

**Senate Study Bill 1242 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON ZAUN)

**A BILL FOR**

1 An Act relating to guardianships and conservatorships  
2 for adults and minors and providing for jurisdiction,  
3 definitions, proceedings, administration, and closing, and  
4 including effective date and applicability provisions.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

GUARDIANSHIPS AND CONSERVATORSHIPS

Section 1. NEW SECTION. 633F.1 **Jurisdiction.**

1. The juvenile court shall have exclusive, original jurisdiction of all proceedings governing minor guardianships for petitions filed on or after January 1, 2020. Prior to January 1, 2020, the district court shall have exclusive, original jurisdiction of all proceedings governing minor guardianships. Existing minor guardianships as of January 1, 2020, shall be transferred to the juvenile court if requested by the protected person's attorney, parent, or guardian, or if directed by the court.

2. Proceedings governing the appointment of conservators and the appointment of guardians for adults; the granting of letters of conservatorship and the granting of letters of guardianship for adults; and the administration, settlement, and closing of conservatorships and the administration, settlement, and closing of guardianships for adults shall be in district court, unless moved elsewhere by a court order.

Sec. 2. NEW SECTION. 633F.2 **Definitions and use of terms.**

When used in this chapter, unless otherwise required by the context, the following words and phrases shall be construed as follows:

1. "*Adult*" means an individual eighteen years of age or older.

2. "*Clerk*" means clerk of the court in the county in which the matter is pending.

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

4. "*Court*" means the Iowa district court sitting in probate and includes any Iowa district court judge and any Iowa district associate court judge or associate probate judge, and the Iowa juvenile court, and includes any Iowa juvenile judge and Iowa associate juvenile judge, presiding over minor

1 guardianships.

2 5. "*Court advisor*" means a person appointed by the court to  
3 investigate and report information relevant to a guardianship  
4 or conservatorship proceeding.

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

13 7. "*Fiduciary*" includes guardian and conservator.

14 8. "*Full age*" means the state of legal majority attained by  
15 having arrived at the age of eighteen years; having married,  
16 even if such marriage has been terminated by divorce; or  
17 having been declared to be emancipated by a court of competent  
18 jurisdiction.

19 9. "*Functional limitations*" means the behavior or condition  
20 of a person which impairs the person's ability to care for  
21 the person's personal safety, to attend to or provide for  
22 necessities for the person, or to make, communicate, or carry  
23 out important decisions concerning the person's financial  
24 affairs.

25 10. "*Guardian*" means the person appointed by the court to  
26 have the custody of the protected person under the provisions  
27 of this chapter.

28 11. "*Legal custody*" means an award to a parent or guardian  
29 under which a parent or guardian has custodial rights and  
30 responsibilities toward a minor child, which includes  
31 decision making affecting the child's legal status, medical  
32 care, education, extracurricular activities, and religious  
33 instruction.

34 12. "*Legal representative*" includes an attorney; guardian;  
35 conservator; a person appointed under power of attorney;

1 court-appointed custodian; representative payee for social  
2 security purposes, veterans affairs benefits, or any other  
3 representative receiving federal or state benefits on behalf of  
4 a protected person; trustee; or federal fiduciary.

5 13. "*Limited conservatorship*" means a conservatorship  
6 that grants the conservator less than all powers available  
7 under this chapter or otherwise restricts the powers of the  
8 conservator.

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

12 15. "*Loyalty*" means actions solely in the best interests of  
13 a protected person and with due regard to a protected person's  
14 wishes.

15 16. "*Minor*" means an unmarried individual under the age  
16 of eighteen years who has not become emancipated pursuant to  
17 chapter 232C.

18 17. "*Parent*" means a biological or adoptive mother or  
19 father of a child; or an individual whose parental status has  
20 been established by operation of law due to the individual's  
21 marriage to the mother at the time of conception or birth of  
22 the child, by order of a court of competent jurisdiction, or by  
23 an administrative order when authorized by state law. "Parent"  
24 does not include a mother or father whose parental rights have  
25 been terminated.

26 18. "*Person*" includes natural persons and corporations.

27 19. "*Property*" includes both real and personal property.

28 20. "*Protected person*" means the person for whom a guardian  
29 or conservator has been appointed, or who is a respondent in a  
30 proceeding under this chapter.

31 21. "*Prudence*" means being careful in the way a conservator  
32 makes decisions or spends money so that the conservator  
33 avoids unnecessary risk by considering the purposes, terms,  
34 distribution requirements, and other circumstances of the  
35 conservatorship.

1 22. "Respondent" means the proposed protected person,  
2 including a person who is the subject of other proceedings  
3 under this chapter.

4 Sec. 3. NEW SECTION. 633F.3 **Applicability of chapter 633.**

5 All relevant provisions of the probate code, chapter 633,  
6 shall apply to proceedings to the extent not inconsistent with  
7 the provisions of this chapter.

8 Sec. 4. NEW SECTION. 633F.4 **Venue.**

9 1. Venue for proceedings under this subchapter shall be in  
10 the judicial district where the minor customarily resides at  
11 the time the proceeding is initiated. The court may transfer  
12 any minor guardianship proceeding brought under this subchapter  
13 to the juvenile court of another county if the court determines  
14 one of the following:

15 a. Such a transfer is in the best interest of the minor  
16 and will assist the court in monitoring and reviewing the  
17 guardianship.

18 b. The respondent minor and the guardian consent to the  
19 transfer and the court finds good cause for the transfer.

20 2. The court shall transfer the case by ordering the  
21 transfer and a continuance by forwarding to the clerk of the  
22 receiving court a certified copy of all papers filed together  
23 with an order of transfer. The judge of the receiving court  
24 shall either accept the filings of the transferring court, or  
25 direct the filing of a new petition upon a finding that it  
26 would be in the minor respondent's best interest to do so.

27 Sec. 5. NEW SECTION. 633F.5 **Petition for appointment of**  
28 **guardian for a minor.**

29 1. Any adult, or minor at least fourteen years of age for  
30 whom the petition is sought, may file with the clerk a verified  
31 petition for the appointment of a guardian of a minor. The  
32 petition shall include all of the following:

33 a. The petitioner's name, residential and electronic mail  
34 addresses, and the relationship of the petitioner to the  
35 respondent.

1     *b.* The respondent's name, date of birth, county of  
2 residence, and, to the extent known, the following: place of  
3 residence, address, and the address of any other residence and  
4 the name and address of any facility at which the respondent  
5 has resided within the six-month period before the filing of  
6 the petition.

7     *c.* To the extent known, the names, residential and  
8 electronic mail addresses, and phone numbers of all of the  
9 following persons:

10     (1) The respondent's parents, if any.

11     (2) The respondent's adult siblings.

12     (3) If none of the previous, then at least one adult nearest  
13 in kinship to the respondent.

14     (4) Any adult who has had the primary care or custody of the  
15 respondent or with whom the respondent has resided within six  
16 months immediately prior to the filing of the petition, if any.

17     (5) Any attorney or other legal representative of the  
18 respondent.

19     (6) Any attorney or other legal representative of the  
20 respondent's parents.

21     *d.* The name and address of any qualified and suitable  
22 proposed guardian and the reason the court should accept the  
23 proposed guardian.

24     *e.* The reasons why a guardianship is sought and would be in  
25 the best interests of the respondent.

26     *f.* The powers to be granted to the guardian and whether a  
27 limited guardianship is appropriate.

28     *g.* Whether the petitioner seeks a change of the respondent's  
29 residence or school district.

30     *h.* To the extent known, a statement of any other proceedings  
31 concerning the care or custody of the respondent pending in any  
32 court in this state or any other jurisdiction.

33     2. Except as required by section 633F.6, any persons  
34 identified pursuant to subsection 1, paragraph "c", are not  
35 entitled to notice of the filing of the petition.

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

6 4. The information required by section 598B.209 shall be  
7 contained as part of the petition or in an attached affidavit  
8 to the petition.

9 **Sec. 6. NEW SECTION. 633F.6 Notice to minor respondent.**

10 1. If the respondent is at least fourteen years of age  
11 and subsection 3 does not apply, notice of the filing of the  
12 petition and the order appointing counsel for the respondent  
13 and setting hearing on the petition shall be served upon the  
14 respondent in the manner of an original notice and the content  
15 of the notice is governed by the rules of civil procedure  
16 governing original notice. If the respondent has retained an  
17 attorney or an attorney has been appointed by the court for the  
18 respondent, the petitioner shall provide the respondent and the  
19 respondent's attorney with a copy of the original notice.

20 2. If the respondent has not attained the age of fourteen  
21 years of age or if subsection 3 applies, the petitioner shall  
22 serve such notice upon the respondent by mailing the attorney  
23 representing the respondent or the court advisor appointed in  
24 the proceeding, a copy of the original notice.

25 3. If the respondent is at least fourteen years of age and  
26 the court, for good cause shown, determines that the respondent  
27 should not be served an original notice as otherwise required  
28 under subsection 1, the respondent shall be served as provided  
29 in subsection 2.

30 4. Notice shall also be served upon the respondent's known  
31 parents listed in the petition in the manner of an original  
32 notice and the parents' attorney if appointed in accordance  
33 with section 633F.7.

34 5. As stated in the petition, notice shall also be mailed to  
35 all of the following persons:

1     *a.* Any adult with whom the respondent has resided in the  
2 six-month period preceding the filing of the petition.

3     *b.* If the respondent has no parents, to the respondent's  
4 adult siblings, or if none, to at least one adult nearest in  
5 kinship to the respondent.

6     6. Any notice required to be mailed under this section  
7 shall conform to the requirements set forth in section 633.40,  
8 subsection 5.

9     Sec. 7. NEW SECTION. **633F.7 Attendance and participation at**  
10 **hearing for appointment of guardian for minor.**

11     1. Unless excused by the court for good cause shown, the  
12 attorney for the respondent, the petitioner, and the proposed  
13 guardian shall attend the hearing on the petition.

14     2. The respondent shall be entitled to attend the hearing  
15 on the petition if the respondent is of an age appropriate  
16 to attend the hearing. A presumption shall exist that  
17 a respondent fourteen years of age or older is of an age  
18 appropriate to attend the hearing.

19     3. Any parent of a respondent has the right to attend such  
20 hearing.

21     4. A person may request permission to participate in such  
22 hearing. The court may grant the request, with or without  
23 hearing, on determining that it is in the best interests of the  
24 respondent. The court may impose appropriate conditions on the  
25 person's participation.

26     Sec. 8. NEW SECTION. **633F.8 Preference for selection of**  
27 **guardian for a minor.**

28     1. The court shall appoint as guardian a qualified and  
29 suitable person who is willing to serve subject to the  
30 preferences as to the appointment of a guardian set forth in  
31 subsections 2 and 3.

32     2. In appointing a guardian for a minor whose parents are  
33 deceased, the court shall give preference to a person, if  
34 qualified and suitable, nominated as guardian for the minor by  
35 a will that was executed by the parent or parents having legal



1 custody of the minor at the time of the parent's or parents'  
2 death, and that was admitted to probate under chapter 633 or  
3 635 or delivered to the clerk under section 633.356.

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

7 Sec. 9. NEW SECTION. 633F.9 Standby petition for  
8 appointment of guardian for a minor.

9 1. An adult person having physical and legal custody of  
10 a minor may execute a verified petition for the appointment  
11 of a guardian of the minor upon the express condition that  
12 the petition shall be acted upon by the court only upon  
13 the occurrence of an event specified or the existence of a  
14 described condition of the mental or physical health of the  
15 petitioner, the occurrence of which event, or the existence of  
16 which condition, shall be established in the manner directed  
17 in the petition. The petition, in addition to containing  
18 the information required in section 633F.5, shall include a  
19 statement that the petitioner understands the result of a  
20 guardian being appointed for the minor. An appointment of a  
21 guardian for a minor shall only be effective until the minor  
22 attains full age.

23 2. A standby petition may nominate a person for appointment  
24 to serve as guardian as well as alternate guardians if the  
25 nominated person is unable or unwilling or is removed as  
26 guardian. The court in appointing the guardian shall appoint  
27 the person or persons nominated by the petitioner unless the  
28 person or persons are not qualified or for other good cause and  
29 shall give due regard to other requests and recommendations  
30 contained in the petition.

31 3. A standby petition may be deposited with the clerk of the  
32 county in which the minor resides or with any person nominated  
33 by the petitioner to serve as guardian.

34 4. A standby petition may be revoked by the petitioner  
35 at any time before appointment of a guardian by the court,

1 provided that the petitioner is of sound mind at the time  
2 of revocation. Revocation shall be accomplished by the  
3 destruction of the petition by the petitioner, or by the  
4 execution of an acknowledged instrument of revocation. If the  
5 petition has been deposited with the clerk, the revocation may  
6 likewise be deposited there.

7 5. If the standby petition has been deposited with the  
8 clerk under the provisions of subsection 3 and has not been  
9 revoked under the provisions of subsection 4, the petition  
10 may be filed with the court upon the filing of a verified  
11 statement to the effect that the occurrence of the event or  
12 the condition provided for in the petition has occurred. If  
13 the petition has not been deposited with the clerk under the  
14 provisions of subsection 3 and has not been revoked under  
15 the provisions of subsection 4, then the petition shall be  
16 filed with the court at the time a verified statement that the  
17 occurrence of the event or the condition provided for in the  
18 petition has occurred is filed with the court in the county  
19 where the minor then resides. Upon filing of the petition and  
20 verified statement, the minor shall then become the respondent  
21 and the person filing the verified statement shall become the  
22 petitioner and the proceedings shall be thereafter conducted as  
23 provided for in this chapter.

24 Sec. 10. NEW SECTION. 633F.10 Appointment of guardian for a  
25 minor.

26 1. Upon the filing of the petition for appointment of a  
27 guardian for a minor, the court shall request records of child  
28 abuse, dependent adult abuse, sex offender registries, and  
29 criminal convictions, in the state of the proposed guardian's  
30 residence unless the proposed guardian has undergone these  
31 required background checks within the prior twelve months.  
32 The court shall consider these records and other information  
33 regarding the proposed guardian that it deems appropriate prior  
34 to determining whether the proposed guardian is qualified  
35 and suitable to serve as guardian for the respondent. The

1 petitioner shall be responsible for paying the costs of  
2 obtaining background information described in this section  
3 unless the court waives such costs for good cause shown.

4 2. Prior to granting a petition for guardianship, the  
5 court shall consider whether the filing of a child in need of  
6 assistance petition is appropriate under section 232.87. If  
7 the court determines a child in need of assistance petition  
8 may be appropriate, the court shall notify the department of  
9 human services or the county attorney. The court may appoint a  
10 guardian for a respondent in a child in need of assistance case  
11 under section 232.101A, 232.103A, or 232.104.

12 Sec. 11. NEW SECTION. 633F.11 **Appointment of guardian for**  
13 **a minor with parental consent.**

14 1. The court shall appoint a guardian for a minor if the  
15 court finds all of the following:

16 a. The parent or parents having legal custody of the minor  
17 understand the nature of the guardianship and knowingly and  
18 voluntarily consent to the guardianship.

19 b. The minor is in need of a guardianship because of any of  
20 the following:

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

24 (2) The parent having legal custody of the minor is  
25 incarcerated.

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

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

30 c. Appointment of a guardian for the minor is in the best  
31 interest of the minor.

32 2. If the guardianship petition requests a guardianship  
33 with parental consent, the petition shall include an affidavit  
34 signed by the parent or parents verifying that the parent or  
35 parents knowingly and voluntarily consent to the guardianship.

1 The consent required by this subsection shall be on a form  
2 prescribed by the judicial branch.

3 3. On or before the date of the hearing on the petition,  
4 the parent or parents and the proposed guardian shall file  
5 an agreement with the court. This agreement shall state the  
6 following:

- 7 a. The responsibilities of the guardian.
- 8 b. The responsibilities of the parent or parents.
- 9 c. The expected duration of the guardianship, if known.

10 4. If the court grants the petition, the court shall approve  
11 the guardianship agreement between the custodial parent and the  
12 proposed guardian and incorporate its terms by reference unless  
13 the court finds the agreement was not reached knowingly and  
14 voluntarily or is not in the best interests of the minor.

15 **Sec. 12. NEW SECTION. 633F.12 Appointment of guardian for a**  
16 **minor without parental consent.**

17 1. The court shall appoint a guardian for a minor without  
18 the consent of the parent or parents having legal custody of  
19 the minor if the court finds by clear and convincing evidence  
20 one of the following:

21 a. Appointment of a guardian is in the best interest of  
22 the minor and no parent of the respondent is willing or able  
23 to adequately exercise the powers the court would grant to the  
24 guardian.

25 b. The respondent has a person serving as de facto  
26 guardian, and the court finds a demonstrated lack of consistent  
27 participation in the respondent's life by the parent or parents  
28 with legal custody after considering all of the following:

29 (1) The intent and circumstances of the parent or parents  
30 when placing the respondent in the de facto guardian's care and  
31 supervision.

32 (2) The amount of communication and visitation by the parent  
33 or parents with the respondent while in the de facto guardian's  
34 care and supervision.

35 (3) Whether the parent or parents have refused to comply

1 with any conditions for retaining custody of the respondent in  
2 prior court orders.

3 2. In appointing a guardian, the court's order shall address  
4 all of the following:

5 a. Whether a limited guardianship is appropriate.

6 b. Whether any terms of any agreement between the custodial  
7 parents or parents and the proposed guardian should be  
8 modified, or that the agreement was not reached knowingly and  
9 voluntarily.

