



2023 South Dakota Legislature

House Bill 1240

Introduced by: **Representative Mulder**

1 **An Act to amend provisions addressing guardianships and conservatorships.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That chapter 29A-5 be amended with a NEW SECTION:**

4 If the person alleged to need protection expresses a desire to contest the petition
 5 pursuant to § 29A-5-309, the petition must be supplemented with a report stating the
 6 person's diagnosis of a mental illness of a type and severity that would be classified as
 7 preventing the person from handling the person's own affairs. The diagnosis must include
 8 an opinion from a licensed psychiatrist stating the following:

9 (1) Whether the person poses a danger to the person's self or others;

10 (2) The likely course of the illness;

11 (3) Treatment options;

12 (4) The least restrictive environment where the person may be treated;

13 (5) Whether custodial care is required; and

14 (6) The basis for the custodial care requirement.

15 **Section 2. That § 29A-5-304 be AMENDED:**

16 **29A-5-304.** Any individual who has sufficient capacity to form a preference may
 17 at any time nominate any individual or entity to act as his guardian or conservator. The
 18 nomination may be made in writing, by an oral request to the court, or may be proved by
 19 any other competent evidence. A person designated under a validly executed power of
 20 attorney by the protected person may be considered as a nominee. The court shall appoint
 21 the individual or entity so nominated if the nominee is otherwise eligible to act and would
 22 serve in the best interests of the protected person.

23 In the absence of an effective nomination by the protected person, the court shall
 24 appoint as guardian or conservator the individual or entity that will act in the protected
 25 person's best interests. In making that appointment, the court shall consider the proposed

1 guardian's or conservator's geographic location, familial or other relationship with the
 2 protected person, ability to carry out the powers and duties of the office, commitment to
 3 promoting the protected person's welfare, any potential conflicts of interest, and the
 4 recommendations of the spouse, the parents or other interested relatives, whether made
 5 by will or otherwise. The court may appoint more than one guardian or conservator and
 6 need not appoint the same individual or entity to serve as both guardian and conservator.

7 **Section 3. That § 29A-5-403 be AMENDED:**

8 **29A-5-403.** A guardian of a protected person shall file a report with the court
 9 within sixty days following the first anniversary of the appointment and:

- 10 (1) At least annually thereafter;
- 11 (2) When the court orders additional reports to be filed;
- 12 (3) When the guardian resigns or is removed; and
- 13 (4) When the guardianship is terminated unless the court determines that there is then
 14 no need therefor.

15 A guardian may elect to file a periodic report on a calendar-year basis. However,
 16 in no event may such a report cover a period of more than one year. A calendar-year
 17 report shall be filed with the court no later than April fifteenth of the succeeding year.

18 A report shall briefly state:

- 19 ~~(1) The current mental, physical and social condition of the protected person;~~
- 20 ~~(2) The living arrangements during the reporting period;~~
- 21 ~~(3) The medical, educational, vocational and other professional services provided to
 22 the protected person and the guardian's opinion as to the adequacy of the
 23 protected person's care;~~
- 24 ~~(4) A summary of the guardian's visits with and activities on the protected person's
 25 behalf;~~
- 26 ~~(5) If the protected person is institutionalized, whether the guardian agrees with the
 27 current treatment or habilitation plan;~~
- 28 ~~(6) A recommendation as to the need for continued guardianship and any
 29 recommended changes in the scope of the guardianship;~~
- 30 ~~(7) Any other information requested by the court or useful in the opinion of the
 31 guardian;~~
- 32 ~~(8) The compensation requested and the reasonable and necessary expenses incurred
 33 by the guardian; and~~

1 ~~(9) The date on which the guardian completed the training curricula required pursuant~~
 2 ~~to § 29A-5-119.~~

3 ~~A guardian shall mail a copy of the report to the individuals and entities specified~~
 4 ~~in § 29A-5-410 no later than fourteen days following its filing.~~

5 ~~Any interested person may request a hearing on the report. The court may order~~
 6 ~~the guardian to attend the hearing on the report on the court's own motion or on the~~
 7 ~~petition of any interested person. A report of the guardian may be incorporated into and~~
 8 ~~made a part of the accounting of the conservator.~~

9 **Section 4. That chapter 29A-5 be amended with a NEW SECTION:**

10 A report shall briefly state:

11 (1) The current mental, physical and social condition of the protected person;

12 (2) The living arrangements during the reporting period;

13 (3) The medical, educational, vocational and other professional services provided to
 14 the protected person and the guardian's opinion as to the adequacy of the
 15 protected person's care;

16 (4) A summary of the guardian's visits with and activities on the protected person's
 17 behalf;

18 (5) If the protected person is institutionalized, whether the guardian agrees with the
 19 current treatment or habilitation plan;

20 (6) A recommendation as to the need for continued guardianship and any
 21 recommended changes in the scope of the guardianship;

22 (7) Any other information requested by the court or useful in the opinion of the
 23 guardian;

24 (8) The compensation requested and the reasonable and necessary expenses incurred
 25 by the guardian; and

26 (9) The date on which the guardian completed the training curricula required pursuant
 27 to § 29A-5-119.

