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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 488
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Grendell and Galonski

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CORRECTED VERSION

SUMMARY

GUARDIANSHIP LAW CHANGES

Definitions

- Expands the terms defined in the Guardianship Law to include “limited guardian,” “standby guardian,” “interim guardian,” and “emergency guardian.”
- Modifies the definitions of “ward,” “incompetent,” “parent,” and “financial harm.”

Guardianship of a minor

- Expands the contents of an application for guardianship of a minor to include:
 - An affidavit with information on the child’s address, places where the child lived in the past five years, and the name and address of each person with whom the child lived in those years;
 - Name and contact information of any person nominated in a writing or a durable power of attorney for health care as guardian of the nominator’s person, estate, or both.
- Removes from the contents of an application for guardianship of a minor the name and address of the person having custody of the minor.
- Modifies current law by providing that a minor *over the age of 12 years*, instead of over the age of 14 years, may select a guardian who must be appointed if a suitable person.
- Eliminates current law’s provision that when a testamentary guardian is appointed, that guardian’s duties, powers, and liabilities in all other respects must be governed by the law regulating guardians not appointed by the will.

- Specifies that the married parents are the joint natural guardians of their minor children, and eliminates provisions specifying parental rights and responsibilities with respect to their children.

Guardianship of an incompetent; conservatorship

- Expands the contents of an application for guardianship of an incompetent to include:
 - The proposed ward's military service, if applicable;
 - The name and contact information of any person nominated in a durable power of attorney for health care or in a writing as guardian of the person, estate, or both, of the person;
 - A statement of expert evaluation under Superintendence Rule 66 by a licensed physician, or other qualified person as determined by the court, who has examined the proposed ward within three months prior to the date of that statement as to the need for establishing the guardianship.
- Provides that upon application to the court and for good cause shown, the court may order appropriate law enforcement personnel to transport the proposed ward for expert evaluation.
- Modifies current law by providing that generally, the guardian of an incompetent must be the guardian of the minor children of the ward, *upon the filing of a separate application under a new case number* unless the court appoints some other person as their guardian.
- Requires the clerk of the probate court to furnish the guardianship guide specifically to a guardian of an *incompetent*.
- Modifies current law by providing that a guardian's report must include a statement by a licensed physician *or other qualified person* who has evaluated the ward within three months prior to the date of the report as to the need for continuing the guardianship.
- Specifies the times when the probate court, upon written request by the ward, the ward's attorney, or any interested party, must conduct a hearing to evaluate the continued necessity of the guardianship of an incompetent.
- Requires that if the ward alleges competence, the burden of proving incompetence must be upon the guardian by clear and convincing evidence.
- Eliminates the requirement that a competent adult must be physically infirm in order to petition the probate court to place the petitioner's person, any or all of the petitioner's property, or both, under a conservatorship.

Notice of hearing on application for guardianship in general

- Retains current provisions regarding the persons who must receive notice of the hearing except that in the appointment of the guardian of a minor, notice must be served by

personal service upon the minor, if *over the age of 12*, instead of over the age of 14 under current law.

- Provides that for good cause shown, the requirement of notice to certain persons under continuing law may be waived except for the notice to the proposed ward.

Guardianship of wards in general

- Specifies that a guardian of the person of an incompetent must oversee the physical placement, maintenance, and care of the ward.
- Requires the guardian of the person of a minor to have the “legal custody” of the minor.
- Defines “legal custody” as a legal status that vests in the custodian the right to have the minor’s physical care and control, determine where and with whom the minor will live, protect and discipline the minor, and provide the minor with food, shelter, education, and medical care, all subject to any residual parental rights and responsibilities.
- Repeals current law generally requiring a guardian of the person and estate of a minor to have the custody of the ward and to provide for the education of the ward and the management of the ward’s estate during minority.
- Expands the duties of a guardian of a minor to include the duty to identify both family and nonfamily members with whom the ward desires to communicate and facilitate the contact that the guardian believes is in the best interest of the ward.
- Repeals outright current law providing that when a person is appointed to have the custody of the person and to take charge of the estate of a ward, such person must have all the duties required of a guardian of the estate and of a guardian of the person.
- Modifies current law by prohibiting any attorney who represents *a guardian* from acting with co-responsibility for any guardianship asset for which the guardian is responsible, or from being a cosignatory on any financial account related to the guardianship.
- Provides that upon application by a guardian of the person of the ward, the court may authorize the settlement of the ward’s claim for injury to the ward or damage to the ward’s property without the appointment of a guardian of the estate of the ward, and authorize the delivery of the moneys as provided in applicable law.
- Outright repeals the current provision that the marriage of a ward must terminate the guardianship as to the person, but not as to the estate, of the ward.

Transactions dealing with ward’s property

- Specifies that an appointed successor guardian may complete any authorized contract relating to the ward’s real property entered into by a guardian who has died or been removed.
- Modifies current law by providing that the guardian of the person and estate, or of the estate only, may sell all or any part of the ward’s personal property if the sale is for the *best interest of the ward, with prior court approval*.

- Requires a guardian to file in the probate court a motion, instead of a petition under current law, to use the ward's moneys and personal property to improve the ward's real property.
- Eliminates the following from the contents of the motion (replacing petition under current law) as described in the preceding dot point:
 - A prayer that the guardian be authorized to use so much of the ward's money and personal property that is necessary to make the improvement;
 - The character of the ward's disability, and if it is incompetency, whether the disability is curable or not, temporary, or confirmed, and its duration;
 - The names, ages, and residences of the ward's family, including the spouse and residents of the county who have the next estate of inheritance from the ward, all of whom, as well as the ward, must be made defendants and notified of the pendency and prayer of the petition in the manner that the court directs.
- Outright repeals the following provisions in current law dealing with the improvement of the ward's property:
 - The probate court must appoint three disinterested freeholders of the county as commissioners to examine the premises to be improved and its surroundings, and to report to the court their opinion whether the improvement proposed will be advantageous to the estate of the ward.
 - If the prayer is granted, the probate court must fix the amount of money and personal property that may be used in making the improvement, and may authorize the guardian to unite with adjacent property owners, for the improvement and management of the ward's premises.
 - A guardian must report to the probate court the amount of money and personal property expended in making an improvement to the ward's real property within 40 days after its completion.
 - If the ward dies before the removal of the disability and there are heirs who inherit real property only from the ward, the money expended must descend and pass in the same manner as the ward's other personal property and must be a charge on the premises improved in favor of the heirs.

