

SENATE BILL NO. 559

INTRODUCED BY J. TREBAS

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ADULT GUARDIANSHIP LAWS; PROVIDING AN ADDITIONAL FILING FEE FOR A PERSON PETITIONING FOR GUARDIANSHIP OF AN ADULT; REQUIRING BACKGROUND CHECKS OF PERSONS NOMINATED AS GUARDIAN; REQUIRING THAT FULL GUARDIANS SUBMIT INITIAL CARE PLANS TO THE COURT; REVISING A GUARDIAN'S POWERS RELATED TO A WARD'S COMMUNICATION AND INTERACTION WITH OTHERS; AMENDING SECTIONS 25-1-201, 72-5-315, AND 72-5-321, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

- (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;
- (b) from each defendant or respondent, on appearance, \$60;
- (c) on the entry of judgment, from the prevailing party, \$50;
- (d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;
- (ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;
- (iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means in all criminal and civil proceedings, 25 cents per page;
- (e) for each certificate, with seal, \$2;

- 1 (f) for oath and jurat, with seal, \$1;
- 2 (g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7
3 years, and an additional \$1 for each name for any additional year searched;
- 4 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
5 the fee for entry of judgment provided for in subsection (1)(c);
- 6 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 7 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 8 (k) for filing and entering papers received by transfer from other courts, \$10;
- 9 (l) for issuing a marriage license:
- 10 (i) when one or both parties to the marriage are present at the solemnization, \$53;
- 11 (ii) when neither party is present at the solemnization, \$83;
- 12 (m) (i) on the filing of an application for informal, formal, or supervised probate or for the
13 appointment of a personal representative or the filing of a petition for the appointment of a guardian of a minor
14 or a conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate; or
15 (ii) on the filing of a petition for the appointment of a guardian of an adult, from the petitioner, \$70,
16 plus an additional fee of \$15 for each person nominated as guardian;
- 17 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of
18 the estate of a nonresident decedent, \$55;
- 19 (o) for filing a declaration of marriage without solemnization, \$53;
- 20 (p) for filing a motion for substitution of a judge, \$100;
- 21 (q) for filing a petition for adoption, \$75;
- 22 (r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per
23 page.
- 24 (2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district
25 court must be deposited in the state general fund as specified by the supreme court administrator.
- 26 (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the
27 children's trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for
28 indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner

1 and family member assault intervention and treatment fund established in 40-15-110.

2 (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust
3 fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault
4 intervention and treatment fund established in 40-15-110.

5 (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an
6 amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court
7 may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan
8 under subsection (1)(a).

9 (5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9
10 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in
11 3-2-714.

12 (6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) must be deposited in the
13 county district court fund. If a district court fund does not exist, the fees must be deposited in the county general
14 fund to be used for district court operations.

15 (7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage
16 without solemnization, \$13 must be deposited in the domestic violence intervention account established by 44-
17 7-202 and \$10 must be deposited in the county district court fund, except that \$30 must be deposited in the
18 county district court fund when neither party to a marriage is present at the solemnization. If a district court fund
19 does not exist, the fees must be deposited in the county general fund to be used for district court operations.

20 (8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not
21 otherwise specifically allocated must be deposited in the state general fund."

22

23 **Section 2.** Section 72-5-315, MCA, is amended to read:

24 **"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview --**
25 **procedural rights.** (1) The incapacitated person or any person interested in the incapacitated person's welfare,
26 including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

27 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.

28 The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the

1 interest of justice, appoint an appropriate official or order the office of state public defender, provided for in 2-
2 15-1029, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the
3 person in the proceeding.

4 (3) (a) The court shall request name-based criminal background checks and checks of the child
5 protective services, adult protective services, and sexual offender registries in this state for any person
6 nominated to serve as guardian.

7 (b) The court shall review the results of background checks in determining the suitability of a
8 person nominated to serve as guardian.

9 (c) The office of court administrator, in conjunction with the department of justice and the
10 department of public health and human services, shall establish procedures for conducting background checks
11 required under this subsection (3).

12 (d) The person who files a petition for appointment of a guardian is responsible for paying any fees
13 for the background checks conducted pursuant to this subsection (3).

14 ~~(3)~~(4) The person alleged to be incapacitated must be examined by a physician appointed by the
15 court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court.
16 Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in
17 treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of
18 the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed
19 and the person who is nominated to serve as guardian and visit the present place of abode of the person
20 alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the
21 requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without
22 undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating
23 the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the
24 condition of the allegedly incapacitated person and make recommendations to the court regarding the most
25 appropriate form of state intervention in the person's affairs.

26 ~~(4)~~(5) The person alleged to be incapacitated is entitled to be present at the hearing in person and to
27 see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to
28 present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to

1 trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be
2 incapacitated or the person's counsel requests it."

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4 **Section 3.** Section 72-5-321, MCA, is amended to read:

5 **"72-5-321. Powers and duties of guardian of incapacitated person.** (1) The powers and duties of
6 a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to
7 report the condition of the incapacitated person and of the estate that has been subject to the guardian's
8 possession and control, as required by the court or by court rule.

9 (2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting
10 the ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third
11 persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the
12 foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

13 (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction
14 relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward
15 and may establish the ward's place of residence within or outside of this state.

