2024 South Dakota Legislature

House Bill 1230

AMENDMENT 1230A
FOR THE INTRODUCED BILL

An Act to amend provisions regarding reports to be done for a guardianship or conservatorship ~~and to provide a penalty therefor~~.

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

Section 1. That § 29A-5-210 be AMENDED:

29A-5-210. The court may appoint a temporary guardian or conservator, or both, under this section and §§ 29A-5-201 to 29A-5-209, inclusive, upon a showing that an immediate need exists and that an appointment would be in the minor's best interests.

A temporary guardian or conservator ~~shall~~ must have only those powers and duties ~~which~~ that are specifically set forth in the order of appointment, and in no event may a temporary guardian or conservator be appointed for more than six months.

An appointment of a temporary guardian or conservator ~~shall~~ must be made upon such notice and subject to such conditions as the court may order, except that reasonable notice of hearing ~~shall~~ must be given to the minor, if age ten or older, unless there is a showing that such delay would not be in the minor's best interests.

A temporary guardian or conservator ~~shall~~ must mail a copy of the order of appointment within five days following its entry to the minor, if age ten or older, and to all individuals and entities that would be entitled to notice of hearing on a petition for a regular appointment~~.~~

~~A violation of this section is a Class 2 misdemeanor~~.

Section 2. That § 29A-5-306 be AMENDED:

29A-5-306. The petition ~~shall~~ for the appointment of a guardian, a conservator, or both, must include a report evaluating the condition of the person alleged to need protection ~~which shall~~. The report must contain, to the best information and belief of its signatories:

(1) A description of the nature, type, and extent of the person's incapacity, including the person's specific cognitive and functional limitations;

(2) Evaluations of the person's mental~~ condition based on DSM-5 or greater standardized testing~~ and physical condition and, where appropriate, educational condition, adaptive behavior, and social skills;

(3) If the appointment of a guardian is requested, a description of the services, if any, currently being provided for the person's health, care, safety, habilitation, or therapeutic needs and a recommendation as to the most suitable living arrangement and, if appropriate, treatment or habilitation plan and the reasons therefor;

(4) If the appointment of a conservator is requested, a description of the services, if any, currently being provided for the management of the person's estate and financial affairs;

(5) An opinion as to whether the appointment of a guardian or conservator is necessary, the type and scope of the guardianship or conservatorship needed, and the reasons therefor;

(6) If the petition states that the incapacity of the person alleged to need protection will prevent attendance at the hearing, an opinion as to whether~~ such~~ the person's attendance would be detrimental to the person's health, care or safety;

(7) A statement as to whether the person alleged to need protection is on any medications that may affect the person's actions, demeanor and participation at the hearing;

(8) The signature of a physician, psychiatrist,~~ nurse practitioner, physician assistant,~~ or licensed psychologist, and the signatures of any other individuals who made substantial contributions toward the report's preparation; and

(9) The date of any assessment or examination upon which the report is based and, if any of the assessments or examinations were performed more than three months prior to the date of the filing of the petition, a~~ an affidavit~~ statement by~~ a~~ the evaluating physician, psychiatrist,~~ nurse practitioner, physician assistant,~~ or licensed psychologist that there has been no material change in the condition of the person alleged to need protection since the dates that~~ such~~ the assessments or examinations were performed.

The court, for good cause shown, may grant leave to file the petition without an evaluation report. If such leave is granted, the court shall order the appropriate

AMENDMENT

assessments or examinations and shall order that a report be prepared and filed with the court.

No evaluation report need be prepared if the petition has been brought on the basis that the person alleged to need protection is an absentee

~~For the purposes of this section, the term "DSM-5" means the Diagnostic and Statistical Manual of Mental Disorder fifth edition as published by the American Psychiatric Association.~~

~~A person who knowingly provides false or misleading information in writing the report is guilty of a Class 2 misdemeanor~~.

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

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

(1) At least annually thereafter;

(2) When the court orders additional reports to be filed;

(3) When the guardian resigns or is removed; and

(4) When the guardianship is terminated unless the court determines that there is then no need therefor.

A guardian may elect to file a periodic report on a calendar-year basis. ~~However, in no event may such a~~ A report may not cover a period of more than one year. A calendar-year report ~~shall~~ must be filed with the court no later than April fifteenth of the succeeding year.

A report ~~shall~~ must be made in writing on a form furnished by the Unified Judicial System or formatted to the ~~United~~ Unified Judicial System form and must briefly state:

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

(2) The living arrangements during the reporting period;

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

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

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

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

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

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

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

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

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

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~~A person who knowingly provides false or misleading information in writing the report is guilty of a Class 2 misdemeanor~~.

Section 4. That § 29A-5-408 be AMENDED:

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

(1) At least annually thereafter;

(2) When the court orders additional accounts to be filed;

(3) When the conservator resigns or is removed; and

(4) When the conservatorship is terminated.

A conservator may elect to file a periodic accounting on a calendar-year basis. ~~However, in no event may such an~~ An accounting may not cover a period of more than one year. A calendar-year report ~~shall~~ must be filed with the court no later than April fifteenth of the succeeding year.

An accounting ~~shall~~ must be made in writing on a form furnished by the Unified Judicial System or formatted to the ~~United~~ Unified Judicial System form and must 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 minor or 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~~ that 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~~ must 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.

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

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~~A person who knowingly provides false or misleading information in writing the accounting is guilty of a Class 2 misdemeanor~~.

AMENDMENT