Termination of guardianship based on value of ward's estate

- Upon a court order to terminate the guardianship of a ward whose estate does not exceed \$25,000 in value, eliminates the court's authority to authorize delivery of the assets to the minor's natural guardian, to the person by whom the minor is maintained, to the executive director of children services in the county, or to the minor's own self.
- Requires a receipt verifying the deposit of guardianship assets in an authorized depository be submitted to the court and that release of any funds held in a depository for the benefit of the minor be by court order.

- Provides that in the alternative to the preceding dot point and for good cause shown, the court may direct the guardian to deliver the assets to a suitable person, and such person must hold the assets and dispose of them in the manner the court directs.
- Upon a court order to terminate the guardianship of an incompetent, requires a receipt verifying the deposit of guardianship assets in an authorized depository be submitted to the court and that release of any funds held in a depository for the benefit of the incompetent be by court order.
- Modifies current law by providing that if the estate of a person *18 years old or older* who has been adjudged incompetent, does not exceed \$25,000, the court, without the appointment of a guardian or, *if a guardian is appointed without the giving of bond*, may authorize the deposit of estate assets in an authorized depository.
- In the event of the preceding dot point, requires a receipt verifying the deposit of assets be submitted to the court and that release of any funds held in a depository for the benefit of the incompetent be by court order.

Guardian for nonresident

- Eliminates the application of current law authorizing the probate court of the county in which a person confined in a state, charitable, or correctional institution has property to appoint a resident guardian to manage the property, and retains the application of the law to the appointment of a resident guardian for a nonresident minor or incompetent.
- Generally requires a resident guardian of a nonresident minor to hold the appointment until the minor dies or arrives at the age of majority, whether or not the minor was over 14 years old at the time of appointment prior to the bill's effective date or whether or not the minor is over 12 years old at the time of appointment on or after that date.
- Changes terminology from nonresident wards to nonresident minors or incompetents.

Other provisions in R.C. Chapter 2111

- Modifies current law by providing that the probate court may enter an order that authorizes a person under a duty to pay money or personal property to a minor who does not have a guardian, to perform that duty in amounts *not exceeding \$25,000*, instead of not exceeding \$5,000 annually.
- Expands the persons or entities to which the money or property under the preceding dot point is to be delivered to include a trust for the benefit of the minor.
- If the money under the second preceding dot point is to be paid to a financial institution, requires that a receipt verifying the deposit be submitted to the court and that release of funds held in a depository for the benefit of the minor be upon court order, including release of funds to the minor upon attaining the age of majority.
- Modifies current law by providing that a probate court may issue an emergency ex parte order freezing the financial assets of an individual whom the court or applicant has

reason to believe is missing or has gone or been *taken away* if immediate action is required to prevent significant financial harm to the individual.

COURT OF COMMON PLEAS' EMPLOYMENT OF LEGAL COUNSEL

Court authority to employ legal counsel

- Authorizes the court of common pleas or a division of the court to employ legal counsel to represent it in any matter of public business coming before the court or in the prosecution or defense of any action in which that court's judge or official, in official capacity, is a party or has an interest.
- Provides that the court of a division of the court may employ such legal counsel at its own choosing, without competitive bidding pursuant to the exception from competitive bidding provided by law, and certified as for other public officials.
- Specifies that when an attorney is so employed by the court of common pleas or division, the following apply:
 - A specified judge must enter upon the court's journal an order fixing the compensation to be paid for the legal services;
 - The compensation is to be paid from the county general fund or another lawful court fund at the judge's discretion;
 - When paid from the county general fund, attorney fee invoices must be submitted to the board of county commissioners for review; and
 - The hourly compensation paid for legal services may not exceed the highest hourly compensation paid by the board of county commissioners for an attorney.
- Expands the court of common pleas' special projects for which additional funds are necessary, to include the employment of legal counsel when the prosecuting attorney has a conflict or fails to provide legal duties to the court.
- Expands the conduct of business of the probate court for which the moneys in the Probate Court Conduct of Business Fund may solely be used, to include the employment of legal counsel when the prosecuting attorney has a conflict or fails to provide legal duties to the court.
- Requires that moneys used to employ legal counsel be reimbursed by the county general fund.

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DETAILED ANALYSIS

GUARDIANSHIP LAW CHANGES

Definitions

The bill expands the terms defined in the Guardianship Law to include the following:¹

“Limited guardian” means a guardian appointed with specific limited powers, including overseeing the care and management of mental health, placement, visitation, or other specified limited powers, as outlined in the letters of guardianship.

“Standby guardian” means a person nominated in a writing to be a guardian of the person, the estate, or both, of one or more of a nominator’s minor or incompetent adult children pursuant to the provisions on the nomination of a guardian.

“Interim guardian” means a person appointed as guardian when an existing guardian is temporarily or permanently removed or resigns and if the welfare of the ward requires immediate action, for a maximum period of 15 days that may be extended up to an additional 30 days for good cause shown and notice of hearing to the ward and interested parties.

“Emergency guardian” means a person appointed as guardian when an emergency exists and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of a ward, for a maximum period of 72 hours that may be extended up to an additional 30 days for good cause shown and notice of hearing to the ward and interested parties.

The bill modifies the definitions under current law of the following terms:²

“Ward” means any *incompetent or minor*, instead of person, for whom a guardian is acting or for whom the probate court is acting as superior guardian of wards.

“Incompetent” means: (a) any *adult*, instead of person, who is so mentally impaired, as a result of a mental or physical illness or disability, intellectual disability, or chronic substance abuse, that the person is incapable of taking proper care of self or property or fails to provide

¹ R.C. 2111.01(I) to (L).

