HOUSE FILE 610
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 22)

(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 relating to the opening of guardianships for adults and conservatorships for adults and minors and the administration of guardianships and conservatorships.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

defined in section 216C.11, subsection 1.

NEW SUBSECTION. 27A. *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.

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

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

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

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

633.174 Guardians and conservators — bond.

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

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

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

633.175 Waiver of bond by court.

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

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

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

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

633.551 ~~Guardianships and conservatorships — general~~ General provisions.

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

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

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

district court shall consider if a limited guardianship or conservatorship pursuant to section 633.635 or 633.637 is appropriate. In making the determination, the court shall make findings of fact to support the powers conferred on the guardian or conservator.

4. In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the ~~proposed ward or ward~~ respondent or protected person is incompetent as defined in section 633.3, the court shall consider credible evidence ~~from any source to the effect of third-party assistance in meeting the needs of the proposed ward or ward~~ as to whether there are other less restrictive alternatives, including third-party assistance, that would meet the needs of the respondent or the protected person. However, neither party to the action shall have the burden to produce such evidence relating to other less restrictive alternatives, including but not limited to third-party assistance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The minor has funds or other property requiring

management or protection that otherwise cannot be provided.

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

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

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

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

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

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

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

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

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

b. Any spouse of the respondent.

c. Any adult children of the respondent.

d. Any parents of the respondent.

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

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

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

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

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

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

[8. The petition shall provide a brief description of the respondent's alleged functional limitations that make the respondent unable to communicate or carry out important decisions concerning the respondent's financial affairs.]

* [9.] Any additional information relevant to the proceeding may be included in an affidavit attached to the petition.

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

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

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

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

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

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

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

d. If the petitioner, or the proposed conservator, is not the parent or parents having legal custody of the minor, the

name and address, to the extent known, of the following:

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

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

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

1. The filing of a petition filed pursuant to section 633.556 shall be served upon the adult respondent in the manner of an original notice in accordance with [the Iowa rules of civil procedure] governing such notice. Notice to the attorney representing the respondent, if any, is notice to the respondent.

2. 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 in accordance with [the Iowa rules of civil procedure]. Failure of such persons to receive actual notice does not constitute a jurisdictional defect precluding the appointment of a guardian or conservator by the court.

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

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

1. The filing of a petition pursuant to section 633.557 shall be served upon a minor respondent in the manner of an original notice in accordance with [the Iowa rules of civil procedure] governing such notice. Notice to the attorney representing the minor, if any, is notice to the minor.

2. Notice shall also be served upon the known parent or parents listed in the petition in accordance with [the Iowa 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 in accordance with [the Iowa rules of civil procedure]. Failure of such persons to receive actual notice does not constitute a jurisdictional defect precluding the appointment of a conservator by the court.

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

Sec. 17. NEW SECTION. **633.560 Hearing.**

1. The court shall fix the time and place of hearing on a 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 to less than twenty days pursuant to section 633.40. The court shall also prescribe the manner of service of the notice of such hearing pursuant to section 633.40.

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

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

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

5. Any person with an interest in the welfare of the respondent may submit a written application to the court requesting permission to participate in the hearing on the petition and other proceedings. The court may grant the request if the court finds that the person's participation is

in the best interest of the respondent. The court may impose appropriate conditions on the person's participation.

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

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

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

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

[Sec. 19. NEW SECTION. **633.560A Mediation.**

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

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

a. The parties will participate in good faith. Participation in mediation shall include attendance at a mediation session with the mediator and the parties to the action, listening to the mediator's explanation of the mediation process, presentation of one party's view of the case, and listening to the response of the other party.

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

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

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

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

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

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

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

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

c. Either of the following:

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

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

Sec. 20. Section 633.561, Code 2019, is amended to read as follows:

633.561 ~~**Representation**~~ **Appointment and role of attorney for respondent.**

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

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

b. If the ~~proposed ward~~ respondent 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~~ respondent is entitled to representation. The determination regarding representation may be made with or without notice to the ~~proposed ward~~ respondent, as the court deems necessary. If the court determines that the ~~proposed ward~~ respondent is entitled to representation, the court shall appoint an attorney to represent the ~~proposed ward~~ respondent. 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.

