

Senate File 425 - Introduced

SENATE FILE 425
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1091)

A BILL FOR

1 An Act providing for juvenile court jurisdiction over minor
2 guardianship proceedings and including effective date and
3 applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

IOWA MINOR GUARDIANSHIP PROCEEDINGS ACT

Section 1. NEW SECTION. 232D.101 Title.

This chapter shall be known as the "*Iowa Minor Guardianship Proceedings Act*".

Sec. 2. NEW SECTION. 232D.102 Definitions.

1. "*Adult*" means a person eighteen years of age or older or a person declared to be emancipated by a court of competent jurisdiction.

2. "*Conservator*" means a person appointed by a court to have custody and control of the property of a minor.

3. "*Court*" means the juvenile court established under section 602.7101.

4. "*Demonstrated lack of consistent parental participation*" means the refusal of a parent to comply with duties and responsibilities imposed upon a parent by the parent-child relationship, including but not limited to providing the minor with necessary food, clothing, shelter, health care, education, and other care and supervision necessary for the minor's physical, mental, and emotional health and development.

5. "*Guardian*" means a person appointed by the court to have custody of a minor.

6. "*Legal custodian*" means a person awarded legal custody of a minor.

7. "*Legal custody*" means an award of the rights of legal custody of a minor under which a parent has legal custodial rights and responsibilities toward the minor child including but not limited to decision making affecting the minor's legal status, medical care, education, extracurricular activities, and religious instruction.

8. "*Limited guardianship*" means a guardianship that grants the guardian less than all powers available under this chapter or otherwise restricts the powers of the guardian.

9. "*Minor*" means an unmarried and unemancipated person under the age of eighteen years.

1 10. "Parent" means a biological or adoptive mother or father
2 of a child, a person whose parental status has been established
3 by operation of law due to the person's marriage to the mother
4 at the time of the conception or birth of the child, by order
5 of a court of competent jurisdiction, or by an administrative
6 order when authorized by state law. "Parent" does not include a
7 person whose parental rights have been terminated.

8 Sec. 3. NEW SECTION. 232D.103 Jurisdiction.

9 The juvenile court has exclusive jurisdiction in a
10 guardianship proceeding concerning a minor who is alleged to
11 be in need of a guardianship.

12 Sec. 4. NEW SECTION. 232D.104 Venue.

13 1. Venue for guardianship proceedings under this chapter
14 shall be in the judicial district where the minor is found or
15 in the judicial district of the minor's residence.

16 2. The court may transfer a guardianship proceeding brought
17 under this chapter to the juvenile court of any county having
18 venue at any stage in the proceedings as follows:

19 a. When it appears that the best interests of the minor
20 or the convenience of the proceedings shall be served by a
21 transfer, the court may transfer the case to the court of the
22 county of the minor's residence.

23 b. With the consent of the receiving court, the court may
24 transfer the case to the court of the county where the minor is
25 found.

26 3. The court shall transfer the case by ordering the
27 transfer and a continuance and by forwarding to the clerk
28 of the receiving court a certified copy of all papers filed
29 together with an order of transfer. The judge of the receiving
30 court may accept the filings of the transferring court or may
31 direct the filing of a new petition and hear the case anew.

32 Sec. 5. NEW SECTION. 232D.105 Proceedings governed by other
33 law.

34 1. A petition alleging that a minor is in need of a
35 conservatorship is not subject to this chapter. Such

1 proceedings shall be governed by chapter 633 and may be
2 initiated pursuant to section 633.627.

3 2. A petition for the appointment of a guardian for a minor
4 and a petition for appointment of a conservator of a minor
5 shall not be combined.

6 3. If a minor guardianship proceeding under this chapter
7 pertains to an Indian child as defined in section 232B.3 and
8 the proceeding is subject to the Iowa Indian child welfare Act
9 under chapter 232B, the proceeding and other actions taken in
10 connection with the proceeding shall comply with chapter 232B.

11 **Sec. 6. NEW SECTION. 232D.106 Applicability of rules of**
12 **civil procedure.**

13 The rules of civil procedure shall govern guardianship
14 proceedings concerning a minor who is alleged to be in need of
15 a guardianship except as otherwise set forth in this chapter.

16 **Sec. 7. NEW SECTION. 232D.201 Termination of parental**
17 **rights and child in need of assistance cases.**

18 1. The court may appoint a guardian for a minor who does not
19 have a guardian if all parental rights have been terminated.

20 2. The court may appoint a guardian for a minor in a child
21 in need of assistance case pursuant to section 232.101A,
22 232.103A, or 232.104.

23 **Sec. 8. NEW SECTION. 232D.202 Death of parents.**

24 1. The court may appoint a guardian for a minor if both
25 parents are deceased.

26 2. In appointing a guardian for a minor whose parents are
27 deceased, the court shall give preference to a person, if
28 qualified and suitable, nominated as guardian for a minor by a
29 will that was executed by the parent or parents having legal
30 custody of the minor at the time of the parent's or parents'
31 death, and that was admitted to probate under chapter 633.

32 **Sec. 9. NEW SECTION. 232D.203 Guardianship with parental**
33 **consent.**

34 1. The court may appoint a guardian for a minor if the court
35 finds all of the following:

1 *a.* The parent or parents having legal custody of the minor
2 understand the nature of the guardianship and knowingly and
3 voluntarily consent to the guardianship.