² R.C. 2111.01(B), (D), (G), and (H).

for the person's family or other persons for whom the person is charged by law to provide, or (b) any *adult*, instead of person, confined to a correctional institution in Ohio.

"Parent" means a natural or adoptive parent of a minor child whose parental rights and responsibilities have not been terminated by *a court of competent jurisdiction*, instead of "a juvenile court or another court."

"Financial harm" means impairment of an individual's financial assets by (the bill eliminates "unlawfully") obtaining or exerting control over the individual's real or personal property in any of the ways specified under continuing law.

Guardianship of a minor

Application for appointment of guardian of a minor

Under current law, in addition to the general requirements for an application for the appointment of a guardian, the application for an appointment of a guardian of a minor must contain the following:³

1. Name, age, and residence of the minor;
2. Name and residence of each parent of the minor;
3. Name, degree of kinship, age, and address of next of kin of the minor, if no parent is living or if a parent is absent, under disability, or for other reason cannot be notified;
4. Name and residence address of the person having custody of the minor.

The bill eliminates (4) above and replaces it with an affidavit attached to that pleading in a child custody proceeding that must give information if reasonably ascertainable under oath as to the child's present address or whereabouts, the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period, and other specified information.⁴

The bill adds to the contents of the application the name and contact information of any person nominated in a writing as guardian of the nominator's person, estate, or both.⁵

Selection and nomination of guardian of minor

The bill modifies current law by providing that a minor over the *age of 12 years*, instead of over the age of 14 years, may select a guardian who must be appointed if a suitable person. If a minor over the *age of 12 years*, instead of over the age of 14 years, fails to select a suitable person, an appointment may be made without reference to the minor's wishes. A surviving parent by a will in writing may *nominate*, instead of appoint, a guardian for any of the surviving parent's children, whether born at the time of making the will or afterward, to continue during

³ R.C. 2111.03(C)(1), (2), and (3).

⁴ R.C. 2111.03(C)(4) and by reference to R.C. 3127.23, not in the bill.

⁵ R.C. 2111.03(C)(5) and by reference to R.C. 2111.121, not in the bill.

the minority of the child or for a less time. When the *parent*, instead of father or mother, of a minor *nominates* (the bill replaces “names” and “named” with *nominates* and *nominated* in this provision), a person as guardian of the estate of that minor in a will, the person *nominated* must have preference in appointment over the person selected by the minor. A person *nominated* in that will as guardian of the person of that minor must have no preference in appointment over the person selected by the minor, but in that event the probate court may appoint the person named in the will, the person selected by the minor, or some other person.⁶

The bill eliminates current law’s provision providing that whenever a testamentary guardian is appointed, the testamentary guardian’s duties, powers, and liabilities in all other respects must be governed by the law regulating guardians not appointed by the will.⁷

Nonresident guardian of the estate of a minor

Under current law, a guardian of the estate must be a resident of Ohio, except that the court may appoint a nonresident of Ohio as a guardian of the estate if the nonresident is selected by a minor over the age of 14 years. The bill changes the age of a minor who may select a nonresident guardian of the estate to over 12 years of age.⁸

Guardianship of minors – duration

The bill modifies current law by providing that when a guardian has been appointed for a minor before the minor is *over 12*, instead of over 14, years of age, the guardian’s power must continue until the ward arrives at the age of majority, unless removed for good cause or the ward selects another suitable guardian.⁹

Natural guardians of minors

The bill provides that the married parents are the joint natural guardians of their minor children. It eliminates the following provisions in current law:¹⁰

The wife and husband are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare, and education and the care and management of their estates. The wife and husband have equal powers, rights, and duties and neither parent has any right paramount to the right of the other concerning the parental rights and responsibilities for the care of the minor or the right to be the residential parent and legal custodian of the minor, the control of the services or the earnings of such minor, or any other matter affecting the minor; provided that if either parent, to the exclusion of the other, is maintaining and supporting the child, that parent must have the paramount right to control the

⁶ R.C. 2111.12(A) and (B).

⁷ R.C. 2111.12(B).

⁸ R.C. 2109.21(C)(1)(b).

⁹ R.C. 2111.46.

¹⁰ R.C. 2111.08.

services and earnings of the child. Neither parent must forcibly take a child from the guardianship of the parent who is the child's residential parent and legal custodian.

If the wife and husband live apart, the court may award the guardianship of a minor to either parent, and the state in which the parent who is the residential parent and legal custodian or who otherwise has the lawful custody of the minor resides has jurisdiction to determine questions concerning the minor's guardianship.

Definition

The bill modifies the definition of "parent" as used in the Guardianship Law as described above under "**Definitions.**"¹¹

Guardian of an incompetent

Application for appointment of guardian of incompetent

Under current law, in addition to the general requirements for an application for the appointment of a guardian, the application for an appointment of a guardian of an alleged incompetent are the following:¹²

1. Name, age, and residence of the person for whom such appointment is sought;
2. Facts upon which the application is based;
3. Name, degree of kinship, age, and address of the next of kin of the alleged incompetent.

The bill revises the definition of "incompetent" as described above under "**Definitions.**"

The bill adds the following to the contents of the application:¹³

1. The proposed ward's military service, if applicable.
2. The name and contact information of any person nominated in a durable power of attorney for health care as guardian of the person, estate, or both, of the principal, or nominated in a writing as guardian of the nominator's person, estate, or both.
3. A statement of expert evaluation under Superintendence Rule 66 by a licensed physician, or other qualified person as determined by the court, who has evaluated or examined the proposed ward within three months prior to the date of the statement as to the need for establishing the guardianship.

¹¹ R.C. 2111.01(G).

¹² R.C. 2111.03(D)(1), (2), and (3).

¹³ R.C. 2111.03(D)(4), (5), and (6) and by reference to R.C. 1337.12(E) and 2111.121, not in the bill.

