

SENATE BILL No. 176

February 12, 2013, Introduced by Senator HILDENBRAND and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending sections 609, 614, and 618 (MCL 330.1609, 330.1614, and
330.1618).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 609. (1) A petition for the appointment of a guardian for
2 an individual who is developmentally disabled may be filed by an
3 interested person or entity or by the individual. The petition
4 shall set forth the following:

5 (a) The relationship and interest of the petitioner.

6 (b) The name, date of birth, and place of residence of the
7 respondent.

8 (c) The facts and reasons for the need for guardianship.

9 (d) The names and addresses of the individual's current

1 guardian, and the respondent's presumptive heirs.

2 (e) The name and address of the person with whom, or the
3 facility in which, the respondent is residing.

4 (f) A description and approximation of the value of the
5 respondent's estate including an estimate of the individual's
6 anticipated yearly income and the source of the income.

7 (g) The name, address, and age of the proposed guardian and if
8 the proposed guardian is a current provider of services to the
9 developmentally disabled.

10 (h) A factual description of the nature and extent of the
11 respondent's developmental disability.

12 (2) AN INTERESTED PERSON OR ENTITY OR THE INDIVIDUAL IN HIS OR
13 HER OWN BEHALF MAY FILE A PETITION FOR THE APPOINTMENT OF A
14 GUARDIAN EFFECTIVE BEGINNING ON THE INDIVIDUAL'S EIGHTEENTH
15 BIRTHDAY FOR AN INDIVIDUAL WHO IS DEVELOPMENTALLY DISABLED AND IS
16 NOT LESS THAN 17 YEARS AND 6 MONTHS OF AGE.

17 Sec. 614. (1) Upon the filing of a petition, the court shall
18 fix a date and a place for a hearing to be held within 30 days
19 after the filing date of the petition. IF THE RESPONDENT IS NOT
20 LESS THAN 17 YEARS AND 6 MONTHS OF AGE, THE COURT MAY FIX A DATE
21 AND A PLACE FOR THE HEARING BEFORE THE INDIVIDUAL'S EIGHTEENTH
22 BIRTHDAY.

23 (2) Hearings may be held either within or without the county
24 in which the court has its principal office, and in quarters as the
25 court directs, including a facility or other convenient place.

26 (3) Notice of the time and place of the hearing shall be given
27 to the petitioner, to the respondent, to the respondent's

1 presumptive heirs, to the preparer of the report or another
2 appropriate person who performed an evaluation, to the director of
3 any facility in which the respondent may be residing, to the
4 respondent's guardian ad litem if one has been appointed, and to
5 the respondent's legal counsel.

6 Sec. 618. (1) The court, at a hearing convened under this
7 chapter for the appointment of a guardian, shall do all of the
8 following:

9 (a) Inquire into the nature and extent of the general
10 intellectual functioning of the respondent asserted to need a
11 guardian.

12 (b) Determine the extent of the impairment in the respondent's
13 adaptive behavior.

14 (c) Determine the respondent's capacity to care for himself or
15 herself by making and communicating responsible decisions
16 concerning his or her person.

17 (d) Determine the capacity of the respondent to manage his or
18 her estate and financial affairs.

19 (e) Determine the appropriateness of the proposed living
20 arrangements of the respondent and determine whether or not it is
21 the least restrictive setting suited to the respondent's condition.

22 (f) If the respondent is residing in a facility, the court
23 shall specifically determine the appropriateness of the living
24 arrangement and determine whether or not it is the least
25 restrictive suited to the respondent's condition.

26 (2) The court shall make findings of fact on the record
27 regarding the matters specified in subsection (1).

1 (3) If it is determined that the respondent possesses the
2 capacity to care for himself or herself and the respondent's
3 estate, the court shall dismiss the petition.

4 (4) If it is found by clear and convincing evidence that the
5 respondent is developmentally disabled and lacks the capacity to do
6 some, but not all, of the tasks necessary to care for himself or
7 herself or the respondent's estate, the court may appoint a partial
8 guardian to provide guardianship services to the respondent, but
9 the court shall not appoint a plenary guardian.

10 (5) If it is found by clear and convincing evidence that the
11 respondent is developmentally disabled and is totally without
12 capacity to care for himself or herself or the respondent's estate,
13 the court shall specify that finding of fact in any order and may
14 appoint a plenary guardian of the person or of the estate or both
15 for the respondent.

16 **(6) IF THE COURT MAKES A FINDING UNDER SUBSECTION (4) OR (5)**
17 **AND THE RESPONDENT IS NOT LESS THAN 17 YEARS AND 6 MONTHS OF AGE,**
18 **THE COURT MAY MAKE AN APPOINTMENT OF A GUARDIAN AS DESCRIBED IN**
19 **SUBSECTION (4) OR (5) THAT IS EFFECTIVE BEGINNING ON THE**
20 **RESPONDENT'S EIGHTEENTH BIRTHDAY.**