4 *b.* The minor is in need of a guardianship because of any one
5 of the following:

6 (1) The parent having legal custody of the minor has a
7 physical or mental illness that prevents the parent from
8 providing care and supervision of the child.

9 (2) The parent having legal custody of the minor is
10 incarcerated or imprisoned.

11 (3) The parent having legal custody of the minor is on
12 active military duty.

13 (4) The minor is in need of a guardianship for some other
14 reason constituting good cause shown.

15 *c.* Appointment of a guardian for the minor is in the best
16 interest of the minor.

17 2. If the guardianship petition requests a guardianship
18 with parental consent, the petition shall include an affidavit
19 signed by the parent or parents verifying that the parent or
20 parents knowingly and voluntarily consent to the guardianship.
21 The consent required by this subsection shall be on a form
22 prescribed by the judicial branch.

23 3. On or before the date of the hearing on the petition,
24 the parent or parents and the proposed guardian shall file
25 an agreement with the court. This agreement shall state the
26 following:

27 *a.* The responsibilities of the guardian.

28 *b.* The responsibilities of the parent or parents.

29 *c.* The expected duration of the guardianship, if known.

30 4. If the court grants the petition, it shall approve the
31 guardianship agreement between the custodial parent and the
32 proposed guardian and incorporate its terms by reference unless
33 the court finds the agreement was not reached knowingly and
34 voluntarily or is not in the best interests of the child.

35 Sec. 10. NEW SECTION. **232D.204 Guardianship without**

1 **parental consent.**

2 1. The court may appoint a guardian for a minor without the
3 consent of the parent or parents having legal custody of the
4 minor if the court finds by clear and convincing evidence all
5 of the following:

6 a. There is a person serving as a de facto guardian of the
7 minor.

8 b. There has been a demonstrated lack of consistent
9 parental participation in the life of the minor by the parent.
10 In determining whether a parent has demonstrated a lack of
11 consistent participation in the minor's life, the court may
12 consider all of the following:

13 (1) The intent of the parent in placing the custody, care,
14 and supervision of the minor with the person petitioning as a
15 de facto guardian and the facts and circumstances regarding
16 such placement.

17 (2) The amount of communication and visitation of the parent
18 with the minor during the alleged de facto guardianship.

19 (3) Any refusal of the parent to comply with conditions for
20 retaining custody of the minor set forth in any previous court
21 orders.

22 2. The court may appoint a guardian for a minor without the
23 consent of the parent or parents having legal custody of the
24 minor if the court finds by clear and convincing evidence all
25 of the following:

26 a. No parent having legal custody of the minor is willing or
27 able to exercise the power the court will grant to the guardian
28 if the court appoints a guardian.

29 b. Appointment of a guardian for the minor is in the best
30 interest of the minor.

31 3. Prior to granting a petition for guardianship, the
32 court shall consider whether the filing of a child in need of
33 assistance petition is appropriate under section 232.87. If
34 the court determines a child in need of assistance petition is
35 not appropriate, the court shall make findings of why a child

1 in need of assistance petition is not appropriate.

2 4. A proceeding under this section shall not create a new
3 eligibility category for the department of human services
4 protective services.

5 Sec. 11. NEW SECTION. 232D.301 **Petition.**

6 1. Proceedings for guardianship pursuant to this chapter
7 may be initiated by the filing of a petition by any person with
8 an interest in the welfare of the minor.

9 2. The petition shall list, to the extent known, all of the
10 following:

11 a. The name, age, and address of the minor who is the
12 subject of the petition.

13 b. The name and address of the petitioner and the
14 petitioner's relationship to the minor.

15 c. If the petitioner is not the proposed guardian, the
16 name and address of the proposed guardian and the reason the
17 proposed guardian should be selected.

18 d. The name and address, to the extent known and
19 ascertainable, of the following:

20 (1) Any living parents of the minor.

21 (2) Any legal custodian of the minor.

22 (3) Any adult who has had the primary care of the minor or
23 with whom the minor has lived for at least six months prior to
24 the filing of the petition.

25 3. The petition shall contain a concise statement of the
26 factual basis for the petition.

27 4. The petition shall state whether a limited guardianship
28 is appropriate.

29 5. Any additional information, to the extent known and
30 reasonably ascertainable, required by section 598B.209 shall be
31 included in an affidavit attached to the petition.

32 6. The petition may request that a temporary guardian for
33 a minor may be appointed. Such a petition shall specify the
34 duration of the requested temporary guardianship and the reason
35 for a temporary guardianship.

1 Sec. 12. NEW SECTION. **232D.302 Notice.**

2 1. The filing of a petition shall be served upon the minor
3 who is the subject of the petition in the manner of an original
4 notice in accordance with rule of civil procedure 1.305(2)
5 governing such notice. Notice to the attorney representing the
6 minor, if any, is notice to the minor.

7 2. Notice shall be served upon the minor's known parents
8 listed in the petition in accordance with rule of civil
9 procedure 1.305.