Determining need for guardianship

The bill modifies existing law by providing that in connection with an application for the appointment of a guardian for an alleged incompetent, the court may appoint physicians, and other qualified persons *as determined by the court*, to examine, investigate, or represent the alleged incompetent, to assist the court in deciding whether a guardianship is necessary. *Upon application to the court and for good cause shown, the court may order appropriate law enforcement personnel to transport the proposed ward for evaluation.*¹⁴

Investigating circumstances of alleged incompetent

Under current law as modified by the bill, at the time of the service of notice upon an alleged incompetent, the court must require (the bill removes “regular”) a probate court investigator, or appoint a temporary probate court investigator, to investigate the circumstances of the alleged incompetent, and, to the maximum extent feasible, to communicate to the alleged incompetent in a language or method of communication that the incompetent can understand, the alleged incompetent’s rights, and subsequently to file with the court a report that contains information specified in continuing law.¹⁵

Guardian of ward’s minor children

The bill modifies existing law by providing that, except when the guardian of an incompetent is an agency under contract with the Department of Developmental Disabilities for the provision of protective services under the Department’s statewide system of protective service, *or another agency or corporation appointed by the court*, the guardian of an incompetent, by virtue of the appointment as guardian, must be the guardian of the minor children of the guardian’s ward, *upon the filing of a separate application under a new case number*, unless the court appoints some other person as their guardian.¹⁶

The bill also corrects the R.C. section reference in the current provision pertaining to the nomination of a guardian of an incompetent adult child in a durable power of attorney for health care.¹⁷

Guardianship guide

The bill modifies current law by requiring the clerk of the probate court to furnish a guardianship guide, prepared by the Attorney General with the approval of the Ohio Judicial Conference or by the Ohio Judicial Conference, to a guardian *of an incompetent* upon the appointment of the guardian and at other specified times under existing law not changed by the bill.¹⁸

¹⁴ R.C. 2111.031.

¹⁵ R.C. 2111.041(A).

¹⁶ R.C. 2111.02(A).

¹⁷ R.C. 2111.02(D)(2) and with reference to R.C. 1337.12(E), not in the bill.

¹⁸ R.C. 2111.011.

Report of guardian of an incompetent

Current law generally requires the guardian of an incompetent to file a guardian's report with the court two years after the date of the issuance of the guardian's letters of appointment and biennially after that time, or at any other time upon the motion or a rule of the probate court. The report must be in a form prescribed by the court and include specified information.¹⁹ The bill modifies one piece of information included in the report by providing that the report must include a statement by a licensed physician *or other qualified person* (the bill deletes "licensed clinical psychologist, licensed independent social worker, licensed professional clinical counselor, or developmental disability team") who has evaluated or examined the ward within three months prior to the date of the report as to the need for continuing the guardianship. The bill adds the provision that the court may waive the requirement of filing further biennial statements of expert evaluation if, in the opinion of the qualified evaluator, it is reasonably certain that the ward's condition will not improve and that the necessity for guardianship will continue to exist.²⁰

The bill eliminates the following provision in current law:²¹

Except as provided in this provision, for any guardianship, upon written request by the ward, the ward's attorney, or any other interested party made at any time after the expiration of 120 days from the date of the guardian's original appointment, a hearing must be held in accordance with R.C. 2111.02 to evaluate the continued necessity of the guardianship. Upon written request, the court must conduct a minimum of one hearing under this provision in the calendar year in which the guardian was appointed, and upon written request, must conduct a minimum of one hearing in each of the following calendar years. Upon its own motion or upon written request, the court may, in its discretion, conduct a hearing within the first 120 days after appointment of the guardian or conduct more than one hearing in a calendar year. If the ward alleges competence, the burden of proving incompetence must be upon the applicant for guardianship or the guardian, by clear and convincing evidence.

Termination or evaluation of guardianship of an incompetent

Under continuing law, upon reasonable notice to the guardian, to the ward, and to the person on whose application the appointment was made, and upon satisfactory proof that the necessity for the guardianship no longer exists or that the letters of appointment were improperly issued, the probate court must order that the guardianship of an incompetent terminate and make an appropriate entry upon the journal.²²

The bill adds to continuing law above the provision that except as provided in this provision, for any guardianship of an incompetent, upon written request by the ward, the

¹⁹ R.C. 2111.49(A)(1).

²⁰ R.C. 2111.49(A)(1)(i).

²¹ R.C. 2111.49(C).

²² R.C. 2111.47(C).

ward's attorney, or any interested party made at any time after the original appointment of the guardian, a hearing must be held in accordance with the law on a hearing on the appointment of a guardian to evaluate the continued necessity of the guardianship. Upon such written request, the court must conduct a minimum of one hearing in the calendar year in which the guardian was appointed, and upon such written request, must conduct a minimum of one hearing in each of the following calendar years. On its own motion or upon written request by the ward, the ward's attorney, or any interested party, the court may, in its discretion, conduct a hearing within the first 120 days after appointment of the guardian or conduct more than one hearing in a calendar year.²³

Under the bill, if the ward alleges competence, the burden of proving incompetence must be upon the guardian, by clear and convincing evidence. The statement of expert evaluation filed with the application for appointment of the guardian or the statement of expert evaluation filed with the guardian's annual or biennial report, or both statements, satisfies the guardian's burden of proof unless contradicted by medical evidence submitted by the ward.²⁴

Petition for conservatorship

The bill eliminates the requirement that a competent adult must be physically infirm in order to petition the probate court of the county in which the petitioner resides, to place, for a definite or indefinite period of time, the petitioner's person, any or all of the petitioner's real or personal property, or both under a conservatorship with the court.²⁵

Notice of hearing on application for a guardianship in general

Under current law, except for an interim or emergency guardian appointed as provided in the law, no guardian of the person, the estate, or both can be appointed until at least seven days after the probate court has caused written notice setting forth the time and place of the hearing, to be served to specified individuals. The bill excludes the appointment of a successor guardian from the requirement of notice. In the appointment of a guardian of a minor, the bill requires that the notice to the minor must be served by personal service upon the minor if over *the age of 12*, instead of over the age of 14 under current law.²⁶ The bill retains current law regarding the other persons to be given notice.

