

**CHAPTER 1299**  
**GUARDIANSHIPS AND CONSERVATORSHIPS**  
*H.F. 2457*

**AN ACT** relating to guardianships and conservatorships by redefining what persons are subject to guardianships and conservatorships, providing that certain proposed wards are entitled to representation, revising provisions governing the powers and duties of guardians and conservators, including requirements for reporting, and eliminating special provisions for guardians of mentally retarded persons.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 222.18, unnumbered paragraph 1, Code 1983, is amended to read as follows:

The county attorney shall, if requested, appear on behalf of any petitioner for the ~~appointment of a guardian or~~ commitment of a person alleged to be mentally retarded under this chapter, and on behalf of all public officials and superintendents in all matters pertaining to the duties imposed upon them by this chapter.

Sec. 2. Section 222.31, unnumbered paragraph 1, Code Supplement 1983, is amended to read as follows:

If in the opinion of the court, or of a commission as authorized in section 222.28, the person is mentally retarded within the meaning of this chapter and the court determines that it will be conducive to the welfare of ~~such that~~ person and of the community to ~~place the person under guardianship, or to commit the person to some~~ a proper institution for treatment, training, instruction, care, habilitation, and support, the court shall by proper order:

Sec. 3. Section 222.31, subsection 1, Code Supplement 1983, is amended by striking the subsection.

Sec. 4. Section 222.34, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

**222.34 GUARDIANSHIP PROCEEDINGS.** If a guardianship is proposed for a mentally retarded person, guardianship proceedings shall be initiated and conducted as provided in chapter 633.

Sec. 5. Section 222.45, Code 1983, is amended to read as follows:

**222.45 POWER OF COURT.** On the hearing, the court may discharge the mentally retarded person from all supervision, control, and care, ~~or may place him under guardianship,~~ or may transfer ~~him~~ the person from a public institution to a private institution, or vice versa, or transfer the person from a special unit to a hospital-school, or vice versa, as the court deems appropriate under all the circumstances.

Sec. 6. Section 222.51, Code 1983, is amended to read as follows:

**222.51 COSTS COLLECTED.** Costs incident to ~~guardianship and~~ to the hearings and commitment of a mentally retarded person to an institution, a hospital-school, or a special unit, may be collected from ~~such the~~ the mentally retarded person and from all persons legally chargeable with the support of ~~such the~~ the mentally retarded person.

Sec. 7. Section 222.55, Code 1983, is amended to read as follows:

222.55 PROCEDURE AS MENTALLY ILL PERSON. If it appears at any time that a person has under the provisions of this chapter been ~~placed under guardianship or~~ committed to a private institution and should be evaluated and treated in a hospital for the mentally ill, the person may be hospitalized under any of the provisions of sections 229.2 to 229.15.

Sec. 8. Section 222.56, Code 1983, is amended to read as follows:

222.56 TRANSFER TO INSTITUTION FOR MENTALLY RETARDED. When the mental condition of a person in a private institution for the mentally ill is found to be such that ~~such the~~ patient should be transferred to an institution for the mentally retarded ~~or placed under guardianship,~~ ~~such the~~ person may be proceeded against under this chapter.

Sec. 9. Section 331.756, subsection 42, Code Supplement 1983, is amended to read as follows:

42. Carry out duties relating to the ~~appointment of a guardian or~~ commitment of a mentally retarded person as provided in section 222.18.

Sec. 10. Section 633.552, subsection 2, Code 1983, is amended to read as follows:

2. That the proposed ward is a ~~minor or is incapable of caring for his own person.~~ is in either of the following categories:

a. By reason of mental, physical or other incapacity lacks sufficient capacity to make or carry out important decisions concerning the proposed ward's person or affairs, other than financial affairs, and, as a result, is in danger of substantially endangering the proposed ward's health or of becoming subject to abuse by other persons.

b. Is a minor.

Sec. 11. Section 633.554, Code 1983, is amended to read as follows:

633.554 NOTICE GOVERNED BY RULES OF CIVIL PROCEDURE. ~~In all other cases, notice~~ Notice of the filing of ~~such the~~ petition shall be served upon the proposed ward in the manner of an original notice and the Rules of Civil Procedure governing original notices shall also govern ~~such the~~ notice as to content. Notice to an attorney representing a proposed ward who is a minor in the custody of the petitioner shall be deemed notice to the proposed ward.

Sec. 12. NEW SECTION. 633.561 REPRESENTATION.

1. In a proceeding for the appointment of a guardian where the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. In a proceeding for the appointment of a guardian where the proposed ward is a minor, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation.

2. If the proposed ward is entitled to representation and desires counsel but is indigent, the court shall appoint an attorney to represent the proposed ward. The cost of court-appointed counsel for indigents shall be assessed against the county of legal settlement of the proposed ward. For purposes of this subsection, a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level.

3. The court shall ensure that all proposed wards entitled to representation have been notified of that right and shall make findings of fact in any order of disposition setting forth the manner in which notification was provided.

4. If it appears to the court that the proposed ward is entitled to representation but is incapable of requesting counsel, the court shall appoint counsel to protect the rights of the proposed ward and represent the proposed ward in the proceeding.