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

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

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

2. The court shall ensure that all ~~proposed wards~~ respondents entitled to representation have been provided ~~with~~ notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in

which notification was provided.

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

4. An attorney appointed pursuant to this section shall:

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

b. Advocate for the wishes of the respondent to the extent those wishes are reasonably ascertainable. If the respondent's wishes are not reasonably ascertainable, the attorney shall advocate for the least restrictive alternative consistent with the respondent's best interests.

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

~~*c.*~~ *d.* Personally interview the ~~proposed ward~~ respondent.

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

~~*e. Represent the proposed ward.*~~

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

5. In the event that an order of appointment is entered,

the attorney appointed pursuant to this section, to the extent possible, shall:

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

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

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

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

7. If the court determines upon application that it is appropriate or necessary, the court may order that the attorney appointed pursuant to this section be given copies of and access to the ~~proposed ward's~~ respondent's health information by describing with reasonable specificity the health information to be disclosed or accessed, for the purpose of fulfilling the attorney's responsibilities pursuant to this section.

Sec. 21. NEW SECTION. **633.562 Appointment and role of court visitor.**

1. If the court determines that the appointment of a court visitor would be in the best interest of the respondent, the court[shall]appoint a court visitor at the expense of the respondent or the respondent's estate, or, if the respondent is indigent, the cost of the court visitor shall be assessed against the county in which the proceedings are pending. The court may appoint any qualified person as a court visitor in a

guardianship or conservatorship proceeding.

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

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

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

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

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

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

a. Interview the petitioner, and if the petitioner is not the proposed guardian or conservator, interview the proposed guardian or conservator.

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

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

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

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

b. A statement of the qualifications of the guardian

together with a statement of whether the respondent has expressed agreement with the appointment of the proposed guardian or conservator.

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

d. Any other matters the court directs.

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

Sec. 22. NEW SECTION. **633.563 Court-ordered professional evaluation.**

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

a. The court finds it has sufficient information to determine whether the criteria for a guardianship or conservatorship are met.

b. The petitioner or respondent has filed a professional evaluation.

2. Notwithstanding subsection 1, if the respondent has filed a professional evaluation and the court determines an additional professional evaluation will assist the court in understanding the decision-making capacity and functional abilities and limitations of the respondent, the court may order a professional evaluation of the respondent.]

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

[4. Unless otherwise directed by the court, the report must contain all of the following:

a. A description of the nature, type, and extent of the respondent's cognitive and functional abilities and limitation.

b. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills.

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

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

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

5. The cost of the professional evaluation shall be paid by the respondent unless the respondent is indigent as defined in section 633.561, subsection 3, in which case the costs shall be paid by the county in which the proceedings are pending or unless the court orders otherwise.]

*[6.] At the request of the respondent, the court shall seal the record of the results of the evaluation ordered by the court subject to the exceptions in subsection [7.]

*[7.] The results of the evaluation ordered by the court shall be made available to the court and the following:

a. The respondent and the respondent's attorney.

b. The petitioner and the petitioner's attorney.

c. A court visitor as described in section 633.562.

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

Sec. 23. NEW SECTION. **633.564 Background check of proposed guardian or conservator.**

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

2. The court shall review the results of background checks in determining the suitability of a proposed guardian or conservator 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 established pursuant to section 135C.33 necessary to conduct background checks requested under subsection 1.

4. The person who files a petition for appointment of guardian or conservator shall be responsible for paying the fee for the background check conducted through the single contact repository established pursuant to section 135C.33.

Sec. 24. NEW SECTION. **633.565 Qualifications and selection of guardian or conservator for an adult.**

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

Sec. 25. NEW SECTION. **633.567 Appointment of guardian or conservator for minor approaching majority on a standby basis.**

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 or section 633.553 to initiate a proceeding to appoint a guardian or conservator for the minor to take effect on the minor's eighteenth birthday.

Sec. 26. NEW SECTION. **633.569 Emergency appointment of temporary guardian or conservator.**

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

2. Such application shall state all of the following:

a. The name and address of the respondent.