10 c. The reasons why the appointment of a guardian is in the  
11 respondent's best interests.

12 d. That all respondents have been provided with notice of  
13 the right to representation by an attorney, the right to be  
14 personally present in hearings on a petition, and evidence of  
15 whether notification was provided pursuant to the order on  
16 whether to appoint a guardian.

17 e. The reporting period to be covered by the guardian's  
18 first annual report.

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

22 Sec. 13. NEW SECTION. 633F.13 **Representation for minor**  
23 **respondent.**

24 1. Upon the filing of a petition for appointment of a  
25 guardian pursuant to section 633F.5, the court shall appoint  
26 an attorney for the minor, if the court determines that the  
27 interests of the minor are or may be inadequately represented.

28 2. An attorney representing the minor shall advocate for the  
29 wishes and views of the minor to the extent that those wishes  
30 and views are reasonably ascertainable and advocate for best  
31 interest of the minor if the wishes and views of the minor are  
32 not reasonably ascertainable.

33 Sec. 14. NEW SECTION. 633F.14 **Representation for indigent**  
34 **parent or parents of minor respondent.**

35 Upon the filing of a petition for appointment of a guardian

1 pursuant to section 633F.5, the court shall appoint an attorney  
2 for the parent identified in the petition if all of the  
3 following are true:

4 1. The parent objects to the appointment of a guardian for  
5 the minor.

6 2. The parent requests appointment of an attorney and  
7 the court determines that the parent is unable to pay for an  
8 attorney in the same manner as in section 232.141.

9 Sec. 15. NEW SECTION. 633F.15 **Emergency appointment of**  
10 **guardian for a minor.**

11 1. The court may appoint a guardian for a minor ex parte  
12 only when the petitioner proves by clear and convincing  
13 evidence that an emergency exists justifying the need for an  
14 immediate appointment. This subsection does not apply to a  
15 protected person with an actively serving guardian. The order  
16 appointing a guardian under this section shall include a list  
17 of powers of the guardian, which powers shall be only such  
18 powers as the court deems necessary to address the emergency  
19 justifying the appointment.

20 2. The petition for emergency appointment must include the  
21 contents of section 633F.5, subsection 1, paragraphs "a", "b",  
22 "c", and "d".

23 3. Upon appointment as a guardian under this section,  
24 the guardian shall provide notice of such appointment to all  
25 persons required to be given notice under section 633F.6.

26 4. A protected person shall be entitled to a hearing within  
27 five days after the filing of a motion by the protected person  
28 asking that the emergency guardianship be terminated. A motion  
29 may also be filed by a legal representative of the protected  
30 person or a parent of the protected person.

31 5. A guardianship under this section shall terminate  
32 twenty-eight days after the order of appointment is entered.

33 Sec. 16. NEW SECTION. 633F.16 **Duties of guardian for a**  
34 **minor.**

35 1. A guardian for a minor is a fiduciary. Except as

1 otherwise limited by the court, a guardian for a minor has the  
2 duties and responsibilities of a parent regarding the minor's  
3 safety, care, education, health, and welfare. A guardian shall  
4 act in the minor's best interest and exercise reasonable care,  
5 diligence, and prudence.

6 2. A guardian of a minor shall do all of the following:

7 a. Meet with and maintain sufficient contact with the  
8 minor to know of the minor's abilities, limitations, needs,  
9 opportunities, and physical and mental health.

10 b. Take reasonable care of the minor's personal effects  
11 and may bring a proceeding for a conservatorship or protective  
12 arrangement instead of conservatorship, if necessary to protect  
13 other property of the minor.

14 c. Inform the court of any change in the minor's dwelling,  
15 address, or school district.

16 d. In determining what is in the minor's best interest, take  
17 into account the minor's preferences to the extent actually  
18 known or reasonably ascertainable by the guardian.

19 Sec. 17. NEW SECTION. 633F.17 Powers of guardian for a  
20 minor.

21 1. Except as otherwise limited by the court, a guardian of  
22 a minor has the powers a parent would otherwise have regarding  
23 the minor's safety, care, education, health, and welfare.

24 2. A guardian of a minor may do any of the following:

25 a. If consistent with the terms of any order by a court  
26 of competent jurisdiction relating to custody of the minor,  
27 take custody of the minor and establish the minor's place of  
28 dwelling, but shall not establish or move the minor's dwelling  
29 outside the state without prior authorization of the court.

30 b. Consent to and arrange for emergency and routine medical,  
31 dental or other care, treatment, or service for the minor.

32 c. To the extent reasonable, delegate to the minor  
33 responsibilities for decisions affecting the minor's  
34 well-being.

35 d. Any other powers the court may specify.

1     3. The court may authorize a guardian of a minor to consent  
2 to adopt the minor who does not have a living parent.

3     4. A guardian of a minor may consent to the marriage of the  
4 minor upon receipt of prior court authorization.

5     Sec. 18. NEW SECTION. 633F.18 **Petitions to transition from**  
6 **minor to adult guardianships.**

7     Within six months of a protected person's eighteenth  
8 birthday, the guardian may petition the court to continue the  
9 guardianship beyond the protected person's eighteenth birthday  
10 for the reasons stated in the guardian's petition. The court  
11 shall set a hearing date on a petition under this section to  
12 be between twenty days after the order setting the hearing  
13 is entered, and sixty days before the protected person's  
14 eighteenth birthday. The respondent shall be present at the  
15 hearing unless the court finds good cause for the absence of  
16 the respondent. If the respondent is not present, the court  
17 shall make a record of the lack of presence. The court shall  
18 make reasonable accommodations to enable the respondent to be  
19 present at the hearing. Notice of the hearing shall be mailed  
20 to all persons who would be entitled to notice of a hearing on  
21 a petition for guardianship by the same petitioner for the same  
22 respondent, if the respondent was of full age.

23     Sec. 19. NEW SECTION. 633F.19 **Petition for appointment of**  
24 **guardian.**

25     Any adult person may file with the clerk a verified petition  
26 for the appointment of guardian. The petition shall state all  
27 of the following:

28     1. The petitioner's name, address, and electronic mail  
29 address, the relationship of the petitioner to the respondent,  
30 and, to the extent known, all of the following:

31     a. The respondent's name, age, county of residence, place  
32 of residence, address, the address of any other residence, and  
33 the name and address of any facility at which the respondent  
34 has resided within the six-month period before the filing of  
35 the petition.



1     *b.* The names and addresses of:

2     (1) Respondent's spouse and all adult children of the  
3 respondent.

4     (2) If there are no persons in subparagraph (1), then  
5 respondent's living parents and adult siblings.

6     (3) If there are no persons in subparagraphs (1) and (2),  
7 then at least one adult nearest in kinship to the respondent.

8     (4) If there are no persons in subparagraphs (1) through  
9 (3), then any adults with whom the respondent has resided  
10 within the six months before the filing of the petition.

11    (5) Any legal representative of the respondent.

12    (6) Any person nominated as guardian by the respondent and  
13 the document in which the person was nominated.

14    2. The name and address of any proposed guardian and the  
15 reason the court should accept the proposed guardian.

16    3. The reasons why the guardianship is necessary, including  
17 a brief description of the respondent's alleged functional  
18 limitations which make the respondent unable to care for the  
19 respondent's personal safety or to attend to or provide for  
20 necessities such as food, shelter, clothing, or medical care,  
21 without which physical injury or illness may occur.

22    4. Whether the petitioner seeks a change of the respondent's  
23 residence.

24    5. The powers to be granted to the guardian and the reasons  
25 a limited guardianship is inappropriate.

26    6. That a guardianship is the least restrictive means to  
27 protect the best interests of the respondent.

28    7. Whether the respondent is capable of requesting an  
29 attorney and whether appointment of a court advisor is  
30 appropriate.

31    8. Except as required by section 633F.20, any persons  
32 identified pursuant to subsection 1, paragraph "b", are not  
33 entitled to notice of hearings on the petition.

34    Sec. 20. NEW SECTION. 633F.20 Notice to respondent.

35    1. Except where the respondent is the petitioner, notice of

1 the filing of a petition to appoint a guardian shall be served  
2 upon the respondent in the manner of an original notice and  
3 the content of the notice is governed by the rules of civil  
4 procedure governing original notice.

5 2. Notice shall also be mailed to the following persons, to  
6 the extent known to the petitioner:

7 a. The respondent's legal representative.

8 b. The spouse and adult children of the respondent.

9 c. If there are no persons in paragraphs "a" and "b", then  
10 to the respondent's adult grandchildren.

11 d. If there are no persons in paragraphs "a" through "c",  
12 then to the respondent's parents and adult siblings.

13 e. If there are no persons in paragraphs "a" through "d",  
14 then to any adult with whom respondent has resided in the  
15 six-month period preceding the filing of the petition, and any  
16 adult who has assisted the respondent with decision making for  
17 such period.

18 f. If there are no persons in paragraphs "a" through "e",  
19 then at least one adult in the priority shown in section  
20 633.219.

21 3. Any notice required to be mailed under this section shall  
22 conform to section 633.40, subsection 5.

23 Sec. 21. NEW SECTION. 633F.21 Notification of guardianship  
24 powers.

25 In a proceeding for the appointment of a guardian, the  
26 respondent shall be given written notice, as provided in  
27 section 633F.20, which advises the respondent that, if  
28 a guardian is appointed, the guardian may, without court  
29 approval, provide for the care of the respondent, manage  
30 the respondent's personal property and effects, assist  
31 the respondent in developing self-reliance and receiving  
32 professional care, counseling, treatment, or services as  
33 needed, and ensure that the respondent receives necessary  
34 emergency medical services. The notice shall also advise  
35 the respondent that, upon the court's approval, the guardian

1 may change the respondent's permanent residence to a more  
2 restrictive residence. The notice shall also advise the  
3 respondent that, without court approval, the guardian may  
4 arrange for certain routine medical procedures for the  
5 respondent. The notice shall clearly advise the respondent in  
6 boldface type of a minimum size of ten points, of the right  
7 to counsel and the potential deprivation of the respondent's  
8 civil rights. The notice shall also state that the respondent  
9 may use the respondent's own attorney instead of an attorney  
10 appointed by the court.

11 Sec. 22. NEW SECTION. 633F.22 Appointment of guardian.

12 1. If the court finds by clear and convincing evidence  
13 that the respondent's decision-making capacity is so impaired  
14 that the respondent is unable to care for the respondent's  
15 personal safety or to attend to or provide for the respondent's  
16 necessities such as food, shelter, clothing, or medical  
17 care, without which physical injury or illness may occur, and  
18 the court finds there are no less restrictive alternatives  
19 that will protect the respondent, the court shall appoint a  
20 guardian.

21 2. In appointing a guardian, the court shall consider the  
22 functional abilities and limitations of the respondent and  
23 whether a limited guardianship is appropriate.

24 3. If the court appoints a guardian for a respondent who has  
25 been diagnosed as having an intellectual disability, the court  
26 shall make a separate determination as to the respondent's  
27 competency to vote. The court shall find a respondent  
28 incompetent to vote only upon determining that the person lacks  
29 sufficient mental capacity to comprehend and exercise the right  
30 to vote.

31 4. Upon the filing of the petition for appointment of a  
32 guardian, the court shall request records of child abuse,  
33 dependent adult abuse, sex offender registries, and criminal  
34 convictions, in the state of the proposed guardian's residence  
35 unless the proposed guardian has undergone these required

1 background checks within the prior twelve months. The court  
2 shall consider these records and other information regarding  
3 the proposed guardian that it deems appropriate prior to  
4 determining whether the proposed guardian is qualified  
5 and suitable to serve as guardian for the respondent. The  
6 petitioner shall be responsible for paying the costs of  
7 obtaining background information described in this subsection  
8 unless the court waives such costs for good cause shown.

9 5. In appointing a guardian, the court's order shall address  
10 all of the following:

- 11 a. Whether a limited guardianship is appropriate.
- 12 b. The reasons why the appointment of a guardian is in the  
13 respondent's best interests.
- 14 c. That the respondent has been provided with notice of  
15 the right to representation by an attorney, the right to be  
16 personally present in hearings on a petition, and evidence of  
17 whether notification was provided pursuant to the order on  
18 whether to appoint a guardian.
- 19 d. The reporting period to be covered by the guardian's  
20 first annual report.

21 Sec. 23. NEW SECTION. 633F.23 **Emergency appointment of**  
22 **guardian.**

23 1. The court may appoint a guardian ex parte only when  
24 the petitioner proves by clear and convincing evidence that  
25 an emergency exists justifying the need for an immediate  
26 appointment. This subsection does not apply to a protected  
27 person with an actively serving guardian. The order appointing  
28 a guardian under this section shall include a list of powers  
29 of the guardian, which powers shall be only such powers as the  
30 court deems necessary to address the emergency justifying the  
31 appointment.

32 2. Upon appointment as a guardian under this section,  
33 the guardian shall provide notice of such appointment to all  
34 persons required to be given notice under section 633F.20.

35 3. A protected person shall be entitled to a hearing within

1 five days after the filing of a motion by the protected person  
2 asking that the emergency guardianship be terminated.

3 4. A guardianship under this section shall terminate  
4 twenty-eight days after the order of appointment is entered.

5 **Sec. 24. NEW SECTION. 633F.24 Preference as to appointment**  
6 **of guardian.**

7 The court shall appoint as guardian a qualified and  
8 suitable person who is willing to serve in that capacity. The  
9 same person may be appointed to serve as both guardian and  
10 conservator.

11 **Sec. 25. NEW SECTION. 633F.25 Appointment of guardian on a**  
12 **standby basis.**

13 1. A petition for the appointment of a guardian on a standby  
14 basis may be filed by any adult person under the same procedure  
15 and requirements as provided in sections 633.596, 633.597,  
16 and 633F.41 for appointment of standby conservator, insofar  
17 as applicable. In all proceedings to appoint a guardian,  
18 the court shall consider whether a limited guardianship is  
19 appropriate.

20 2. If prior to the time of hearing on a petition for the  
21 appointment of a guardian or a conservator, a petition is  
22 filed under the provisions of this section or section 633F.19,  
23 633F.28, or 633F.41, subsection 1, the court shall combine the  
24 hearing on such petitions and determine who shall be appointed  
25 guardian or conservator, and such petition shall be triable to  
26 the court.

27 **Sec. 26. NEW SECTION. 633F.26 Responsibilities of guardian.**

28 1. A guardian is a fiduciary. A guardian shall have the  
29 following responsibilities:

30 *a.* Treat protected persons with dignity and respect.

31 *b.* Promote self-determination of the protected persons, to  
32 the extent reasonably possible, by involving them in decisions  
33 that affect them and by considering their wishes, values, and  
34 preferences in making decisions on their behalf.

35 *c.* In making decisions for a protected person, make the

1 decisions known or reasonably believed the protected person  
2 would make if able unless such a decision would unreasonably  
3 harm or endanger the protected person's welfare or interest.  
4 If the guardian does not know or cannot reasonably ascertain  
5 the decisions that the protected person would make if able, or  
6 if making such a decision would unreasonably harm or endanger  
7 the protected person's welfare, the guardian shall act in the  
8 protected person's best interest.

9 *d.* Maintain regular contact with the protected person to the  
10 extent reasonably possible.

11 *e.* Make a good-faith effort to cooperate with other legal  
12 representatives of the protected person.

13 2. Based upon evidence produced at the hearing, the court  
14 may grant a guardian the following powers and duties which may  
15 be exercised without additional court approval:

16 *a.* Providing for the care, comfort, and maintenance of the  
17 protected person, including appropriate training and education  
18 to maximize the protected person's potential.

19 *b.* Taking reasonable care of the protected person's  
20 clothing, furniture, vehicle, and other personal effects.

21 *c.* Ensuring the protected person receives necessary  
22 emergency medical services.

23 *d.* Ensuring the protected person receives appropriate  
24 professional care, counseling, and medical treatment and  
25 services limited to preventive and diagnostic services and  
26 treatment related to a specific illness, symptom, complaint,  
27 or injury.

28 *e.* Changing the protected person's permanent residence to an  
29 arrangement that is less restrictive of the protected person's  
30 ability to leave or have visitors than the arrangement at the  
31 time of the guardian's appointment.

32 *f.* Placing reasonable time, place, or manner restrictions on  
33 communication, visitation, or interaction between the protected  
34 person and another person.

35 *g.* Any other powers or duties the court may specify.

1 3. The court in issuing any order shall take into account  
2 all the available information concerning the capabilities of  
3 the protected person including any additional evaluation deemed  
4 necessary and the availability of third-party assistance to  
5 meet the needs of the protected person.

6 4. The court may direct that the guardian have only limited  
7 responsibility for the protected person. If the responsibility  
8 is limited, the court shall state those areas of responsibility  
9 which shall be the guardian's, and all others shall be retained  
10 by the protected person.

11 5. Following hearing and notice to the protected person and  
12 court advisor, the court, by specific reference to the power  
13 being granted, may authorize a guardian to exercise any of the  
14 following powers:

15 a. Changing, at the guardian's request, the protected  
16 person's permanent residence to a nursing home, or other secure  
17 facility or secure portion of a facility, or a facility that  
18 restricts the protected person's ability to leave or have  
19 visitors.

20 b. Arranging for health, including mental health, or other  
21 care, treatment, or services for the protected person that were  
22 not granted in subsection 2.

23 c. Consenting to the withholding or withdrawal of  
24 life-sustaining procedures in accordance with chapter 144A for  
25 the protected person.

