

SECOND REGULAR SESSION

# HOUSE BILL NO. 1829

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOUGHTON.

5439H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 475.075, RSMo, and to enact in lieu thereof one new section relating to probate hearings for guardianship.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 475.075, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 475.075, to read as follows:

475.075. 1. Except as otherwise provided in section 475.062, when a petition for the appointment of a guardian ad litem, guardian or conservator against any person, hereinafter referred to as the respondent, is filed on grounds other than minority, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall promptly set the petition for hearing.

2. The respondent shall be served in person with the following: A copy of the petition; a written notice stating the time and place the proceeding will be heard by the court, the name and address of appointed counsel, and the names and addresses of the witnesses who may be called to testify in support of the petition; and with a copy of the respondent's rights as set forth in subsections 7 and 8 of this section. The notice shall be signed by the judge or clerk of the court and served in person on the respondent a reasonable time before the date set for the hearing. The petition shall state the names and addresses of the spouse, parents, children who have reached eighteen, any person serving as his guardian, conservator, limited guardian or limited conservator, any person having power to act in a fiduciary capacity with respect to any of the respondent's financial resources, and any person having his care and custody known to the petitioner. Each person so listed shall be served with like notice in any manner permitted by section 472.100. If no such spouse, parent or child is known, notice shall be given to at least one of his closest relatives who has reached eighteen.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18           3. Upon the filing of a petition under the provisions of subsection 1 of this section or for  
19 the approval on behalf of the respondent of a transaction pursuant to section 475.092 or for the  
20 rendition of emergency medical treatment under the provisions of section 475.123, the court shall  
21 immediately appoint an attorney to represent the respondent in the proceeding. The attorney  
22 shall visit his client prior to the hearing. If the client is capable of understanding the matter in  
23 question or of contributing to the advancement of the client's interest, the attorney shall obtain  
24 from the client all possible aid. If the disability of a client compels the attorney to make  
25 decisions for the client, the attorney shall consider all circumstances then prevailing and act with  
26 care to safeguard and advance the interests of the client. The court shall allow a reasonable  
27 attorney's fee for the services rendered, to be taxed as costs of the proceeding **except as provided**  
28 **under subsection 12 of this section.** The court-appointed attorney may be permitted to  
29 withdraw if the respondent employs private counsel who enters an appearance on behalf of said  
30 person.

31           4. The court may direct that the respondent be examined by a physician or licensed  
32 psychologist or other appropriate professional designated by the court, and may allow a  
33 reasonable fee for the services rendered, to be taxed as costs in the proceeding. The  
34 court-appointed physician, licensed psychologist or other professional shall, prior to  
35 examination, explain to the respondent in simple language, the following:

36           (1) Incapacity or disability as defined in section 475.010;

37           (2) That the purpose of the examination is to produce evidence which may be used to  
38 determine whether the respondent is incapacitated, disabled or partially incapacitated or disabled;

39           (3) That respondent has the right to remain silent;

40           (4) That anything respondent says may be used at the court hearing, and in making the  
41 determination of incapacity or disability.

42           5. The court-appointed physician, licensed psychologist or other professional shall  
43 submit his report in writing to the court and to counsel for all parties.

44           6. If prima facie proof of partial or complete incapacity or disability is made, a physician  
45 or licensed psychologist is competent and may be compelled to testify as to information acquired  
46 from the respondent, despite otherwise applicable testimonial privileges. Evidence received  
47 under this subsection which would otherwise be privileged may not be used in any other civil  
48 action or criminal proceeding without the consent of the holder of the privilege.

49           7. The petitioner has the burden of proving incapacity, partial incapacity, disability, or  
50 partial disability by clear and convincing evidence.

