

House Study Bill 22 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOLT)

A BILL FOR

1 An Act relating to the opening of guardianships for adults
2 and conservatorships for adults and minors and the
3 administration of guardianships and conservatorships.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 48A.2, subsection 4, Code 2019, is
2 amended to read as follows:

3 4. "*Person who is incompetent to vote*" means a person with an
4 intellectual disability who has been found to lack the mental
5 capacity to vote in a proceeding held pursuant to section
6 ~~633.556~~ 633.552.

7 Sec. 2. Section 229.27, subsection 3, unnumbered paragraph
8 1, Code 2019, is amended to read as follows:

9 A hearing limited to the question of the person's competence
10 and conducted in substantially the manner prescribed in
11 sections 633.552, ~~to~~ 633.556, 633.558, and 633.560 shall be
12 held when:

13 Sec. 3. Section 235B.18, subsections 4 and 5, Code 2019, are
14 amended to read as follows:

15 4. If, at the hearing, the judge finds by clear and
16 convincing evidence that the dependent adult is in need of
17 protective services and lacks the capacity to consent to the
18 receipt of protective services, the judge may issue an order
19 authorizing the provision of protective services. The order
20 may include the designation of a person to be responsible for
21 performing or obtaining protective services on behalf of the
22 dependent adult or otherwise consenting to the receipt of
23 protective services on behalf of the dependent adult. Within
24 sixty days of the appointment of such a person the court
25 shall conduct a review to determine if a petition shall be
26 initiated in accordance with ~~section 633.552~~ 633.556 for good
27 cause shown. The court may extend the sixty-day period for
28 an additional sixty days, at the end of which the court shall
29 conduct a review to determine if a petition shall be initiated
30 in accordance with ~~section 633.552~~ 633.556. A dependent adult
31 shall not be committed to a mental health facility under this
32 section.

33 5. A determination by the court that a dependent adult lacks
34 the capacity to consent to the receipt of protective services
35 under this chapter shall not affect incompetency proceedings

1 under sections 633.552, through 633.556, 633.558, and 633.560
2 or any other proceedings, and incompetency proceedings under
3 sections 633.552, through 633.556, 633.558, and 633.560 shall
4 not have a conclusive effect on the question of capacity to
5 consent to the receipt of protective services under this
6 chapter. A person previously adjudicated as incompetent under
7 the relevant provisions of chapter 633 is entitled to the care,
8 protection, and services under this chapter.

9 Sec. 4. Section 235B.19, subsection 5, paragraph a,
10 unnumbered paragraph 1, Code 2019, is amended to read as
11 follows:

12 Notwithstanding sections 633.552 633.556 and 633.573
13 633.569, upon a finding that there is probable cause to believe
14 that the dependent adult abuse presents an immediate danger to
15 the health or safety of the dependent adult or is producing
16 irreparable harm to the physical or financial resources or
17 property of the dependent adult, and that the dependent adult
18 lacks capacity to consent to the receipt of services, the court
19 may order the appointment of a temporary guardian or temporary
20 conservator without notice to the dependent adult or the
21 dependent adult's attorney if all of the following conditions
22 are met:

23 Sec. 5. Section 622.10, subsection 3, paragraph f, Code
24 2019, is amended to read as follows:

25 *f.* The provisions of this subsection do not apply to actions
26 or claims brought pursuant to chapter 85, 85A, or 85B, or to
27 court orders issued pursuant to section 633.552.

28 Sec. 6. Section 633.3, Code 2019, is amended by adding the
29 following new subsections:

30 NEW SUBSECTION. 1A. *Assistance animal* — means an animal
31 that qualifies as a reasonable accommodation under the federal
32 Fair Housing Act, 42 U.S.C. §3601 et seq., as amended, or
33 section 504 of the federal Rehabilitation Act of 1973, 29
34 U.S.C. §794, as amended.

35 NEW SUBSECTION. 1B. *Assistive animal* — means the same as

1 defined in section 216C.11, subsection 1.

2 NEW SUBSECTION. 27A. *Limited guardianship* — means a
3 guardianship that grants the guardian less than all powers
4 available under this chapter or otherwise restricts the powers
5 of the guardian.

6 NEW SUBSECTION. 32A. *Protected person* — means a person
7 subject to guardianship or a person subject to conservatorship,
8 or both.

9 NEW SUBSECTION. 32B. *Respondent* — means a person who
10 is alleged to be a person in need of a guardianship or
11 conservatorship, or both.

12 NEW SUBSECTION. 32C. *Service animal* — means a dog or
13 miniature horse as set forth in the implementing regulations
14 of Title II and Title III of the federal Americans with
15 Disabilities Act of 1990, 42 U.S.C. §12101 et seq.

16 Sec. 7. Section 633.174, Code 2019, is amended to read as
17 follows:

18 **633.174 Guardians and conservators — bond.**

19 1. When the guardian appointed for a person is not the
20 conservator of the property of that person, no bond shall be
21 required of the guardian, unless the court for good cause finds
22 it proper to require one. If no bond is initially required,
23 the court may, nevertheless, for good cause, at any subsequent
24 time, require that a bond be given.

25 2. Every conservator shall execute and file with the clerk
26 a bond with sufficient surety or sureties except as provided
27 in section 633.175.

28 Sec. 8. Section 633.175, Code 2019, is amended to read as
29 follows:

30 **633.175 Waiver of bond by court.**

31 1. The court, for good cause shown, may exempt any fiduciary
32 from giving bond, if the court finds that the interests of
33 creditors and distributees will not thereby be prejudiced.

34 2. However, the court, except as provided in section
35 633.172, subsection 2, shall not exempt a conservator, other

1 than a financial institution with Iowa trust powers, from
2 giving bond in a conservatorship with total assets of more than
3 twenty-five thousand dollars, excluding real property, unless
4 it is a voluntary conservatorship in which the petitioner is
5 eighteen years of age or older and has waived bond in the
6 petition unless the court finds that there is an alternative to
7 a bond that will provide sufficient protection to the assets
8 of the protected person. The conservator shall submit a plan
9 for any proposed alternative to a bond for review and approval
10 by the court.

11 Sec. 9. Section 633.551, Code 2019, is amended to read as
12 follows:

13 **633.551 ~~Guardianships and conservatorships — general~~ General**
14 **provisions.**

15 1. The determination of incompetency of the ~~proposed ward or~~
16 ~~ward and the determination of the need for the appointment of a~~
17 ~~guardian or conservator or of the modification or termination~~
18 ~~of a guardianship or conservatorship~~ adult respondent to a
19 petition for guardianship or conservatorship or an adult
20 subject to guardianship or conservatorship shall be supported
21 by clear and convincing evidence.