26 d. Upon a showing to the court of good cause, denying all  
27 communication, visitation, or interaction by the protected  
28 person with a person with whom the protected person has  
29 expressed a desire to communicate, visit, or interact, or with  
30 a person who seeks to communicate, visit, or interact with the  
31 protected person.

32 6. If the court makes a separate determination that the  
33 protected person lacks sufficient mental capacity to comprehend  
34 and exercise the right to vote then the court shall order that  
35 the protected person may not vote without further order of the

1 court.

2 7. If the court makes a separate determination that the  
3 protected person lacks sufficient mental capacity to contract a  
4 valid marriage then the court shall order that the protected  
5 person may not marry without further order of the court.

6 Sec. 27. NEW SECTION. 633F.27 Rights of protected person  
7 under guardianship.

8 An adult protected person under a guardianship has the right  
9 of communication, visitation, or interaction with other persons  
10 upon the consent of the adult protected person, subject to  
11 section 633F.26, subsection 2, paragraph "f". If an adult  
12 protected person is unable to give express consent to such  
13 communication, visitation, or interaction with a person due to  
14 a physical or mental condition, consent of an adult protected  
15 person may be presumed by a guardian or a court based on an  
16 adult protected person's prior relationship with such person.

17 Sec. 28. NEW SECTION. 633F.28 Petition for appointment of  
18 conservator.

19 1. Any adult person may file with the clerk a verified  
20 petition for the appointment of a conservator. The petition  
21 shall state all of the following information:

22 a. The petitioner's name, address, and electronic mail  
23 address, and relationship to the respondent.

24 b. To the extent known, the respondent's name, age, county  
25 of residence, mailing address, and current location.

26 c. To the extent known, the name, address, electronic mail  
27 address, and phone number of the following persons:

28 (1) The respondent's spouse, if any, and respondent's adult  
29 children.

30 (2) If there are no persons in subparagraph (1), the  
31 respondent's living parents and adult siblings.

32 (3) If there are no persons in subparagraphs (1) and (2),  
33 then, one or all of the below:

34 (a) Any adult with whom the respondent has resided in a  
35 noninstitutional setting for more than six months immediately



1 prior to the filing of the petition, if any.

2 (b) Any person or institution primarily responsible for the  
3 care or having custody of the respondent, if any.

4 (4) Any nominated or presently acting legal representative  
5 of the respondent.

6 2. Any person nominated as conservator by the respondent,  
7 and the document in which the person was nominated.

8 3. The name and address of any proposed conservator, and  
9 the reasons the court should accept the proposed conservator.  
10 If the respondent has nominated a conservator other than the  
11 proposed conservator, the reasons the proposed conservator  
12 should be appointed in lieu of the respondent's nominee.

13 4. The reasons why the conservatorship is necessary,  
14 including a brief description of the respondent's alleged  
15 functional limitations which make the respondent unable to  
16 make, communicate, or carry out important decisions concerning  
17 the respondent's financial affairs.

18 5. A list of what alternatives to the appointment of a  
19 conservator have been considered or attempted and why these  
20 alternatives do not address the limitations in the respondent's  
21 ability to make, communicate, or carry out the respondent's  
22 financial decisions.

23 6. The powers to be granted to the limited conservator, or,  
24 the reasons a limited conservatorship is inappropriate.

25 7. The estimated present value of the real estate, the  
26 estimated value of the personal property, and the estimated  
27 gross annual income of the estate. If any money is payable,  
28 or to become payable, to the respondent by the United States  
29 through the United States department of veterans affairs, the  
30 petition shall so state.

31 8. Whether the respondent is capable of requesting an  
32 attorney and whether appointment of a court advisor is  
33 appropriate.

34 9. Except as required by section 633F.20, any persons  
35 identified pursuant to section 1, paragraph "c", are not

1 entitled to notice of hearings on the petition.

2 Sec. 29. NEW SECTION. 633F.29 Notice to respondent.

3 1. Except where the respondent is the petitioner, notice of  
4 the filing of the petition shall be served upon the respondent  
5 in the manner of an original notice and the content of the  
6 notice is governed by the rules of civil procedure governing  
7 original notice.

8 2. Notice shall be mailed to the following persons, to the  
9 extent known to the petitioner:

10 a. The respondent's legal representative.

11 b. The spouse and adult children of the respondent.

12 c. If there are no persons in paragraphs "a" and "b", then  
13 to the respondent's adult grandchildren.

14 d. If there are no persons in paragraphs "a" through "c",  
15 then to the respondent's parents and adult siblings.

16 e. If there are no persons in paragraphs "a" through "d",  
17 then to any adult with whom the respondent has resided in the  
18 six-month period preceding the filing of the petition, and any  
19 adult who has assisted the respondent with decision making for  
20 such period.

21 f. If there are no persons in paragraphs "a" through "e",  
22 then at least one adult in the priority shown in section  
23 633.219.

24 3. Notice shall also be mailed to the United States  
25 department of veterans affairs in the event the respondent is  
26 receiving a veterans benefit.

27 4. Any notice required to be mailed hereunder shall conform  
28 to section 633.40, subsection 5.

29 Sec. 30. NEW SECTION. 633F.30 Notification of  
30 conservatorship powers.

31 In a proceeding for the appointment of a conservator, the  
32 respondent shall be given written notice which advises the  
33 respondent that if a conservator is appointed, the conservator  
34 may, without court approval, manage the respondent's principal,  
35 income, and investments, sue and defend any claim by or against

1 the respondent, sell and transfer personal property, and vote  
2 at corporate meetings. The notice shall also advise the  
3 respondent that, upon the court's approval, the conservator  
4 may, after approval of the conservator's plan and without  
5 further approval, invest the respondent's funds, execute  
6 leases, make payments to or for the benefit of the respondent,  
7 support the respondent's legal dependents, compromise or settle  
8 any claim, and do any other thing that the court determines  
9 is in the respondent's best interests. The notice shall  
10 clearly advise the respondent, in boldface type of a minimum  
11 size of ten points, of the right to counsel and the potential  
12 deprivation of the respondent's civil rights. The notice shall  
13 also state that the respondent may use the respondent's own  
14 attorney instead of an attorney appointed by the court. In an  
15 involuntary conservatorship proceeding, the notice shall be  
16 served upon the respondent with the notice of the filing of the  
17 petition as provided in section 633F.29.

18 Sec. 31. NEW SECTION. 633F.31 **Appointment of conservator.**

19 1. If the court finds by clear and convincing evidence that  
20 the respondent's functional limitations prevent the respondent  
21 from making, communicating, or carrying out important decisions  
22 concerning the respondent's financial affairs, and the court  
23 finds there are no less-restrictive alternatives that will  
24 protect the respondent, the court shall appoint a conservator.

25 2. In appointing a conservator, the court shall consider  
26 the functional abilities and limitations of the respondent and  
27 whether a limited conservatorship is appropriate.

28 3. Upon the filing of the petition for appointment of a  
29 conservator, the court shall request records of child abuse,  
30 dependent adult abuse, sex offender registries, and criminal  
31 convictions, in the state of the proposed conservator's  
32 residence unless the proposed conservator has undergone these  
33 required background checks within the prior twelve months,  
34 or unless the proposed conservator is an Iowa financial  
35 institution with trust powers. The court shall consider

1 these records and other information regarding the proposed  
2 conservator that it deems appropriate prior to determining  
3 whether the proposed conservator is qualified and suitable to  
4 serve as conservator for the respondent. The petitioner shall  
5 be responsible for paying the costs of obtaining background  
6 information described in this section unless the court waives  
7 such costs for good cause shown.

8 4. In appointing a conservator, the court's order shall  
9 address all of the following:

10 a. Whether a limited conservatorship is appropriate.

11 b. The reasons why the appointment of a conservator is in  
12 the respondent's best interests.

13 c. That all respondents have been provided with notice of  
14 the right to representation by an attorney, the right to be  
15 personally present in hearings on a petition, and evidence of  
16 whether notification was provided pursuant to the order on  
17 whether to appoint a conservator.

18 d. The reporting period to be covered by the conservator's  
19 first annual report.

20 Sec. 32. NEW SECTION. 633F.32 **Emergency appointment of**  
21 **conservator.**

22 1. The court may appoint a conservator ex parte only when  
23 the petitioner proves by clear and convincing evidence that  
24 an emergency exists justifying the need for an immediate  
25 appointment. This subsection does not apply to a protected  
26 person with an actively serving conservator. The order  
27 appointing a conservator under this section shall include  
28 a list of powers of the conservator, which powers shall be  
29 only such powers as the court deems necessary to address the  
30 emergency justifying the appointment.

31 2. Upon appointment as a conservator under this section,  
32 the conservator shall provide notice of such appointment to all  
33 persons required to be given notice under section 633F.29.

34 3. A protected person shall be entitled to a hearing within  
35 five days after the filing of a motion by the protected person

1 asking that the emergency conservatorship be terminated.

2 4. A conservatorship under this section shall terminate  
3 twenty-eight days after the order of appointment is entered.

4 Sec. 33. NEW SECTION. 633F.33 **Selection of conservator.**

5 The court shall appoint as conservator a qualified and  
6 suitable person who is willing to serve in that capacity. The  
7 same person may be appointed to serve as both guardian and  
8 conservator.

9 Sec. 34. NEW SECTION. 633F.34 **Combining petitions for**  
10 **appointment of guardian and conservator.**

11 1. The petition for the appointment of a guardian for an  
12 adult and a petition for a conservator for an adult may be  
13 combined and the cause tried in the same manner as a petition  
14 for the appointment of a conservator.

15 2. The petition for the appointment of a guardian for a  
16 minor and the petition for the appointment of a conservator of  
17 a minor shall not be combined.

18 Sec. 35. NEW SECTION. 633F.35 **Powers of protected person**  
19 **in conservatorship.**

20 1. A protected person for whom a conservator has been  
21 appointed shall not have the power to convey, encumber, or  
22 dispose of property in any manner, other than by will if the  
23 protected person possesses the requisite testamentary capacity,  
24 unless the court determines that the protected person has a  
25 limited ability to handle the protected person's own funds. If  
26 the court makes such a finding, it shall specify to what extent  
27 the protected person may possess and use the protected person's  
28 own funds.

29 2. Any modification of the powers of the protected person  
30 that would be more restrictive of the protected person's  
31 control over the protected person's financial affairs shall  
32 be based upon clear and convincing evidence and the burden of  
33 persuasion is on the conservator. Any modification that would  
34 be less restrictive of the protected person's control over the  
35 protected person's financial affairs shall be based upon proof

1 in accordance with the requirements of section 633F.55.

2 Sec. 36. NEW SECTION. 633F.36 Title and possession of  
3 protected person's property.

4 1. The title to all property of the protected person is  
5 in the protected person and not the conservator, subject,  
6 however, to possession by the conservator and to the control of  
7 the court for the purposes of administration, sale, or other  
8 disposition. Any real property of the protected person titled  
9 at any time in the name of a conservatorship shall be deemed  
10 to be titled in the protected person's name subject to the  
11 conservator's right of possession.

12 2. Every conservator shall have a right to, and shall take,  
13 possession of all of the real and personal property of the  
14 protected person. The conservator shall pay the taxes and  
15 collect the income from the property until the conservatorship  
16 is terminated. The conservator may maintain an action for the  
17 possession of the property, and to determine the title to the  
18 property.

19 Sec. 37. NEW SECTION. 633F.37 Duties of conservator.

20 1. A conservator is a fiduciary and has duties of prudence  
21 and loyalty to the protected person.

22 2. A conservator shall promote the self-determination of  
23 the protected person and, to the extent feasible, encourage  
24 the protected person to participate in decisions, act on the  
25 protected person's own behalf, and develop or regain the  
26 capacity to manage the protected person's financial affairs.

27 3. In making decisions for a protected person, the  
28 conservator shall make the decision the conservator reasonably  
29 believes the protected person would make if able, unless doing  
30 so would fail to preserve the resources needed to maintain  
31 the protected person's well-being and lifestyle or otherwise  
32 unreasonably harm or endanger the welfare or personal or  
33 financial interests of the protected person. To determine  
34 the decision the protected person would make if able, the  
35 conservator shall consider the protected person's prior or

1 current directions, preferences, opinions, values, and actions,  
2 to the extent actually known or reasonably ascertainable by the  
3 conservator.

4 4. If a conservator cannot make a decision under subsection  
5 3 because the conservator does not know and cannot reasonably  
6 determine the decision the protected person would make if  
7 able, or the conservator reasonably believes the decision the  
8 protected person would make would fail to preserve resources  
9 needed to maintain the protected person's well-being and  
10 lifestyle or otherwise unreasonably harm or endanger the  
11 welfare or personal or financial interests of the protected  
12 person, the conservator shall act in accordance with the best  
13 interests of the protected person. In determining the best  
14 interests of the protected person, the conservator shall  
15 consider all of the following:

16 a. Information received from professionals and persons that  
17 demonstrate sufficient interest in the welfare of the protected  
18 person.

19 b. Other information the conservator believes the protected  
20 person would have considered if the protected person were able  
21 to act.

22 c. Other factors a reasonable person in the circumstances  
23 of the protected person would consider, including consequences  
24 to others.

25 5. Except when inconsistent with the conservator's duties  
26 under subsections 1 through 4, a conservator shall invest and  
27 manage the protected person's assets as a prudent investor  
28 would, by considering the circumstances and property of the  
29 protected person.

30 6. The propriety of a conservator's investment and  
31 management of the conservatorship estate is determined in light  
32 of the facts and circumstances existing when the conservator  
33 decides or acts and not by hindsight.

34 7. A conservator that has special skills or expertise,  
35 or is named conservator in reliance on the conservator's

1 representation of special skills or expertise, has a duty  
2 to use the special skills or expertise in carrying out the  
3 conservator's duties.

4 8. In investing and selecting specific property for  
5 distribution, a conservator shall consider any estate plan or  
6 other donative, nominative, or appointive instrument of the  
7 protected person, known to the conservator.

8 9. A conservator shall maintain insurance on the insurable  
9 real and personal property of the protected person, unless  
10 the conservatorship estate lacks sufficient funds to pay for  
11 insurance or the court finds any of the following:

12 a. The property lacks sufficient equity to justify the  
13 insurance premium.

14 b. Insuring the property would unreasonably dissipate the  
15 conservatorship estate.

16 c. Insuring the property would not be in the best interest  
17 of the protected person.

18 10. If a protected person has executed a valid power of  
19 attorney under chapter 633B, the conservator shall act in  
20 accordance with the applicable provisions of chapter 633B.

21 11. The conservator shall report to the department of  
22 human services the protected person's assets and income, if  
23 the protected person is receiving medical assistance under  
24 chapter 249A. Such reports shall be made upon establishment of  
25 a conservatorship for an individual applying for or receiving  
26 medical assistance, upon application for benefits on behalf  
27 of the protected person, upon annual or semiannual review of  
28 continued medical assistance eligibility, when any significant  
29 change in the protected person's assets or income occurs, or  
30 as otherwise requested by the department of human services.  
31 Written reports shall be provided to the department of human  
32 services office for the county in which the protected person  
33 resides or the office in which the protected person's medical  
34 assistance is administered.

35 Sec. 38. NEW SECTION. 633F.38 Powers of conservator.



1 1. The conservator, acting reasonably and consistent  
2 with the fiduciary duties of the conservator to accomplish  
3 the purpose of the conservatorship, and acting in a manner  
4 consistent with the conservator's plan, and consistent with  
5 the order establishing the conservatorship, including any  
6 limitations in the order, shall, without the necessity of prior  
7 court approval, have all the following powers on behalf of the  
8 protected person:

9 a. Collect, receive, receipt for any principal or income,  
10 and to enforce, defend against, or prosecute any claim by or  
11 against the protected person or the conservator; and to sue on  
12 and defend claims in favor of or against the protected person  
13 or the conservator.

14 b. Sell and transfer personal property of a perishable  
15 nature and tangible personal property for which there is a  
16 regularly established market.

17 c. Vote at corporate meetings in person or by proxy.

18 d. Receive additional property from any source.

19 e. Notwithstanding the provisions of section 633.123,  
20 continue to hold any investment or other property originally  
21 received by the conservator, and also any increase thereof,  
22 pending the timely filing of the first annual report.

23 f. Pay court costs, bond premiums, and court-approved  
24 expenses.

25 g. Open a depository account.

26 h. Receive bank statements and investment reports and  
27 correspond with financial institutions.

28 i. Buy, sell, invest, or reinvest assets, except real  
29 estate, pursuant to section 633.123.

30 j. Make payments on any existing mortgage, including for  
31 real estate taxes and for property and liability insurance.

32 k. Pay for the protected person's housing under an existing  
33 agreement.

34 l. Pay health care insurance premiums and prescription  
35 medications, medical expenses, hospital expenses, and ambulance

1 bills.

2 *m.* Authorize preparation and filing of, and pay any amount  
3 due for, state and federal income taxes.

4 *n.* Pay utilities on the real property owned or leased by the  
5 protected person.

6 *o.* Purchase clothing.

7 *p.* Purchase food, cleaning supplies, toiletries, and  
8 personal grooming for the protected person.

9 *q.* Reimburse the guardian or guardians for reasonable  
10 out-of-pocket expenses advanced on behalf of the protected  
11 person for health care and other items upon presentation of a  
12 receipt or statement to the conservator.

13 *r.* Pay reasonable wages and any required employment taxes  
14 to individuals or organizations that can assist the protected  
15 person as needed with cooking, cleaning, shopping, and other  
16 activities of daily living.

