the presiding judge, provides that the person
26 24 authorized to examine the report may demand that a report be
26 25 filed if the guardian fails to do so, and provides that the
26 26 person authorized to examine the reports may demand a revised
26 27 report if the report submitted is incomplete or
26 28 unsatisfactory. Failure of a guardian to comply with a demand
26 29 is grounds for entry of an order of compliance, denial, or
26 30 reduction in the compensation of the guardian, or removal of
26 31 the guardian.

26 32 The bill provides new grounds for the modification or
26 33 removal of a guardian including a determination that the ward
26 34 is not incompetent, that the guardian has become disabled,
26 35 ill, or has died, or that the ward has been removed from the
27 1 state or if reasonable access to the ward by the guardian is
27 2 not possible.

27 3 The bill provides that any interested party may petition
27 4 for modification or termination of a guardianship and that all
27 5 of the procedural requirements that apply to an initial
27 6 guardianship appointment apply to the modification or
27 7 termination proceedings. The bill provides several grounds
27 8 for the removal of a guardian or conservator including
27 9 incapacity, criminal conviction, wasting or mismanaging the
27 10 estate, neglecting the ward, failure to file required reports,
27 11 and others.

27 12 The bill provides court evaluator education requirements,
27 13 provides for the establishment of an office of public guardian
27 14 at the discretion of the chief judge of each judicial district
27 15 and provides the required qualifications for a public
27 16 guardian.

27 17 The bill requires the supreme court administrator to
27 18 establish a system of notification for the filing of
27 19 guardianship cases and records distinct from probate cases and
27 20 for the monitoring of the filing of annual reports so that the
27 21 court will be notified of annual reports as they become due
27 22 and whether the reports have been filed.

27 23 The bill repeals the section of the Code providing for the
27 24 appointment of a guardian on a voluntary petition and the
27 25 section which limits the applications to terminate a
27 26 guardianship or conservatorship by stating that if a petition
27 27 is denied, no other petition shall be filed until at least 6
27 28 months following the date of the denial of the petition.

27 29 BACKGROUND STATEMENT

27 30 SUBMITTED BY THE AGENCY

27 31 Imposition of full guardianship may entail extensive
27 32 limitation of personal rights. A person for whom a guardian
27 33 is appointed may lose the most fundamental rights: the choice
27 34 of where to live; the authority to consent to or refuse
27 35 medical treatment; control over personal care matters; and
28 1 many other personal, contractual, and legal rights. The
28 2 significance of these limitations increase as the population
28 3 grows older and the number of persons under guardianship
28 4 increases.

28 5 Because of these serious consequences, advocates for the
28 6 elderly and disabled continue to voice concerns about
28 7 guardianships. Concerns about the guardianship process
28 8 include issues of due process, procedural protections, and
28 9 alternatives to and limited guardianships. Concerns about the
28 10 monitoring of guardianships focus on the lack of oversight
28 11 actually exercised by a majority of courts and have led to
28 12 recommendations for more detailed reporting forms, better
28 13 scrutiny of reports, training of guardians as to their

28 14 responsibilities and periodic review of the need for
28 15 guardianships.

28 16 In recognition of these concerns, several events have
28 17 occurred which precipitated the introduction of this bill:

28 18 1. In 1990, the Iowa task force on substitute decision
28 19 making began meeting to discuss difficult guardianship cases
28 20 and areas of concern with the guardianship statute. The group
28 21 continues to meet and assists in the development and review of
28 22 this proposal. The task force created a problem/concern
28 23 statement which identifies problems with and suggests
28 24 resolutions of problems with the current statute. Many of
28 25 these suggestions were reviewed in developing this legislative
28 26 proposal.

28 27 2. National organizations and other states identified
28 28 concerns and developed recommendations on guardianship issues
28 29 including:

28 30 a. A 1987 associated press study which revealed many of
28 31 the shortcomings of the guardianship process.

28 32 b. A 1987 American bar association commission on the
28 33 mentally disabled and commission on legal problems of the
28 34 elderly meeting which resulted in the development of a report
28 35 containing 31 recommendations for reform.

29 1 c. The legal counsel for the elderly published articles
29 2 concerning guardianship, the overdue implementation of limited
29 3 guardianships, and several areas of concern and reform
29 4 including due process, guardianship participants, the
29 5 definition of incapacity, functional assessment, self-
29 6 autonomy, limited powers, monitoring, and emergency
29 7 guardianships.

29 8 d. A 1989 house of representatives select committee on
29 9 aging report which outlined model standards to ensure quality
29 10 guardianship and representative payee services.

29 11 e. A survey of state guardianship laws completed by
29 12 advocacy and protection services in Columbus, Ohio, found that
29 13 many state legislatures have focused upon several key areas of
29 14 reform including: limited guardianship, temporary or
29 15 emergency guardianship and other alternatives to full
29 16 guardianship; establishment of public guardians; the
29 17 determination of incapacity; procedural due process; and
29 18 enhanced guardian accountability and monitoring.

29 19 f. The commission on national probate court standards
29 20 which recognize the important liberty interests at stake in a
29 21 guardianship proceeding and the due process protections
29 22 appropriately afforded a respondent in conjunction with such a
29 23 proceeding.

29 24 g. The center for social gerontology, national study of
29 25 guardianship systems recommendations including use of
29 26 alternatives to guardianship; education of judges; education
29 27 of investigators; guardians ad litem and counsel for the
29 28 respondents; use of functional assessment to ensure least
29 29 restrictive decisions in the respondent's appointment of a
29 30 guardian; participation of respondents in the process;
29 31 ensuring effective respondent representation; appropriate use
29 32 of limited guardianships; and the use of adult guardianship
29 33 mediation, where appropriate.

29 34 3. The Iowa supreme court decided In Re Hedin, 528 N.W.2nd
29 35 567 (Iowa 1995). In Hedin the court established new standards
30 1 for Iowa's guardianship law. In the decision, Justice Louis
30 2 Lavorato noted "guardianship involves such a significant loss
30 3 of liberty that we now hold that the ward is entitled to the
30 4 full panoply of procedural due process rights comparable to
30 5 those present in involuntary civil commitment proceedings."
30 6 These rights include the standards for determining whether a
30 7 guardianship is appropriate, the standards of proof used in
30 8 the hearing, and how much power the guardian should have over
30 9 the ward.

30 10 In an attempt to codify Hedin and incorporate changes which

30 11 would resolve the concerns identified above, the department
30 12 submits this proposal.
30 13 LSB 3356DP 76
30 14 pf/sc/14.1