22 2. The burden of persuasion is on the petitioner in an
23 initial proceeding to appoint a guardian or conservator.
24 In a proceeding to modify or terminate a guardianship or
25 conservatorship, if the guardian or conservator is the
26 petitioner, the burden of persuasion remains with the guardian
27 or conservator. In a proceeding to terminate a guardianship
28 or conservatorship, if the ~~ward~~ protected person is the
29 petitioner, the ~~ward~~ protected person shall make a prima facie
30 showing of some decision-making capacity. Once a prima facie
31 showing is made, the burden of persuasion is on the guardian or
32 conservator to show by clear and convincing evidence that the
33 ~~ward~~ protected person is incompetent.

34 3. In determining whether a guardianship or conservatorship
35 is to be established, modified, or terminated, the

1 district court shall consider if a limited guardianship or
2 conservatorship pursuant to [section 633.635](#) or [633.637](#) is
3 appropriate. In making the determination, the court shall
4 make findings of fact to support the powers conferred on the
5 guardian or conservator.

6 4. In proceedings to establish, modify, or terminate a
7 guardianship or conservatorship, in determining if the ~~proposed~~
8 ~~ward or ward~~ respondent or protected person is incompetent as
9 defined in [section 633.3](#), the court shall consider credible
10 ~~evidence from any source to the effect of third-party~~
11 ~~assistance in meeting the needs of the proposed ward or ward~~
12 as to whether there are other less restrictive alternatives,
13 including third-party assistance, that would meet the needs of
14 the respondent or the protected person. However, neither party
15 to the action shall have the burden to produce such evidence
16 relating to other less restrictive alternatives, including but
17 not limited to third-party assistance.

18 5. Except as otherwise provided in [sections 633.672](#)
19 and [633.673](#), in proceedings to establish a guardianship or
20 conservatorship, the costs, including attorney fees, court
21 visitor fees, and expert witness fees, shall be assessed
22 against the ~~ward or the ward's~~ respondent or the respondent's
23 estate unless the proceeding is dismissed either voluntarily
24 or involuntarily, in which case fees and costs may be assessed
25 against the petitioner for good cause shown.

26 6. Except as otherwise provided in this subchapter, the
27 rules of civil procedure shall govern proceedings to establish,
28 modify, or terminate a guardianship or conservatorship.

29 **Sec. 10. NEW SECTION. 633.552 **Basis for appointment of****
30 **guardian for an adult.**

31 1. On petition and after notice and hearing, the court may
32 appoint a guardian for an adult if the court finds by clear and
33 convincing evidence that all of the following are true:

34 a. The decision-making capacity of the respondent is
35 so impaired that the respondent is unable to care for the

1 respondent's safety, or to provide for necessities such as
2 food, shelter, clothing, or medical care without which physical
3 injury or illness may occur.

4 *b.* The appointment of a guardian is in the best interest of
5 the respondent.

6 2. Section 633.551 applies to the appointment of a guardian
7 under subsection 1.

8 3. If the court appoints a guardian based upon the mental
9 incapacity of the protected person because the protected
10 person has an intellectual disability, as defined in section
11 4.1, the court shall make a separate determination as to the
12 protected person's competency to vote. The court shall find
13 a protected person incompetent to vote only upon determining
14 that the person lacks sufficient mental capacity to comprehend
15 and exercise the right to vote.

16 Sec. 11. NEW SECTION. 633.553 **Basis for appointment of**
17 **conservator for an adult.**

18 1. On petition and after notice and hearing, the court may
19 appoint a conservator for an adult if the court finds by clear
20 and convincing evidence that both of the following are true:

21 *a.* The decision-making capacity of the respondent is so
22 impaired that the respondent is unable to make, communicate,
23 or carry out important decisions concerning the respondent's
24 financial affairs.

25 *b.* The appointment of a conservator is in the best interest
26 of the respondent.

27 2. Section 633.551 applies to the appointment of a
28 conservatorship under subsection 1.

29 Sec. 12. NEW SECTION. 633.554 **Basis for appointment of**
30 **conservator for a minor.**

31 On petition and after notice, the court may appoint a
32 conservator for a minor if the court finds by a preponderance
33 of the evidence that the appointment is in the best interest of
34 the minor and any of the following is true:

35 1. The minor has funds or other property requiring

1 management or protection that otherwise cannot be provided.

2 2. The minor has or may have financial affairs that may be
3 put at unreasonable risk or hindered because of the minor's
4 age.

5 3. A conservator is needed to obtain or provide funds or
6 other property.

7 Sec. 13. NEW SECTION. 633.556 **Petition for appointment of**
8 **guardian or conservator for an adult.**

9 1. A formal judicial proceeding to determine whether
10 to appoint a guardian or conservator for an adult shall be
11 initiated by the filing of a verified petition by a person with
12 an interest in the welfare of the adult, which may include the
13 adult who is the subject of the petition.

14 2. The petition shall contain a concise statement of the
15 factual basis for the petition.

16 3. The petition shall contain a concise statement of why
17 there is no less restrictive alternative to the appointment of
18 a guardian or a conservator.

19 4. The petition shall list the name and address of the
20 petitioner and the petitioner's relationship to the respondent.

21 5. The petition shall list the name and address, to the
22 extent known, of the following:

23 a. The name and address of the proposed guardian and the
24 reason the proposed guardian should be selected.

25 b. Any spouse of the respondent.

26 c. Any adult children of the respondent.

27 d. Any parents of the respondent.

28 e. Any adult, who has had the primary care of the respondent
29 or with whom the respondent has lived for at least six months
30 prior to the filing of the petition, or any institution or
31 facility where the respondent has resided for at least six
32 months prior to the filing of the petition.

33 f. Any legal representative or representative payee of the
34 respondent.

35 g. Any person designated as an attorney in fact in a durable

1 power of attorney for health care which is valid under chapter
2 144B, or any person designated as an agent in a durable power
3 of attorney which is valid under chapter 633B.

4 6. Any additional persons who may have an interest in
5 the proceeding may be listed in an affidavit attached to the
6 petition.

7 7. If the petition requests the appointment of a
8 conservator, the petition shall state the estimated present
9 value of the real estate owned or to be owned by the
10 respondent, the estimated value of the personal property owned
11 or to be owned by the respondent, and the estimated gross
12 annual income of the respondent.

13 8. Any additional information relevant to the proceeding
14 may be included in an affidavit attached to the petition.

15 **Sec. 14. NEW SECTION. 633.557 Petition for appointment of a**
16 **conservator for a minor.**

17 1. A formal judicial proceeding to determine whether to
18 appoint a conservator for a minor shall be initiated by the
19 filing of a verified petition by a person with an interest in
20 the welfare of the minor.

21 2. The petition shall contain a concise statement of the
22 factual basis for the petition.

23 3. The petition shall state the following to the extent
24 known:

25 *a.* The name, age, and address of the minor.

26 *b.* The name and address of the petitioner and the
27 petitioner's relationship to the minor.

28 *c.* The name and address of the proposed conservator and the
29 reason the proposed conservator should be selected.

30 *d.* If the petitioner, or the proposed conservator, is not
31 the parent or parents having legal custody of the minor, the
32 name and address, to the extent known, of the following:

33 (1) The parent or parents having legal custody of the minor.