17 2. Except as otherwise ordered by the court, a conservator  
18 must give notice to persons entitled to notice and receive  
19 specific prior authorization by the court before the  
20 conservator may take any other action on behalf of the  
21 protected person. These other powers requiring court approval  
22 include the authority of the conservator to:

23 *a.* Invest the protected person's assets consistent with  
24 section 633.123.

25 *b.* Make gifts on the protected person's behalf from  
26 conservatorship assets to persons or religious, educational,  
27 scientific, charitable, or other nonprofit organizations to  
28 whom or to which such gifts were regularly made prior to the  
29 conservator's appointment; or on a showing that such gifts  
30 would benefit the protected person from the perspective of  
31 gift, estate, inheritance, or other taxes. No gift shall be  
32 allowed which would foreseeably prevent adequate provision for  
33 the protected person's best interest.

34 *c.* Make payments consistent with the conservator's plan  
35 described above directly to the protected person or to others

1 for the protected person's education and training needs.

2 *d.* Use the protected person's income or assets to provide  
3 for any person that the protected person is legally obligated  
4 to support.

5 *e.* Compromise, adjust, arbitrate, or settle any claim by or  
6 against the protected person or the conservator.

7 *f.* Make elections for a protected person who is the  
8 surviving spouse as provided in sections 633.236 and 633.240.

9 *g.* Exercise the right to disclaim on behalf of the protected  
10 person as provided in section 633E.5.

11 *h.* Sell, mortgage, exchange, pledge, or lease the protected  
12 person's real and personal property consistent with subchapter  
13 VII, part 6 of chapter 633 regarding sale of property from a  
14 decedent's estate.

15 **Sec. 39. NEW SECTION. 633F.39 Presumption of fraud in**  
16 **conservatorship.**

17 If a conservator is appointed, all contracts, transfers,  
18 and gifts made by the protected person after the filing of the  
19 petition shall be presumed to be a fraud against the rights and  
20 interest of the protected person except as otherwise directed  
21 by the court pursuant to section 633.637.

22 **Sec. 40. NEW SECTION. 633F.40 Procedure in lieu of**  
23 **conservatorship.**

24 If a conservator has not been appointed, money due a minor or  
25 other property to which a minor is entitled, not exceeding in  
26 the aggregate fifty thousand dollars in value, shall be paid  
27 or delivered to a custodian under any uniform transfers to  
28 minors Act. The written receipt of the custodian constitutes  
29 an acquittance of the person making the payment of money or  
30 delivery of property.

31 **Sec. 41. NEW SECTION. 633F.41 Standby petition for**  
32 **appointment of conservator for adult.**

33 1. Any adult person of sound mind may execute a verified  
34 petition for the appointment of a conservator of the person's  
35 property upon the express condition that such petition shall

1 be acted upon by the court only upon the occurrence of an event  
2 specified or the existence of a described condition of the  
3 mental or physical health of the petitioner, the occurrence  
4 of which event, or the existence of which condition, shall  
5 be established in the manner directed in the petition. The  
6 petition, in addition to containing the information required in  
7 section 633F.28, shall include a statement in substantially the  
8 language of section 633F.30 that the petitioner understands the  
9 result of a conservator being appointed for the petitioner.

10 2. Such petition may nominate a person for appointment to  
11 serve as such conservator as well as alternate conservators  
12 if the nominated person is unable or unwilling or is removed  
13 as conservator, and may request that the appointment be made  
14 without bond, or with bond of a certain stated sum. The  
15 court in appointing the conservator shall appoint the person  
16 or persons nominated by the petitioner unless the person or  
17 persons are not qualified or for other good cause and shall  
18 give due regard to other requests and recommendations contained  
19 in the petition.

20 3. Such petition may be deposited with the clerk of the  
21 county in which the party resides, or with any person, firm,  
22 bank, or trust company nominated by the petitioner.

23 4. Such petition may be revoked by the petitioner at any  
24 time before appointment of a conservator by the court, provided  
25 that the petitioner is of sound mind at the time of revocation.  
26 Revocation shall be accomplished by the destruction of  
27 the petition by the petitioner, or by the execution of an  
28 acknowledged instrument of revocation. If the petition has  
29 been deposited with the clerk, the revocation may likewise be  
30 deposited there.

31 5. If the petition has been deposited with the clerk under  
32 the provisions of subsection 3 and has not been revoked, the  
33 petition may be filed with the court upon the filing of a  
34 verified statement to the effect that the occurrence of the  
35 event or the condition provided for in the petition has come

1 to pass. If the petition has not been deposited with the clerk  
2 under the provisions of subsection 3 and has not been revoked,  
3 then the petition shall be filed with the court at the time  
4 a verified statement that the occurrence of the event or the  
5 condition provided for in the petition has come to pass is  
6 filed with the court in the county where the petitioner then  
7 resides. Upon filing of the petition and verified statement,  
8 the person who filed the petition under subsection 1 shall  
9 then become the respondent and the person filing the verified  
10 statement under this subsection shall become the petitioner  
11 and the proceedings shall be thereafter conducted as provided  
12 for in sections 633F.29 through 633F.40, except as otherwise  
13 provided for in this section.

14 6. If prior to the time of hearing on a petition for the  
15 appointment of a guardian or a conservator, a petition is filed  
16 under the provisions of section 633F.19, 633F.25, 633F.28,  
17 or subsection 1 of this section, the court shall combine the  
18 hearing on such petitions and determine who shall be appointed  
19 guardian or conservator, and such petition shall be triable to  
20 the court.

21 **Sec. 42. NEW SECTION. 633F.42 Standby petition for**  
22 **appointment of conservator for a minor.**

23 1. An adult person having physical and legal custody of  
24 a minor may execute a verified petition for the appointment  
25 of a conservator of the minor upon the express condition  
26 that the petition shall be acted upon by the court only upon  
27 the occurrence of an event specified or the existence of a  
28 described condition of the mental or physical health of the  
29 petitioner, the occurrence of which event, or the existence of  
30 which condition, shall be established in the manner directed  
31 in the petition. The petition, in addition to containing  
32 the information required in section 633F.28, shall include  
33 a statement that the petitioner understands the result of a  
34 conservator being appointed for the minor. An appointment of a  
35 conservator for a minor shall only be effective until the minor

1 attains full age.

2 2. A standby petition may nominate a person for appointment  
3 to serve as such conservator as well as alternate conservator  
4 if the nominated person is unable or unwilling or is removed  
5 as conservator. The court in appointing the conservator shall  
6 appoint the person or persons nominated by the petitioner  
7 unless the person or persons are not qualified or for other  
8 good cause and shall give due regard to other requests and  
9 recommendations contained in the petition.

10 3. A standby petition may be deposited with the clerk of the  
11 county in which the minor resides or with any person nominated  
12 by the petitioner to serve as guardian.

13 4. A standby petition may be revoked by the petitioner at  
14 any time before appointment of a conservator by the court,  
15 provided that the petitioner is of sound mind at the time  
16 of revocation. Revocation shall be accomplished by the  
17 destruction of the petition by the petitioner, or by the  
18 execution of an acknowledged instrument of revocation. If the  
19 petition has been deposited with the clerk, the revocation may  
20 likewise be deposited there.

21 5. If the standby petition has been deposited with the  
22 clerk under the provisions of subsection 3 and has not been  
23 revoked under the provisions of subsection 4, the petition may  
24 be filed with the court upon the filing of a verified statement  
25 to the effect that the occurrence of the event or the condition  
26 provided for in the petition has come to pass. If the petition  
27 has not been deposited with the clerk under the provisions of  
28 subsection 3 and has not been revoked under the provisions of  
29 subsection 4, then the petition shall be filed with the court  
30 at the time a verified statement that the occurrence of the  
31 event or the condition provided for in the petition has come to  
32 pass is filed with the court in the county where the minor then  
33 resides. Upon filing of the petition and verified statement,  
34 the minor shall then become the respondent and the person  
35 filing the verified statement shall become the petitioner and

1 the proceedings shall be thereafter conducted as provided for  
2 in this chapter.

3 Sec. 43. NEW SECTION. 633F.43 **Appointing conservator for**  
4 **absentee.**

5 1. When a person owns property located in this state,  
6 the person's whereabouts are unknown, and no provision for  
7 the care, control, and supervision of such property has been  
8 made, with the result that such property may be lost, damaged,  
9 or diminished in value, or that the dependents of such owner  
10 are likely to be deprived of means of support because of such  
11 absence, any adult person may file with the clerk a petition  
12 for the appointment of a conservator of such property of the  
13 absentee. The petition shall state the petitioner's name,  
14 address, and electronic mail address, relationship to the  
15 absentee, and all of the following:

16 a. The absentee's name, county of residence, and last known  
17 address.

18 b. To the extent known, the name, address, electronic mail  
19 address, and telephone number of the absentee's:

20 (1) Spouse, if any.

21 (2) Adult children, or if the absentee has none, the  
22 absentee's living parents and adult siblings.

23 (3) If there are no persons in subparagraphs (1) and (2),  
24 then:

25 (a) Any adult with whom the absentee has resided in a  
26 noninstitutional setting for more than six months immediately  
27 prior to the filing of the petition, if any.

28 (b) Any person or institution primarily responsible for the  
29 care or having had custody of the absentee within six months  
30 immediately prior to the filing of the petition, if any.

31 (4) Any nominated or presently acting legal representative  
32 of the absentee.

33 (5) Any person nominated as conservator by the absentee and  
34 the document in which the person was nominated.

35 c. The name and address of the proposed conservator, and the

1 reasons that the court should accept the proposed conservator.  
2 If the absentee has nominated a conservator other than the  
3 proposed conservator, the reasons that the proposed conservator  
4 should be appointed in lieu of the absentee's nominee.

5 *d.* The facts concerning the disappearance of the absentee,  
6 including the reasons why the conservatorship is necessary.

7 *e.* A general description of the property of the absentee  
8 within this state and of the absentee's right to receive  
9 property, the estimated value of the absentee's real estate,  
10 the estimated value of the absentee's personal property, and  
11 the estimated gross annual income of the property. If any  
12 money is payable, or to become payable, to the absentee by the  
13 United States through the United States department of veterans  
14 affairs, the petition shall so state.

15 *f.* Except as required by section 633F.29, any persons  
16 identified pursuant to paragraph "b" of this section are not  
17 entitled to notice.

18 2. Notice of the filing of a petition under this section:

19 *a.* Shall be served together with notice of the hearing on  
20 the petition on the absentee by publication in the manner of  
21 an original notice and the rules of civil procedure governing  
22 original notices by publication shall also govern such a notice  
23 as to content.

24 *b.* Shall be mailed to the following persons, to the extent  
25 known to the petitioner:

26 (1) The legal representative of the absentee.

27 (2) The spouse and adult children of the absentee.

28 (3) If there are no persons in subparagraphs (1) and (2),  
29 then to the absentee's adult grandchildren.

30 (4) If there are no persons in subparagraphs (1) through  
31 (3), then to the absentee's parents and adult siblings.

32 (5) If there are no persons in subparagraphs (1) through  
33 (4), then to any adults with whom the absentee has resided in  
34 the six-month period preceding the filing of the petition, and  
35 any adult who has assisted the absentee with decision making



1 in such period.

2 (6) If there are no persons in subparagraphs (1) through  
3 (5), then at least one adult in the priority shown in section  
4 633.219.

5 c. Notice of any other subsequent hearings related to the  
6 petition hereunder shall be mailed in conformity with section  
7 633.40, subsection 5.

8 3. In the event that the absentee does not appear at the  
9 hearing on the petition, the court shall hear the petition and  
10 the proof offered. All evidence shall be made part of the  
11 record of the proceeding. If the allegations of the petition  
12 are proved by clear and convincing evidence, the court shall  
13 appoint a conservator.

14 Sec. 44. NEW SECTION. 633F.44 **Appointing foreign**  
15 **conservator.**

16 1. When there is no conservatorship or pending application  
17 for a conservatorship in this state, the duly qualified foreign  
18 conservator or guardian of a nonresident protected person may,  
19 upon application, be appointed conservator of the property of  
20 the protected person in this state if a resident conservator is  
21 appointed to serve with the foreign conservator. However, for  
22 good cause shown, the court may appoint the foreign conservator  
23 to act alone without the appointment of a resident conservator.

24 2. The application for appointment of a foreign conservator  
25 or guardian as conservator in this state shall include the name  
26 and address of the nonresident protected person, and of the  
27 nonresident conservator or guardian, and the name and address  
28 of the resident conservator to be appointed, if applicable.  
29 The application shall be accompanied by a certified copy of  
30 the original letters or other authority conferring the power  
31 upon the foreign conservator or guardian to act as conservator  
32 or guardian. The application shall state the cause for  
33 the appointment of the foreign conservator to act as sole  
34 conservator, if applicable.

35 3. A foreign conservator or guardian of a nonresident may

1 be authorized by the court of the county where the protected  
2 person has personal property to receive the personal property  
3 upon compliance with the provisions of subsections 4, 5, and 6.

4 4. A foreign conservator or guardian shall file in the  
5 office of the clerk in the county where the property is  
6 situated a certified copy of the conservator's or guardian's  
7 official bond, if any, duly authenticated by the court granting  
8 the letters. The foreign conservator or guardian shall also  
9 execute a receipt for the property received by the conservator  
10 or guardian.

11 5. Upon the filing of the bond as provided in subsection  
12 4, if the court determines that the amount of the bond is  
13 sufficient security, the court shall order the personal  
14 property of the protected person delivered to the foreign  
15 conservator or guardian.

16 6. The clerk shall record the bonds and the receipt,  
17 and notify by mail the court which granted the letters of  
18 conservatorship or guardianship of the amount of property  
19 delivered to the fiduciary and the date of delivery.

20 Sec. 45. NEW SECTION. 633F.45 **Disposition of protected**  
21 **person's will.**

22 1. When a conservator receives an instrument purporting  
23 to be the will of the protected person, the conservator shall  
24 immediately deliver the instrument to the court.

25 2. Upon receiving an instrument purporting to be the  
26 will of a living protected person under this section, the  
27 court may open and read the instrument. The court, with or  
28 without notice, may enter orders in the conservatorship as the  
29 court deems advisable for the proper administration of the  
30 conservatorship in light of the expressed testamentary intent  
31 of the protected person.

32 3. An instrument purporting to be the will of a protected  
33 person that the court receives under this section shall then be  
34 resealed by the court and deposited with the clerk to be held  
35 by the clerk as provided in sections 633.286 through 633.289.

1     Sec. 46. NEW SECTION.   633F.46   **Claims against protected**  
2 **person or conservator.**

3     1. Claims accruing before or after the appointment of  
4 the conservator, and whether arising in contract or tort or  
5 otherwise, after being allowed or established as provided in  
6 subsections 3 through 5, shall be paid by the conservator from  
7 the assets of the conservatorship.

8     2. The provision of medical care or services to a protected  
9 person who is a recipient of medical assistance under chapter  
10 249A creates a claim for the amount owed to the provider under  
11 the medical assistance program for the care or services. The  
12 amount of the claim, after being allowed or established as  
13 provided in this subchapter, shall be paid by the conservator  
14 from the assets of the conservatorship.

15    3. A claim shall not be allowed against a protected person's  
16 conservatorship unless the claim is in writing, filed with the  
17 clerk, states the claimant's name and address, and describes  
18 the nature and the amount of the claim, if ascertainable. The  
19 claim shall be accompanied by the affidavit of the claimant,  
20 or of someone for the claimant, that the amount is justly due,  
21 or if not due, when the amount will or may become due, that no  
22 payments have been made on the amount which are not credited,  
23 and that there are no offsets against the amount, to the  
24 knowledge of the affiant, except as stated in the claim. Valid  
25 contract claims arising in the ordinary course of the conduct  
26 of the business or affairs of the protected person by the  
27 conservator may be paid by the conservator without requiring  
28 affidavit or filing.

29    4. If a claim is founded upon a written instrument, the  
30 original or a copy of the instrument, with all endorsements,  
31 must be attached to the claim. The original instrument must be  
32 shown to the conservator or to the court, upon demand, unless  
33 the original instrument has been lost or destroyed, in which  
34 case, the original instrument's loss or destruction must be  
35 stated in the claim.

1 5. All claims filed against a protected person's  
2 conservatorship shall be titled in the name of the claimant  
3 against the conservator as conservator, naming the conservator,  
4 and in all further proceedings on the claim, this title shall  
5 be preserved.

6 6. The filing of a claim in the conservatorship tolls the  
7 statute of limitations applicable to the claim.

8 7. No claimant shall have the right to compel payment until  
9 the claimant's claim has been duly filed and allowed.

10 8. When a claim has been filed and has been admitted in  
11 writing by the conservator, the claim shall be deemed allowed,  
12 in the absence of fraud or collusion.

13 9. Execution shall not issue upon, and levy shall not  
14 be made against, any property of the protected person's  
15 conservatorship under any judgment against the protected  
16 person or the protected person's conservator, but this  
17 section shall not be construed to prevent the enforcement of a  
18 mortgage, pledge, or other lien upon property in an appropriate  
19 proceeding.

20 10. If the conservator is a creditor of the protected  
21 person, the conservator shall file the claim as other  
22 creditors, and the court shall appoint a temporary conservator  
23 to protect the conservatorship estate at the hearing on the  
24 conservator's claim. The same procedure shall be followed in  
25 the case of co-conservators where all such conservators are  
26 creditors of the protected person. However, if one of the  
27 co-conservators is not a creditor of the protected person, the  
28 disinterested conservator shall protect the conservatorship  
29 estate at the hearing on the co-conservator's claim.