10 3. Notice shall be served upon other known persons listed in
11 the petition in the manner prescribed by the court, which may
12 be notice by mail. Failure of such persons to receive actual
13 notice does not constitute a jurisdictional defect precluding
14 the appointment of a guardian by the court.

15 4. Notice of the filing of a petition given to a person
16 under subsection 2 or 3 shall include a statement that the
17 person may register to receive notice of the hearing on
18 the petition and other proceedings and the manner of such
19 registration.

20 Sec. 13. NEW SECTION. **232D.303 Attorney for minor.**

21 1. Upon the filing of a petition for appointment of a
22 guardian pursuant to section 232D.301, the court may appoint
23 an attorney for the minor, if the court determines that the
24 interests of the minor are or may be inadequately represented.

25 2. An attorney representing the minor shall advocate
26 for the wishes of the minor to the extent that those wishes
27 are reasonably ascertainable and advocate for best interest
28 of the minor if the wishes of the minor are not reasonably
29 ascertainable.

30 Sec. 14. NEW SECTION. **232D.304 Attorney for parent.**

31 Upon the filing of a petition for appointment of a guardian,
32 the court shall appoint an attorney for the parent identified
33 in the petition if all of the following are true:

34 1. The parent objects to the appointment of a guardian for
35 the minor.

1 2. The parent requests appointment of an attorney and
2 the court determines that the parent is unable to pay for an
3 attorney in accordance with section 232D.505.

4 Sec. 15. NEW SECTION. **232D.305 Court visitor.**

5 1. The court may appoint a court visitor for the minor.

6 2. The same person shall not serve both as the attorney
7 representing the minor and as court visitor.

8 3. Unless otherwise enlarged or circumscribed by the court,
9 the duties of a court visitor with respect to the minor shall
10 include all of the following:

11 *a.* Conducting, if the minor's age is appropriate, an initial
12 in-person interview with the minor.

13 *b.* Explaining to the minor, if the minor's age is
14 appropriate, the substance of the petition, the purpose and
15 effect of the guardianship proceeding, the rights of the
16 minor at the hearing, and the general powers and duties of a
17 guardian.

18 *c.* Determining, if the minor's age is appropriate, the views
19 of the minor regarding the proposed guardian, the proposed
20 guardian's powers and duties, and the scope and duration of the
21 proposed guardianship.

22 *d.* Interviewing the parent or parents and any other person
23 with legal responsibility for the custody, care, or both, of
24 the minor.

25 *e.* Interviewing the petitioner, and if the petitioner is not
26 the proposed guardian, interviewing the proposed guardian.

27 *f.* Visiting, to the extent feasible, the residence where it
28 is reasonably believed that the minor will live if the guardian
29 is appointed.

30 *g.* Making any other investigation the court directs,
31 including but not limited to interviewing any persons providing
32 medical, mental health, educational, social, or other services
33 to the minor.

34 4. The court visitor shall submit a written report to the
35 court that contains all of the following:

1 *a.* A recommendation regarding the appropriateness of a
2 guardianship for the minor.

3 *b.* A statement of the qualifications of the guardian
4 together with a statement of whether the minor has expressed
5 agreement with the appointment of the proposed guardian.

6 *c.* Any other matters the court visitor deems relevant to the
7 petition for guardianship and the best interests of the minor.

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

9 5. The report of the court visitor shall be made part of the
10 court record unless otherwise ordered by the court.

11 Sec. 16. NEW SECTION. 232D.306 **Hearing on petition.**

12 1. The court shall fix the time and place of hearing on
13 the petition and shall prescribe a time not less than twenty
14 days after the date the notice is served unless the court finds
15 there is good cause shown to shorten the time period. The
16 court shall also prescribe the manner of service of the notice
17 of such hearing.

18 2. The minor who is the subject of a petition filed pursuant
19 to section 232D.301 shall be entitled to attend the hearing on
20 the petition if the minor is of an age appropriate to attend
21 the hearing. A presumption shall exist that a minor fourteen
22 years of age or older is of an age appropriate to attend the
23 hearing.

24 3. The court shall not exclude a minor entitled to
25 attend the hearing under subsection 2 unless the court finds
26 that there is good cause shown for excluding the minor from
27 attendance.

28 Sec. 17. NEW SECTION. 232D.307 **Background checks of**
29 **proposed guardians.**

30 1. The court shall request criminal record checks and checks
31 of the child abuse, dependent adult abuse, and sex offender
32 registries in this state for all proposed guardians other than
33 financial institutions with Iowa trust powers unless a proposed
34 guardian has undergone the required background checks in this
35 section within the twelve months prior to the filing of a

1 petition.

2 2. The court shall review the results of background checks
3 in determining the suitability of a proposed guardian for
4 appointment.

5 3. The judicial branch in conjunction with the department
6 of public safety, the department of human services, and the
7 state chief information officer shall establish procedures for
8 electronic access to the single contact repository necessary to
9 conduct background checks requested under subsection 1.

10 4. The person who files a petition for appointment of
11 guardian for a minor shall be responsible for paying the fee
12 for the background check conducted through the single contact
13 repository unless the court waives the fee for good cause
14 shown.

15 Sec. 18. NEW SECTION. 232D.308 Selection of guardian —
16 qualifications and preferences.

17 1. The court shall appoint as guardian a qualified and
18 suitable person who is willing to serve subject to the
19 preferences as to the appointment of a guardian set forth in
20 subsections 2 and 3.