28 A guardian shall mail a copy of the report to the individuals and entities specified
 29 in § 29A-5-410 no later than fourteen days following its filing.

30 Within sixty days of the filing of the annual report, any interested person may
 31 request a hearing on the report. The court may order the guardian to attend the hearing
 32 on the report on the court's own motion or on the petition of any interested person. A
 33 report of the guardian may be incorporated into and made a part of the accounting of the
 34 conservator if the same individual holds both appointments.

1 **Section 5. That § 29A-5-408 be AMENDED:**

2 **29A-5-408.** A conservator shall file an accounting with the court within sixty days
3 following the first anniversary of the appointment and:

- 4 (1) At least annually thereafter;
5 (2) When the court orders additional accounts to be filed;
6 (3) When the conservator resigns or is removed; and
7 (4) When the conservatorship is terminated.

8 A conservator may elect to file a periodic accounting on a calendar-year basis.
9 However, in no event may such an accounting cover a period of more than one year. A
10 calendar-year report shall be filed with the court no later than April fifteenth of the
11 succeeding year.

12 ~~An accounting shall include:~~

- 13 ~~(1) A listing of the receipts, disbursements, and distributions from the estate under~~
14 ~~the conservator's control during the period covered by the account;~~
15 ~~(2) A listing of the estate;~~
16 ~~(3) The services being provided to the protected person;~~
17 ~~(4) The significant actions taken by the conservator during the reporting period;~~
18 ~~(5) A recommendation as to the continued need for conservatorship and any~~
19 ~~recommended changes in the scope of the conservatorship;~~
20 ~~(6) Any other information requested by the court or useful in the opinion of the~~
21 ~~conservator;~~
22 ~~(7) The compensation requested and the reasonable and necessary expenses incurred~~
23 ~~by the conservator;~~
24 ~~(8) An annual inventory of any item of tangible personal property with a value of two~~
25 ~~thousand five hundred dollars or more which has come into the conservator's~~
26 ~~possession or knowledge for the minor or protected person; and~~
27 ~~(9) The date on which the conservator completed the training curricula required~~
28 ~~pursuant to § 29A-5-119.~~

29 ~~A conservator shall mail a copy of the accounting to the individuals and entities~~
30 ~~specified in § 29A-5-410 no later than fourteen days following its filing. A conservator~~
31 ~~shall notify all persons receiving the accounting that they must present written objections~~
32 ~~within fourteen days after receipt or be barred from thereafter objecting.~~

33 ~~Upon filing an objection, any interested person may request a hearing on the~~
34 ~~accounting. The court may order the conservator to attend the hearing on an account on~~

~~the court's own motion or on the petition of any interested person. An accounting by a conservator may be incorporated into and made a part of the report of the guardian.~~

~~Subject to written objection, appeal, or vacation within the time permitted, an order allowing an account of a conservator adjudicates as to liabilities concerning all matters disclosed in the account.~~

Section 6. That chapter 29A-5 be amended with a NEW SECTION:

An accounting shall include:

(1) A listing of the receipts, disbursements, and distributions from the estate under the conservator's control during the period covered by the account;

(2) A listing of the estate;

(3) The services being provided to the protected person;

(4) The significant actions taken by the conservator during the reporting period;

(5) A recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship;

(6) Any other information requested by the court or useful in the opinion of the conservator;

(7) The compensation requested and the reasonable and necessary expenses incurred by the conservator;

(8) An annual inventory of any item of tangible personal property with a value of two thousand five hundred dollars or more which has come into the conservator's possession or knowledge for the minor or protected person; and

(9) The date on which the conservator completed the training curricula required pursuant to § 29A-5-119.

A conservator shall mail a copy of the accounting to the individuals and entities specified in § 29A-5-410 no later than fourteen days following its filing. A conservator shall notify all persons receiving the accounting that they must present written objections within sixty days after receipt or be barred from thereafter objecting.

Upon filing an objection, any interested person may request a hearing on the accounting. The court may order the conservator to attend the hearing on an account on the court's own motion or on the petition of any interested person. An accounting by a conservator may be incorporated into and made a part of the report of the guardian if the same individual holds both appointments.

1 Subject to written objection, appeal, or vacation within the time permitted, an
2 order allowing an account of a conservator adjudicates as to liabilities concerning all
3 matters disclosed in the account.

4 **Section 7. That chapter 29A-5 be amended with a NEW SECTION:**

5 Within sixty days following the first anniversary and annually thereafter of the
6 appointment of a guardian or conservator, a review hearing shall be held by the court to
7 determine if the guardianship or conservatorship of the protected person is to remain in
8 place, be modified, or terminated. The protected person may nominate a successor
9 guardian or conservator in the review hearing.

10 **Section 8. That chapter 29A-5 be amended with a NEW SECTION:**

11 An interested party must have access to medical and financial records of the
12 protected person. The court must grant access if the court finds access is in the best
13 interest of an interested party or the protected person and does not endanger the welfare
14 or financial interest of the protected person.