34 (2) Any adult who has had the primary care of the minor or
35 with whom the minor has lived for at least six months prior

1 to the filing of the petition, or any institution or facility
2 where the minor has resided for at least six months prior to
3 the filing of the petition.

4 Sec. 15. NEW SECTION. 633.558 Notice to adult respondent.

5 1. The filing of a petition filed pursuant to section
6 633.556 shall be served upon the adult respondent in the
7 manner of an original notice in accordance with rule of
8 civil procedure 1.305 governing such notice. Notice to the
9 attorney representing the respondent, if any, is notice to the
10 respondent.

11 2. Notice shall be served upon other known persons listed in
12 the petition in the manner prescribed by the court, which may
13 be notice by mail in accordance with rule of civil procedure
14 1.308(5). Failure of such persons to receive actual notice
15 does not constitute a jurisdictional defect precluding the
16 appointment of a guardian or conservator by the court.

17 3. Notice of the filing of a petition given to persons under
18 subsections 2 and 3 shall include a statement that such persons
19 may register to receive notice of the hearing on the petition
20 and other proceedings and the manner of such registration.

21 Sec. 16. NEW SECTION. 633.559 Notice to minor respondent.

22 1. The filing of a petition pursuant to section 633.557
23 shall be served upon a minor respondent in the manner of an
24 original notice in accordance with rule of civil procedure
25 1.305(2) governing such notice. Notice to the attorney
26 representing the minor, if any, is notice to the minor.

27 2. Notice shall also be served upon the known parent or
28 parents listed in the petition in accordance with rule of civil
29 procedure 1.305.

30 3. Notice shall be served upon other known persons listed in
31 the petition in the manner prescribed by the court, which may
32 be notice by mail in accordance with rule of civil procedure
33 1.308(5). Failure of such persons to receive actual notice
34 does not constitute a jurisdictional defect precluding the
35 appointment of a conservator by the court.

1 4. Notice of the filing of a petition given to persons
2 under subsections 2 and 3 shall include a statement that the
3 recipient of the notice may register to receive notice of the
4 hearing on the petition and other proceedings and the manner of
5 such registration.

6 Sec. 17. NEW SECTION. 633.560 Hearing.

7 1. The court shall fix the time and place of hearing on a
8 petition and shall prescribe a time not less than twenty days
9 after the date the notice is served unless the court finds
10 there is good cause shown to shorten the time period to less
11 than twenty days pursuant to section 633.40. The court shall
12 also prescribe the manner of service of the notice of such
13 hearing pursuant to section 633.40.

14 2. The respondent shall be entitled to attend the hearing on
15 the petition and all other proceedings. The court shall make
16 reasonable accommodations to enable the respondent to attend
17 the hearing and all other proceedings. The court may waive the
18 respondent's attendance for good cause shown. The court shall
19 make a record of the reason for a respondent's nonattendance.

20 3. The court shall require the proposed guardian or
21 conservator to attend the hearing on the petition but the court
22 may excuse the proposed guardian's attendance for good cause
23 shown.

24 4. The court shall require the court visitor as described in
25 section 633.562, if any, to attend the hearing but the court
26 may excuse the court visitor's attendance for good cause shown.

27 5. Any person with an interest in the welfare of the
28 respondent may submit a written application to the court
29 requesting permission to participate in the hearing on the
30 petition and other proceedings. The court may grant the
31 request if the court finds that the person's participation is
32 in the best interest of the respondent. The court may impose
33 appropriate conditions on the person's participation.

34 6. A complete record of the hearing shall be made.

35 Sec. 18. Section 633.560, Code 2019, is amended to read as

1 follows:

2 **633.560 Appointment of guardian for an adult on a standby**
3 **basis.**

4 A petition for the appointment of a guardian for an adult
5 on a standby basis may be filed by any person under the same
6 procedure and requirements as provided in sections 633.591
7 to 633.597, for appointment of standby conservator, insofar
8 as applicable. In all proceedings to appoint a guardian,
9 the court shall consider whether a limited guardianship, as
10 authorized in [section 633.635](#), is appropriate.

11 Sec. 19. Section 633.561, Code 2019, is amended to read as
12 follows:

13 **633.561 Representation Appointment and role of attorney for**
14 **respondent.**

15 1. In a proceeding for the appointment of a guardian or
16 conservator for an adult or a conservator for a minor:

17 a. If the ~~proposed ward~~ respondent is an adult and is not
18 the petitioner, the ~~proposed ward~~ the respondent is entitled
19 to representation by an attorney. Upon the filing of the
20 petition, the court shall appoint an attorney to represent the
21 ~~proposed ward~~ respondent, set a hearing on the petition, and
22 provide for notice of the appointment of counsel and the date
23 for hearing.

24 b. If the ~~proposed ward~~ respondent is either a minor or
25 an adult under a standby petition, the court shall determine
26 whether, under the circumstances of the case, the ~~proposed ward~~
27 respondent is entitled to representation. The determination
28 regarding representation may be made with or without notice to
29 the ~~proposed ward~~ respondent, as the court deems necessary.
30 If the court determines that the ~~proposed ward~~ respondent
31 is entitled to representation, the court shall appoint an
32 attorney to represent the ~~proposed ward~~ respondent. After
33 making the determination regarding representation, the court
34 shall set a hearing on the petition, and provide for notice on
35 the determination regarding representation and the date for

1 hearing.

2 *c.* The court may take action under paragraph "a" or "b"
3 prior to the service of the original notice upon the ~~proposed~~
4 ward respondent.

5 *d.* The court may reconsider the determination regarding
6 representation upon application by any interested person.

7 *e.* The court may discharge the attorney appointed by the
8 court if it appears upon the application of the ~~proposed~~
9 ward respondent or any other interested person that the ~~ward~~
10 respondent has privately retained an attorney who has filed an
11 appearance on behalf of the ~~proposed-ward respondent~~.

12 2. The court shall ensure that all ~~proposed-wards~~
13 respondents entitled to representation have been provided
14 with notice of the right to representation and right to be
15 personally present at all proceedings and shall make findings
16 of fact in any order of disposition setting out the manner in
17 which notification was provided.

18 3. If the ~~proposed-ward respondent~~ is entitled to
19 representation and is indigent or incapable of requesting
20 counsel, the court shall appoint an attorney to represent the
21 ~~proposed-ward respondent~~. The cost of court appointed counsel
22 for indigents shall be assessed against the county in which the
23 proceedings are pending. For the purposes of **this subsection**,
24 the court shall find a person is indigent if the person's
25 income and resources do not exceed one hundred fifty percent of
26 the federal poverty level or the person would be unable to pay
27 such costs without prejudicing the person's financial ability
28 to provide economic necessities for the person or the person's
29 dependents.

30 4. An attorney appointed pursuant to **this section** shall:

31 *a.* Ensure that the ~~proposed-ward respondent~~ has been
32 properly advised of the nature and purpose of the proceeding.

