

HOUSE BILL No. 6091

September 16, 1998, Introduced by Rep. Martinez and referred to the Committee on Judiciary.

A bill to amend 1978 PA 642, entitled "Revised probate code," by amending sections 447 and 455 (MCL 700.447 and 700.455), as amended by 1988 PA 398.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 447. (1) On petition of the guardian and subject to
2 the filing and approval of a report prepared ~~pursuant to~~ AS
3 REQUIRED BY section ~~455(1)(e)~~ 455(2)(E), the court shall accept
4 the guardian's resignation and make any other order ~~which~~ THAT
5 may be appropriate.

6 (2) The ward or a person interested in the ward's welfare
7 may petition for an order removing the guardian, appointing a
8 successor guardian, modifying the terms of the guardianship, or
9 terminating the guardianship. A request for this order may be
10 made by informal letter to the court or judge. A person who

1 knowingly interferes with transmission of this kind of request to
2 the court or judge is subject to a finding of contempt of court.
3 Except as otherwise provided in the order finding legal incapac-
4 ity, upon receiving a petition or request, the court shall set a
5 date for a hearing to be held within 28 days after the receipt of
6 the petition or request. An order finding legal incapacity may
7 specify a minimum period, not exceeding 180 days, during which a
8 petition or request for a finding that a ward is no longer
9 legally incapacitated, or FOR an order removing the guardian,
10 modifying the terms of the guardianship, or terminating the
11 guardianship, may not be filed without special leave of the
12 court.

13 (3) Before removing a guardian, appointing a successor
14 guardian, modifying the terms of the guardianship, or terminating
15 a guardianship, the court, following the same procedures to safe-
16 guard the rights of the ward as apply to a petition for appoint-
17 ment of a guardian, may send a visitor to the residence of the
18 present guardian and to the place where the ward resides or is
19 detained, to observe conditions and report in writing to the
20 court.

21 Sec. 455. (1) IN EXERCISING A GUARDIANSHIP POWER, A GUARD-
22 IAN SHALL BE GUIDED BY WISHES EXPRESSED BY THE GUARDIAN'S WARD
23 BEFORE THE WARD BECAME LEGALLY INCAPACITATED. THIS REQUIREMENT
24 INCLUDES THE GUARDIAN'S COMPLIANCE WITH A DURABLE POWER OF ATTOR-
25 NEY OR OTHER ADVANCE DIRECTIVE. IN ADDITION, WHENEVER MEANINGFUL
26 COMMUNICATION IS POSSIBLE, BEFORE MAKING A MAJOR DECISION
27 AFFECTING A WARD, A GUARDIAN SHALL CONSULT WITH THE WARD.

1 (2) Except as limited under THIS SECTION AND section
2 ~~444(3), a guardian of~~ 444, a legally incapacitated ~~person~~
3 PERSON'S GUARDIAN is responsible for the care, custody, and con-
4 trol of the ward, but is not liable to third persons by reason of
5 that responsibility for THE WARD'S acts. ~~of the ward.~~ In par-
6 ticular, and without qualifying the ~~foregoing~~ PROVISIONS OF THE
7 PREVIOUS SENTENCE, a guardian has the following powers and
8 duties, except as modified by COURT order: ~~of the court:~~

9 (a) To the extent that it is consistent with the terms of an
10 order by a court of competent jurisdiction relating to THE WARD'S
11 detention or commitment, ~~of the ward,~~ the guardian is entitled
12 to custody of the WARD'S person ~~of his or her ward~~ and may
13 establish the ward's place of residence within or without this
14 state. The guardian shall notify the court within 14 days of
15 ~~any~~ A change in the ward's place of residence.

16 (b) If entitled to custody of the ward, the guardian shall
17 ~~make provision~~ PROVIDE for the WARD'S care, comfort, and main-
18 tenance ~~of the ward~~ and, when appropriate, arrange for the
19 ward's training and education. The guardian shall ~~have the~~
20 ~~responsibility of securing~~ SECURE services to restore the ward
21 to the best possible state of mental and physical well-being so
22 that the ward can return to self-management at the earliest pos-
23 sible time. Without regard to custodial rights of the ward's
24 person, the guardian shall take reasonable care of the ward's
25 clothing, furniture, vehicles, and other personal effects and
26 commence protective proceedings if other property of the ward ~~is~~
27 ~~in need of~~ NEEDS protection.