The bill replaces current law's provision that "[n]otice may not be waived by the person for whom the appointment is sought" with the provision that *for good cause shown, the requirement of notice may be waived except for the notice to the proposed ward.*²⁷

²³ R.C. 2111.47(A).

²⁴ R.C. 2111.47(B).

²⁵ R.C. 2111.021.

²⁶ R.C. 2111.04(A)(1)(a).

²⁷ R.C. 2111.04(C).

Guardianship of wards in general

Guardian of the person

The bill provides that a guardian of the person of an incompetent must oversee the physical placement, maintenance, and care of the ward.²⁸

The bill modifies existing law by providing that a guardian of the person of a minor must be appointed as to a minor having no *living parent*, instead of having no father or mother; whose parents are unsuitable persons to have the custody of the minor (the bill deletes “and to provide for the education of the minor as required by section 3321.01 of the Revised Code,”) or whose interests, in the opinion of the court, will be promoted by the appointment of a guardian.²⁹

The bill eliminates current law’s provision that a guardian of the person must have the custody and provide for the maintenance of the ward, and if the ward is a minor, the guardian must also provide for the education of the ward as required by R.C. 3321.01, and replaces it with the following provision:

*The guardian of the person of a minor must have the legal custody of the minor. “Legal custody” means a legal status that vests in the custodian the right to have physical care and control of the minor, and to determine where and with whom the minor shall live, and the right and duty to protect, train, and discipline the minor, and to provide the minor with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.*³⁰

The bill then outright repeals the provision in current law that requires each person appointed guardian of the person and estate of a minor to have the custody of the ward, the obligation to provide for the education of the ward as required under R.C. 3321.01, and the management of the ward’s estate during minority, unless the guardian is removed or discharged from that trust or the guardianship terminates from any of the causes specified in the probate court laws.³¹

Duties of the guardian of a ward

The bill expands the duties of a guardian appointed to have the custody and maintenance of a ward, and to have charge of the education of the ward if the ward is a minor, to include the duty to identify both family and nonfamily members with whom the ward desires to communicate and facilitate the contact that the guardian believes is in the best interest of

²⁸ R.C. 2111.06(B).

²⁹ R.C. 2111.06(C).

³⁰ R.C. 2111.06(D).

³¹ R.C. 2111.07, repealed by the bill.

the ward. Any dispute regarding visitation of the ward must be reviewed as provided in Superintendence Rule 66.³²

Current law, as modified by the bill, provides the following duties of the guardian of the person of a ward:³³

- To protect and control the person of the ward;
- To provide suitable maintenance for the ward when necessary, which must be paid out of the ward's estate upon the order of the guardian of the person;
- To provide such maintenance and education for the ward as the amount of the ward's estate justifies if the ward is a minor and has no *parent*, instead of "father or mother," or has a *parent*, instead of "father or mother" who fails to maintain or educate the ward, which must be paid out of such ward's estate upon the order of the guardian of the person;
- To obey all the orders and judgments of the probate court touching the guardianship.

The bill repeals outright current law's provision that when a person is appointed to have the custody of the person and to take charge of the estate of a ward, such person must have all the duties required of a guardian of the estate and of a guardian of the person.³⁴

Restriction on attorney representing a guardian

The bill modifies current law by prohibiting any attorney who represents *a guardian*, instead of "any other person and who is appointed as a guardian," under the Guardianship Law or any other provision of the Revised Code from: (a) acting as a person with co-responsibility for any guardianship asset for which the guardian is responsible, or (b) being a cosignatory on any financial account related to the guardianship.³⁵

Claim for injury to ward or damage to property – settlement

Under continuing law, with the probate court's advice, approval, and consent, the guardian of the estate of a ward may settle a claim of the ward for personal injury or damage to tangible or intangible property caused by wrongful act, neglect, or default that would entitle the ward to maintain an action for damages or other relief.³⁶

Under current law, as modified by the bill, if it is proposed that a claim be settled for the net amount of \$25,000 or less after payment of fees and expenses as allowed by the court, the

³² R.C. 2111.13(A)(5).

³³ R.C. 2111.13(A)(1) to (4).

³⁴ R.C. 2111.15, repealed by the bill. Note that the bill does not modify the law regarding the duties of a guardian of the estate of a ward under continuing R.C. 2111.14, not in the bill.

³⁵ R.C. 2111.091.

³⁶ R.C. 2111.18.

court, upon application by a *guardian of the person of the ward* or any suitable person whom the court may authorize to receive and receipt for the settlement, may authorize the settlement without the appointment of a *guardian of the estate of the ward* and authorize the delivery of the moneys as provided in the law on termination of a guardianship based on the value of a ward's estate.³⁷

Marriage of a ward

The bill outright repeals the current provision that the marriage of a ward must terminate the guardianship as to the person, but not as to the estate, of the ward.³⁸

Transactions dealing with ward's property

Completion of real property contracts

Current law provides that a guardian, whether appointed by a court in Ohio or elsewhere, may complete the contracts of the ward for the purchase or sale of real property "or any authorized contract relating to real property entered into by a guardian who has died or been removed." The bill deletes the above quoted clause and instead provides that an appointed successor guardian may complete any authorized contract relating to real property entered into by a guardian who has died or been removed. The bill modifies current law by requiring an appointed *successor* guardian to proceed in the manner provided by the probate court law on completion of a contract to sell land.³⁹

Sale of personal estate

Under current law, as modified by the bill, the guardian of the person and estate, or of the estate only, may sell all or any part of the personal property of the ward if the sale is for the *best interest of the ward, with prior court approval*.⁴⁰

Lease of real property

The bill modifies existing law by providing that a guardian may lease *to others* (the bill removes "the possession and use of") the real property of the (the bill deletes "guardian's") ward or any part of it for a term of years, renewable or otherwise, by perpetual lease, with or without the privilege of purchase, or may lease upon the terms and for the time that the probate court approves any lands belonging to the ward containing mineral substances for the purpose of drilling, mining, or excavating for and removing any of those substances, or the guardian may modify or change any lease previously made.⁴¹

³⁷ R.C. 2111.18.

