

HOUSE BILL NO. 1860

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on/for _____

on _____)

(Patron Prior to Substitute--Delegate Bell)

A BILL to amend and reenact §§ 64.2-2002 and 64.2-2003 of the Code of Virginia, relating to guardianship or conservatorship; primary health care provider of respondent.

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2002 and 64.2-2003 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-2002. Who may file petition; contents.

A. Any person, including a community services board and any other local or state governmental agency, may file a petition for the appointment of a guardian, a conservator, or both.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;

2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter 21;

3. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including stepchildren. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;

4. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;

27 5. The name, place of residence or location, and post office address of any agent designated under
28 a durable power of attorney or an advance directive of which the respondent is the principal, and any
29 guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the petitioner
30 shall attach a copy of any such durable power of attorney, advance directive, or order appointing the
31 guardian, committee, or conservator, if available;

32 5a. The name, location, and post office address of the respondent's primary health care provider,
33 if any;

34 6. The type of guardianship or conservatorship requested and a brief description of the nature and
35 extent of the respondent's alleged incapacity;

36 7. When the petition requests appointment of a guardian, a brief description of the services
37 currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate,
38 a recommendation as to living arrangements and treatment plan;

39 8. If the appointment of a limited guardian is requested, the specific areas of protection and
40 assistance to be included in the order of appointment and, if the appointment of a limited conservator is
41 requested, the specific areas of management and assistance to be included in the order of appointment;

42 9. The name and post office address of any proposed guardian or conservator or any guardian or
43 conservator nominated by the respondent and that person's relationship to the respondent;

44 10. The native language of the respondent and any necessary alternative mode of communication;

45 11. A statement of the financial resources of the respondent that shall, to the extent known, list the
46 approximate value of the respondent's property and the respondent's anticipated annual gross income,
47 other receipts, and debts;

48 12. A statement of whether the petitioner believes that the respondent's attendance at the hearing
49 would be detrimental to the respondent's health, care, or safety; and

50 13. A request for appointment of a guardian ad litem.

51 **§ 64.2-2003. Appointment of guardian ad litem.**

52 A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a
53 guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee
54 that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

55 B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the
56 respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent
57 has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to §
58 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the
59 court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem
60 recommends counsel; (v) investigating the petition and evidence, requesting additional evaluation if
61 necessary, considering whether a less restrictive alternative to guardianship or conservatorship is
62 available, including the use of an advance directive, supported decision-making agreement, or durable
63 power of attorney, and filing a report pursuant to subsection C;~~and~~ making a good faith effort to
64 consult directly with the respondent's primary health care provider, if any, unless the evaluation report
65 required by § 64.2-2005 is prepared in whole or in part by such provider; and (vii) personally appearing
66 at all court proceedings and conferences. If the respondent is between 17 and a half and 21 years of age
67 and has an Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review
68 such IEP and transition plan and include the results of his review in the report required by clause (v).

69 C. In the report required by clause (v) of subsection B, the guardian ad litem shall address the
70 following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or
71 conservator is needed based on evaluations and reviews conducted pursuant to subsection B; (iii) the
72 extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of the
73 person selected as guardian or conservator after consideration of the person's geographic location, familial
74 or other relationship with the respondent, ability to carry out the powers and duties of the office,
75 commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the
76 respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the
77 conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent. The
78 report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend

79 the appointment of counsel for the respondent, (b) determination that a less restrictive alternative to
80 guardianship or conservatorship is not advisable, and (c) determination that appointment of a limited
81 guardian or conservator is not appropriate. If the guardian ad litem was unable to consult directly with the
82 respondent's primary health care provider, such information shall also be included in such report.

83 D. A health care provider and local school division shall disclose or make available to the guardian
84 ad litem, upon request, any information, records, and reports concerning the respondent that the guardian
85 ad litem determines necessary to perform his duties under this section.

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