

1 AN ACT relating to guardians and conservators.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 387.530 is amended to read as follows:

4 (1) A petition for a determination of partial disability or disability and the appointment
5 of a limited guardian, guardian, limited conservator, or conservator may be filed by
6 any interested person or by an individual needing guardianship or conservatorship.

7 The petition shall set forth the following:

- 8 (a) The name and address of the respondent;
- 9 (b) The date of birth of the respondent, if known;
- 10 (c) The nature and degree of the alleged disability of the respondent;
- 11 (d) The facts and reasons supporting the need for guardianship or
- 12 conservatorship;
- 13 (e) A description and approximation of the value of the respondent's financial
- 14 resources, including government benefits, insurance entitlements, and
- 15 anticipated yearly income, if known;

16 (f) The names and addresses of the respondent's next of kin;~~;~~

17 **(g) The names and addresses of any parents, stepparents, or adoptive parents,** if
18 known;

19 **(h)**~~(g)~~ The name and address of the individual or facility, if any, having
20 custody of the respondent;

21 **(i)**~~(h)~~ The name, address and interest of the petitioner;

22 **(j)**~~(i)~~ The name and address of the petitioner's attorney, if any; ~~and~~

23 **(k)**~~(j)~~ **Whether any civil or criminal action is pending against or in relation**
24 **to the respondent, and whether any custodial order is in effect regarding the**
25 **respondent, if known; and**

26 **(l)** The name and address of any person or entity appointed by the respondent as
27 respondent's attorney in fact under a durable power of attorney or as

1 respondent's surrogate to make health care decisions under an advance
2 directive.

3 (2) The petition shall be accompanied by a verified application of the person or entity
4 desiring appointment as limited guardian, guardian, limited conservator, or
5 conservator. The application shall state the name, address, and qualifications of the
6 applicant and his relationship to the respondent. If it is proposed that a standby
7 limited guardian, guardian, limited conservator, or conservator be designated, the
8 petition shall also be accompanied by the application of the person or entity desiring
9 to be so designated. Additional petitions may be filed prior to the date of the hearing
10 by other persons desiring appointment.

11 ➔Section 2. KRS 387.580 is amended to read as follows:

12 (1) At a hearing convened under KRS 387.500 to 387.770 for a determination of partial
13 disability or disability, the court, or the jury if one is impaneled, shall:

14 (a) Inquire into the nature and extent of the general intellectual functioning of the
15 respondent;

16 (b) Inquire into the respondent's capacity to make informed decisions concerning
17 his personal affairs and financial resources;

18 (c) Determine whether the respondent is disabled, partially disabled, or has no
19 disability in relation to the management of his financial resources; and

20 (d) Determine whether the respondent is disabled, partially disabled, or has no
21 disability in relation to the management of his personal affairs.

22 (2) If the respondent is found not to be disabled or partially disabled, the petition shall
23 be dismissed.

24 (3) If the respondent is found to be disabled or partially disabled, the court shall, at the
25 same hearing, without a jury, determine:

26 (a) The type of guardian, conservator, or guardian and conservator to be
27 appointed;

- 1 (b) The specific legal disabilities to which the respondent is subject, if the
2 respondent has been determined to be partially disabled;
- 3 (c) Whether the respondent retains the right to vote;
- 4 (d) The corresponding powers and duties of the limited guardian or limited
5 conservator, if the respondent has been determined to be partially disabled;
- 6 (e) The individual or entity to be appointed by the court as limited guardian,
7 guardian, limited conservator, or conservator;
- 8 (f) The individual or entity, if any, to be appointed as standby guardian or
9 conservator; and
- 10 (g) The duration of the term of guardianship or conservatorship.

11 **(4) If the respondent is found to be disabled or partially disabled, the court shall, at**
12 **the same hearing:**

13 **(a) Make a finding on the record and inform the guardian or conservator of**
14 **any pending civil or criminal action involving or in relation to the**
15 **respondent, and whether any custodial order is in effect regarding the**
16 **respondent; and**

17 **(b) Inform the respondent of the right to petition the court to modify or**
18 **terminate the guardianship or conservatorship pursuant to Section 5 of this**
19 **Act. If the respondent is not present at the hearing, the court shall convey**
20 **this information to the respondent in writing.**

21 **(5) Unless the order of guardianship or conservatorship establishes otherwise:**

22 **(a) Court-appointed counsel shall represent the respondent through the end of**
23 **the period in which to perfect an appeal or upon the resolution of the appeal**
24 **or action; and**

25 **(b) Counsel retained by the respondent shall be subject to the terms of the**
26 **representation agreement.**

27 ➔Section 3. KRS 387.600 is amended to read as follows:

1 (1) The court may appoint as limited guardian, guardian, limited conservator, or
2 conservator any suitable person or any entity, public or private, capable of
3 conducting an active guardianship or conservatorship program. The court shall not
4 ordinarily or customarily appoint the Cabinet for Health and Family Services or any
5 other person or entity, public or private, that is directly providing services to the
6 respondent unless no other suitable person or entity is available and willing to be
7 appointed. Appointment of the Cabinet for Health and Family Services shall be
8 consistent with the provisions of KRS 210.290.