33 *b.* Advocate for the wishes of the respondent to the extent
34 those wishes are reasonably ascertainable. If the respondent's
35 wishes are not reasonably ascertainable, the attorney shall

1 advocate for the least restrictive alternative consistent with
2 the respondent's best interests.

3 ~~b.~~ c. Ensure that the ~~proposed ward~~ respondent has been
4 properly advised of the ~~ward's~~ respondent's rights in a
5 guardianship proceeding.

6 ~~e.~~ d. Personally interview the ~~proposed ward~~ respondent.

7 ~~d.~~ e. File a written report stating whether there is a
8 return on file showing that proper service on the ~~proposed~~
9 ~~ward~~ respondent has been made and also stating that specific
10 compliance with paragraphs "a" through "e" "d" has been made
11 or stating the inability to comply by reason of the ~~proposed~~
12 ~~ward's~~ respondent's condition.

13 ~~e.~~ ~~Represent the proposed ward.~~

14 f. Ensure that the guardianship procedures conform to the
15 statutory and due process requirements of Iowa law.

16 5. In the event that an order of appointment is entered,
17 the attorney appointed pursuant to [this section](#), to the extent
18 possible, shall:

19 a. Inform the ~~proposed ward~~ respondent of the effects of the
20 order entered for appointment of guardian.

21 b. Advise the ~~ward~~ respondent of the ~~ward's~~ respondent's
22 rights to petition for modification or termination of the
23 guardianship.

24 c. Advise the ~~ward~~ respondent of the rights retained by the
25 ~~ward~~ respondent.

26 6. If the court determines that it would be in the ~~ward's~~
27 respondent's best interest to have legal representation
28 with respect to any proceedings in a guardianship or
29 conservatorship, the court may appoint an attorney to represent
30 the ~~ward~~ respondent at the expense of the ~~ward~~ respondent or
31 the ~~ward's~~ respondent's estate, or if the ~~ward~~ respondent
32 is indigent the cost of the court appointed attorney shall
33 be assessed against the county in which the proceedings are
34 pending.

35 7. If the court determines upon application that it

1 is appropriate or necessary, the court may order that the
2 attorney appointed pursuant to [this section](#) be given copies
3 of and access to the ~~proposed ward's~~ respondent's health
4 information by describing with reasonable specificity the
5 health information to be disclosed or accessed, for the purpose
6 of fulfilling the attorney's responsibilities pursuant to this
7 section.

8 Sec. 20. NEW SECTION. **633.562 Appointment and role of court**
9 **visitor.**

10 1. If the court determines that the appointment of a court
11 visitor would be in the best interest of the respondent,
12 the court may appoint a court visitor at the expense of the
13 respondent or the respondent's estate, or, if the respondent
14 is indigent, the cost of the court visitor shall be assessed
15 against the county in which the proceedings are pending. The
16 court may appoint any qualified person as a court visitor in a
17 guardianship or conservatorship proceeding.

18 2. The same person shall not serve both as the attorney
19 representing the respondent and as court visitor.

20 3. Unless otherwise enlarged or circumscribed by the court,
21 the duties of a court visitor with respect to the respondent
22 shall include all of the following:

23 a. Conducting an initial in-person interview with the
24 respondent.

25 b. Explaining to the respondent the substance of the
26 petition, the purpose and effect of the guardianship or
27 conservatorship proceeding, the rights of the respondent at
28 the hearing, and the general powers and duties of a guardian
29 or conservator.

30 c. Determining the views of the respondent regarding the
31 proposed guardian or conservator, the proposed guardian's or
32 conservator's powers and duties, and the scope and duration of
33 the proposed guardianship or conservatorship.

34 4. In addition, if directed by the court, the court visitor
35 shall:

1 *a.* Interview the petitioner, and if the petitioner is not
2 the proposed guardian or conservator, interview the proposed
3 guardian or conservator.

4 *b.* Visit, to the extent feasible, the residence where it
5 is reasonably believed that the respondent will live if the
6 appointment of a guardian or conservator is made.

7 *c.* Make any other investigation the court directs including
8 but not limited to interviewing any persons providing medical,
9 mental health, educational, social, and other services to the
10 respondent.

11 5. The court visitor shall submit a written report to the
12 court that shall contain all of the following:

13 *a.* A recommendation regarding the appropriateness of a
14 limited guardianship for the respondent, including whether less
15 restrictive alternatives are available.

16 *b.* A statement of the qualifications of the guardian
17 together with a statement of whether the respondent has
18 expressed agreement with the appointment of the proposed
19 guardian or conservator.

20 *c.* Any other matters the court visitor deems relevant to
21 the petition for guardianship or conservatorship and the best
22 interests of the respondent.

23 *d.* Any other matters the court directs.

24 6. The report of the court visitor shall be made part of the
25 court record unless otherwise ordered by the court.

26 Sec. 21. NEW SECTION. 633.563 **Court-ordered professional**
27 **evaluation.**

28 1. In an adult guardianship or conservatorship proceeding,
29 the court may order an evaluation of the decision-making
30 capacity and functional abilities and limitations of the
31 respondent for the purpose of determining any of the following:

32 *a.* Whether the conditions for a guardianship are met
33 pursuant to section 633.552, subsection 1.

34 *b.* Whether the conditions for a conservatorship are met
35 pursuant to section 633.553, subsection 1.

1 *c.* Whether a limited guardianship or conservatorship is
2 appropriate.

3 2. If the court orders an evaluation, the evaluation shall
4 be conducted by a licensed physician, psychologist, social
5 worker, or other individual who is qualified to conduct an
6 evaluation appropriate for the respondent being assessed.

7 3. At the request of the respondent, the court shall seal
8 the record of the results of the evaluation ordered by the
9 court subject to the exceptions in subsection 4.

10 4. The results of the evaluation ordered by the court shall
11 be made available to the court and the following:

12 *a.* The respondent and the respondent's attorney.

13 *b.* The petitioner and the petitioner's attorney.

14 *c.* A court visitor as described in section 633.562.

15 *d.* Other persons for good cause shown for such purposes as
16 the court may order.

17 Sec. 22. NEW SECTION. **633.564 Background check of proposed**
18 **guardian or conservator.**

19 1. The court shall request criminal record checks and
20 checks of the child abuse, dependent adult abuse, and sexual
21 offender registries in this state for all proposed guardians
22 and conservators, other than financial institutions with Iowa
23 trust powers.

24 2. The court shall review the results of background checks
25 in determining the suitability of a proposed guardian or
26 conservator for appointment.

27 3. The judicial branch, in conjunction with the department
28 of public safety, the department of human services, and the
29 state chief information officer, shall establish procedures for
30 electronic access to the single contact repository established
31 pursuant to section 135C.33 necessary to conduct background
32 checks requested under subsection 1.

33 4. The person who files a petition for appointment of
34 guardian or conservator shall be responsible for paying the fee
35 for the background check conducted through the single contact

1 repository established pursuant to section 135C.33.