21 2. In appointing a guardian for a minor, the court shall
22 give preference to a person, if qualified and suitable,
23 nominated as guardian for a minor by a will that was executed
24 by the parent or parents having legal custody of the minor
25 at the time of the parent's or parents' death, and that was
26 admitted to probate under chapter 633.

27 3. In appointing a guardian for a minor, the court shall
28 give preference, if qualified and suitable, to a person
29 requested by a minor fourteen years of age or older.

30 Sec. 19. NEW SECTION. 232D.309 Emergency appointment of
31 temporary guardian.

32 1. A person authorized to file a petition under section
33 232D.301 may file a petition for the emergency appointment of a
34 temporary guardian for the minor.

35 2. The petition shall state all of the following:

1 a. The name and address of the minor and the birthdate of
2 the minor.

3 b. The name and address of the living parents of the minor,
4 if known.

5 c. The name and address of any other person legally
6 responsible for the custody or care of the minor, if known.

7 d. The reason the emergency appointment of a temporary
8 guardian is sought.

9 3. The court may enter an ex parte order appointing a
10 temporary guardian for a minor on an emergency basis under this
11 section if the court finds that all of the following are met:

12 a. There is not sufficient time to file a petition and hold
13 a hearing pursuant to section 232D.301.

14 b. The appointment of temporary guardian is necessary to
15 avoid immediate or irreparable harm to the minor.

16 4. Notice of the emergency appointment of a temporary
17 guardian shall be provided to persons required to be listed in
18 the petition under subsection 2.

19 5. The parents of the minor and any other person legally
20 responsible for the custody or care of the minor may file a
21 written request for a hearing. Such hearing shall be held no
22 later than seven days after the filing of the written request.

23 6. The powers of the temporary guardian set forth in the ex
24 parte order shall be limited to those necessary to address the
25 emergency situation requiring the appointment of a temporary
26 guardian.

27 7. The ex parte order shall terminate within thirty days
28 after the order is issued.

29 Sec. 20. NEW SECTION. 232D.310 Appointment of a guardian
30 for a minor on a standby basis.

31 A petition for the appointment of a guardian for a minor
32 on a standby basis may be filed by any person under the same
33 procedure and requirements as provided under this chapter.

34 Sec. 21. NEW SECTION. 232D.311 Appointment of guardian for
35 minor approaching majority on a standby basis.

1 Notwithstanding section 232D.103, any adult with an interest
2 in the welfare of a minor who is at least seventeen years and
3 six months of age may file a verified petition pursuant to
4 section 633.552 to initiate a proceeding to appoint a guardian
5 of the minor to take effect on the minor's eighteenth birthday.

6 Sec. 22. NEW SECTION. 232D.401 **Order appointing guardian**
7 **and powers of guardian.**

8 1. The order by the court appointing a guardian for a minor
9 shall state the basis for the order.

10 2. The order by the court appointing a guardian for a minor
11 shall state whether the guardianship is a limited guardianship.

12 3. An order by the court appointing a guardian for a minor
13 shall state the powers granted to the guardian. Except as
14 otherwise limited by court order, the court may grant the
15 guardian the following powers, which may be exercised without
16 prior court approval:

17 a. Taking custody of the minor and establishing the minor's
18 permanent residence if otherwise consistent with the terms of
19 any order of competent jurisdiction relating to the custody,
20 placement, detention, or commitment of the minor within the
21 state.

22 b. Consenting to medical, dental, and other health care
23 treatment and services for the minor.

24 c. Providing or arranging for the provision of education
25 for the minor including but not limited to preschool education,
26 primary education and secondary education, special education
27 and related services, and vocational services.

28 d. Consenting to professional services for the minor to
29 ensure the safety and welfare of the minor.

30 e. Applying for and receiving funds and benefits payable for
31 the support of the minor.

32 f. Any other powers the court may specify.

33 4. The court may grant the guardian the following powers,
34 which shall only be exercised with prior court approval:

35 a. Consenting to the withholding or withdrawal of

1 life-sustaining procedures, as defined in section 144A.2, from
2 the minor, the performance of an abortion on the minor, or the
3 sterilization of the minor.

4 *b.* Establishing the residence of the minor outside of the
5 state.

6 *c.* Consenting to the marriage of the minor.

7 *d.* Consenting to the emancipation of the minor.

8 5. The guardian shall obtain prior court approval for denial
9 of all visitation, communication, or interaction between the
10 minor and the parents of the minor. The court shall approve
11 such denial of visitation, communication, or interaction
12 upon a showing by the guardian that significant physical or
13 emotional harm to the minor has resulted or is likely to result
14 to the minor from parental contact. The guardian may place
15 reasonable time, place, or manner restrictions on visitation,
16 communication, or interaction between the minor and the minor's
17 parents without prior court approval.

18 Sec. 23. NEW SECTION. 232D.402 Duties and responsibilities
19 of guardian.

20 1. A guardian is a fiduciary and shall act in the
21 best interest of the minor and exercise reasonable care,
22 diligence, and prudence in performing guardianship duties and
23 responsibilities. The fiduciary duties of a guardian for an
24 adult set forth in chapter 633 are applicable to a guardian
25 under this chapter.