5. An attorney appointed pursuant to this section shall:

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

- b. Ensure that the proposed ward has been properly advised of the proposed ward's rights in a guardianship proceeding.
- c. Personally interview the proposed ward.
- d. Represent the proposed ward.
- e. Ensure that the guardianship procedures conform to the statutory and due process requirements of Iowa law.
- f. Inform the proposed ward of the effects of any order entered by the court, including the effects of an order entered for appointment of guardian.
- g. Advise the ward, if an order for appointment of guardian is entered, of the ward's rights to petition for modification or termination of the guardianship.
- h. Advise the ward, if a guardian is appointed, of the rights the ward retains.

Sec. 13. Section 633.566, subsection 2, Code 1983, is amended to read as follows:

2. That the proposed ward is a minor or is incapable of managing his property. is in either of the following categories:

a. By reason of mental, physical or other incapacity lacks sufficient capacity to make or carry out important decisions concerning the proposed ward's financial affairs and, as a result, is in danger of substantially endangering the proposed ward's health or of becoming subject to abuse by other persons.

b. Is a minor.

Sec. 14. Section 633.568, Code 1983, is amended to read as follows:

633.568 NOTICE GOVERNED BY RULES OF CIVIL PROCEDURE. In all other cases, notice Notice of the filing of such the petition shall be served upon the proposed ward in the manner of an original notice and the Rules of Civil Procedure governing original notice shall also govern such the notice as to content. Notice to an attorney representing a proposed ward who is a minor in the custody of the petitioner shall be deemed notice to the proposed ward.

Sec. 15. NEW SECTION. 633.575 REPRESENTATION.

1. In a proceeding for the appointment of a conservator where the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. In a proceeding for the appointment of a conservator where the proposed ward is a minor, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation.

2. If the proposed ward is entitled to representation and desires counsel but is indigent, the court shall appoint an attorney to represent the proposed ward. The cost of court-appointed counsel for indigents shall be assessed against the county of legal settlement of the proposed ward. For purposes of this subsection, a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level.

3. The court shall ensure that all proposed wards entitled to representation have been notified of that right and shall make findings of fact in any order of disposition setting forth the manner in which such notification was provided.

4. If it appears to the court that the proposed ward is entitled to representation but is incapable of requesting counsel, the court shall appoint counsel to protect the rights of the proposed ward and represent the proposed ward in the proceeding.

5. An attorney appointed pursuant to this section shall:

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

b. Ensure that the proposed ward has been properly advised of the proposed ward's rights in a conservatorship proceeding.

- c. Personally interview the proposed ward.
- d. Represent the proposed ward.
- e. Ensure that the conservatorship procedures conform to the statutory and due process requirements of Iowa law.
- f. Inform the proposed ward of the effects of any order entered by the court, including the effects of an order entered for appointment of conservator.
- g. Advise the ward, if an order for appointment of conservator is entered, of the ward's rights to petition for modification or termination of the conservatorship.
- h. Advise the ward, if a conservator is appointed, of the rights the ward retains.

Sec. 16. Section 633.635, Code 1983, is amended to read as follows:

**633.635 RESPONSIBILITIES OF GUARDIAN.** Unless otherwise directed by order of court, the guardian shall have custody of a minor ward and general supervisory responsibility for the care of a ward who has attained the age of majority.

1. A guardian may be granted the following powers and duties 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.
- b. Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.
- c. Assisting the ward 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.

f. Any other powers or duties the court may specify.

2. 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.
- b. Arranging the provision of major elective surgery or any other nonemergency major medical procedure.

If the court determines that it would be in the ward's best interest to have legal representation with respect to proceedings under this subsection, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate.

3. However, the The court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, and may direct that the guardian have only a specially limited responsibility for the ward. In such 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.

4. From time to time, upon a proper showing, the court may alter the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard.

Sec. 17. Section 633.669, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

**633.669 REPORTING REQUIREMENTS—ASSISTANCE BY CLERK.**

1. A guardian appointed under this chapter shall file with the court the following reports:

- a. An initial report within sixty days of the guardian's appointment.
- b. An annual report which shall be filed within thirty days of the anniversary of the granting of the guardianship.

- c. A final report within thirty days of the termination of the guardianship.
2. Reports required by this section must include:
  - a. The current mental, physical and social 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 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. The court shall develop a simplified uniform reporting form for use in filing the required reports.
4. The clerk of the court shall notify the guardian of the reporting requirements and shall provide information and assistance to the guardian in filing the reports and with respect to other responsibilities, powers and duties of the guardian.
5. 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. 18. Section 633.670, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

**633.670 REPORTING REQUIREMENTS—ASSISTANCE BY CLERK.**

1. A conservator appointed under this chapter shall file with the court the following reports:
  - a. An initial report within sixty days of the conservator's appointment.
  - b. An annual report which shall be filed within thirty days of the anniversary of the granting of the conservatorship.
  - c. A final report within thirty days of the termination of the conservatorship.
2. The court shall develop a simplified uniform reporting form for use in filing the required reports.
3. The clerk of court shall notify the conservator of the reporting requirements and shall provide information and assistance to the conservator in filing the reports and with respect to other responsibilities, powers and duties of the conservator.
4. Reports of conservators shall be reviewed and approved by a district court judge or referee.
5. Reports required by this section shall, if requested, be served on the attorney appointed to represent the ward in the conservatorship proceeding and all other parties appearing in the proceeding.

Sec. 19. Sections 222.33, 222.35, 633.553 and 633.567 are repealed.

Approved May 17, 1984