2 Sec. 23. NEW SECTION. 633.565 **Qualifications and selection**
3 **of guardian or conservator for an adult.**

4 The court shall appoint as guardian or conservator any
5 qualified and suitable person who is willing to serve as
6 guardian or conservator.

7 Sec. 24. NEW SECTION. 633.567 **Appointment of guardian or**
8 **conservator for minor approaching majority on a standby basis.**

9 Any adult with an interest in the welfare of a minor who
10 is at least seventeen years and six months of age may file
11 a verified petition pursuant to section 633.552 or section
12 633.553 to initiate a proceeding to appoint a guardian or
13 conservator for the minor to take effect on the minor's
14 eighteenth birthday.

15 Sec. 25. NEW SECTION. 633.569 **Emergency appointment of**
16 **temporary guardian or conservator.**

17 1. A person authorized to file a petition under section
18 633.552, 633.553, or 633.554 may file an application for the
19 emergency appointment of a temporary guardian or conservator.

20 2. Such application shall state all of the following:

21 a. The name and address of the respondent.

22 b. The name and address of the proposed guardian or
23 conservator and the reason the proposed guardian or conservator
24 should be selected.

25 c. The reason the emergency appointment of a temporary
26 guardian is sought.

27 3. The court may enter an ex parte order appointing a
28 temporary guardian on an emergency basis under this section if
29 the court finds that all of the following conditions are met:

30 a. There is not sufficient time to file a petition and hold
31 a hearing pursuant to section 633.552, 633.553, or 633.554.

32 b. The appointment of a temporary guardian or conservator
33 is necessary to avoid immediate or irreparable harm to the
34 respondent.

35 c. There is reason to believe that the basis for appointment

1 of guardian or conservator exists under section 633.552,
2 633.553, or 633.554.

3 4. Notice of a petition for the appointment of a temporary
4 guardian or conservator and the issuance of an ex parte
5 order appointing a temporary guardian or conservator shall be
6 provided to the respondent, the respondent's attorney, and any
7 other person the court determines should receive notice.

8 5. Upon the issuance of an ex parte order, if the respondent
9 is an adult, the respondent may file a request for a hearing.
10 If the respondent is a minor, the respondent, a parent having
11 legal custody of the respondent, or any other person having
12 legal custody of the respondent may file a written request for
13 a hearing. Such hearing shall be held no later than seven days
14 after the filing of a written request.

15 6. The powers of the temporary guardian or conservator
16 set forth in the order of the court shall be limited to those
17 necessary to address the emergency situation requiring the
18 appointment of a temporary guardian or conservator.

19 7. The temporary guardianship or conservatorship shall
20 terminate within thirty days after the order is issued.

21 **Sec. 26. NEW SECTION. 633.570 Notification of guardianship
22 and conservatorship powers.**

23 1. In a proceeding for the appointment of a guardian, the
24 respondent shall be given written notice which advises the
25 respondent of the powers that a guardian may exercise without
26 court approval pursuant to section 633.635, subsection 2, and
27 the powers that the guardian may exercise only with court
28 approval pursuant to section 633.635, subsection 3.

29 2. In a proceeding for the appointment of a conservator,
30 the respondent shall be given written notice which advises
31 the respondent of the powers that a conservator may exercise
32 without court approval pursuant to section 633.646 and the
33 powers that the guardian may exercise only with court approval
34 pursuant to section 633.647.

35 3. If the respondent is an adult, the notice shall

1 clearly advise the respondent of the respondent's rights to
2 representation by an attorney and the potential deprivation of
3 the respondent's civil rights. The notice shall also state
4 that the respondent may be represented by the respondent's own
5 attorney rather than an attorney appointed by the court. If
6 the respondent is an adult, notice shall be served upon the
7 respondent with the notice of the filing of the petition as
8 provided in section 633.558. If the respondent is a minor,
9 notice shall be served upon the respondent with the notice of
10 the filing of a petition as provided in section 633.559.

11 Sec. 27. Section 633.574, Code 2019, is amended to read as
12 follows:

13 **633.574 Procedure in lieu of conservatorship for a minor.**

14 If a conservator has not been appointed for a minor, money
15 due a minor or other property to which a minor is entitled,
16 not exceeding in the aggregate twenty-five thousand dollars
17 in value, shall be paid or delivered to a custodian under any
18 uniform transfers to minors Act. The written receipt of the
19 custodian constitutes an acquittance of the person making the
20 payment of money or delivery of property.

21 Sec. 28. Section 633.591, Code 2019, is amended to read as
22 follows:

23 **633.591 Voluntary petition for appointment of conservator —**
24 **standby basis.**

25 Any person of full age and sound mind may execute a verified
26 petition for the voluntary appointment of a conservator of the
27 person's property upon the express condition that such petition
28 shall be acted upon by the court only upon the occurrence of an
29 event specified or the existence of a described condition of
30 the mental or physical health of the petitioner, the occurrence
31 of which event, or the existence of which condition, shall
32 be established in the manner directed in the petition. The
33 petition, if executed on or after January 1, 1991, shall advise
34 the ~~proposed ward~~ respondent of a conservator's powers as
35 provided in ~~section 633.576~~ 633.570.

1 Sec. 29. Section 633.634, Code 2019, is amended to read as
2 follows:

3 **633.634 Combination of ~~voluntary and standby~~ petitions with**
4 **~~involuntary petition for hearing.~~**

5 If prior to the time of hearing on a petition for the
6 appointment of a guardian or a conservator, a petition is filed
7 under the provisions of section 633.556, 633.557, 633.572 or
8 633.591, the court shall combine the hearing on such petitions
9 and determine who shall be appointed guardian or conservator,
10 and such petition shall be triable to the court.

11 Sec. 30. Section 633.635, Code 2019, is amended to read as
12 follows:

13 **633.635 Responsibilities of guardian.**

14 1. The order by the court appointing a guardian shall state
15 the basis for the guardianship pursuant to section 633.552.

16 ~~1.~~ 2. Based upon the evidence produced at the hearing, the
17 court may grant a guardian the following powers and duties with
18 respect to a protected person which may be exercised without
19 prior court approval:

20 ~~a. Providing for the care, comfort and maintenance of the~~
21 ~~ward, including the appropriate training and education to~~
22 ~~maximize the ward's potential~~ Making decisions regarding the
23 care, maintenance, health, education, welfare, and safety of
24 the protected person except as otherwise limited by the court.

25 b. Establishing the protected person's permanent residence
26 except as limited by subsection 3.

27 ~~b.~~ c. Taking reasonable care of the ward's protected
28 person's clothing, furniture, vehicle, and other personal
29 effects, and companion animals, assistive animals, assistance
30 animals, and service animals.

31 ~~c.~~ d. Assisting the ward protected person in developing
32 maximum self-reliance and independence.

33 ~~d.~~ e. Ensuring the ward receives necessary emergency medical
34 services.