26 2. Except as otherwise limited by the court, a guardian
27 has the duty and responsibility to ensure the minor's health,
28 education, safety, welfare, and support.

29 3. A guardian with whom the minor is not living should
30 maintain regular contact with the minor.

31 4. A guardian should make reasonable efforts to facilitate
32 the continuation of the relationship of the minor and the
33 minor's parents subject to section 232D.401, subsection 5.

34 5. A guardian shall file the reports with the court required
35 under section 232D.501.

1 6. A guardian shall promptly inform the court of any change
2 in the permanent residence of the minor and the minor's new
3 address.

4 Sec. 24. NEW SECTION. 232D.403 **Guardian's acceptance of**
5 **appointment and oath and issuance of letters of appointment.**

6 The court shall issue letters of appointment to a guardian
7 upon the guardian's acceptance of appointment and the
8 guardian's subscription of an oath, or certification under
9 penalties of perjury, that the guardian will faithfully
10 discharge the duties imposed by law, according to the best of
11 the guardian's ability.

12 Sec. 25. NEW SECTION. 232D.501 **Reports of guardian.**

13 1. A guardian appointed by the court under this chapter
14 shall file the following reports which shall not be waived by
15 the court:

16 a. A verified initial care plan filed within sixty days of
17 appointment. The information in the initial care plan shall
18 include but not be limited to the following information:

19 (1) The minor's current residence and guardian's plan for
20 the minor's living arrangements.

21 (2) The guardian's plan for payment of the minor's living
22 expenses and other expenses.

23 (3) The minor's health status and the guardian's plan for
24 meeting the minor's health needs.

25 (4) The minor's educational training and vocational needs
26 and the guardian's plan for meeting the minor's educational
27 training and vocational needs.

28 (5) The guardian's plan for facilitating contacts of the
29 minor with the minor's parents.

30 (6) The guardian's plan for contact with and activities on
31 behalf of the minor.

32 b. A verified annual report filed within thirty days of
33 the close of the reporting period. The information in the
34 annual report shall include but not be limited to the following
35 information:

1 (1) The current residence and living arrangements of the
2 minor.

3 (2) The sources of the payment for the minor's living
4 expenses and other expenses.

5 (3) The minor's health status and health services provided
6 the minor.

7 (4) The minor's mental, behavioral, or emotional problems,
8 if any, and professional services provided the minor for such
9 problems.

10 (5) The minor's educational status and educational training
11 and vocational services provided the minor.

12 (6) The nature and extent of parental visits and
13 communication with the minor.

14 (7) The nature and extent of the guardian's visits with and
15 activities on behalf of the minor.

16 (8) The need for continuation of guardianship.

17 (9) The ability of the guardian to continue as guardian.

18 (10) The need of the guardian for assistance in providing or
19 arranging for the provision of care for the minor.

20 c. A final report filed within thirty days of the
21 termination of the guardianship under section 232D.503.

22 2. The judicial branch shall prescribe the forms for use by
23 the guardian in filing the reports required by this section.

24 3. The clerk of the court shall notify the guardian in
25 writing of the reporting requirements and shall provide
26 information and assistance to the guardian in filing the
27 reports.

28 4. Reports of the guardian shall be reviewed and approved
29 by the court.

30 **Sec. 26. NEW SECTION. 232D.502 Removal of guardian —**
31 **appointment of successor guardian.**

32 1. The court may remove a guardian for a minor for failure
33 to perform guardianship duties or for other good cause shown.

34 2. The court shall conduct a hearing to determine whether
35 a guardian should be removed on the filing of a petition by

1 a minor under guardianship who is fourteen years of age or
2 older, the parent of a minor, or other person with an interest
3 in welfare of the minor if the court determines that there are
4 reasonable grounds for believing that removal is appropriate
5 based on the allegations stated in the petition.

6 3. The court may conduct a hearing to determine whether
7 the guardian should be removed on the receipt of a written
8 communication from a minor under guardianship who is fourteen
9 years of age or older, the parent of the minor, or other
10 person with an interest in welfare of the minor if the court
11 determines that a hearing would be in the best interest of the
12 minor.

13 4. The court may decline to hold a hearing under subsection
14 2 or 3 if the same or substantially similar facts were alleged
15 in a petition filed in the preceding six months or in a written
16 communication received in the preceding six months.

17 5. The court may appoint a successor guardian on the
18 removal of a guardian pursuant to subsection 1, the death of a
19 guardian, or the resignation of a guardian.

20 Sec. 27. NEW SECTION. 232D.503 **Termination and modification**
21 **of guardianships.**

22 1. A guardianship shall terminate on the minor's death,
23 adoption, emancipation, or attainment of majority.

24 2. The court shall terminate a guardianship established
25 pursuant to section 232D.203 if the court finds that the basis
26 for the guardianship set forth in section 232D.203 is not
27 currently satisfied unless the court finds that the termination
28 of the guardianship would be harmful to the minor and the
29 minor's interest in continuation of the guardianship outweighs
30 the interest of a parent of the minor in the termination of the
31 guardianship.