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

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

3. The court may enter an ex parte order appointing a

temporary guardian on an emergency basis under this section if the court finds that all of the following conditions are met:

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

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

c. There is reason to believe that the basis for appointment of guardian or conservator exists under section 633.552, 633.553, or 633.554.

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

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

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

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

Sec. 27. NEW SECTION. **633.570 Notification of guardianship and conservatorship powers.**

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

approval pursuant to section 633.635, subsection 3.

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

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

Sec. 28. Section 633.574, Code 2019, is amended to read as follows:

633.574 Procedure in lieu of conservatorship for a minor.

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

Sec. 29. Section 633.591, Code 2019, is amended to read as follows:

633.591 Voluntary petition for appointment of conservator — standby basis.

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such 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, if executed on or after January 1, 1991, shall advise the ~~proposed ward~~ respondent of a conservator's powers as provided in section ~~633.576~~ 633.570.

Sec. 30. Section 633.634, Code 2019, is amended to read as follows:

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

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

Sec. 31. Section 633.635, Code 2019, is amended to read as follows:

633.635 Responsibilities of guardian.

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

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

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

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

~~*b.*~~ *c.* Taking reasonable care of the ~~ward's~~ protected

person's clothing, furniture, vehicle, ~~and~~ other personal effects, and companion animals, assistive animals, assistance animals, and service animals.

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

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

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

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

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

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

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

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

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

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

~~residence if the proposed new residence is more restrictive of the ward's liberties than the current residence~~ the protected person's permanent residence to a nursing home, other secure facility, or secure portion of a facility that restricts the protected person's ability to leave or have visitors, unless advance notice of the change was included in the guardian's initial care plan that was approved by the court. In an emergency situation, the court shall review the request for approval on an expedited basis.

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

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

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

(3) The sterilization of the protected person.

~~*c. Consent to the withholding or withdrawal of life-sustaining procedures in accordance with chapter 144A.*~~

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

~~3. For the purposes of this section:~~

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

~~*b. "Routine physical examinations and procedures"* includes examinations and procedures performed for the purpose of general treatment or diagnosis or for the purpose of treatment or diagnosis related to a specific illness, symptom, complaint, or injury.~~

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

5. From time to time, upon a proper showing, the court may modify the respective responsibilities of the guardian and the ~~ward~~ protected person, after notice to the ~~ward~~ protected person and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ~~ward~~ protected person shall be based on clear and convincing evidence that the ~~ward~~ protected person continues to ~~fall within the categories of~~ meet the basis for the appointment of a guardian pursuant to 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~~ protected person shall be based upon proof in accordance with

the requirements of section 633.675.

Sec. 32. Section 633.641, Code 2019, is amended by striking the section and inserting in lieu thereof the following:

633.641 Duties of conservator.

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

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

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

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

Sec. 33. NEW SECTION. **633.642 Responsibilities of conservator.**

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

1. Invest the protected person's assets consistent with section 633.123.

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

3. Make payments consistent with the conservator's plan described above directly to the protected person or to others for the protected person's education and training needs.

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

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

6. Make elections for a protected person who is the surviving spouse as provided in sections 633.236 and 633.240.

7. Exercise the right to disclaim on behalf of the protected person as provided in section 633E.5.

8. Sell, mortgage, exchange, pledge, or lease the protected person's real and personal property consistent with subchapter VII, part 6 of this chapter regarding sale of property from a decedent's estate.

Sec. 34. Section 633.648, Code 2019, is amended to read as follows:

633.648 Appointment of attorney in compromise of personal injury settlements.

Notwithstanding the provisions of section ~~633.647~~ 633.642 prior to authorizing a compromise of a claim for damages on account of personal injuries to the ward, the court may order an independent investigation by an attorney other than by the

attorney for the conservator. The cost of such investigation, including a reasonable attorney fee, shall be taxed as part of the cost of the conservatorship.

Sec. 35. Section 633.669, Code 2019, is amended to read as follows:

633.669 Reporting requirements — assistance by clerk.

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

a. An initial ~~report within sixty days of the guardian's appointment~~ 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 current residence of the protected person and the guardian's plan for the protected person's living arrangements.

