HOUSE FILE 591
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 118)

(As Amended and Passed by the House March 21, 2019)

[= New Language by the House

* = Language Stricken by the House

A BILL FOR

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

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

DIVISION I

IOWA MINOR GUARDIANSHIP PROCEEDINGS ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The responsibilities of the guardian.

b. The responsibilities of the parent or parents.

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

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

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

parental consent.

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

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

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

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

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

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

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

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

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

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

in need of assistance petition is not appropriate.

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

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

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

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

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

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

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

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

(1) Any living parents of the minor.

(2) Any legal custodian of the minor.

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

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

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

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

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

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

1. The filing of a petition shall be served upon the minor who is the subject of the petition in the manner of an * original notice in accordance with [the rules of civil procedure] governing such notice. Notice to the attorney representing the minor, if any, is notice to the minor.

2. Notice shall be served upon the minor's known parents * listed in the petition in accordance with [the rules of civil procedure].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. A recommendation regarding the appropriateness of a guardianship for the minor.

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

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

d. Any other matters the court directs.

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

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

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

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

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

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

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

petition.

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

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

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

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

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

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

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

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

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

2. The petition shall state all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

* [1. An adult person having physical and legal custody of a minor may execute a verified petition for the appointment of a guardian of the minor upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a

described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition. The petition, in addition to containing the information required in section 232D.301, shall include a statement that the petitioner understands the result of a guardian being appointed for the minor. An appointment of a guardian for a minor shall only be effective until the minor attains full age.

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

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

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

5. If the standby petition has been deposited with the clerk under the provisions of subsection 3 and has not been revoked under the provisions of subsection 4, the petition may be filed with the court upon the filing of a verified statement to the effect that the occurrence of the event or the condition provided for in the petition has occurred. If the petition has not been deposited with the clerk under the provisions of

subsection 3 and has not been revoked under the provisions of subsection 4, then the petition shall be filed with the court at the time a verified statement that the occurrence of the event or the condition provided for in the petition has occurred is filed with the court in the county where the minor then resides. Upon filing of the petition and verified statement, the person filing the verified statement shall become the petitioner and the proceedings shall be thereafter conducted as provided for in this chapter.

6. A standby petition for the appointment of a guardian for a minor shall not supersede any contradictory provision in a will admitted to probate of a parent, guardian, or custodian having physical and legal custody of a minor in the event of the parent's, guardian's, or custodian's death.]

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

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

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

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

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

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

a. Taking custody of the minor and establishing the minor's permanent residence if otherwise consistent with the terms of any order of competent jurisdiction relating to the custody,

placement, detention, or commitment of the minor within the state.

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

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

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

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

f. Any other powers the court may specify.

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

a. Consenting to the withholding or withdrawal of life-sustaining procedures, as defined in section 144A.2, from the minor, the performance of an abortion on the minor, or the sterilization of the minor.

b. Establishing the residence of the minor outside of the state.

c. Consenting to the marriage of the minor.

d. Consenting to the emancipation of the minor.

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

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

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

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

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

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

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

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

[7. A guardian shall promptly inform the court of any change in the minor's school or school district.]

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

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

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

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

a. A verified initial care plan filed within sixty days of appointment. The information in the initial care plan shall

include but not be limited to the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) The need for continuation of guardianship.

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

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

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

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

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

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

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

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

2. The court shall conduct a hearing to determine whether a guardian should be removed on the filing of a petition by a minor under guardianship who is fourteen years of age or older, the parent of a minor, or other person with an interest in welfare of the minor if the court determines that there are reasonable grounds for believing that removal is appropriate based on the allegations stated in the petition.

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

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

5. The court may appoint a successor guardian on the

removal of a guardian pursuant to subsection 1, the death of a guardian, or the resignation of a guardian.

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

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

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

3. The court shall terminate a guardianship established pursuant to section 232D.204 if the court finds that the basis for the guardianship set forth in section 232D.204 is not currently satisfied. A person seeking termination of guardianship established pursuant to section 232D.204 has the burden of making a prima facie showing that the guardianship should be terminated. If such a showing is made, the guardian has the burden of going forward to prove by clear and convincing evidence that the guardianship should not be terminated.

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

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

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

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

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

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

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

1. Except as otherwise provided by law, the court shall inquire into the ability of the minor or the minor's parent to pay expenses incurred pursuant to the guardianship proceedings established under this chapter. After giving the minor and the parent a reasonable opportunity to be heard, the court may order the minor or the parent to pay all or part of the following:

a. Costs of legal expenses of the minor and the parent.

b. Expenses for a court visitor.

c. Filing fees and other court costs, unless the costs are waived for good cause shown.

2. If the court finds a minor's parents to be indigent, or if the minor has no parent, costs shall be assessed against the county in which the proceeding is pending. For purposes of assessing costs under this subsection, the court shall find a minor's parents to be indigent if the minor's or the parent's income and resources do not exceed one hundred fifty percent of the federal poverty level, or the minor's parent would be unable to pay such costs without prejudicing the parent's ability to provide economic necessities for the parent or the parent's dependents.

DIVISION II

CORRESPONDING CODE CHANGES

Sec. 30. Section 232.101A, Code 2019, is amended to read as follows:

232.101A Transfer of guardianship to custodian.

1. After a dispositional hearing the court may ~~enter an order transferring guardianship of the child to a custodian~~ close the child in need of assistance case and appoint a guardian pursuant to sections 232D.308 and 232D.401 if all of the following conditions are met:

a. The person receiving guardianship meets the definition of custodian in section 232.2.

b. The person receiving guardianship has assumed responsibility for the child prior to filing of the petition under this division and has maintained placement of the child since the filing of the petition under this division.

c. The parent of the child does not appear at the dispositional hearing, or the parent appears at the dispositional hearing, does not object to the transfer of guardianship, and agrees to waive the requirement for making reasonable efforts as defined in section 232.102.

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

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

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

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

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

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

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

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

NEW SUBPARAGRAPH. (6) To a district court upon a finding that data is necessary for the resolution of an issue arising

in any phase of a case involving proceedings for a child guardianship under chapter 232D.

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

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

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

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

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

3. *Conservatorships and guardianships.*

a. ~~The~~ Except as provided for in paragraph "*b*", the appointment of conservators and guardians; the granting of letters of conservatorship and guardianship; the administration, settlement and closing of conservatorships and guardianships.

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

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

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

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

~~*b. Is a minor.*~~

Sec. 38. Section 633.554, subsection 2, Code 2019, is

amended to read as follows:

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

b. Notice shall also be served upon~~:~~

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

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

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

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

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

b. If the proposed ward is ~~either a minor or~~ an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the

proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

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

5. From time to time, upon a proper showing, the court may modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of section 633.552, subsection 2, ~~paragraph "a" or "b",~~ and that the facts justify a modification of the guardianship. Section 633.551 applies to the modification proceedings. Any modification that would be less restrictive for the ward shall be based upon proof in accordance with the requirements of section 633.675.

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

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

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

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

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