32 3. The court shall terminate a guardianship established
33 pursuant to section 232D.204 if the court finds that the
34 basis for the guardianship set forth in section 232D.204
35 is not currently satisfied. A person seeking termination

1 of guardianship established pursuant to section 232D.204
2 has the burden of making a prima facie showing that the
3 guardianship should be terminated. If such a showing is made,
4 the guardian has the burden of going forward to prove by clear
5 and convincing evidence that the guardianship should not be
6 terminated.

7 4. The court shall modify the powers granted to the guardian
8 if the court finds such powers no longer meet the needs of the
9 minor or are not in the minor's best interest.

10 5. The court may conduct a hearing to determine whether
11 termination or modification of a guardianship is appropriate
12 on the filing of a petition by a minor fourteen years of age or
13 older who is under guardianship, a guardian, or other person
14 with an interest in the welfare of the minor or on receipt of a
15 written communication from such persons.

16 Sec. 28. NEW SECTION. 232D.504 **Rights and immunities of**
17 **a guardian.**

18 1. A guardian is not required to use the guardian's personal
19 funds for the minor's expenses. If a conservator has been
20 appointed for the estate of the minor, the guardian may request
21 and the conservator may approve and pay for the requested
22 reimbursement without prior court approval.

23 2. A guardian may submit a request, together with the
24 guardian's annual report, for approval by the court of
25 reasonable compensation for services as guardian.

26 3. Notwithstanding section 137C.25B or any other provision
27 of law to the contrary, a guardian is not liable to a third
28 person for an act or omission of the minor solely by reason of
29 the guardianship.

30 Sec. 29. NEW SECTION. 232D.505 **Expenses.**

31 1. Except as otherwise provided by law, the court shall
32 inquire into the ability of the minor or the minor's parent to
33 pay expenses incurred pursuant to the guardianship proceedings
34 established under this chapter. After giving the minor and
35 the parent a reasonable opportunity to be heard, the court

1 guardianship, and agrees to waive the requirement for making
2 reasonable efforts as defined in [section 232.102](#).

3 2. If the court ~~transfers guardianship~~ appoints a guardian
4 pursuant to [subsection 1](#), the court may close the child in
5 need of assistance case ~~by transferring jurisdiction over the~~
6 ~~child's guardianship to the probate court~~. The court shall
7 inform the proposed guardian of the guardian's reporting duties
8 under ~~section 633.669~~ [232D.501](#) and other duties under chapter
9 ~~633~~ [232D](#). ~~Upon transferring jurisdiction, the~~ The court shall
10 direct the ~~probate clerk of court~~, once the proposed guardian
11 has filed an oath of office and identification ~~in accordance~~
12 ~~with section 602.6111~~, to issue letters of appointment for
13 guardianship and ~~docket the case in probate~~. Records contained
14 in the probate case file that were copied or transferred from
15 the juvenile court file concerning the case shall be subject to
16 ~~section 232.147~~ and other confidentiality provisions of this
17 chapter for cases not involving juvenile delinquency.

18 Sec. 31. Section 232.104, subsection 8, paragraph b, Code
19 2019, is amended to read as follows:

20 *b.* In lieu of the procedures specified in paragraph "a",
21 the court may close the child in need of assistance case ~~by~~
22 ~~transferring jurisdiction over the child's guardianship to the~~
23 probate court and may appoint a guardian pursuant to chapter
24 232D. ~~The court shall inform the proposed guardian of the~~
25 ~~guardian's reporting duties under section 633.669 and other~~
26 ~~duties under the probate code~~. ~~Upon transferring jurisdiction,~~
27 ~~the court shall direct the probate clerk, once the proposed~~
28 ~~guardian has filed an oath of office and identification~~
29 ~~in accordance with section 602.6111, to issue letters of~~
30 ~~appointment for guardianship and docket the case in probate~~.
31 ~~Records contained in the probate case file that were copied or~~
32 ~~transferred from the juvenile court file concerning the case~~
33 ~~shall be subject to section 232.147 and other confidentiality~~
34 ~~provisions of this chapter for cases not involving juvenile~~
35 ~~delinquency~~.

1 Sec. 32. Section 235A.15, subsection 2, paragraph d,
2 subparagraphs (1) and (2), Code 2019, are amended to read as
3 follows:

4 (1) To a juvenile court involved in an adjudication or
5 disposition of a child named in a report or a child that is the
6 subject of a guardianship proceeding under chapter 232D.

7 (2) To a district court upon a finding that data is
8 necessary for the resolution of an issue arising in any phase
9 of a case involving child abuse or guardianship proceedings for
10 a child under chapter 232D.

11 Sec. 33. Section 235B.6, subsection 2, paragraph d, Code
12 2019, is amended by adding the following new subparagraphs:

13 NEW SUBPARAGRAPH. (5) To a juvenile court involved in an
14 adjudication or disposition of a child that is the subject of a
15 guardianship proceeding under chapter 232D.

16 NEW SUBPARAGRAPH. (6) To a district court upon a finding
17 that data is necessary for the resolution of an issue arising
18 in any phase of a case involving proceedings for a child
19 guardianship under chapter 232D.

20 Sec. 34. Section 602.7101, subsection 1, Code 2019, is
21 amended to read as follows:

22 1. A juvenile court is established in each county. The
23 juvenile court is within the district court and has the
24 jurisdiction provided in ~~chapter~~ chapters 232 and 232D.