9 (2) Prior to the appointment, the court shall make a reasonable effort to question the
10 respondent concerning his preference regarding the person or entity to be appointed
11 limited guardian, guardian, limited conservator, or conservator, and any preference
12 indicated shall be given due consideration. If the respondent has designated another
13 as his attorney in fact or agent by executing a power of attorney in writing, that
14 designation may~~shall~~ be treated as an indication of the respondent's preference as
15 to the person or entity to be appointed as his limited guardian, guardian, limited
16 conservator, or conservator, and that preference shall be given due consideration.
17 The court shall appoint the person or entity best qualified and willing to serve.

18 ➔Section 4. KRS 387.620 is amended to read as follows:

19 (1) A partially disabled or disabled person, his limited guardian, guardian, limited
20 conservator, or conservator, or any other interested person may petition the court
21 for:

- 22 (a) Termination or modification of an order of partial disability or disability;
- 23 (b) Removal and/or replacement of a limited guardian, guardian, limited
24 conservator or conservator; or
- 25 (c) Renewal of the appointment of a limited guardian, guardian, limited
26 conservator, or conservator.

27 (2) Petitions pursuant to this section shall set forth:

- 1 (a) The name and address of the ward;
- 2 (b) The name and address of the limited guardian, guardian, limited conservator,
3 or conservator;
- 4 (c) The name, address, and interest of the petitioner;
- 5 (d) The names and addresses of the ward's next of kin; ~~and~~
- 6 **(e) The names and addresses of any parents, stepparents, or adoptive parents,** if
7 known;
- 8 ~~(f)(e)~~ The name and address of the individual or facility, if any, having
9 custody of the ward;
- 10 ~~(g)(f)~~ The relief requested; and
- 11 ~~(h)(g)~~ The facts and reasons supporting the request.
- 12 (3) A request under subsection (1) of this section, if made by the ward, may be
13 communicated to the court by any means, including, but not limited to, oral
14 communication or informal letter. **Any attorney licensed in the commonwealth**
15 **who receives an informal request under subsection (1) of this section shall**
16 **transmit the request to the Circuit Court clerk for the county in which the request**
17 **was received.** If such a request is communicated by means other than a petition, the
18 court shall appoint a suitable person who may, but need not be, an employee of the
19 state, county, or court to prepare a written petition to be filed with the court within
20 seven (7) days following the appointment.
- 21 (4) Within thirty (30) days after the filing of a petition, the court shall conduct a hearing
22 at which the ward shall be entitled to counsel. The time for a hearing may be
23 extended by the court, on motion of either party, for cause. Notice of the time and
24 place of the hearing shall be given by the clerk of the court not less than fourteen
25 (14) days prior to the hearing to both parties and all persons named in the petition.
26 The petitioner shall, upon his motion, be entitled to have the motion for termination
27 or modification determined by a jury.

1 (5) At the request of any party or on its own initiative, the court may order an
2 interdisciplinary evaluation of the ward. The time period in which the court must
3 review a petition may be extended for an appropriate period of time if an evaluation
4 is ordered by the court. The interdisciplinary evaluation report may be filed as a
5 single or joint report of the interdisciplinary evaluation team, or it may otherwise be
6 constituted by the separate reports filed by each individual of the team. If the court
7 and all parties to the proceeding and their attorneys agree to the admissibility of the
8 report or reports, the report or reports shall be admitted into evidence and shall be
9 considered by the court.

10 (6) *The hearing shall be a jury trial, unless:*

11 *(a) The respondent, counsel for the respondent, and the attorney for the*
12 *Commonwealth agree to a bench trial; and*

13 *(b) The interdisciplinary evaluation report prepared for the proceeding reflects*
14 *a unanimous consensus of the persons preparing it that the respondent is*
15 *disabled or partially disabled, the court has reviewed the report, and the*
16 *court finds no cause to require a jury trial.*

17 *(7)* Upon conclusion of a modification hearing~~[without a jury]~~, the court shall enter a
18 written order setting forth the factual basis for its finding and may do any of the
19 following:

- 20 (a) Dismiss the petition;
- 21 (b) Remove the guardian or conservator and dissolve the guardianship or
22 conservatorship order;
- 23 (c) Remove the limited guardian, guardian, limited conservator, or conservator
24 and appoint a successor;
- 25 (d) Modify the original guardianship or conservatorship order; or
- 26 (e) Make any other order which the court deems appropriate and in the best
27 interest of the ward, *including but not limited to establishing a visitation*

1 arrangement with any person.