30 11. The court may determine whether or not the applicable  
31 statute of limitation shall be invoked to bar a claim which the  
32 conservator recommends be allowed.

33 12. This section shall not affect or prevent an action or  
34 proceeding to enforce any mortgage, pledge, or other lien upon  
35 the property of the protected person.

1 13. a. Any action pending against the protected person at  
2 the time the conservator is appointed shall also be considered  
3 a claim filed in the conservatorship if notice of substitution  
4 is served on the conservator as defendant, and proof of service  
5 of notice of such proceeding is filed in the conservatorship  
6 proceeding.

7 b. A separate action based on a debt or other liability  
8 of the protected person may be commenced against the  
9 conservator as conservator in lieu of filing a claim in the  
10 conservatorship. Such an action shall be commenced by serving  
11 an original notice on the conservator and filing proof of  
12 service of notice of such proceeding in the conservatorship  
13 proceeding. Such an action shall also be considered a claim  
14 filed in the conservatorship. Such an action may be commenced  
15 only in a county where the venue would have been proper if  
16 there were no conservatorship and the action had been commenced  
17 against the protected person.

18 14. The provisions of sections 633.438 to 633.448 shall  
19 be applicable to the denial and contest of claims against  
20 conservatorships, but shall not be applicable to actions  
21 continued or commenced under this section.

22 15. When it appears that the assets in a conservatorship  
23 are insufficient to pay in full all the claims against the  
24 conservatorship, the conservator shall report such matter to  
25 the court, and the court shall, upon hearing, with notice to  
26 all persons who have filed claims in the conservatorship, make  
27 an order for the pro rata payment of claims giving claimants  
28 the same priority as in section 633.425.

29 Sec. 47. NEW SECTION. 633F.47 Professional evaluation.

30 1. For purposes of this section:

31 a. "Professional evaluation" means an evaluation by  
32 a licensed or certified person qualified to evaluate  
33 a respondent's cognitive and functional abilities and  
34 limitations.

35 b. "Respondent" includes, when appropriate, a protected

1 person.

2 2. A petitioner or respondent may submit a professional  
3 evaluation in a matter concerning the granting, modifying,  
4 or terminating a guardianship or conservatorship for the  
5 respondent.

6 3. *a.* At or before a hearing on a petition for the  
7 appointment of a guardian or conservator or the modification  
8 or termination of a guardianship or conservatorship, the court  
9 shall order a professional evaluation of the respondent unless  
10 one of the following criteria are met:

11 (1) The court finds it has sufficient information  
12 to determine whether the criteria for a guardianship or  
13 conservatorship are met.

14 (2) The petitioner or respondent has filed a professional  
15 evaluation.

16 *b.* If the respondent has filed a professional evaluation and  
17 the court determines an additional professional evaluation will  
18 assist the court in understanding the decision-making capacity  
19 and functional abilities and limitations of the respondent, the  
20 court may order a professional evaluation of the respondent.

21 4. If the court orders an evaluation, the respondent must be  
22 examined by a licensed or certified person, appointed by the  
23 court, who is qualified to evaluate the respondent's cognitive  
24 and functional abilities and limitations.

25 5. The court shall not appoint an individual to conduct the  
26 examination if the individual has a conflict of interest.

27 6. The individual conducting the evaluation shall promptly  
28 file a written report with the court and, if so ordered, shall  
29 attend a court hearing and be available for cross-examination.

30 7. Unless otherwise directed by the court, the report must  
31 contain all of the following:

32 *a.* A description of the nature, type, and extent of  
33 the respondent's cognitive and functional abilities and  
34 limitations.

35 *b.* An evaluation of the respondent's mental and physical

1 condition and, if appropriate, educational potential, adaptive  
2 behavior, and social skills.

3 c. A prognosis for improvement and recommendation for the  
4 appropriate treatment, support, or habilitation plan.

5 d. The evaluator's qualifications to evaluate the  
6 respondent's cognitive and functional abilities limitations and  
7 lack of conflict of interest.

8 e. The date of the examination on which the report is based.

9 8. The cost of the professional evaluation shall be paid  
10 by the respondent unless the respondent is indigent under the  
11 provisions of section 633.561, in which case the costs shall  
12 be paid by the county in which the proceedings are pending, or  
13 unless the court otherwise orders.

14 9. The court may order the production of any existing  
15 professional evaluation that is relevant to the determination  
16 of whether a guardian or a conservator should be appointed, as  
17 well as whether a guardianship or conservatorship should be  
18 modified or terminated.

19 10. In a proceeding to establish a guardianship or  
20 conservatorship, any professional evaluation provided in the  
21 proceeding, whether voluntarily or pursuant to a court order,  
22 shall be confidential and shall be sealed and available to only  
23 the court, the respondent, the petitioner, the respondent's  
24 attorney, the petitioner's attorney for purposes of the  
25 proceeding, a court advisor, and other persons the court orders  
26 for good cause and limited for the purposes set out in the  
27 court's order.

28 11. In a proceeding to modify or terminate a guardianship  
29 or conservatorship, the court upon good cause shown and for  
30 such purposes as the court orders may grant access to any  
31 professional evaluation that was sealed in a proceeding to  
32 establish the guardianship or conservatorship.

33 Sec. 48. NEW SECTION. 633F.48 Appointment and role of court  
34 advisor.

35 1. The court may appoint any qualified person as a court

1 advisor in a guardianship or conservatorship proceeding. The  
2 role of the court advisor is to gather and report factual  
3 information that will assist the court in making custody,  
4 visitation, or other decisions related to the welfare of the  
5 respondent. Unless the appointing judge specifies otherwise,  
6 the court advisor role is limited to gathering and reporting  
7 information to the court. The court advisor may include  
8 recommendations in the report in subsection 6 only if the  
9 court's appointment order authorizes inclusion of such  
10 recommendations.

11 2. The court shall not appoint a guardian ad litem in a  
12 guardianship or conservatorship proceeding.

13 3. The same person shall not serve both as the attorney  
14 representing the respondent and as court advisor.

15 4. Unless otherwise enlarged or circumscribed by the court,  
16 the court advisor shall do all of the following:

17 a. Conduct an initial in-person interview with the  
18 respondent.

19 b. Discuss with the respondent the substance of the  
20 petition, the purpose and effect of the proceeding, the rights  
21 of the respondent at the hearing, and the general powers and  
22 duties of a guardian or conservator.

23 c. Determine the views of the respondent regarding the  
24 proposed guardian or conservator, the proposed guardian's or  
25 conservator's powers and duties, and the scope and duration of  
26 the proposed guardianship or conservatorship.

27 5. In addition, if directed by the court, the court advisor  
28 shall do the following:

29 a. Interview the petitioner and an appointed or proposed  
30 guardian or conservator.

31 b. Visit, to the extent feasible, the residence where it  
32 is reasonably believed that the respondent will live if the  
33 appointment of a guardian or conservator is made.

34 c. Make any other investigation the court directs including  
35 but not limited to interviewing any persons providing medical,



1 mental health, educational, social, and other services to the  
2 respondent.

3 *d.* Determining the financial resources available to the  
4 respondent.

5 6. The court advisor shall submit a written report to the  
6 court that shall contain all of the following:

7 *a.* A recommendation regarding the appropriateness of a  
8 limited guardianship or conservatorship for the respondent,  
9 including whether less restrictive alternatives are available.

10 *b.* A statement of the qualifications of the proposed  
11 guardian or conservator together with a statement of whether  
12 the respondent has expressed agreement with the appointment of  
13 the proposed guardian or conservator.

14 *c.* Any other matters the court advisor deems relevant to  
15 the petition for guardianship or conservatorship and the best  
16 interests of the respondent.

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

18 7. The report of the court advisor shall be made part of the  
19 court record unless otherwise ordered by the court.

20 **Sec. 49. NEW SECTION. 633F.49 Attorneys for minor and adult**  
21 **respondents and protected persons in conservatorships and for**  
22 **adult respondents and protected persons in guardianships.**

23 1. Upon the filing of a petition to appoint or remove a  
24 guardian for an adult or conservator for a minor or adult, the  
25 court shall appoint an attorney to represent the respondent,  
26 provided that the respondent is not the petitioner. The court  
27 shall set a hearing on the petition and provide for notice of  
28 the appointment of counsel and the date of hearing.

29 *a.* The court may reconsider the determination regarding  
30 representation by an attorney upon application by any  
31 interested person.

32 *b.* The court may discharge an attorney appointed by the  
33 court if the respondent has privately retained an attorney who  
34 has filed an appearance on behalf of the respondent.

35 2. An attorney representing a respondent or protected

1 person shall, to the extent feasible:

2     *a.* Ensure that the respondent or protected person has been  
3 properly advised of the nature and purpose of the proceeding.

4     *b.* Ensure that the respondent or protected person has been  
5 advised of the respondent's or protected person's rights in the  
6 proceeding.

7     *c.* Personally interview the respondent.

8     *d.* Advocate for the respondent's or protected person's  
9 position to the extent that the position is reasonably  
10 ascertainable. If the respondent's or protected person's  
11 position is not reasonably ascertainable, the attorney shall  
12 advocate for the result that is the least restrictive option in  
13 type, duration, and scope, consistent with the respondent's or  
14 protected person's interests.

15     *e.* Represent the respondent or protected person.

16     *f.* Ensure that guardianship and conservatorship procedures  
17 conform to the statutory and due process requirements under  
18 law.

19     *g.* File a written report stating whether there is evidence  
20 on file showing that proper service on the respondent has been  
21 made and also stating that specific compliance with paragraphs  
22 "a", "b", and "c" has been made or stating the inability to  
23 comply by reason of the respondent's condition.

24     3. If the court determines, on application, that it is  
25 appropriate or necessary, the court may order that the attorney  
26 representing the respondent or protected person be given copies  
27 of and access to the respondent's or protected person's health  
28 information. Such an order must describe, with reasonable  
29 specificity, the health information to be disclosed or accessed  
30 for purposes of fulfilling the attorney's responsibilities  
31 pursuant to this section.

32     4. If an order appointing a guardian or conservator  
33 is entered, the respondent's attorney shall do all of the  
34 following:

35     *a.* Inform the respondent of the effects of the order.

1     *b.* Advise the respondent of the respondent's rights to  
2 petition for modification or termination of the guardianship  
3 or conservatorship.

4     *c.* Advise the respondent of the rights retained by the  
5 respondent.

6     5. Following the appointment of a guardian or conservator,  
7 if the court determines that it would be in the protected  
8 person's best interest to be represented by an attorney  
9 with respect to any further proceedings in a guardianship or  
10 conservatorship, the court may appoint an attorney to represent  
11 the protected person at the protected person's expense or at  
12 the county's expense for indigents as provided in subsection 6.

13     6. The cost of court-appointed attorneys for indigents  
14 shall be assessed against the county in which the proceedings  
15 are pending. For purposes of this section, the court shall  
16 find a person indigent if the person's income and resources do  
17 not exceed one hundred fifty percent of the federal poverty  
18 level or the person would be unable to pay such costs without  
19 prejudicing the person's financial ability to provide economic  
20 necessities for the respondent or the respondent's dependents.

21     Sec. 50. NEW SECTION. 633F.50 **Mediation.**

22     1. The district court may, on its own motion or on the  
23 motion of any party, order the parties to participate in  
24 mediation in any guardianship or conservatorship action.  
25 Mediation performed under this section shall comply with the  
26 provisions of chapter 679C. The court shall, upon application  
27 of a party, grant a waiver from any court-ordered mediation  
28 under this section if the party demonstrates that a history  
29 of domestic abuse exists similarly as considered in section  
30 598.41, subsection 3, paragraph "j". The court may, upon  
31 application of a party, grant a waiver from any court-ordered  
32 mediation if the action involves elder abuse pursuant to  
33 chapter 235F.

34     2. Mediation shall comply with all of the following  
35 standards:

1     *a.* The parties will participate in good faith.

2 Participation in mediation shall include attendance at  
3 a mediation session with the mediator and the parties to  
4 the action, listening to the mediator's explanation of the  
5 mediation process, presentation of one party's view of the  
6 case, and listening to the response of the other party.

7 Participation in mediation does not require that the parties  
8 reach an agreement.

9     *b.* Unless the parties agree upon a mediator, the court shall  
10 appoint a mediator. Any mediator appointed by the court shall  
11 meet the qualifications established in this section.

12     *c.* Parties to the mediation shall have the right to  
13 representation by an attorney at all times.

14     *d.* The parties to the mediation shall present any agreement  
15 reached through the mediation to their attorneys, if any.  
16 A mediation agreement reached by the parties shall not be  
17 enforceable until approved by the court.

18     *e.* The costs of mediation shall be borne by the parties, as  
19 agreed to by the parties, or as ordered by the court, and may  
20 be taxed as court costs.

21     3. A mediator appointed by the court acting pursuant to this  
22 section shall have the following qualifications:

23     *a.* Completed a one-hour internet seminar or live session  
24 regarding the external resources available to a respondent with  
25 particular focus on resources for older persons.

26     *b.* A minimum of twenty-five hours of general mediation  
27 training.

28     *c.* Either of the following:

29         (1) Fifteen hours of probate-specific or elder-specific  
30 mediation training.

31         (2) Ten continuous years of practice in Iowa as a licensed  
32 attorney with the greater of four hundred hours or forty  
33 percent of the total hours of law practice per year being  
34 devoted to matters concerning wills, trusts, and estate work  
35 for each of the ten continuous years. For mediations involving

1 guardianship of juveniles, the mediator shall also be currently  
2 qualified as a family law mediator and have completed a  
3 one-hour live session concerning guardianship procedures.

4 Sec. 51. NEW SECTION. 633F.51 **Presumption regarding**  
5 **testamentary capacity.**

6 The appointment of a guardian or conservator does not create  
7 a presumption that the protected person lacks testamentary  
8 capacity.

9 Sec. 52. NEW SECTION. 633F.52 **Reports by guardians.**

10 1. A guardian appointed under this chapter shall file with  
11 the court the following written verified reports, which the  
12 court shall not waive:

13 a. An initial care plan within sixty days of the guardian's  
14 appointment. The initial care plan must include all of the  
15 following:

16 (1) The protected person's current residence and the  
17 guardian's plan for the protected person's living arrangements.

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

20 (3) The protected person's health status and the guardian's  
21 plan for meeting the protected person's health needs.

22 (4) The protected person's educational, training, and  
23 vocational needs and the guardian's plan for meeting the  
24 protected person's educational needs.

25 (5) The guardian's plan for facilitating contacts of the  
26 protected person with the family members of the protected  
27 person.

28 (6) The guardian's plan for contact with and activities on  
29 behalf of the protected person.

30 b. An annual report, within sixty days of the close of  
31 the reporting period, unless the court otherwise orders an  
32 extension for good cause shown in accordance with rules of  
33 probate procedure.

34 c. A final report within thirty days of the termination of  
35 the guardianship unless that time is extended by the court.

1 2. Annual reports and the final report shall include all of  
2 the following:

3 a. The current mental and physical condition of the  
4 protected person.

5 b. The present living arrangement of the protected person,  
6 including a description of each residence where the protected  
7 person has resided during the reporting period.

8 c. A summary of the medical, educational, vocational, and  
9 technical, and other professional services provided for the  
10 protected person.

11 d. A description of the guardian's visits with and  
12 activities on behalf of the protected person.

13 e. Any changes in the care plan.

14 f. A recommendation as to the need for continued  
15 guardianship.

16 g. When the guardianship is for a minor protected person:

17 (1) The nature and extent of parental visits and  
18 communication with the minor.

19 (2) The ability of the guardian to continue as guardian and  
20 arranging for the provision of care for the minor protected  
21 person.

22 h. Other information requested by the court or useful in the  
23 opinion of the guardian.

24 3. In accordance with the requirements of subsections 1 and  
25 2, the court shall provide simplified uniform reporting forms  
26 for use in filing the required reports.

27 4. The clerk of the court shall notify the guardian in  
28 writing of the reporting requirements and shall provide  
29 information and assistance to the guardian in filing the  
30 reports.

31 5. Reports of guardians shall be submitted to the court for  
32 approval.

33 6. Reports required by this section shall be served on the  
34 attorney representing the respondent or the protected person  
35 and, if requested, all other parties who have filed appearances

1 in the proceeding.

2 Sec. 53. NEW SECTION. 633F.53 Reports by conservators.

3 1. A conservator shall file an initial plan for protecting,  
4 managing, investing, expending, and distributing the assets  
5 of the conservatorship estate within ninety days after  
6 appointment. The plan must be based on the needs of the  
7 protected person and take into account the best interest of the  
8 protected person as well as the protected person's preference,  
9 values, and prior directions to the extent known to, or  
10 reasonably ascertainable by, the conservator.

11 a. The initial plan shall include all of the following:

12 (1) A budget containing projected expenses and resources,  
13 including an estimate of the total amount of fees the  
14 conservator anticipates charging per year and a statement or  
15 list of the amount the conservator proposes to charge for each  
16 service the conservator anticipates providing to the protected  
17 person.

18 (2) A statement as to how the conservator will involve  
19 the protected person in decisions about management of the  
20 conservatorship estate.

21 (3) If ordered by the court, any step the conservator plans  
22 to take to develop or restore the ability of the protected  
23 person to manage the conservatorship estate.

24 (4) An estimate of the duration of the conservatorship.

25 b. Within two days after filing the initial plan, the  
26 conservator shall give notice of the filing of the initial plan  
27 with a copy of the plan to the protected person, the protected  
28 person's attorney and court advisor, if any, and others as  
29 directed by the court. The notice must state that any person  
30 entitled to a copy of the plan must file any objections to the  
31 plan not later than fifteen days after it is filed.