25 Sec. 35. Section 602.8102, subsection 42, Code 2019, is
26 amended to read as follows:

27 42. Serve as clerk of the juvenile court and carry out
28 duties as provided in ~~chapter~~ chapters 232 and 232D and article
29 7 of this chapter.

30 Sec. 36. Section 633.10, subsection 3, Code 2019, is amended
31 to read as follows:

32 3. *Conservatorships and guardianships.*

33 a. The Except as provided for in paragraph "b", the
34 appointment of conservators and guardians; the granting
35 of letters of conservatorship and guardianship; the

1 administration, settlement and closing of conservatorships and
2 guardianships.

3 b. Beginning the effective date of this Act, minor
4 guardianships are under the exclusive jurisdiction of the
5 juvenile court pursuant to, and except as limited by, chapter
6 232D.

7 Sec. 37. Section 633.552, subsection 2, Code 2019, is
8 amended to read as follows:

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

11 ~~a.~~ Is a person whose decision-making capacity is so
12 impaired that the person is unable to care for the person's
13 personal safety or to attend to or provide for necessities for
14 the person such as food, shelter, clothing, or medical care,
15 without which physical injury or illness might occur.

16 ~~b. Is a minor.~~

17 Sec. 38. Section 633.554, subsection 2, Code 2019, is
18 amended to read as follows:

19 2. a. ~~If the proposed ward is a minor or if the~~
20 proposed ward is an adult under a standby petition and the
21 court determines, pursuant to section 633.561, subsection
22 1, paragraph "b", that the proposed ward is entitled to
23 representation, notice in the manner of original notice, or
24 another form of notice ordered by the court, given to the
25 attorney appointed to represent the ward is notice to the
26 proposed ward.

27 b. Notice shall also be served upon:

28 ~~(1) The parents of the proposed ward, if the proposed ward~~
29 ~~is a minor.~~

30 ~~(2) The~~ the spouse of the proposed ward, if the proposed
31 ward is an adult. If the proposed ward has no spouse, notice
32 shall be served upon the proposed ward's adult children, if
33 any.

34 Sec. 39. Section 633.557, subsection 1, Code 2019, is
35 amended to read as follows:

1 1. A guardian may also be appointed by the court upon the
2 verified petition of the proposed ward, without further notice,
3 ~~if the proposed ward is other than a minor under the age of~~
4 ~~fourteen years,~~ provided the court determines that such an
5 appointment will inure to the best interest of the applicant.
6 However, if an involuntary petition is pending, the court shall
7 be governed by [section 633.634](#). The petition shall provide
8 the proposed ward notice of a guardian's powers as provided in
9 section 633.562.

10 Sec. 40. Section 633.561, subsection 1, paragraph b, Code
11 2019, is amended to read as follows:

12 b. If the proposed ward is ~~either a minor or~~ an adult under
13 a standby petition, the court shall determine whether, under
14 the circumstances of the case, the proposed ward is entitled
15 to representation. The determination regarding representation
16 may be made with or without notice to the proposed ward, as
17 the court deems necessary. If the court determines that the
18 proposed ward is entitled to representation, the court shall
19 appoint an attorney to represent the proposed ward. After
20 making the determination regarding representation, the court
21 shall set a hearing on the petition, and provide for notice on
22 the determination regarding representation and the date for
23 hearing.

24 Sec. 41. Section 633.635, subsection 5, Code 2019, is
25 amended to read as follows:

26 5. From time to time, upon a proper showing, the court may
27 modify the respective responsibilities of the guardian and
28 the ward, after notice to the ward and an opportunity to be
29 heard. Any modification that would be more restrictive or
30 burdensome for the ward shall be based on clear and convincing
31 evidence that the ward continues to fall within the categories
32 of [section 633.552, subsection 2, paragraph "a" or "b"](#), and
33 that the facts justify a modification of the guardianship.
34 Section 633.551 applies to the modification proceedings. Any
35 modification that would be less restrictive for the ward shall

1 be based upon proof in accordance with the requirements of
2 section 633.675.

3 Sec. 42. Section 633.675, subsection 2, Code 2019, is
4 amended by striking the subsection.

5 Sec. 43. Section 633.679, subsection 2, Code 2019, is
6 amended by striking the subsection.

7 Sec. 44. REPEAL. Section 633.559, Code 2019, is repealed.

8 Sec. 45. EFFECTIVE DATE. This Act takes effect January 1,
9 2020.

10 Sec. 46. APPLICABILITY. This Act applies to guardianships
11 and guardianship proceedings of minors established or pending
12 before, on, or after January 1, 2020.

13 EXPLANATION

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

16 This bill provides the basis for appointment of a guardian
17 for a minor by the juvenile court, the procedures for
18 establishment of a minor guardianship, and court monitoring and
19 administration of minor guardianships.

20 JUVENILE COURT JURISDICTION OVER MINOR GUARDIANSHIPS. Code
21 chapter 633 contains provisions relating to guardianships,
22 which apply to adults and minors. The bill repeals and amends
23 the provisions that specifically refer to minor guardianships
24 and replaces them with new Code chapter 232D, the Iowa minor
25 guardianship proceedings Act.