³⁸ R.C. 2111.45, repealed by the bill.

³⁹ R.C. 2111.19.

⁴⁰ R.C. 2111.20.

⁴¹ R.C. 2111.26.

Improvement of real property – procedure

Under current law, a guardian may use the ward's moneys and personal property to improve the ward's real property. The guardian must file in the probate court in which the guardian was appointed a "petition" containing the following:⁴²

1. A description of the premises to be improved;
2. The amount of rent the premises yield at the time the petition is filed;
3. In what manner the improvement is proposed to be made;
4. The proposed expenditures for the improvement;
5. The rent the premises will probably yield when so improved;
6. A statement of the value of the ward's personal property;
7. Other facts that are pertinent to the question whether the improvement should be made;
8. A prayer that the guardian be authorized to use so much of the ward's money and personal property that is necessary to make the improvement;
9. The character of the disability of the ward, and if it is incompetency, whether the disability is curable or not, temporary, or confirmed, and its duration;
10. The names, ages, and residence of the ward's family, including the spouse and those known to be residents of the county who have the next estate of inheritance from the ward. All of those persons, as well as the ward, must be made defendants and notified of the pendency and prayer of the petition in the manner that the court directs.

The bill modifies current law by providing that, *upon motion*, a guardian may use the ward's moneys and personal property to improve the ward's real property. The guardian must file in the probate court in which the guardian was appointed a *motion*, instead of petition, containing the following:⁴³

- The same information in (1), (3), (4), (6), and (7) as in current law above.
- The information in (2) and (5) above, modified as follows:
 - (2) *If applicable*, the amount of rent the premises yield at the time the *motion* is filed;
 - (5) The rent the premises will probably yield when so improved, *if any*.
- The bill eliminates (8), (9), and (10) in current law above.

Existing law provides that if the property is so situated that, to the best interests of the ward's estate, it can be advantageously improved in connection with the improvement of

⁴² R.C. 2111.33(A).

⁴³ R.C. 2111.33(A).

property adjacent to it, the petition must show this and have a prayer to so improve the property.⁴⁴ The bill eliminates that existing provision and instead provides that the court may appoint a guardian ad litem to report to the court the guardian ad litem's opinion whether the improvement proposed will be necessary, reasonable, and beneficial to the estate of the ward.⁴⁵

Proceedings; amount used for improvement; guardian's report

The bill outright repeals the following provisions in current law dealing with the improvement of the ward's property:

- Upon the filing of the petition described above in current law in "**Improvement of real property – procedure**," similar proceedings must be had as to pleadings and proof as on petition by a guardian to sell the real property of a ward under the probate laws on sale of lands. The probate court must appoint three disinterested freeholders of the county as commissioners to examine the premises to be improved and the surroundings, and to report to the court their opinion whether the improvement proposed will be advantageous to the estate of the ward.⁴⁶
- On the final hearing of a guardian's proceeding to improve the ward's real property, if the prayer of the petition is granted, the probate court must fix the amount of money and personal property that may be used in making the improvement. The court may authorize the guardian to unite with the owners of adjacent property, upon equitable terms and conditions approved by the court, for the improvement of the ward's premises and the proper management and repair of the property when so improved.⁴⁷
- A guardian must distinctly report to the probate court the amount of money and personal property expended in making an improvement to the ward's real property as described in the preceding dot point, within 40 days after the improvement is completed. If the ward dies before the removal of the disability and there are heirs who inherit real property only from the ward, the money expended must descend and pass in the same manner as the ward's other personal property and must be a charge on the premises improved in favor of the heirs who inherit the personal property.⁴⁸

Termination of guardianship based on value of ward's estate

The bill modifies or retains current law as follows:

⁴⁴ R.C. 2111.33(B).

⁴⁵ R.C. 2111.33(B).

⁴⁶ R.C. 2111.34, repealed by the bill.

⁴⁷ R.C. 2111.35, repealed by the bill.

⁴⁸ R.C. 2111.36, repealed by the bill.

- When the whole estate of a ward does not exceed \$25,000 in value, the guardian may apply to the probate court for an order to terminate the guardianship *of the estate*. Upon proof that it would be for the best interest of the ward to terminate the guardianship, the court may order the guardianship terminated (the bill relocates “and direct the guardian” to the following dot point).⁴⁹
- If the ward is a minor, the court may direct the guardian to deposit the assets of the guardianship in a depository authorized to receive fiduciary funds, payable to the *minor upon attaining the age of majority*, instead of “to the ward when the ward attains majority” (the bill eliminates “or the court may authorize the delivery of the assets to the natural guardian of the minor, to the person by whom the minor is maintained, to the executive director of children services in the county, or to the minor’s own self”). The bill instead provides that *a receipt verifying the deposit of assets must be submitted to the court. Release of any funds held in a depository for the benefit of the minor must be by court order, including the release of funds to the minor upon attaining the age of majority. In the alternative and for good cause shown, the court may direct the guardian to deliver the assets to a suitable person. The person receiving the assets must hold and dispose of them in the manner the court directs.*⁵⁰
- If the ward is an incompetent, and the court orders the guardianship terminated, the court may authorize the deposit of the assets of the guardianship in a depository authorized to receive fiduciary funds in the name of a suitable person to be designated by the court. *A receipt verifying the deposit of assets must be submitted to the court. Release of any funds held in a depository for the benefit of the incompetent must be by court order.* If the assets do not consist of money, the court may authorize delivery to a suitable person to be designated by the court. The person receiving the assets must hold and dispose of them in the manner the court directs.⁵¹
- As in existing law, unchanged by the bill, if the court refuses to grant the application to terminate the guardianship, or if no such application is presented to the court, the guardian only must be required to render account upon the termination of the guardianship, upon order of the probate court made on its own motion, or upon the order of the court made on the motion of a person interested in the wards or their property, for good cause shown, and set forth upon the journal of the court.⁵²

⁴⁹ R.C. 2111.05(A).

⁵⁰ R.C. 2111.05(A)(1).

⁵¹ R.C. 2111.05(A)(2).