32 c. At least twenty days after the plan has been filed, the  
33 court shall review and determine whether the plan should be  
34 approved or revised, after considering objections filed and  
35 whether the plan is consistent with the conservator's powers

1 and duties.

2 *d.* After approval by the court, the conservator shall  
3 provide a copy of the approved plan and order approving the  
4 plan to the protected person, the protected person's attorney  
5 and court advisor, if any, and others as directed by the court.

6 *e.* The conservator shall file an amended plan when there has  
7 been a significant change in circumstances or the conservator  
8 seeks to deviate significantly from the plan. Before the  
9 amended plan is implemented, the provisions for court approval  
10 of the plan shall be followed as provided in paragraphs "*b*",  
11 "*c*", and "*d*".

12 2. A conservator shall file an inventory of the protected  
13 person's assets within ninety days after appointment which  
14 includes an oath or affirmation that the inventory is believed  
15 to be complete and accurate as far as information permits.  
16 Copies of the inventory shall be provided to the protected  
17 person, the protected person's attorney and court advisor  
18 (if any), and others as directed by the court. When the  
19 conservator receives additional property of the protected  
20 person, or becomes aware of its existence, a description of the  
21 property shall be included in the conservator's next annual  
22 report.

23 3. A conservator shall file a written and verified report  
24 for the period since the end of the preceding report period.  
25 The court shall not waive these reports.

26 *a.* These reports shall include all of the following:

27 (1) Balance of funds on hand at the beginning and end of the  
28 period.

29 (2) Disbursements made.

30 (3) Changes in the conservator's plan.

31 (4) List of assets as of the end of the period.

32 (5) Bond amount and surety's name.

33 (6) Residence and physical location of the protected  
34 person.

35 (7) General physical and mental condition of the protected



1 person.

2 (8) Other information reflecting the condition of the  
3 conservatorship estate.

4 *b.* These reports shall be filed:

5 (1) On an annual basis within sixty days of the end of the  
6 reporting period unless the court orders an extension for good  
7 cause shown in accordance with the rules of probate procedure.

8 (2) Within thirty days following removal of the  
9 conservator.

10 (3) Upon the conservator's filing of a resignation and  
11 before the resignation is accepted by the court.

12 (4) Within sixty days following the termination of the  
13 conservatorship.

14 (5) At other times as ordered by the court.

15 *c.* Reports required by this section shall be served on the  
16 protected person's attorney and court advisor, if any, and the  
17 veterans administration if the protected person is receiving  
18 veterans benefits.

19 Sec. 54. NEW SECTION. 633F.54 Removal of guardian and  
20 conservator.

21 1. The court may conduct a hearing to determine whether the  
22 removal of a guardian or conservator is appropriate upon any  
23 of the following:

24 *a.* The filing of a petition by a protected person, a  
25 guardian, a conservator, or other person with an interest in  
26 the welfare of such a person.

27 *b.* The receipt of a written communication from a protected  
28 person, a guardian, a conservator, or other person with an  
29 interest in the welfare of such a person, indicating that  
30 removal may be appropriate.

31 *c.* The court's determination that such a hearing would be in  
32 the best interest of a protected person.

33 2. A person who is not the guardian, conservator, or  
34 protected person may request permission to participate in such  
35 hearing. The court may grant the request, with or without

1 hearing, on determining that the person's participation is  
2 in the best interest of the protected person. The court may  
3 impose appropriate limitations on the person's participation.

4 3. Following a hearing, the court may remove a guardian  
5 and conservator for failure to perform the guardian or  
6 conservator's duties or for other good cause, and appoint a  
7 successor guardian or conservator to assume the duties of the  
8 guardian or conservator, if needed under the circumstances.

9 4. The court may decline to hold a hearing under subsection  
10 1 if the same or substantially similar facts were alleged in a  
11 petition or written communication filed in the preceding six  
12 months.

13 **Sec. 55. NEW SECTION. 633F.55 Termination and modification**  
14 **of guardianships and conservatorships.**

15 1. Guardianships and conservatorships shall terminate upon  
16 the occurrence of any of the following circumstances:

17 a. Death of the protected person.

18 b. A finding by the court that the basis for appointment no  
19 longer exists.

20 c. A determination by the court that the guardianship or  
21 conservatorship is no longer necessary for any other reason.

22 2. A protected person, a guardian, a conservator, or a  
23 person interested in the welfare of the protected person may  
24 petition for or request one of the following:

25 a. Termination of the guardianship or conservatorship  
26 because the basis for appointment no longer exists.

27 b. Modification of the guardianship or conservatorship  
28 because the extent of protection or assistance granted is no  
29 longer appropriate.

30 3. The court shall conduct a hearing to determine  
31 whether termination or modification of a guardianship or  
32 conservatorship is appropriate upon the filing of a petition  
33 under subsection 2 that contains allegations that, if  
34 true, would support a reasonable belief that termination or  
35 modification of the guardianship or conservatorship may be

1 appropriate. The court may also conduct a hearing upon any of  
2 the following:

3 a. The receipt of written communication from a protected  
4 person, a guardian, a conservator, or other person interested  
5 in the welfare of the protected person indicating that  
6 termination or modification may be appropriate.

7 b. The court's determination that such a hearing would be in  
8 the best interest of a protected person.

9 c. A report from a guardian or conservator.

10 4. A person seeking termination or modification has the  
11 burden of making a prima facie showing that the guardianship  
12 or conservatorship should be terminated or modified. If such  
13 a showing is made, the guardian, the conservator, or other  
14 person resisting termination or modification has the burden to  
15 prove by clear and convincing evidence that the guardianship or  
16 conservatorship should not be terminated or modified.

17 5. The court shall modify the powers granted to the  
18 guardian or conservator if the court finds that the powers are  
19 either more than needed or less than needed in view of the  
20 decision-making capacity, functional abilities and limitations  
21 of the protected person, the availability of third-party  
22 assistance and decision-making supports for the protected  
23 person, or other circumstances.

24 6. Except as otherwise ordered by the court for good  
25 cause, before terminating or modifying a guardianship or  
26 conservatorship, the court shall follow the same procedures  
27 to safeguard the rights of the protected person as apply to a  
28 petition for a guardianship or conservatorship, including the  
29 right to representation by an attorney.

30 **Sec. 56. NEW SECTION. 633F.56 Pleadings and hearings.**

31 In proceedings to establish, modify, or terminate a  
32 guardianship or conservatorship, or remove a guardian or  
33 conservator, the case shall be tried as a law action and  
34 be governed by the rules of civil procedure subject to the  
35 following requirements:

1 1. The respondent shall be entitled to a hearing on  
2 appointment, modification, removal, or termination.

3 2. The respondent shall be present at the hearing and at  
4 all other stages of the proceedings unless the court finds good  
5 cause for the absence of the respondent. If the respondent  
6 is not present, the court shall make a record of the lack of  
7 presence. The court shall make reasonable accommodations to  
8 enable the respondent to be present at the hearing and at all  
9 other stages of the proceedings.

10 3. The respondent may subpoena witnesses and documents,  
11 examine witnesses and documents, present evidence, and  
12 otherwise participate in the hearing.

13 4. The court shall require the proposed or existing guardian  
14 or conservator to attend the hearing except upon a showing of  
15 good cause.

16 5. The court shall require any court advisor it has  
17 appointed to attend the hearing.

18 6. Any person may file a written application to participate  
19 in a hearing or other proceeding. The court may grant the  
20 request without hearing unless a resistance to such application  
21 is filed within five days. If a resistance is filed within  
22 five days, the court shall hold a hearing on the application.

23 7. All hearings and proceedings shall be reported.

24 8. For purposes of this section, the term respondent  
25 includes, when appropriate, a protected person.

26 **Sec. 57. NEW SECTION. 633F.57 Compensation of guardians,**  
27 **conservators, and attorneys.**

28 The compensation of guardians, conservators, guardian's  
29 attorneys, and conservator's attorneys shall be fixed according  
30 to section 633.200.

31 **Sec. 58. NEW SECTION. 633F.58 Liability of guardians and**  
32 **conservators.**

33 Guardians and conservators shall not be held personally  
34 liable for actions or omissions taken or made in the official  
35 discharge of the guardian's or conservator's duties, except for

1 any of the following:

2 1. A breach of fiduciary duty imposed by the provisions of  
3 chapter 633 or this chapter.

4 2. Willful or wanton misconduct in the official discharge of  
5 the guardian's or conservator's duties.

6 Sec. 59. NEW SECTION. 633F.59 **Tort liability of guardians  
7 and conservators.**

8 The fact that a person is a guardian or conservator shall  
9 not make the person personally liable for damages for the acts  
10 of the protected person.

11 Sec. 60. NEW SECTION. 633F.60 **Court costs in guardianships  
12 and conservatorships.**

13 A protected person shall be charged with the court costs  
14 of the protected person's guardianship and conservatorship  
15 proceedings, including guardian's and conservator's fees, and  
16 the fees of attorneys representing guardians and conservators.  
17 The court may, upon application, enter an order waiving  
18 payment of the court costs in indigent cases. However, if the  
19 protected person becomes financially capable of paying any  
20 waived costs, the costs shall no longer be waived and shall be  
21 immediately payable.

22 Sec. 61. NEW SECTION. 633F.61 **Provisions applicable to all  
23 fiduciaries shall govern.**

24 The provisions of chapter 633 applicable to all fiduciaries  
25 shall govern the appointment, qualification, oath, and bond of  
26 guardians and conservators with the following exceptions:

27 1. Guardians shall not be required to give bond unless the  
28 court, for good cause, finds that the best interests of the  
29 protected person require a bond.

30 2. Notwithstanding section 633.175, conservators other  
31 than Iowa financial institutions with trust powers must give  
32 surety bonds unless the court finds there is an alternative  
33 to such a bond that will provide sufficient protection of the  
34 conservatorship assets. The conservator shall submit a plan  
35 for any proposed alternative to a bond for review and approval

1 by the court.

2 Sec. 62. CODE EDITOR DIRECTIVES.

3 1. The Code editor shall designate sections 633F.1  
4 through 633F.3, as enacted by this division of this Act,  
5 as a subchapter entitled "JURISDICTION, DEFINITIONS, AND  
6 APPLICABILITY".

7 2. The Code editor shall designate sections 633F.4 through  
8 633F.18, as enacted by this division of this Act, as a  
9 subchapter entitled "GUARDIANSHIPS FOR MINORS".

10 3. The Code editor shall designate sections 633F.19  
11 through 633F.27, as enacted by this division of this Act, as a  
12 subchapter entitled "GUARDIANSHIPS FOR ADULTS".

13 4. The Code editor shall designate sections 633F.28  
14 through 633F.46, as enacted by this division of this Act, as a  
15 subchapter entitled "CONSERVATORSHIPS".

16 5. The Code editor shall designate sections 633F.47  
17 through 633F.61, as enacted by this division of this Act, as a  
18 subchapter entitled "PROCEEDINGS, ADMINISTRATION, AND CLOSING".

19 DIVISION II

20 CONFORMING CHANGES

21 Sec. 63. Section 10.1, subsection 7, Code 2019, is amended  
22 to read as follows:

23 7. "*Farm estate*" means the real and personal property of a  
24 decedent, a ~~ward~~ protected person, or a trust as provided in  
25 chapters 633, ~~and 633A~~, and 633F, if at least sixty percent of  
26 the gross receipts from the estate comes from farming.

27 Sec. 64. Section 48A.2, subsection 4, Code 2019, is amended  
28 to read as follows:

29 4. "*Person who is incompetent to vote*" means a person with an  
30 intellectual disability who has been found to lack the mental  
31 capacity to vote in a proceeding held pursuant to section  
32 ~~633-556~~ 633F.22.

33 Sec. 65. Section 135C.24, subsection 5, Code 2019, is  
34 amended to read as follows:

35 5. The provisions of this section notwithstanding, upon

1 the verified petition of the county board of supervisors the  
2 district court may appoint the administrator of a county care  
3 facility as conservator or guardian, or both, of a resident of  
4 such county care facility, in accordance with the provisions  
5 of ~~chapter~~ chapters 633 and 633F. Such administrator shall  
6 serve as conservator or guardian, or both, without fee. The  
7 county attorney shall serve as attorney for the administrator  
8 in such conservatorship or guardianship, or both, without fee.  
9 The administrator may establish either separate or common bank  
10 accounts for cash funds of such resident wards.

11 Sec. 66. Section 141A.1, subsection 15, Code 2019, is  
12 amended to read as follows:

13 15. "*Legal guardian*" means a person appointed by a court  
14 pursuant to chapter 633 or 633F or an attorney in fact as  
15 defined in section 144B.1. In the case of a minor, "*legal*  
16 *guardian*" also means a parent or other person responsible for  
17 the care of the minor.

18 Sec. 67. Section 144A.7, subsection 1, paragraph b, Code  
19 2019, is amended to read as follows:

20 b. The guardian of the person of the patient if one has been  
21 appointed, provided court approval is obtained in accordance  
22 with ~~section 633.635, subsection 2, paragraph "c"~~ 633F.26,  
23 subsection 5, paragraph "c". This paragraph does not require  
24 the appointment of a guardian in order for a treatment decision  
25 to be made under this section.

26 Sec. 68. Section 144B.6, subsection 1, Code 2019, is amended  
27 to read as follows:

28 1. Unless the district court sitting in equity specifically  
29 finds that the attorney in fact is acting in a manner contrary  
30 to the wishes of the principal or the durable power of attorney  
31 for health care provides otherwise, an attorney in fact who is  
32 known to the health care provider to be available and willing  
33 to make health care decisions has priority over any other  
34 person, including a guardian appointed pursuant to chapter 633  
35 or 633F, to act for the principal in all matters of health

1 care decisions. The attorney in fact has authority to make  
2 a particular health care decision only if the principal is  
3 unable, in the judgment of the attending physician, to make the  
4 health care decision. If the principal objects to a decision  
5 to withhold or withdraw health care, the principal shall be  
6 presumed to be able to make a decision.

7 Sec. 69. Section 217.13, subsection 3, Code 2019, is amended  
8 to read as follows:

9 3. All volunteers registered with the department and  
10 in compliance with departmental rules are considered state  
11 employees for purposes of [chapter 669](#). However, [this section](#)  
12 does not except a conservator or guardian from an action  
13 brought under [section 658.1A](#) or [658.3](#). [This section](#) does not  
14 relieve a guardian or conservator from duties under chapter 633  
15 [or 633F](#).

16 Sec. 70. Section 222.34, Code 2019, is amended to read as  
17 follows:

18 **222.34 Guardianship proceedings.**

19 If a guardianship is proposed for a person with an  
20 intellectual disability, guardianship proceedings shall be  
21 initiated and conducted as provided in chapter ~~633~~ [633F](#).

22 Sec. 71. Section 229.27, subsection 3, unnumbered paragraph  
23 1, Code 2019, is amended to read as follows:

24 A hearing limited to the question of the person's competence  
25 and conducted in substantially the manner prescribed in  
26 sections ~~633.552 to 633.556~~ [633F.19, 633F.20, 633F.22, and](#)  
27 [633F.56](#) shall be held when:

28 Sec. 72. Section 231E.5, subsection 2, paragraph g,  
29 subparagraph (6), Code 2019, is amended to read as follows:

30 (6) If determined necessary, file a petition for the  
31 appointment of a guardian or conservator pursuant to chapter  
32 ~~633~~ [633F](#).

33 Sec. 73. Section 231E.5, subsections 4 and 5, Code 2019, are  
34 amended to read as follows:

35 4. An individual acting as the state public guardian or a



1 local public guardian shall comply with applicable requirements  
2 for guardians and conservators pursuant to chapter ~~633~~ 633F, or  
3 representative payees pursuant to federal law and regulations.

4 5. Notwithstanding any provision to the contrary, an  
5 individual acting as the state public guardian or a local  
6 public guardian shall not be subject to the posting of a bond  
7 pursuant to chapter ~~633~~ 633F. An individual acting as the  
8 state public guardian or a local public guardian shall complete  
9 at least eight hours of training annually as certified by the  
10 department.

11 Sec. 74. Section 231E.6, subsection 2, Code 2019, is amended  
12 to read as follows:

13 2. For all appointments made pursuant to [this section](#),  
14 notice shall be provided to the state office or local office  
15 prior to appointment. For appointments made pursuant to this  
16 section, the state office or local office shall only accept  
17 appointments made pursuant to the filing of an involuntary  
18 petition for appointment of a conservator or guardianship  
19 pursuant to chapter ~~633~~ 633F.

20 Sec. 75. Section 231E.8, subsection 5, Code 2019, is amended  
21 to read as follows:

22 5. The state public guardian or a local public guardian  
23 shall be subject to discharge or removal, by the court, on  
24 the grounds and in the manner in which other guardians or  
25 conservators are discharged or removed pursuant to chapter ~~633~~  
26 633F.

27 Sec. 76. Section 231E.12, Code 2019, is amended to read as  
28 follows:

29 **231E.12 Liability.**

30 All employees and volunteers of the state office and local  
31 offices operating under [this chapter](#) and other applicable  
32 chapters and pursuant to rules adopted under this and other  
33 applicable chapters are considered employees of the state  
34 and state volunteers for the purposes of [chapter 669](#) and  
35 shall be afforded protection under [section 669.21](#) or [669.24](#),

1 as applicable. **This section** does not relieve a guardian or  
2 conservator from performing duties prescribed under chapter 633  
3 or 633F.