16 (b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort,
17 and maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without
18 regard to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's
19 clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property
20 of the ward is in need of protection.

21 (c) (i) A full guardian shall make reasonable efforts to identify and facilitate supportive relationships
22 of and interactions by the ward with family members and significant other persons. The guardian may place
23 reasonable time, place, or manner restrictions on communication, visitation, or interaction between the ward
24 and another person, except as provided in subsection (2)(c)(ii).

25 (ii) A full guardian may not deny all communication, visitation, or interaction by a ward with a
26 person with whom the ward has expressed a desire to communicate, visit, or interact or with a person who
27 seeks to communicate, visit, or interact with the ward unless the court approves the denial on a showing of
28 good cause by the guardian.

1 ~~(e)~~(d) A full guardian may give any consents or approvals that may be necessary to enable the ward
2 to receive medical or other professional care, counsel, treatment, or service. This subsection (2)~~(e)~~ (d) does not
3 authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not
4 resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the
5 Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full
6 guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining
7 treatment or to a do not resuscitate order. The court may not grant that authority if it conflicts with the ward's
8 wishes to the extent that those wishes can be determined. To determine the ward's wishes, the court shall
9 determine by a preponderance of evidence if the ward's substituted judgment, as applied to the ward's current
10 circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate
11 order.

12 ~~(d)~~(e) If a conservator for the estate of the ward has not been appointed, a full guardian may:

13 (i) institute proceedings to compel any person under a duty to support the ward or to pay sums for
14 the welfare of the ward to perform that person's duty;

15 (ii) receive money and tangible property deliverable to the ward and apply the money and property
16 for support, care, and education of the ward. However, the full guardian may not use funds from the ward's
17 estate for room and board that the full guardian or the full guardian's spouse, parent, or child has furnished the
18 ward unless a charge for the service is approved by order of the court made upon notice to at least one of the
19 next of kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any
20 excess for the ward's needs.

21 ~~(e)~~(f) (i) A full guardian shall file an initial care plan with the court within 60 days of appointment. The
22 initial care plan must include but is not limited to the following information:

23 (A) the current residence of the ward and the guardian's plan for the ward's living arrangements;

24 (B) the guardian's plan for payment of the ward's living expenses and other expenses;

25 (C) the ward's health status and health care needs and the guardian's plan for meeting the ward's
26 needs for medical, dental, and other health care needs;

27 (D) if applicable, the guardian's plan for other professional services needed by the ward;

28 (E) if applicable, the guardian's plan for meeting the educational, training, and vocational needs of

1 the ward;

2 (F) if applicable, the guardian's plan for facilitating the participation of the ward in social activities;

3 (G) the guardian's plan for facilitating contacts between the ward and the ward's family members

4 and other significant persons; and

5 (H) the guardian's plan for contact with and activities on behalf of the ward.

6 (ii) Unless waived by the court, a full guardian is required to report the condition of the ward and of
7 the estate that has been subject to the full guardian's possession or control annually for the preceding year. A
8 copy of the initial care plan and the report must be served upon the ward's parent, child, or sibling if that person
9 has made an effective request under 72-5-318.

10 ~~(f)~~(g) If a conservator has been appointed, all of the ward's estate received by the full guardian in
11 excess of those funds expended to meet current expenses for support, care, and education of the ward must be
12 paid to the conservator for management as provided in this chapter, and the full guardian must account to the
13 conservator for funds expended.

14 (3) Upon failure, as determined by the clerk of court, of the guardian to file an initial care plan or an
15 annual report, the court shall order the guardian to file the initial care plan or the report and give good cause for
16 the guardian's failure to file a timely initial care plan or report.

17 (4) Any full guardian of one for whom a conservator also has been appointed shall control the
18 custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall
19 control those aspects of the custody and care of the ward over which the limited guardian is given authority by
20 the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive
21 reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon
22 between the guardian and the conservator, provided the amounts agreed upon are reasonable under the
23 circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may
24 request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's
25 care and maintenance.

26 (5) Except as provided in subsection (6), a full guardian or limited guardian may not involuntarily
27 commit for mental health treatment or for treatment of a developmental disability or for observation or
28 evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-

1 5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed.
 2 This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters
 3 20 and 21.

4 (6) (a) If the court has found that a ward has a primary diagnosis of a major neurocognitive
 5 disorder, as defined in the fifth edition of the diagnostic and statistical manual of mental disorders adopted by
 6 the American psychiatric association, and because of this disorder the ward is unwilling or unable to give
 7 informed consent to treatment, a full guardian or limited guardian may seek admission of the ward for
 8 stabilization and treatment to a hospital, skilled nursing facility, or another appropriate treatment facility other
 9 than the Montana state hospital.

10 (b) If the ward is admitted to the Montana mental health nursing care center, the court shall review
 11 every 90 days whether the Montana mental health nursing care center is the appropriate placement for the
 12 ward or whether a less restrictive placement exists.

13 (7) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited
 14 guardian, upon an order of the court and if there is no personal representative authorized to do so, may make
 15 necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains,
 16 including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture,
 17 and other personal effects that may be in the possession of the person in charge of the ward's care, comfort,
 18 and maintenance at the time of the ward's death."

19

20 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2023.

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