⁵² R.C. 2111.05(B).

- If the estate of a minor is \$25,000 or less (the bill deletes “and the ward is a minor”), the court, without the appointment of a guardian by the court, or, *if a guardian is appointed by the court* without the giving of bond, may authorize the deposit in a depository authorized to receive fiduciary funds, payable to the guardian when appointed, or to the *minor*, instead of ward, *upon attaining the age of majority*, rather than “when the ward attains majority” (the bill eliminates “or the court may authorize delivery to the natural guardian of the minor, to the person by whom the minor is maintained, to the executive director who is responsible for the administration of children services in the county, or to the minor’s own self”). *A receipt verifying the deposit of assets must be submitted to the court. Release of any funds held in a depository for the benefit of the minor must be by court order, including release of funds to the minor upon attaining the age of majority. In the alternative and for good cause shown, the court may authorize delivery of the assets to a suitable person. The person receiving the assets must hold and dispose of them in the manner the court directs.*⁵³
- If the whole estate of a person *18 years of age or older*, instead of a person “over 18 years of age,” who has been adjudged incompetent, does not exceed \$25,000 in value, the court, without the appointment of a guardian by the court or, *if a guardian is appointed by the court* without the giving of bond, may authorize the deposit of the estate *assets* in a depository authorized to receive fiduciary funds in the name of a suitable person to be designated by the court. *A receipt verifying the deposit of assets must be submitted to the court. Release of any funds held in a depository for the benefit of the incompetent must be by court order.* If the assets do not consist of money, the court may authorize delivery to a suitable person to be designated by the court. The person receiving the assets must hold and dispose of them in the manner the court directs.⁵⁴

Guardian for nonresident

The bill modifies current law by providing that if a nonresident minor *or* incompetent (the bill removes “or person confined in a state, charitable, or correctional institution”) has real property or rights, credits, moneys, or other personal property in Ohio, the probate court of the county in which the property or a part of it is situated may appoint a resident guardian of the ward to manage, collect, lease, and take care of the ward’s property. The appointment may be made whether or not a ward has a guardian, trustee, or other conservator in the state of the ward’s residence, and, if the ward has such a guardian, trustee, or other conservator, the control and authority of the resident guardian appointed in Ohio must be superior as to all property of the ward in Ohio.⁵⁵

⁵³ R.C. 2111.05(C).

⁵⁴ R.C. 2111.05(D).

⁵⁵ R.C. 2111.37.

Resident guardian’s duties; duration of appointment

Under current law, as modified by the bill, unless removed by the probate court, a resident guardian of a nonresident minor must hold that appointment until the minor dies or arrives at the age of majority, whether or not the minor *was* over 14 years of age at the time of appointment *prior to the bill’s effective date or whether or not the minor is over 12 years of age at the time of appointment on or after the bill’s effective date*. A resident guardian of any other nonresident ward must hold that appointment until the death of the ward or until the court is satisfied that the necessity for the guardianship no longer exists. All moneys due to the nonresident ward while the resident guardianship continues shall be paid over to the ward’s foreign guardian *if it is in the ward’s best interest* (the bill removes “so far as necessary or proper for the ward’s support and maintenance”).⁵⁶

Foreign representative may collect money

The bill modifies current law by providing that when a foreign legal representative of a nonresident *minor or incompetent*, instead of ward, applies to have all or any of the moneys or property in the possession or under the control of the resident guardian of the *nonresident minor or incompetent*, instead of ward, paid or delivered to the foreign representative, the foreign representative must file a petition or motion in the probate court by which the resident guardian was appointed. Upon continuing law’s requirements of notice, authentication of the foreign representative’s appointment and qualification, and a hearing, the bill requires the court to make an order that it considers for the best interests of the *nonresident minor or incompetent*, instead of “nonresident ward or the nonresident ward’s estate.”⁵⁷

Sale of real property of nonresident minor or incompetent

Under existing law, applications for the sale of real property by guardians of wards who live outside Ohio must be made in the county in which the land is situated. If the real property is situated in two or more counties, the application must be made in one of the counties in which a part of it is situated. Additional security that may be approved by the probate court of the county in which the application is made must be required from the guardian if considered necessary.⁵⁸

Under the bill modifying existing law, *proceedings* for the sale of real property by resident guardians of *nonresident minors or incompetents* must be made in the county in which the land is situated. If the real property is situated in two or more counties, the *proceedings* must be *commenced* in one of the counties in which a part of it is situated. Additional *bond* may

⁵⁶ R.C. 2111.38.

⁵⁷ R.C. 2111.39.

⁵⁸ R.C. 2111.44.

be *ordered* by the court of the county in which *the proceedings are commenced* if considered necessary and *in the nonresident minor's or incompetent's best interest*.⁵⁹

Probate court as superior guardian of wards

The bill modifies current law by providing that the probate court must cause notice to be given and a hearing to be conducted prior to its exercise or direction of the exercise of any of the following powers pursuant to its powers as guardian of wards:⁶⁰

- The exercise or release of powers as a donee of a power of appointment;
- *If the amount of the gift is more than \$1,000, instead of unless the amount of the gift is no more than \$1,000, the making of a gift, in trust or otherwise.*

Other provisions in R.C. Chapter 2111

Court order for payments of no more than \$25,000 due to minor

The bill modifies current law by providing that the probate court may enter an order that authorizes a person under a duty to pay or deliver money or personal property to a minor who does not have a guardian of the person and estate or a guardian of the estate, to perform that duty in *an amount not exceeding \$25,000*, instead of amounts not exceeding \$5,000 (the bill removes annually), by paying or delivering the money or property to any of the following:⁶¹

1. The guardian of the person only of the minor;
2. The minor's natural guardians who are the minor's married parents, if any;
3. The minor;
4. Any person who has the care and custody of the minor and with whom the minor resides, other than a guardian of the person only or a natural guardian;
5. A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor. *A receipt verifying the deposit must be submitted to the court. Release of any funds held in a depository for the benefit of the minor must be upon court order, including release of funds to the minor upon attaining the age of majority.*
6. A custodian designated by the court in its order, for the minor under the Ohio Transfers to Minors Act;
7. *A trust for the benefit of the minor pursuant to the law pertaining to a court order for all or a portion of funds received by a minor to be deposited in trust.*⁶²

⁵⁹ R.C. 2111.44.