4 Sec. 77. Section 232.3, subsection 1, Code 2019, is amended  
5 to read as follows:

6 1. During the pendency of an action under **this chapter**, a  
7 party to the action is estopped from litigating concurrently  
8 the custody, guardianship, or placement of a child who  
9 is the subject of the action, in a court other than the  
10 juvenile court. A district judge, district associate judge,  
11 magistrate, or judicial hospitalization referee, upon notice  
12 of the pendency of an action under **this chapter**, shall not  
13 issue an order, finding, or decision relating to the custody,  
14 guardianship, or placement of the child who is the subject of  
15 the action, under any law, including but not limited to chapter  
16 598, **598B**, ~~or 633~~, or 633F.

17 Sec. 78. Section 232.101A, subsection 2, Code 2019, is  
18 amended to read as follows:

19 2. If the court transfers guardianship pursuant to  
20 subsection 1, the court may close the child in need of  
21 assistance case by transferring jurisdiction over the child's  
22 guardianship to the probate court. The court shall inform the  
23 proposed guardian of the guardian's reporting duties under  
24 section ~~633.669~~ 633F.52 and other duties under chapter ~~633~~  
25 633F. Upon transferring jurisdiction, the court shall direct  
26 the probate clerk, once the proposed guardian has filed an  
27 oath of office and identification in accordance with section  
28 602.6111, to issue letters of appointment for guardianship and  
29 docket the case in probate. Records contained in the probate  
30 case file that were copied or transferred from the juvenile  
31 court file concerning the case shall be subject to section  
32 232.147 and other confidentiality provisions of **this chapter**  
33 for cases not involving juvenile delinquency.

34 Sec. 79. Section 232.104, subsection 8, paragraph b, Code  
35 2019, is amended to read as follows:

1     *b.* In lieu of the procedures specified in paragraph “*a*”,  
2 the court may close the child in need of assistance case  
3 by transferring jurisdiction over the child’s guardianship  
4 to the probate court. The court shall inform the proposed  
5 guardian of the guardian’s reporting duties under section  
6 ~~633.669~~ 633F.52 and other duties under the probate code. Upon  
7 transferring jurisdiction, the court shall direct the probate  
8 clerk, once the proposed guardian has filed an oath of office  
9 and identification in accordance with [section 602.6111](#), to  
10 issue letters of appointment for guardianship and docket the  
11 case in probate. Records contained in the probate case file  
12 that were copied or transferred from the juvenile court file  
13 concerning the case shall be subject to [section 232.147](#) and  
14 other confidentiality provisions of [this chapter](#) for cases not  
15 involving juvenile delinquency.

16     Sec. 80. Section 235B.2, subsection 5, paragraph b,  
17 subparagraph (3), Code 2019, is amended to read as follows:

18     (3) The withholding or withdrawing of health care from  
19 a dependent adult who is terminally ill in the opinion of a  
20 licensed physician, when the withholding or withdrawing of  
21 health care is done at the request of the dependent adult or at  
22 the request of the dependent adult’s next of kin, attorney in  
23 fact, or guardian pursuant to the applicable procedures under  
24 chapter 125, [144A](#), [144B](#), [222](#), [229](#), or ~~633~~ 633F.

25     Sec. 81. Section 235B.3, subsection 9, paragraph a, Code  
26 2019, is amended to read as follows:

27     *a.* If, upon completion of the evaluation or upon referral  
28 from the department of inspections and appeals, the department  
29 determines that the best interests of the dependent adult  
30 require court action, the department shall initiate action  
31 for the appointment of a guardian or conservator or for  
32 admission or commitment to an appropriate institution or  
33 facility pursuant to the applicable procedures under chapter  
34 125, [222](#), [229](#), or ~~633~~ 633F, or shall pursue other remedies  
35 provided by law. The appropriate county attorney shall assist

1 the department in the preparation of the necessary papers  
2 to initiate the action and shall appear and represent the  
3 department at all district court proceedings.

4 Sec. 82. Section 235B.18, subsections 4 and 5, Code 2019,  
5 are amended to read as follows:

6 4. If, at the hearing, the judge finds by clear and  
7 convincing evidence that the dependent adult is in need of  
8 protective services and lacks the capacity to consent to the  
9 receipt of protective services, the judge may issue an order  
10 authorizing the provision of protective services. The order  
11 may include the designation of a person to be responsible for  
12 performing or obtaining protective services on behalf of the  
13 dependent adult or otherwise consenting to the receipt of  
14 protective services on behalf of the dependent adult. Within  
15 sixty days of the appointment of such a person the court  
16 shall conduct a review to determine if a petition shall be  
17 initiated in accordance with section ~~633.552~~ 633F.19 for good  
18 cause shown. The court may extend the sixty-day period for  
19 an additional sixty days, at the end of which the court shall  
20 conduct a review to determine if a petition shall be initiated  
21 in accordance with section ~~633.552~~ 633F.19. A dependent adult  
22 shall not be committed to a mental health facility under this  
23 section.

24 5. A determination by the court that a dependent adult lacks  
25 the capacity to consent to the receipt of protective services  
26 under [this chapter](#) shall not affect incompetency proceedings  
27 under sections ~~633.552 through 633.556~~ 633F.19, 633F.20,  
28 633F.22, and 633F.56 or any other proceedings, and incompetency  
29 proceedings under sections ~~633.552 through 633.556~~ 633F.19,  
30 633F.20, 633F.22, and 633F.56 shall not have a conclusive  
31 effect on the question of capacity to consent to the receipt of  
32 protective services under [this chapter](#). A person previously  
33 adjudicated as incompetent under the relevant provisions of  
34 chapter ~~633~~ 633F is entitled to the care, protection, and  
35 services under [this chapter](#).

1     Sec. 83. Section 235B.19, subsection 5, paragraph a,  
2 unnumbered paragraph 1, Code 2019, is amended to read as  
3 follows:

4     Notwithstanding sections ~~633.552~~ 633F.19 and ~~633.573~~  
5 633F.32, upon a finding that there is probable cause to believe  
6 that the dependent adult abuse presents an immediate danger to  
7 the health or safety of the dependent adult or is producing  
8 irreparable harm to the physical or financial resources or  
9 property of the dependent adult, and that the dependent adult  
10 lacks capacity to consent to the receipt of services, the court  
11 may order the appointment of a temporary guardian or temporary  
12 conservator without notice to the dependent adult or the  
13 dependent adult's attorney if all of the following conditions  
14 are met:

15     Sec. 84. Section 235E.1, subsection 5, paragraph b,  
16 subparagraph (3), Code 2019, is amended to read as follows:

17     (3) The withholding or withdrawing of health care from  
18 a dependent adult who is terminally ill in the opinion of a  
19 licensed physician, when the withholding or withdrawing of  
20 health care is done at the request of the dependent adult or at  
21 the request of the dependent adult's next of kin, attorney in  
22 fact, or guardian pursuant to the applicable procedures under  
23 chapter 125, 144A, 144B, 222, 229, or ~~633~~ 633F.

24     Sec. 85. Section 235E.2, subsection 6, paragraph a, Code  
25 2019, is amended to read as follows:

26     a. If, upon completion of an investigation, the department  
27 determines that the best interests of the dependent adult  
28 require court action, the department shall notify the  
29 department of human services of the potential need for a  
30 guardian or conservator or for admission or commitment to an  
31 appropriate institution or facility pursuant to the applicable  
32 procedures under chapter 125, 222, 229, or ~~633~~ 633F, or shall  
33 pursue other remedies provided by law. The appropriate county  
34 attorney shall assist the department of human services in the  
35 preparation of the necessary papers to initiate the action and

1 shall appear and represent the department of human services at  
2 all district court proceedings.

3 Sec. 86. Section 235F.1, subsection 5, paragraph b,  
4 subparagraph (3), Code 2019, is amended to read as follows:

5 (3) The withholding or withdrawing of health care from  
6 a vulnerable elder who is terminally ill in the opinion of  
7 a licensed physician, when the withholding or withdrawing of  
8 health care is done at the request of the vulnerable elder or  
9 at the request of the vulnerable elder's next of kin, attorney  
10 in fact, or guardian pursuant to the applicable procedures  
11 under [chapter 125, 144A, 144B, 222, 229](#), or ~~633~~ [633F](#).

12 Sec. 87. Section 235F.6, subsection 3, paragraph b, Code  
13 2019, is amended to read as follows:

14 b. Grants relief that is more appropriately obtained in a  
15 protective proceeding filed under ~~chapter 633~~ [633F](#) including  
16 but not limited to giving control and management of the funds,  
17 benefits, property, resources, belongings, or assets of the  
18 vulnerable elder to a guardian, conservator, or attorney in  
19 fact for any purpose other than the relief granted under  
20 subsection 2.

21 Sec. 88. Section 239B.13, subsection 2, Code 2019, is  
22 amended to read as follows:

23 2. The department may order the cash assistance under  
24 this chapter to be paid to a protective payee if it has  
25 been demonstrated that the specified relative with whom  
26 the child is residing is unable to manage the assistance in  
27 the best interest of the child. Protective payment of cash  
28 assistance shall not be made beyond a period of two years. The  
29 department may petition the district court sitting in probate  
30 to establish, pursuant to ~~chapter 633~~ [633F](#), a conservatorship  
31 over a participant. If a conservatorship is established, the  
32 participant's cash assistance shall be paid to the conservator.  
33 In addition to the cash assistance, an amount not to exceed ten  
34 dollars per case per month may be allowed for conservatorship  
35 or guardianship fees if authorized by court order. The

1 department may pay cash assistance or other cash benefits to  
2 a third party if the department determines that a third-party  
3 payment is essential to assure the proper use of the assistance  
4 or benefits.

5 Sec. 89. Section 252B.6A, subsection 4, Code 2019, is  
6 amended to read as follows:

7 4. For the purposes of [this section](#), a "*judicial proceeding*"  
8 means an action to enforce support filed with a court of  
9 competent jurisdiction in which the court issues an order which  
10 identifies the amount of the support collection which is a  
11 direct result of the court proceeding. "*Judicial proceedings*"  
12 include but are not limited to those pursuant to [chapters 598](#),  
13 [626](#), [633](#), [633F](#), [642](#), [654](#), or [684](#) and also include contempt  
14 proceedings if the collection payment is identified in the  
15 court order as the result of such a proceeding. "*Judicial*  
16 *proceedings*" do not include enforcement actions which the unit  
17 is required to implement under federal law including, but not  
18 limited to, income withholding.

19 Sec. 90. Section 565B.24, Code 2019, is amended to read as  
20 follows:

21 **565B.24 Other laws not applicable.**

22 ~~Chapter~~ [Chapters 633 and 633F](#) and all other laws of this  
23 state to the extent contrary to [this chapter](#) do not apply to  
24 the custodial property of a minor held by the custodian under  
25 this chapter.

26 Sec. 91. Section 602.6306, subsection 2, Code 2019, is  
27 amended to read as follows:

28 2. District associate judges also have jurisdiction  
29 in civil actions for money judgment where the amount in  
30 controversy does not exceed ten thousand dollars; jurisdiction  
31 over involuntary commitment, treatment, or hospitalization  
32 proceedings under [chapters 125](#) and [229](#); jurisdiction of  
33 indictable misdemeanors, class "D" felony violations, and other  
34 felony arraignments; jurisdiction to enter a temporary or  
35 emergency order of protection under [chapter 235F](#) or [236](#), and to

1 make court appointments and set hearings in criminal matters;  
2 jurisdiction to enter orders in probate which do not require  
3 notice and hearing and to set hearings in actions under chapter  
4 633, ~~or 633A,~~ or 633F; and the jurisdiction provided in section  
5 602.7101 when designated as a judge of the juvenile court.

6 While presiding in these subject matters a district associate  
7 judge shall employ district judges' practice and procedure.

8 Sec. 92. Section 602.8102, subsections 105 and 105A, Code  
9 2019, are amended to read as follows:

10 105. Carry out duties of the clerk of the probate court as  
11 provided in ~~chapter~~ chapters 633 and 633F.

12 105A. Provide written notice to all duly appointed  
13 guardians and conservators of their liability as provided in  
14 sections ~~633.633A~~ 633F.58 and ~~633.633B~~ 633F.59.

15 Sec. 93. Section 633.27A, unnumbered paragraph 1, Code  
16 2019, is amended to read as follows:

17 When a petition is filed for a conservatorship or  
18 guardianship, or a combined petition as provided in section  
19 ~~633.627~~ 633F.34, the administration thereof shall be treated as  
20 one proceeding, with one docket number, from the date of the  
21 filing of the petition. The separate reporting requirements  
22 for conservatorships and guardianships shall continue to apply  
23 in a combined petition. The clerk shall clearly indicate on  
24 the docket whether the proceedings are voluntary or involuntary  
25 and whether a guardianship, a conservatorship, or combined.

26 Sec. 94. Section 633.551, subsections 3 and 5, Code 2019,  
27 are amended to read as follows:

28 3. In determining whether a guardianship or conservatorship  
29 is to be established, modified, or terminated, the  
30 district court shall consider if a limited guardianship or  
31 conservatorship pursuant to section ~~633.635~~ 633F.26 or ~~633.637~~  
32 633F.35 is appropriate. In making the determination, the court  
33 shall make findings of fact to support the powers conferred on  
34 the guardian or conservator.

35 5. Except as otherwise provided in ~~sections 633.672~~ and



1 ~~633.673~~ section 633F.57 or 633F.60, in proceedings to establish  
2 a guardianship or conservatorship, the costs, including  
3 attorney fees and expert witness fees, shall be assessed  
4 against the ~~ward~~ protected person or the ~~ward's~~ protected  
5 person's estate unless the proceeding is dismissed either  
6 voluntarily or involuntarily, in which case fees and costs may  
7 be assessed against the petitioner for good cause shown.

8 Sec. 95. Section 633.562, Code 2019, is amended to read as  
9 follows:

10 **633.562 Notification of guardianship powers.**

11 In a proceeding for the appointment of a guardian, the  
12 ~~proposed ward~~ respondent shall be given written notice which  
13 advises the ~~proposed ward~~ respondent that if a guardian is  
14 appointed, the guardian may, without court approval, provide  
15 for the care of the ~~ward~~ protected person, manage the ~~ward's~~  
16 protected person's personal property and effects, assist the  
17 ~~ward~~ protected person in developing self-reliance and receiving  
18 professional care, counseling, treatment or services as needed,  
19 and ensure that the ~~ward~~ protected person receives necessary  
20 emergency medical services. The notice shall also advise the  
21 ~~proposed ward~~ respondent that, upon the court's approval, the  
22 guardian may change the ~~ward's~~ protected person's permanent  
23 residence to a more restrictive residence, and arrange for  
24 major elective surgery or any other nonemergency major medical  
25 procedure. The notice shall clearly advise the ~~proposed ward~~  
26 respondent in boldface type of a minimum size of ten points,  
27 of the right to counsel and the potential deprivation of the  
28 ~~proposed ward's~~ respondent's civil rights. The notice shall  
29 also state that the ~~proposed ward~~ respondent may use the ~~ward's~~  
30 respondent's own attorney instead of an attorney appointed by  
31 the court. In an involuntary guardianship proceeding, the  
32 notice shall be served upon the ~~proposed ward~~ respondent with  
33 the notice of the filing of the petition as provided in section  
34 ~~633.554~~ 633F.20.

35 Sec. 96. Section 633.634, Code 2019, is amended to read as

1 follows:

2 **633.634 Combination of voluntary and standby petitions with**  
3 **involuntary petition for hearing.**

4 If prior to the time of hearing on a petition for the  
5 appointment of a guardian or a conservator, a petition is filed  
6 under the provisions of section ~~633.557, 633.572~~ 633F.19 or  
7 ~~633.591~~ section 633F.41, subsection 1, the court shall combine  
8 the hearing on such petitions and determine who shall be  
9 appointed guardian or conservator, and such petition shall be  
10 triable to the court.

11 Sec. 97. Section 633.717, subsection 8, Code 2019, is  
12 amended to read as follows:

13 8. The denial by a court of this state of a petition to  
14 accept a guardianship or conservatorship transferred from  
15 another state does not affect the ability of the guardian or  
16 conservator to seek appointment as guardian or conservator in  
17 this state under section 633.551, ~~633.552~~ 633F.19, or ~~633.566~~  
18 633F.28, if the court has jurisdiction to make an appointment  
19 other than by reason of the provisional order of transfer.

20 Sec. 98. Section 633B.102, subsections 2 and 6, Code 2019,  
21 are amended to read as follows:

22 2. "*Conservator*" or "*conservatorship*" means a conservator  
23 appointed or conservatorship established pursuant to ~~sections~~  
24 ~~633.570 and 633.572~~ section 633F.31 or a similar provision of  
25 the laws of another state.

26 6. "*Guardian*" or "*guardianship*" means a guardian appointed  
27 or a guardianship established pursuant to sections ~~633.556~~  
28 633F.22 and ~~633.560~~ 633F.25 or a similar provision of the laws  
29 of another state.

30 Sec. 99. Section 633B.108, subsection 1, Code 2019, is  
31 amended to read as follows:

32 1. Under a power of attorney, a principal may nominate  
33 a conservator of the principal's estate or guardian of  
34 the principal's person for consideration by the court if  
35 proceedings for the principal's estate or person are begun

1 after the principal executes the power of attorney. Except  
2 for good cause shown or disqualification, the court shall make  
3 its appointment in accordance with the principal's most recent  
4 nomination. This section does not prohibit an individual  
5 from executing a petition for the voluntary appointment of a  
6 guardian or conservator on a standby basis pursuant to sections  
7 ~~633.560~~ 633F.25 and ~~633.591~~ 633F.41.