26 The bill provides that the juvenile court shall have
27 exclusive jurisdiction over minor guardianship proceedings.
28 The effect of this provision is to transfer jurisdiction over
29 these proceedings from the probate court to the juvenile court.

30 BASIS FOR APPOINTMENT OF GUARDIAN. The bill authorizes
31 minor guardianships under the following circumstances:
32 termination of parental rights and child in need of assistance
33 cases; cases involving the death of a minor's parents; cases
34 in which there is parental consent to the establishment of a
35 guardianship; and cases in which there is not parental consent

1 to the establishment of a guardianship.

2 The bill provides that a guardianship may be established
3 without parental consent under the following circumstances:
4 there is a person serving as a de facto guardian; there has
5 been a demonstrated lack of parental participation in the life
6 of the minor; and the appointment of a guardian is in the
7 best interest of the minor. The bill also provides that a
8 guardianship may be established if no parent is willing or able
9 to exercise the power the court is requested to grant to the
10 proposed guardian, and the appointment of a guardian is in the
11 best interest of the minor.

12 ESTABLISHING A GUARDIANSHIP. The bill contains provisions
13 relating to the establishment of minor guardianships. These
14 provisions specify the requirements regarding the contents of a
15 minor guardianship petition, notice, and hearing.

16 The bill provides that the court may appoint an attorney
17 for the minor if the court determines that the interests of
18 the minor are, or may be, inadequately represented. The bill
19 also provides that the court shall appoint an attorney for a
20 parent if the parent objects to the appointment of a guardian
21 and the court determines that the parent is unable to pay for
22 an attorney.

23 The bill provides that the court may appoint a court visitor
24 to visit the minor and other parties to the proceeding and
25 gather the information needed by the court in determining
26 whether to grant the petition.

27 The bill retains the existing standard for appointment of
28 a person as a guardian, namely that the person be qualified,
29 suitable, and willing to serve in that capacity.

30 Current law does not require background checks of proposed
31 guardians. The bill requires that proposed guardians, other
32 than financial institutions, undergo Iowa criminal record
33 checks and checks of the Iowa child abuse, dependent adult
34 abuse, and sex offender registries. The bill provides that the
35 judicial branch, in collaboration with other relevant state

1 agencies, shall establish procedures for electronic access to
2 the single contact repository for the conduct of background
3 checks for a minimal fee. The bill gives the judge discretion
4 to evaluate the relevance of any negative background check
5 information in determining the suitability of a person for
6 appointment as a guardian.

7 The bill authorizes the emergency appointment of a temporary
8 guardian. The court is authorized to issue an ex parte order
9 appointing a temporary guardian on an emergency basis under
10 limited circumstances.

11 ORDER APPOINTING GUARDIAN AND GUARDIAN'S POWERS, DUTIES, AND
12 RESPONSIBILITIES. The bill contains provisions relating to
13 the order appointing the guardian and the guardian's powers,
14 duties, and responsibilities.

15 The bill specifies the powers that the court may grant to
16 a guardian. The bill sets forth the specific powers that
17 the guardian may exercise without prior court approval and
18 those powers that the guardian may exercise only with prior
19 court approval. The bill also specifies the duties and
20 responsibilities of the guardian.

21 COURT MONITORING AND ADMINISTRATION OF MINOR GUARDIANSHIPS.
22 The bill contains provisions relating to ongoing court
23 monitoring of minor guardianship and administration of minor
24 guardianships. The court has an ongoing responsibility to
25 monitor minor guardianships in order to ensure the well-being
26 and protection of minors subject to guardianship and the
27 accountability of the persons appointed to serve as guardians.

28 The bill provides that guardians shall file an initial care
29 plan for the minor within 60 days of appointment for review
30 and approval by the court. The bill retains the existing
31 requirement that guardians file thereafter an annual report
32 describing the minor's status and needs and the guardian's
33 activities. The bill authorizes the court to remove a guardian
34 and appoint a successor guardian under certain circumstances.
35 The bill further authorizes the court to modify a guardianship

1 or terminate a guardianship under certain circumstances.

2 EXPENSES. The bill provides that the court shall inquire
3 into the ability of the minor or the minor's parent to pay
4 expenses incurred pursuant to the guardianship proceedings.
5 After giving the minor and the parent a reasonable opportunity
6 to be heard, the court may order the minor or the parent to
7 pay all or part of the following: costs of legal expenses
8 of the minor and the parent; expenses for a court visitor;
9 and filing fees and other court costs, unless the costs are
10 waived for good cause shown. The bill provides that if the
11 court finds a minor's parents to be indigent or if the minor
12 has no parent, costs shall be assessed against the county in
13 which the proceeding is pending. The minor or the minor's
14 parents are indigent if the minor's or the parent's income and
15 resources do not exceed 150 percent of the federal poverty
16 level, or the minor's parent would be unable to pay such costs
17 without prejudicing the parent's ability to provide economic
18 necessities for the parent or the parent's dependents.

19 EFFECTIVE DATE AND APPLICABILITY. The bill takes effect
20 January 1, 2020, and applies to all minor guardianships and
21 guardianship proceedings established or pending before, on, or
22 after January 1, 2020.