51           8. The respondent shall have the following rights in addition to those elsewhere  
52 specified:

53           (1) The right to be represented by an attorney;

- 54 (2) The right to have a jury trial;
- 55 (3) The right to present evidence in his behalf;
- 56 (4) The right to cross-examine witnesses who testify against him;
- 57 (5) The right to remain silent;
- 58 (6) The right to have the hearing opened or closed to the public as he elects;
- 59 (7) The right to a hearing conducted in accordance with the rules of evidence in civil  
60 proceedings, except as modified by this chapter;
- 61 (8) The right to be present at the hearing.
- 62 9. If the court finds that the respondent possesses capacity to meet his essential  
63 requirements for food, clothing, shelter, safety and other care or that he possesses the ability to  
64 manage his financial resources, it shall deny the petition. On the other hand, if the court finds  
65 that the capacity of the respondent to receive and evaluate information or to communicate  
66 decisions is impaired to such an extent as to render him incapable of meeting some or all of his  
67 essential requirements for food, clothing, shelter, safety or other care so that serious physical  
68 injury, illness, or disease is likely to occur, or that the ability of the respondent to receive and  
69 evaluate information or to communicate decisions is impaired to such an extent so as to render  
70 him unable to manage some or all of his financial resources, it shall make and recite in its order  
71 detailed findings of fact stating:
- 72 (1) The extent of his physical and mental incapacity to care for his person;
- 73 (2) The extent of his physical and mental disability to manage his financial resources;
- 74 (3) Whether or not he requires placement in a supervised living situation and, if so, the  
75 degree of supervision needed;
- 76 (4) Whether or not his financial resources require supervision and, if so, the nature and  
77 extent of supervision needed.
- 78 10. If the court finds the respondent to be in some degree incapacitated or disabled, or  
79 both, the court, in determining the degree of supervision necessary, shall apply the least  
80 restrictive environment principle as defined in this chapter and shall not restrict his personal  
81 liberty or his freedom to manage his financial resources to any greater extent than is necessary  
82 to protect his person and his financial resources. The court shall consider whether or not the  
83 respondent may be fully protected by the rendition of temporary protective services provided by  
84 a private or public agency or agencies; or by the appointment of a guardian or conservator ad  
85 litem; or by the appointment of a limited guardian or conservator; or, as a last resort, by the  
86 appointment of a guardian or conservator. The limitations imposed upon the authority of the  
87 guardian or conservator as set forth in the findings of the court shall be stated in the letters of the  
88 guardian or conservator and shall be set forth in the notice of first publication of letters of  
89 conservatorship granted.

90           11. If an alleged incapacitated or disabled person has no guardian or conservator and an  
91 emergency exists which presents a substantial risk that serious physical harm will occur to his  
92 person or irreparable damage will occur to his property because of his failure or inability to  
93 provide for his essential human needs or to protect his property, the court may, with notice to  
94 such person's attorney, as provided in subsection 3 of this section, and service of notice upon  
95 such person as provided in subsection 2 of this section, and, with or without notice to other  
96 persons interested in the proceeding, after hearing, appoint a guardian or conservator ad litem  
97 for a specified period not to exceed thirty days and for specified purposes. Orders appointing the  
98 guardian or conservator ad litem may be modified upon motion and hearing. After hearing and  
99 a showing of continuing emergency need, orders appointing the guardian or conservator ad litem  
100 may be extended from time to time, not to exceed thirty days each. A guardian or conservator  
101 ad litem may be removed at any time and shall make any report the court requires. Proceedings  
102 under this subsection shall not be employed as alternative to proceedings for the involuntary  
103 detention and treatment of a mentally ill person under the provisions of chapter 632.

104           **12. If the petitioner in an action filed under this section is a state agency and the**  
105 **appointed guardian or conservator is a public administrator, the costs of the proceeding**  
106 **shall be reimbursed to the county by the state in accordance with rules and regulations**  
107 **promulgated by the state court administrator from funds appropriated to the office of**  
108 **administration for such purposes. However, no attorney's fees shall be allowed for services**  
109 **rendered by any attorney who is a salaried employee of a public agency or a private agency**  
110 **that receives public funds.**

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