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

1 ~~treatment, or services as needed. If necessitated by the~~
2 ~~physical or mental disability of the ward, the provision of~~
3 ~~professional care, counseling, treatment, or services limited~~
4 ~~to the provision of routine physical and dental examinations~~
5 ~~and procedures under anesthesia is included, if the anesthesia~~
6 ~~is provided within the scope of the health care practitioner's~~
7 ~~scope of practice~~ Consenting to and arranging for medical,
8 dental, and other health care treatment and services for the
9 protected person except as otherwise limited by subsection 3.

10 f. Consenting to and arranging for other needed professional
11 services for the protected person.

12 g. Consenting to and arranging for appropriate training,
13 educational, and vocational services for the protected person.

14 h. Maintaining contact, including through regular visitation
15 with the protected person if the protected person does not
16 reside with the guardian.

17 ~~f.~~ i. Placing Making reasonable efforts to identify and
18 facilitate supportive relationships and interactions of the
19 protected person with family members and significant other
20 persons. The guardian may place reasonable time, place,
21 or manner restrictions on communication, visitation, or
22 interaction between the adult ward protected person and another
23 person except as otherwise limited by subsection 3.

24 ~~g.~~ j. Any other powers or duties the court may specify.

25 ~~2.~~ 3. A guardian may be granted the following powers which
26 may only be exercised upon court approval:

27 a. Changing, at the guardian's request, the ward's permanent
28 residence if the proposed new residence is more restrictive of
29 the ward's liberties than the current residence the protected
30 person's permanent residence to a nursing home, other secure
31 facility, or secure portion of a facility that restricts the
32 protected person's ability to leave or have visitors, unless
33 advance notice of the change was included in the guardian's
34 initial care plan that was approved by the court. In an
35 emergency situation, the court shall review the request for

1 approval on an expedited basis.

2 ~~b. Arranging the provision of major elective surgery or any~~
3 ~~other nonemergency major medical procedure. For the purposes~~
4 ~~of this paragraph, "major elective surgery" and "nonemergency~~
5 ~~major medical procedure" do not include the provision to the~~
6 ~~ward of professional care, counseling, treatment, or services~~
7 ~~limited to the provision of routine physical and dental~~
8 ~~examinations and procedures under anesthesia, if the use of~~
9 ~~anesthesia is necessitated by the physical or mental disability~~
10 ~~of the ward, and if the anesthesia is provided within the scope~~
11 ~~of the health care practitioner's scope of practice.~~

12 Consenting to the following:

13 (1) The withholding or withdrawal of life-sustaining
14 procedures from the protected person in accordance with chapter
15 144A.

16 (2) The performance of an abortion on the protected person.

17 (3) The sterilization of the protected person.

18 ~~c. Consent to the withholding or withdrawal of~~
19 ~~life-sustaining procedures in accordance with [chapter 144A](#).~~

20 ~~d. c.~~ Denying all communication, visitation, or interaction
21 by an ~~adult ward~~ a protected person with a person with whom
22 the ~~adult ward~~ protected person has expressed a desire to
23 communicate, visit, or interact or with a person who seeks to
24 communicate, visit, or interact with the ~~adult ward~~ protected
25 person. A court shall approve the denial of all communication,
26 visitation, or interaction with another person only upon a
27 showing of good cause by the guardian.

28 ~~3. For the purposes of [this section](#):~~

29 ~~a. "Routine dental examinations and procedures" includes~~
30 ~~preventive services, diagnostic services, restorative services,~~
31 ~~periodontal services, endodontic services, oral surgery,~~
32 ~~prosthetic services, and orthodontic procedures.~~

33 ~~b. "Routine physical examinations and procedures" includes~~
34 ~~examinations and procedures performed for the purpose of~~
35 ~~general treatment or diagnosis or for the purpose of treatment~~

1 ~~or diagnosis related to a specific illness, symptom, complaint,~~
2 ~~or injury.~~

3 4. The court may take into account all available information
4 concerning the capabilities of the ~~ward~~ respondent or
5 the protected person and any additional evaluation deemed
6 necessary, including the availability of third-party assistance
7 to meet the needs of the ~~ward or proposed ward~~ respondent or
8 the protected person, and may direct that the guardian have
9 only a specially limited responsibility for the ~~ward~~ protected
10 person. In that event, the court shall state those areas of
11 responsibility which shall be supervised by the guardian and
12 all others shall be retained by the ~~ward~~ protected person. The
13 court may make a finding that the ~~ward~~ protected person lacks
14 the capacity to contract a valid marriage.

15 5. From time to time, upon a proper showing, the court may
16 modify the respective responsibilities of the guardian and
17 the ~~ward~~ protected person, after notice to the ~~ward~~ protected
18 person and an opportunity to be heard. Any modification that
19 would be more restrictive or burdensome for the ~~ward~~ protected
20 person shall be based on clear and convincing evidence that the
21 ~~ward~~ protected person continues to ~~fall within the categories~~
22 ~~of~~ meet the basis for the appointment of a guardian pursuant
23 to section 633.552, subsection 2, paragraph "a" or "b", and
24 that the facts justify a modification of the guardianship.
25 Section 633.551 applies to the modification proceedings. Any
26 modification that would be less restrictive for the ~~ward~~
27 protected person shall be based upon proof in accordance with
28 the requirements of section 633.675.

29 Sec. 31. Section 633.669, Code 2019, is amended to read as
30 follows:

31 **633.669 Reporting requirements — assistance by clerk.**

32 1. A guardian appointed by the court under this chapter
33 shall file with the court the following written verified
34 reports which shall not be waived by the court:

35 a. ~~An initial report within sixty days of the guardian's~~

1 appointment care plan filed within sixty days of appointment.

2 The information in the initial care plan shall include but not
3 be limited to the following information:

4 (1) The current residence of the protected person and the
5 guardian's plan for the protected person's living arrangements.

6 (2) The guardian's plan for payment of the protected
7 person's living expenses and other expenses.

8 (3) The protected person's health status and health care
9 needs, and the guardian's plan for meeting the protected
10 person's needs for medical, dental, and other health care
11 needs.

12 (4) If applicable, the guardian's plan for other
13 professional services needed by the protected person.

14 (5) If applicable, the guardian's plan for meeting the
15 educational, training, and vocational needs of the protected
16 person.

17 (6) If applicable, the guardian's plan for facilitating the
18 participation of the protected person in social activities.

19 (7) The guardian's plan for facilitating contacts between
20 the protected person and the protected person's family members
21 and other significant persons.

22 (8) The guardian's plan for contact with, and activities on
23 behalf of, the protected person.

24 b. An annual report, filed within ~~ninety~~ sixty days of
25 the close of the reporting period, unless the court otherwise
26 orders on good cause shown. The information in the annual
27 report shall include but not be limited to the following
28 information:

29 (1) The current living arrangements of the protected
30 person.

31 (2) The sources of payment for the protected person's living
32 expenses and other expenses.

33 (3) A description, if applicable, of the following:

34 (a) The protected person's physical and mental health
35 status and the medical, dental, and other professional services

1 provided to the protected person.

2 (b) If applicable, the protected person's employment status
3 and the educational, training, and vocational services provided
4 to the protected person.