8 Sec. 100. Section 815.11, Code 2019, is amended to read as  
9 follows:

10 **815.11 Appropriations for indigent defense — fund created.**

11 Costs incurred for legal representation by a court-appointed  
12 attorney under chapter 229A, 665, 822, or 908, or section  
13 232.141, subsection 3, paragraph "d", or section 598.23A,  
14 600A.6B, 814.9, 814.10, 814.11, 815.4, 815.7, or 815.10 on  
15 behalf of an indigent shall be paid from moneys appropriated by  
16 the general assembly to the office of the state public defender  
17 in the department of inspections and appeals and deposited in  
18 an account to be known as the indigent defense fund. Costs  
19 incurred representing an indigent defendant in a contempt  
20 action, or representing an indigent juvenile in a juvenile  
21 court proceeding, are also payable from the fund. However,  
22 costs incurred in any administrative proceeding or in any other  
23 proceeding under this chapter or chapter 598, 600, 600A, 633,  
24 633A, 633F, 814, or 915 or other provisions of the Code or  
25 administrative rules are not payable from the fund.

26 Sec. 101. CODE EDITOR DIRECTIVE.

27 1. Section 633.3, subsections 7, 15, 20, and 21, section  
28 633.78, subsection 1, unnumbered paragraph 1 and paragraph  
29 "b", and subsection 4, paragraph "a", sections 633.80, 633.93,  
30 and 633.112, section 633.123, subsection 1, paragraph "a", and  
31 subparagraph (3), section 633.551, subsections 1, 2, and 4,  
32 and sections 633.617, 633.662, 633.676, 633.677, 633.681, and  
33 633.682, Code 2019, are amended by striking the word "ward" and  
34 inserting in lieu thereof the words "protected person".

35 2. Section 633.551, subsections 1 and 4, and section

1 633.557, subsection 1, Code 2019, are amended by striking the  
2 words "proposed ward" and inserting in lieu thereof the word  
3 "respondent".

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

10 Sec. 102. REPEAL. Sections 633.552, 633.554, 633.555,  
11 633.556, 633.557, 633.558, 633.559, 633.560, 633.561, 633.562,  
12 633.566, 633.568, 633.569, 633.570, 633.571, 633.572, 633.573,  
13 633.574, 633.575, 633.576, 633.580, 633.581, 633.582, 633.584,  
14 633.585, 633.591, 633.591A, 633.592, 633.593, 633.594,  
15 633.595, 633.596, 633.603, 633.604, 633.605, 633.606, 633.607,  
16 633.608, 633.627, 633.628, 633.633, 633.633A, 633.633B,  
17 633.635, 633.636, 633.637, 633.637A, 633.638, 633.639, 633.640,  
18 633.641, 633.643, 633.644, 633.645, 633.646, 633.647, 633.648,  
19 633.649, 633.650, 633.652, 633.653, 633.653A, 633.654, 633.655,  
20 633.656, 633.657, 633.658, 633.659, 633.660, 633.661, 633.663,  
21 633.664, 633.665, 633.666, 633.667, 633.668, 633.669, 633.670,  
22 633.671, 633.672, 633.673, 633.675, and 633.679, Code 2019, are  
23 repealed.

24 DIVISION III

25 EFFECTIVE DATE AND APPLICABILITY PROVISIONS

26 Sec. 103. EFFECTIVE DATE. This Act takes effect January 1,  
27 2020.

28 Sec. 104. APPLICABILITY. This Act applies January 1, 2020,  
29 to guardianships and conservatorships proceedings occurring on  
30 or after that date.

31 EXPLANATION

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

34 This bill relates to guardianships and conservatorships for  
35 adults and minors and provides for jurisdiction, definitions,

1 proceedings, administration, and closing. The bill creates  
2 new Code chapter 633F and repeals similar provisions from Code  
3 chapter 633. The new Code chapter is organized into five  
4 subchapters: jurisdictions, definitions, and applicability;  
5 guardianships for minors; guardianships for adults;  
6 conservatorships; and proceedings, administration, and closing.

7 JURISDICTION, DEFINITIONS, AND APPLICABILITY. The bill  
8 provides the jurisdiction for minor and adult guardianships and  
9 conservatorships. The bill provides that district courts have  
10 jurisdiction over all conservatorships and adult guardianships.  
11 The bill provides that effective for petitions filed January  
12 1, 2020, the juvenile court shall have exclusive, original  
13 jurisdiction for minor guardianships. The bill provides that  
14 existing guardianships as of that date shall be transferred  
15 to the juvenile court if requested by the protected person's  
16 attorney, parent, or guardian, or if requested by the court.  
17 Prior to January 1, 2020, the district court shall have  
18 jurisdiction over minor guardianships.

19 The bill provides definitions for the following terms:  
20 adult, clerk, conservator, court, court advisor, demonstrated  
21 lack of consistent parental participation, fiduciary, full  
22 age, functional limitation, guardian, legal custody, legal  
23 representative, limited conservatorship, limited guardianship,  
24 loyalty, minor, parent, person, property, protected person,  
25 prudence, and respondent.

26 "Court advisor" is defined as a person appointed by the  
27 court to investigate and report information relevant to  
28 a guardianship or conservatorship proceeding. "Protected  
29 person" is used in lieu of the former term "ward" and is  
30 defined as the person for whom a guardian or conservator has  
31 been appointed, or who is a respondent in a proceeding under  
32 the new Code chapter. "Respondent" is used in lieu of the  
33 former term "proposed ward" and is defined as the proposed  
34 protected person, including a person who is the subject of  
35 other proceedings under the new Code chapter. The bill makes

1 corresponding term changes to the use of the terms "ward" and  
2 "proposed ward" in Code chapter 633.

3 The bill provides that all relevant provisions of the  
4 probate code, Code chapter 633, shall apply to proceedings to  
5 the extent not inconsistent with the provisions of Code chapter  
6 633F.

7 GUARDIANSHIPS FOR MINORS. The bill prescribes the venue  
8 for a minor guardianship and provides for the transferring of  
9 a case in the best interests of a minor. The bill sets forth  
10 the requirements of what must be submitted in a petition for  
11 appointment of a guardian for a minor. The bill prescribes  
12 who shall receive notice of the filing of the petition of  
13 appointment of a guardian for a minor, order appointing counsel  
14 for the respondent, and setting a hearing on the petition. The  
15 bill prescribes who shall be required and who has a right to  
16 participate in the hearing for appointment of a guardian for  
17 a minor. The bill sets forth preferences for selection of a  
18 guardian for a minor.

19 The bill provides for a process for a standby petition for  
20 appointment of a guardian for a minor where an adult person  
21 having physical and legal custody of a minor may execute a  
22 verified petition for the appointment of a guardian of the  
23 minor upon the express condition that the petition shall be  
24 acted upon by the court only upon the occurrence of an event  
25 specified or the existence of a described condition of the  
26 mental or physical health of the petitioner, the occurrence of  
27 which event, or the existence of which conditions, shall be  
28 established in the manner directed in the petition.

29 The bill provides a process for appointment of a guardian for  
30 a minor, which includes a background check and consideration  
31 of filing a child in need of assistance petition. The bill  
32 provides for two processes for the appointment of a guardian:  
33 one that provides for the appointment of a guardian for a minor  
34 without parental consent and one that provides for appointment  
35 of a guardian with parental consent. The bill provides for

1 representation of a minor respondent, providing for an attorney  
2 for the minor respondent if the court determines that the  
3 interests of the minor are or may be inadequately represented.  
4 The bill also provides for representation for indigent  
5 parents of a minor respondent, providing that the court shall  
6 appoint an attorney for the parent identified in the petition  
7 for appointment of a guardian if the parent objects to the  
8 appointment of a guardian, the parent requests appointment of  
9 an attorney, and the court determines that the parent is unable  
10 to pay for an attorney in accordance with Code section 232.141.

11 The bill provides for emergency appointment of a guardian  
12 for a minor when the petitioner proves by a clear and  
13 convincing evidence that an emergency exists justifying  
14 the need for an immediate appointment. The bill provides  
15 rights for the protected person to terminate the emergency  
16 guardianship. The bill details the duties and powers of  
17 a guardian for a minor. The bill provides a process to  
18 transition a minor guardianship to an adult guardianship.

19 GUARDIANSHIPS FOR ADULTS. The bill sets forth the  
20 requirements of what must be submitted in a petition for  
21 appointment of a guardian for an adult. The bill prescribes  
22 who shall receive notice of the filing of the petition to  
23 appoint a guardian. The bill provides that in a proceeding  
24 for the appointment of a guardian, the respondent shall be  
25 given written notice of a guardian's powers, including the  
26 potential deprivation of the respondent's civil rights. The  
27 bill provides the process for determining whether to appoint  
28 a guardian or whether a limited guardianship might be more  
29 appropriate. The bill requires that upon a filing of a  
30 petition for appointment of a guardian, a background check  
31 shall be conducted when determining who the proposed guardian  
32 shall be. The bill discusses all of the areas that the court's  
33 order shall address in the appointment of a guardian.

34 The bill provides for emergency appointment of a guardian  
35 for an adult when the petitioner proves by a clear and

1 convincing evidence that an emergency exists justifying  
2 the need for an immediate appointment. The bill provides  
3 rights for the protected person to terminate the emergency  
4 guardianship.

5 The bill provides that the court shall appoint as guardian a  
6 qualified and suitable person who is willing to serve in that  
7 capacity and the same person may be appointed to serve as both  
8 guardian and conservator. The bill provides for a process  
9 for a petition for the appointment of a guardian on a standby  
10 basis. The bill prescribes the responsibilities of a guardian.  
11 The bill sets forth the rights of a protected person under a  
12 guardianship.

13 CONSERVATORSHIPS. The bill sets forth the requirements  
14 of what must be submitted in a petition for appointment  
15 of a conservator. The bill prescribes who shall receive  
16 notice of the filing petition for a conservatorship. The  
17 bill provides that in a proceeding for the appointment of a  
18 conservator, the respondent shall be given written notice of a  
19 conservator's powers, including the potential deprivation of  
20 a respondent's civil rights. The bill provides the process  
21 for determining whether to appoint a conservator or whether a  
22 limited conservatorship might be more appropriate. The bill  
23 requires that upon a filing of a petition for appointment of  
24 a conservatorship, a background check shall be conducted when  
25 determining who the proposed guardian shall be. The bill  
26 discusses all of the areas that the court's order shall address  
27 in the appointment of a conservator.

28 The bill provides for emergency appointment of a conservator  
29 when the petitioner proves by a clear and convincing evidence  
30 that an emergency exists justifying the need for an immediate  
31 appointment. The bill provides rights for the protected person  
32 to terminate the emergency conservatorship.

33 The bill provides that the court shall appoint as  
34 conservator a qualified and suitable person who is willing to  
35 serve in that capacity and the same person may be appointed



1 to serve as both guardian and conservator. The bill provides  
2 that the petition for appointment of a guardian for an adult  
3 and a petition for a conservator for an adult may be combined  
4 and the cause tried in the same manner as a petition for the  
5 appointment of a conservator. The bill provides the petition  
6 for appointment of a guardian for a minor and the petition  
7 for the appointment of a conservator of a minor shall not be  
8 combined. The bill sets forth the powers of a protected person  
9 in a conservatorship. The bill sets forth who has title and  
10 who has possession of a protected person's property. The bill  
11 details the duties and powers of a conservator.

12 The bill provides that there is a presumption of fraud in a  
13 conservatorship if a contract, transfer, or gift is made by a  
14 protected person after a conservator has been appointed. The  
15 bill provides for a procedure in lieu of a conservatorship for  
16 money or other property due to a minor when a conservatorship  
17 is not in place.

18 The bill provides for a procedure for the appointment of a  
19 conservator for an adult on a standby basis in which an adult  
20 person of sound mind may execute a verified petition for the  
21 appointment of a conservator of the person's property upon the  
22 express condition that such petition shall be acted upon by the  
23 court only upon the occurrence of an event specified or the  
24 existence of a described condition of the mental or physical  
25 health of the petitioner, the occurrence of which event, or  
26 the existence of which condition, shall be established in the  
27 manner directed in the petition.

28 The bill provides for a procedure for a standby petition for  
29 appointment of a conservator for a minor. The bill provides  
30 that an adult person having physical and legal custody of a  
31 minor may execute a verified petition for the appointment  
32 of a conservator of the minor upon the express condition  
33 that the petition shall be acted upon by the court only upon  
34 the occurrence of an event specified or the existence of a  
35 described condition of the mental or physical health of the

1 petitioner, the occurrence of which event, or the existence of  
2 which condition, shall be established in the manner directed  
3 in the petition. The petition, in addition to containing the  
4 information required in new Code section 633F.28, shall include  
5 a statement that the petitioner understands the result of a  
6 conservator being appointed for the minor. An appointment of a  
7 conservator for a minor shall only be effective until the minor  
8 attains full age.

9 The bill provides a process for when a person owns property  
10 located in the state of Iowa, the person's whereabouts  
11 are unknown, and no provision for the care, control, and  
12 supervision of such property has been made, with the result  
13 that such property may be lost, damaged, or diminished in  
14 value, or that the dependents of such owners are likely to be  
15 deprived of means of support because of such absence. The  
16 bill allows any adult person to file with the clerk a petition  
17 for the appointment of a conservator of such property of the  
18 absentee. The bill provides a process for the appointment of  
19 a foreign conservator. The bill provides a process for the  
20 disposition of a protected person's will. The bill provides  
21 for rules governing claims against protected persons or  
22 conservators.

23 PROCEEDINGS, ADMINISTRATION, AND CLOSING. The bill provides  
24 that a petitioner or respondent may submit a professional  
25 evaluation in a matter concerning the granting, modifying,  
26 or terminating of a guardianship or conservatorship for  
27 the respondent. The bill requires that the court order  
28 a professional evaluation unless the court finds it has  
29 sufficient information to determine whether the criteria for a  
30 guardianship or conservatorship are met or the petitioner or the  
31 petitioner or respondent has filed a professional evaluation.  
32 The bill provides additional guidelines to govern professional  
33 evaluations and how a court shall consider professional  
34 evaluations.

35 The bill provides direction for the position of a court

1 advisor including what the court advisor shall do when  
2 appointed by the court. The bill specifies that the role of  
3 the court advisor is to gather and report factual information  
4 that will assist the court in making custody, visitation, or  
5 other decisions related to the welfare of the respondent. The  
6 bill specifies that the same person shall not serve both as  
7 the attorney representing the respondent and as court advisor.  
8 Additionally, the bill specifies that in a guardianship  
9 or conservatorship proceeding, the court shall not appoint  
10 a guardian ad litem. The bill sets forth what the court  
11 advisor's written report shall entail and that the report shall  
12 be made part of the court record unless otherwise ordered by  
13 the court.

14 The bill provides for the appointment of an attorney for  
15 adult respondents and protected persons in conservatorships and  
16 adult respondents and protected persons in guardianships and  
17 sets forth the duties of the attorney representing a respondent  
18 or protected person. The bill provides for the cost of  
19 court-appointed attorneys for indigents to be assessed against  
20 the county in which the proceedings are pending.

21 The bill provides that the district court may, on its own  
22 motion or on the motion of any party, order the parties to  
23 participate in mediation in any guardianship or conservatorship  
24 action. The bill provides that the mediation shall be  
25 conducted in accordance with Code chapter 679C and standards  
26 set forth by the bill.

27 The bill provides that the appointment of a guardian or  
28 conservator does not create a presumption that the protected  
29 person lacks testamentary capacity. The bill describes the  
30 reporting requirements of guardians and conservators.

31 The bill provides that the court may conduct a hearing to  
32 determine whether the removal of a guardian or conservator is  
33 appropriate in certain circumstances set forth in the bill.  
34 The bill sets forth additional guidelines regarding the removal  
35 of a guardian or conservator.

1 The bill sets forth criteria to govern the termination or  
2 modification of guardianships and conservatorships. The bill  
3 provides that in proceedings to establish, modify, or terminate  
4 a guardianship or conservatorship, or to remove a guardian  
5 or conservator, the case shall be tried as a law action and  
6 governed by the rules of civil procedure subject to several  
7 requirements set forth in the bill. The bill provides that the  
8 compensation of guardians, conservators, guardian's attorneys,  
9 and conservator's attorneys shall be fixed according to Code  
10 section 633.200. The bill describes the liability of guardians  
11 and conservators for their own acts or omissions taken or made  
12 in the official discharge of their duties and for the acts of  
13 the protected person.

14 The bill provides that a protected person shall be charged  
15 with the court costs of the protected person's guardianship  
16 and conservatorship proceedings, including guardian's and  
17 conservator's fees, and the fees of attorneys representing  
18 guardians and conservators. The bill provides that in the  
19 case of indigency, the court may, upon application, waive  
20 payment of court costs. However, the bill provides that if  
21 the protected person becomes financially capable of paying  
22 any waived costs, the costs shall no longer be waived and are  
23 immediately payable. The bill provides that the provisions of  
24 Code chapter 633 are applicable to all fiduciaries and govern  
25 the appointment, qualification, oath, and bond of guardians and  
26 conservators with two exceptions.

27 The bill repeals numerous sections in the probate code and  
28 makes conforming changes throughout the Code.

29 The bill takes effect January 1, 2020. The bill applies to  
30 guardianship and conservatorship proceedings on or after that  
31 date.