⁶⁰ R.C. 2111.50(E)(1).

⁶¹ R.C. 2111.131(A) and by reference to R.C. 2111.08.

⁶² By reference to R.C. 2111.182, not in the bill.

An order entered as described above authorizes the person or entity specified in it, to receive the money or personal property on behalf of the minor from the person under the duty to pay or deliver it, in an *amount not exceeding \$25,000*, instead of amounts not exceeding \$5,000 (the bill removes annually). Money or personal property so received by guardians of the person only, natural guardians, and custodians as described above may be used by them only for the support, maintenance, or education of the minor involved.⁶³

Guardian ad litem for the ward or minor

Continuing law provides that when a ward, for whom a guardian of the estate or of the person and estate has been appointed, is interested in any suit or proceeding in the probate court, such guardian must in all such suits or proceedings act as guardian ad litem for such ward, except as to suits or proceedings in which the guardian has an adverse interest. The bill requires that in a suit or proceeding in which the guardian has an adverse interest, the court must appoint a guardian ad litem to represent that ward.⁶⁴

Under current law, as modified by the bill, when a minor or other person under legal disability, for whom no guardian of the estate or of the person and estate has been appointed, is interested in any suit or proceeding in the probate court, the court may appoint a guardian or a guardian ad litem *to represent such minor or other person under legal disability*. The bill eliminates the provision that “[i]n a suit or proceeding in which the guardian has an adverse interest, the court must appoint a guardian ad litem.”⁶⁵

Settlement of claim of emancipated minor

Under current law, as modified by the bill, if personal injury, damage to tangible or intangible property, or damage or loss on account of personal injury or damage to tangible or intangible property is caused to a minor who claims to be emancipated, by wrongful act, neglect, or default that would entitle the minor to maintain an action and recover damages for the injury, damage, or loss, and if any minor who claims to be emancipated is entitled to maintain an action for damages or other relief based on any claim, or is subject to any claim to recover damages or other relief based on any claim, that minor may file an application in the probate court praying for a finding by the court that the minor is in fact emancipated *for the sole purpose of settlement of the claim*, and authorizing, approving, and consenting to the settlement of the claim by the minor without the appointment of a guardian.⁶⁶

The bill replaces ward with *minor* in a subsequent provision pertaining to the delivery and payment of the moneys.⁶⁷

⁶³ R.C. 2111.131(B).

⁶⁴ R.C. 2111.23.

⁶⁵ R.C. 2111.23.

⁶⁶ R.C. 2111.181.

⁶⁷ R.C. 2111.181.

Emergency order to freeze assets of missing person

Under current law, as modified by the bill, a probate court, on its own motion or on application of an interested party, may issue an emergency ex parte order freezing the financial assets of an individual whom the court or applicant has reason to believe is missing or has gone or been *taken away*, instead of “taken to another state” if it is reasonably certain that immediate action is required to prevent significant financial harm to the individual. The order may freeze the individual’s assets for a period not exceeding 72 hours.⁶⁸

COURT OF COMMON PLEAS’ EMPLOYMENT OF LEGAL COUNSEL

Court authority to employ legal counsel

The bill authorizes the court of common pleas or a division of the court to employ legal counsel as described in the following paragraph, at its choosing and without competitive bidding pursuant to the exception from competitive bidding for the services of an attorney under the competitive bidding and exceptions law, and certified as for other public officials as provided by law, to represent it in any matter of public business coming before the court or in the prosecution or defense of any action or proceeding in which that court’s judge or official is a party or has an interest, in the judge’s or official’s official capacity.⁶⁹

The bill requires that when the court of common pleas or its division employs legal counsel, as described above, the specified judge must enter upon the court’s journal an order in which the compensation to be paid for the legal services must be fixed. The compensation must be paid from the county general fund or another lawful court fund at the discretion of the judge. When paid from the county general fund, attorney fee invoices must be submitted to the board of county commissioners for review. The hourly compensation paid for the legal services cannot exceed the highest hourly compensation paid by the board of county commissioners for an attorney other than the prosecuting attorney to represent the board or other county officials.⁷⁰ The judge who enters the compensation order must be one of the following, whichever is applicable:⁷¹

1. If legal counsel is employed to represent a judge, the judge must enter the order.
2. If legal counsel is employed to represent a court official, the judge of the court or, if the court has more than one judge, the presiding judge of the court, must enter the order.

⁶⁸ R.C. 2111.022.

⁶⁹ R.C. 305.14(A) and by reference to R.C. 307.86, not in the bill.

⁷⁰ R.C. 309.09(C).

⁷¹ R.C. 309.09(C)(1) and (2).

The bill makes conforming changes relating to the changes in division numbers in the bill.⁷²

Court of common pleas special projects funds

Current law permits the court of common pleas to determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court, including the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. The bill expands the court's special projects for which additional funds are necessary to include the employment of legal counsel. It provides that moneys used to employ legal counsel must be reimbursed by the county general fund.⁷³

Probate Court Conduct of Business Fund

Under continuing law, all moneys obtained from the sale of merchandise to be used in connection with any license, order, or document issued by a probate court must be paid by the probate judge or the deputy clerk of the court into the county treasury. The moneys are credited to a fund known as the Probate Court Conduct of Business Fund. Current law provides that the moneys so credited must be used solely for the conduct of the business of the probate court. Under the bill, the conduct of business of the probate court includes the employment of legal counsel. The bill provides that moneys used to employ legal counsel must be reimbursed by the county general fund.⁷⁴

HISTORY

Action	Date
Introduced	11-10-21

H0488-I-CORRECTED-134/ar

⁷² R.C. 309.10 and 1545.07.

⁷³ R.C. 2303.201(E)(1).

⁷⁴ R.C. 2101.19(B).