5 (c) The contact of the protected person with family members
6 and other significant persons.

7 (d) The nature and extent of the guardian's visits with, and
8 activities on behalf of, the protected person.

9 (4) The guardian's recommendation as to the need for
10 continuation of the guardianship.

11 (5) The ability of the guardian to continue as guardian.

12 (6) The need of the guardian for assistance in providing or
13 arranging for the provision of the care and protection of the
14 protected person.

15 *c.* A final report within thirty days of the termination
16 of the guardianship under [section 633.675](#) unless that time is
17 extended by the court.

18 ~~2. Reports required by [this section](#) must include:~~

19 ~~a. The current mental and physical condition of the ward.~~

20 ~~b. The present living arrangement of the ward, including a~~
21 ~~description of each residence where the ward has resided during~~
22 ~~the reporting period.~~

23 ~~c. A summary of the medical, educational, vocational and~~
24 ~~technical, and other professional services provided for the~~
25 ~~ward.~~

26 ~~d. A description of the guardian's visits with and~~
27 ~~activities on behalf of the ward.~~

28 ~~e. A recommendation as to the need for continued~~
29 ~~guardianship.~~

30 ~~f. Other information requested by the court or useful in the~~
31 ~~opinion of the guardian.~~

32 ~~3.~~ 2. The court shall develop a simplified uniform
33 reporting form for use in filing the required reports.

34 ~~4.~~ 3. The clerk of the court shall notify the guardian
35 in writing of the reporting requirements and shall provide

1 information and assistance to the guardian in filing the
2 reports.

3 ~~5.~~ 4. Reports of guardians shall be reviewed and approved
4 by a district court judge or referee.

5 ~~6. Reports required by this section shall, if requested, be~~
6 ~~served on the attorney appointed to represent the ward in the~~
7 ~~guardianship proceeding and all other parties appearing in the~~
8 ~~proceeding.~~

9 Sec. 32. Section 633.670, subsection 1, paragraph b, Code
10 2019, is amended to read as follows:

11 b. Written verified reports and accountings which shall not
12 be waived by the court as follows:

13 (1) An initial financial management plan within sixty days
14 after the appointment of the conservator.

15 ~~(1)~~ (2) Annually, within ninety days of the close of the
16 reporting period, unless the court otherwise orders on good
17 cause shown.

18 ~~(2)~~ (3) Within thirty days following the date of removal.

19 ~~(3)~~ (4) Upon filing resignation and before the resignation
20 is accepted by the court.

21 ~~(4)~~ (5) Within sixty days following the date of
22 termination.

23 ~~(5)~~ (6) At other times as the court may order.

24 Sec. 33. Section 633.675, Code 2019, is amended to read as
25 follows:

26 **633.675 Cause for termination.**

27 1. A guardianship ~~shall cease,~~ and a conservatorship
28 shall terminate, upon the occurrence of any of the following
29 circumstances:

30 a. If the ward protected person is a minor, when the ward
31 protected person reaches full age.

32 b. The death of the ward protected person.

33 ~~c. A determination by the court that the ward is no longer~~
34 ~~a person whose decision-making capacity is so impaired as~~
35 ~~to bring the ward within the categories of section 633.552,~~

1 ~~subsection 2, paragraph "a", or section 633.566, subsection 2,~~
2 ~~paragraph "a". In a proceeding to terminate a guardianship or~~
3 ~~a conservatorship, the ward shall make a prima facie showing~~
4 ~~that the ward has some decision-making capacity. Once the~~
5 ~~ward has made that showing, the guardian or conservator has~~
6 ~~the burden to prove by clear and convincing evidence that the~~
7 ~~ward's decision-making capacity is so impaired, as provided~~
8 ~~in section 633.552, subsection 2, paragraph "a", or section~~
9 ~~633.566, subsection 2, paragraph "a", that the guardianship or~~
10 ~~conservatorship should not be terminated.~~

11 ~~d. c.~~ Upon determination by the court that the
12 conservatorship or guardianship is no longer necessary for any
13 other reason.

14 2. Notwithstanding ~~subsection 1, paragraphs "a" through~~
15 ~~"d", if the court appointed a guardian for a minor child for~~
16 ~~whom the court's jurisdiction over the child's guardianship~~
17 ~~was established pursuant to transfer of the child's case in~~
18 ~~accordance with section 232.101A or 232.104, the court shall~~
19 ~~not enter an order terminating the guardianship before the~~
20 ~~child becomes age eighteen unless the court finds by clear~~
21 ~~and convincing evidence that the best interests of the child~~
22 ~~warrant a return of custody to the child's parent. The~~
23 court shall terminate a guardianship if it finds by clear and
24 convincing evidence that the basis for appointing a guardian
25 pursuant to section 633.552 is not satisfied.

26 3. The court shall terminate a conservatorship if the court
27 finds by clear and convincing evidence that the basis for
28 appointing a conservator pursuant to section 633.553 or 633.554
29 is not satisfied.

30 4. The standard of proof and the burden of proof to be
31 applied in a termination proceeding shall be the same as set
32 forth in section 633.551, subsection 2.

33 Sec. 34. Section 633.717, subsection 8, Code 2019, is
34 amended to read as follows:

35 8. The denial by a court of this state of a petition to

1 accept a guardianship or conservatorship transferred from
2 another state does not affect the ability of the guardian or
3 conservator to seek appointment as guardian or conservator in
4 this state under [section 633.551](#), ~~633.552~~, or ~~633.566~~ [633.556](#),
5 if the court has jurisdiction to make an appointment other than
6 by reason of the provisional order of transfer.

7 Sec. 35. Section 633B.102, subsections 2 and 6, Code 2019,
8 are amended to read as follows:

9 2. "*Conservator*" or "*conservatorship*" means a conservator
10 appointed or conservatorship established pursuant to ~~sections~~
11 ~~633.570~~ and ~~633.572~~ [section 633.553](#), [633.554](#), or [633.567](#) or a
12 similar provision of the laws of another state.

13 6. "*Guardian*" or "*guardianship*" means a guardian appointed
14 or a guardianship established pursuant to sections ~~633.556~~
15 [633.552](#) and ~~633.560~~ [633.568](#) or a similar provision of the laws
16 of another state.

17 Sec. 36. Section 633B.108, subsection 1, Code 2019, is
18 amended to read as follows:

19 1. Under a power of attorney, a principal may nominate
20 a conservator of the principal's estate or guardian of
21 the principal's person for consideration by the court if
22 proceedings for the principal's estate or person are begun
23 after the principal executes the power of attorney. Except
24 for good cause shown or disqualification, the court shall make
25 its appointment in accordance with the principal's most recent
26 nomination. [This section](#) does not prohibit an individual
27 from executing a petition for the voluntary appointment of a
28 guardian or conservator on a standby basis pursuant to sections
29 ~~633.560~~ [633.568](#) and [633.591](#).