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

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

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

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

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

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

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

b. An annual report, filed within ~~ninety~~ sixty days of the close of the reporting period, unless the court otherwise

orders on good cause shown. The information in the annual report shall include but not be limited to the following information:

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

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

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

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

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

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

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

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

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

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

c. A final report within thirty days of the termination of the guardianship under section 633.675 unless that time is extended by the court.

~~2. Reports required by this section must include:~~

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

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

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

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

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

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

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

~~4.~~ 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.

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

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

* [Sec. 36. Section 633.670, Code 2019, is amended by striking the section and inserting in lieu thereof the following:

633.670 Reports by conservators.

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

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

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

person.

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

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

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

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

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

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

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

2. A conservator shall file an inventory of the protected person's assets within ninety days after appointment which includes an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. Copies of the inventory shall be provided to the protected

person, the protected person's attorney and court advisor, if any, and others as directed by the court. When the conservator receives additional property of the protected person, or becomes aware of its existence, a description of the property shall be included in the conservator's next annual report.

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

a. These reports shall include all of the following:

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

(2) Disbursements made.

(3) Changes in the conservator's plan.

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

(5) Bond amount and surety's name.

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

(7) General physical and mental condition of the protected person.

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

b. These reports shall be filed:

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

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

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

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

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

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

veterans benefits.]

Sec. 37. Section 633.675, Code 2019, is amended to read as follows:

633.675 Cause for termination.

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

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

b. The death of the ~~ward~~ protected person.

~~*c. A determination by the court that the ward is no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section 633.552, subsection 2, paragraph "a", or section 633.566, subsection 2, paragraph "a". In a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired, as provided in section 633.552, subsection 2, paragraph "a", or section 633.566, subsection 2, paragraph "a", that the guardianship or conservatorship should not be terminated.*~~

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

2. ~~Notwithstanding subsection 1, paragraphs "a" through "d", if the court appointed a guardian for a minor child for whom the court's jurisdiction over the child's guardianship was established pursuant to transfer of the child's case in accordance with section 232.101A or 232.104, the court shall not enter an order terminating the guardianship before the child becomes age eighteen unless the court finds by clear and convincing evidence that the best interests of the child warrant a return of custody to the child's parent.~~ The

court shall terminate a guardianship if it finds by clear and convincing evidence that the basis for appointing a guardian pursuant to section 633.552 is not satisfied.

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

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

Sec. 38. Section 633.717, subsection 8, Code 2019, is amended to read as follows:

8. The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under section 633.551~~, 633.552,~~ or ~~633.566~~ 633.556, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Sec. 39. Section 633B.102, subsections 2 and 6, Code 2019, are amended to read as follows:

2. *"Conservator"* or *"conservatorship"* means a conservator appointed or conservatorship established pursuant to ~~sections 633.570 and 633.572~~ section 633.553, 633.554, or 633.567 or a similar provision of the laws of another state.

6. *"Guardian"* or *"guardianship"* means a guardian appointed or a guardianship established pursuant to sections ~~633.556~~ 633.552 and ~~633.560~~ 633.568 or a similar provision of the laws of another state.

Sec. 40. Section 633B.108, subsection 1, Code 2019, is amended to read as follows:

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

after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination. This section does not prohibit an individual from executing a petition for the voluntary appointment of a guardian or conservator on a standby basis pursuant to sections ~~633.560~~ 633.568 and 633.591.

Sec. 41. REPEAL. Sections 633.552, 633.554, 633.555, 633.556, 633.557, 633.558, 633.559, 633.562, 633.566, 633.568, 633.569, 633.570, 633.572, 633.573, 633.575, 633.576, [633.646, 633.647, 633.649, 633.650, and 633.652,] Code 2019, are repealed.

Sec. 42. CODE EDITOR'S DIRECTIVE.

The Code editor is directed to make the following transfers:

1. Section 633.560 to 633.568.
2. Section 633.571 to 633.566.
3. Section 633.574 to 633.555.