1 (c) A guardian may give ~~any~~ consent or approval that ~~may~~
2 ~~be~~ IS necessary to enable the ward to receive medical or other
3 professional care, counsel, treatment, or service.

4 (d) If a conservator for the WARD'S estate ~~of the ward~~ is
5 not appointed, a guardian may DO ALL OF THE FOLLOWING:

6 (i) Institute proceedings to compel a person under a duty to
7 support the ward or to pay sums for the WARD'S welfare ~~of the~~
8 ~~ward~~ to perform that duty.

9 (ii) Receive money and tangible property deliverable to the
10 ward and apply the money and property for THE WARD'S support,
11 care, and education. ~~of the ward.~~ The guardian may not use
12 ~~funds~~ MONEY from the ward's estate for room and board ~~which~~
13 THAT the guardian or the guardian's spouse, parent, or child have
14 furnished the ward unless a charge for the service is approved by
15 COURT order ~~of the court~~ made upon notice to at least 1 of the
16 WARD'S next of kin, ~~of the incompetent ward,~~ if notice is
17 possible. The guardian shall exercise care to conserve any
18 excess for the ward's needs.

19 (e) ~~To~~ THE GUARDIAN SHALL report the condition of the ward
20 and of the estate ~~which~~ THAT is subject to the guardian's pos-
21 session or control, as required by the court, but not less often
22 than annually. ~~A~~ THE report shall contain all of the
23 following:

24 (i) The ward's current mental, physical, and social
25 condition.

1 (ii) Any improvement or deterioration in the ward's mental,
2 physical, and social condition that has occurred during the past
3 year.

4 (iii) The ward's present living arrangement and ~~any~~
5 changes in his or her living arrangement that have occurred
6 during the past year.

7 (iv) Whether the guardian recommends a more suitable living
8 arrangement for the ward.

9 (v) Any medical treatment received by the ward.

10 (vi) Services received by the ward.

11 (vii) A list of the guardian's visits with, and activities
12 on behalf of, the ward.

13 (viii) A recommendation as to the need for continued
14 guardianship.

15 (f) If a conservator is appointed, THE GUARDIAN SHALL PAY TO
16 THE CONSERVATOR, FOR MANAGEMENT AS PROVIDED IN THIS ACT, the
17 ward's estate received by the guardian in excess of ~~those funds~~
18 THE MONEY expended to meet current expenses for THE WARD'S sup-
19 port, care, and education. ~~of the ward shall be paid to the con-~~
20 ~~servator for management as provided in this act, and the~~ THE
21 guardian shall account to the conservator for ~~funds~~ MONEY
22 expended.

23 (3) ~~(2)~~ A guardian of a person for whom a conservator also
24 is appointed shall control the custody and care of the ward and
25 is entitled to receive reasonable sums for his or her services
26 and for room and board furnished to the ward as agreed upon
27 between the guardian and the conservator if the amounts agreed

1 upon are reasonable under the circumstances. The guardian may
2 request the conservator to expend the ward's estate by payment to
3 third persons or institutions for the ward's care and
4 maintenance.

5 (4) ~~(3)~~ If a ward dies while under guardianship, ~~and~~ a
6 conservator has not been appointed for the WARD'S estate, ~~of the~~
7 ~~ward,~~ and ~~if~~ the guardian has possession of any ~~money~~ of the
8 deceased ~~ward~~ WARD'S MONEY, the court may, upon THE GUARDIAN'S
9 petition ~~of the guardian~~ and with or without notice, hear a
10 claim for burial expense or any other claim as the court consid-
11 ers advisable. Upon hearing the claim, the court may enter an
12 order allowing or disallowing the claim or any part of it and
13 provide in the order of allowance that the claim or any part of
14 it be paid immediately if the payment can be made without injury
15 or serious inconvenience to the ward's estate.