30 Sec. 37. REPEAL. Sections 633.552, 633.554, 633.555,
31 633.556, 633.557, 633.558, 633.559, 633.562, 633.566, 633.568,
32 633.569, 633.570, 633.572, 633.573, 633.575, and 633.576, Code
33 2019, are repealed.

34 Sec. 38. CODE EDITOR'S DIRECTIVE.

35 1. The Code editor is directed to make the following

1 transfers:

2 a. Section 633.560 to 633.568.

3 b. Section 633.571 to 633.566.

4 c. Section 633.574 to 633.555.

5 2. The Code editor is directed to make changes in any Code
6 sections amended or enacted by any other Act to correspond with
7 the changes made in this Act if there appears to be no doubt
8 as to the proper method of making the changes and the changes
9 would not be contrary to or inconsistent with the purposes of
10 this Act or any other Act.

11

EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 BACKGROUND. Guardians are persons and entities appointed by
15 the court to make decisions for persons regarding the person's
16 care, maintenance, health, education, welfare, and safety.
17 Conservators are appointed by the court to make decisions for
18 persons regarding management of their financial affairs.

19 This bill amends the Iowa probate code, which provides
20 for the opening and administration of guardianships and
21 conservatorships for adults and minors. The bill amends
22 the provisions governing guardianships for adults and
23 conservatorships for adults and minors. The bill deletes
24 provisions relating to guardianships for minors. The bill does
25 not provide a process for a court to appoint a guardian for a
26 minor.

27 TERMINOLOGY. The current Code uses the term "proposed ward"
28 to refer to persons alleged to be in need of a guardianship or
29 conservatorship, and the term "ward" to refer to a person for
30 whom the court has appointed a guardian or conservator. The
31 bill substitutes the term "respondent" for the term "proposed
32 ward". The bill substitutes the term "protected person" for
33 the term "ward".

34 BASIS FOR APPOINTMENT OF GUARDIAN AND CONSERVATOR. The bill
35 does not alter the current Code requirement for appointment

1 of a guardian for an adult. The court must find by clear
2 and convincing evidence that the adult has diminished
3 decision-making capacity resulting in the adult's inability to
4 care for or protect the adult. The bill also does not alter
5 the current Code requirement for appointment of a conservator
6 for an adult. The court must find by clear and convincing
7 evidence that the adult has diminished decision-making capacity
8 resulting in the adult's inability to manage the adult's
9 financial affairs. The current Code does not set forth the
10 substantive criteria that must be met for the appointment of a
11 conservator for a minor. The bill requires that the court find
12 by a preponderance of evidence that a conservator is needed to
13 manage or protect the minor's funds or other assets.

14 PETITION, NOTICE, AND HEARING. The bill amends and adds
15 specific requirements regarding the contents of a guardianship
16 or conservatorship petition, notice, and hearing. The bill
17 states that the petition must contain a concise statement of
18 the factual basis for the petition and a concise statement of
19 why there is no less restrictive alternative to the appointment
20 of a guardian or conservator. The bill also designates persons
21 with an actual or potential interest in a guardianship or
22 conservatorship proceeding who must be listed, if known, in the
23 petition.

24 ATTORNEY FOR RESPONDENT. The bill retains the current
25 Code provision under which the respondent is entitled to be
26 represented by a court-appointed attorney if indigent or
27 incapable of requesting an attorney. The bill also retains the
28 current Code provision describing the responsibilities of the
29 attorney representing the respondent.

30 GUARDIAN AD LITEM — COURT VISITOR. The bill clarifies the
31 distinction between the appointment and role of the attorney
32 for the respondent and the guardian ad litem. In addition,
33 the bill substitutes the term "court visitor" for the term
34 "guardian ad litem". The bill provides that a court may, but
35 is not required to, appoint any qualified person as a court

1 visitor to gather information for the court that the court
2 needs to determine whether to grant the petition. The bill
3 also provides that the attorney representing the respondent may
4 not serve as a court visitor.

5 COURT-ORDERED PROFESSIONAL EVALUATIONS. The bill
6 authorizes the court to order a professional evaluation of
7 the decision-making capacity and functional abilities and
8 limitations of an adult in guardianship and conservatorship
9 proceedings for the purpose of determining whether
10 to establish, modify, or terminate a guardianship or
11 conservatorship and whether a limited guardianship or
12 conservatorship is appropriate. The evaluation must be
13 conducted by a qualified professional and the results of the
14 evaluation are confidential with access limited to specified
15 individuals.

16 BACKGROUND CHECKS OF PROPOSED GUARDIANS AND CONSERVATORS.
17 The current Code does not require background checks of
18 proposed guardians or conservators. The bill mandates that
19 proposed guardians and conservators, other than financial
20 institutions, undergo Iowa criminal record checks and checks
21 of the Iowa child abuse, dependent adult abuse, and sexual
22 offender registries. The bill directs the judicial branch,
23 in collaboration with other relevant state agencies, to
24 establish procedures for electronic access to the single
25 contact repository for the conduct of background checks for a
26 minimal fee. The bill gives the court discretion to evaluate
27 the relevance of any negative background check information in
28 determining the suitability of a person for appointment as a
29 guardian or conservator.

30 QUALIFICATIONS FOR APPOINTMENT OF A GUARDIAN OR CONSERVATOR.
31 The bill retains the ability for the court to appoint any
32 person as a guardian or conservator who is qualified, suitable,
33 and willing to serve in that capacity.

34 EMERGENCY APPOINTMENT OF TEMPORARY GUARDIAN OR CONSERVATOR.
35 The bill authorizes the emergency appointment of a temporary

1 guardian. The court may issue an ex parte order appointing
2 a temporary guardian on an emergency basis under specified
3 limited circumstances.

4 ORDER APPOINTING GUARDIAN AND GUARDIAN'S POWERS, DUTIES,
5 AND RESPONSIBILITIES. The bill sets forth the specific powers
6 that the guardian may exercise without prior court approval and
7 the specific powers that the guardian may exercise only with
8 prior court approval. The bill also specifies the duties and
9 responsibilities of the guardian.

10 COURT MONITORING OF GUARDIANSHIPS AND CONSERVATORSHIPS.

11 The bill contains provisions relating to the court's ongoing
12 responsibility to monitor guardianships and conservatorships
13 to ensure the well-being and protection of persons subject
14 to guardianship and conservatorship and to ensure the
15 accountability of guardians and conservators. The bill
16 provides that guardians must file an initial care plan within
17 60 days of appointment for review and approval by the court.
18 The bill retains the existing Code requirement that guardians
19 thereafter file an annual report describing the protected
20 person's status and needs and the guardian's activities. The
21 bill likewise provides that conservators must file an initial
22 financial management report and retains the existing Code
23 requirement that conservators thereafter file annual reports
24 and accountings.

25 TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS. The
26 bill authorizes the court to remove a guardian or conservator
27 and appoint a successor guardian or conservator under certain
28 circumstances. The bill likewise authorizes the court to
29 modify or terminate a guardianship or conservatorship under
30 certain circumstances.