2 ~~(8)~~~~(7)~~ If the original order is dissolved and no further order is issued, the ward shall
3 be relieved of all legal disabilities. The court shall enter an order and judgment
4 restoring to the person all of the rights and privileges of a citizen. The clerk shall
5 note the judgment or modification in the book in which notices of actions and
6 encumbrances are indexed.

7 ~~(9)~~~~(8)~~ The clerk of the court shall transmit a certified copy of the restoration
8 judgment or modification to the originating court, if the judgment or modification is
9 ordered by a court other than the court in which the original judgment was entered.

10 ➔Section 5. KRS 387.640 is amended to read as follows:

11 It shall be the general duty of the limited guardian or guardian to carry out diligently and
12 in good faith the specific duties and powers assigned by the court and to:

13 (1) Assure that the personal, civil, and human rights of the ward are protected;~~and~~

14 (2) Encourage the ward to:

15 (a) Participate to the maximum extent of his or her abilities in all decisions which
16 affect him or her;

17 (b) Act in his or her own behalf on all matters in which he or she is able to do so;
18 and

19 (c) Develop or regain, to the maximum extent possible, his or her capacity to
20 meet the essential requirements for his physical health or safety, and, if
21 impaired, his capacity to manage his or her financial resources; and

22 (3) If the guardian or limited guardian is the Cabinet for Health and Family
23 Services:

24 (a) Facilitate and encourage the ward's connection to his or her family
25 members, where appropriate;

26 (b) Provide information to the ward's family about how they can be considered
27 for appointment as the guardian or limited guardian, if information is

1 requested; and
2 (c) Provide the family of the ward with guidance, including but not limited to a
3 case plan, for changes necessary for the cabinet to consider the family
4 member for visitation with, or as a placement for, the ward.

5 ➔Section 6. KRS 387.660 is amended to read as follows:

6 A guardian of a disabled person shall have the following powers and duties, except as
7 modified by order of the court:

8 (1) To establish the ward's place of abode within the state, except that, if at any time a
9 guardian places a ward in a licensed residential facility for developmentally disabled
10 persons, the guardian shall, within thirty (30) days of such placement, file with the
11 court notice of the placement, stating with specificity the reasons for such
12 placement, and an interdisciplinary evaluation report detailing the social,
13 psychological, medical or other considerations on which such placement is
14 predicated, a description of the treatment or habilitation programs which will
15 benefit the ward as a result of such placement, and a determination that such
16 placement will provide appropriate treatment in the least restrictive available
17 treatment and residential program. For purposes of this subsection, the
18 interdisciplinary evaluation report may be one performed within two (2) months
19 prior to the placement for purposes of determining whether such placement is
20 necessary and appropriate, or may be an evaluation and assessment provided by the
21 residential facility immediately after placement. Notice to the court shall not be
22 required where the ward is transferred from one licensed residential facility to
23 another;

24 (2) To make provision for the ward's care, comfort, and maintenance and arrange for
25 such educational, social, vocational, and rehabilitation services as are appropriate
26 and as will assist the ward in the development of maximum self-reliance and
27 independence;

- 1 (3) To give any necessary consent or approval to enable the ward to receive medical or
2 other professional care, counsel, treatment or service, except that a guardian may
3 not consent on behalf of a ward to an abortion, sterilization, psychosurgery, removal
4 of a bodily organ, or amputation of a limb unless the procedure is first approved by
5 order of the court or is necessary, in an emergency situation, to preserve the life or
6 prevent serious impairment of the physical health of the ward;
- 7 (4) To act with respect to the ward in a manner which limits the deprivation of civil
8 rights and restricts his personal freedom only to the extent necessary to provide
9 needed care and services to him;~~and~~
- 10 (5) To expend sums from the financial resources of the ward reasonable and necessary
11 to carry out the powers and duties assigned to him by the court; and
- 12 (6) If the guardian or limited guardian is the Cabinet for Health and Family
13 Services, to:
- 14 (a) Facilitate and encourage the ward's connection to his or her family
15 members, where appropriate;
- 16 (b) Provide information to the ward's family about how they can be considered
17 for appointment as the guardian or limited guardian, if information is
18 requested; and
- 19 (c) Provide the family of the ward with guidance, including but not limited to a
20 case plan, for changes necessary for the cabinet to consider the family
21 member for visitation with, or as a placement for, the ward.

22 If a separate limited conservator or conservator has been appointed for the ward, the
23 expenditure of funds by the limited guardian shall be consistent with the duties assigned
24 to and procedures and policies established by such limited conservator or conservator.
25 Conflicts arising between a limited guardian and a limited conservator or conservator
26 regarding the expenditure of funds which are unable to be otherwise resolved shall be
27 submitted to the court for resolution.

1 ➔Section 7. KRS 387.740 is amended to read as follows:

- 2 (1) The court may exercise the powers of a limited guardian or limited conservator or
3 may appoint an individual or agency to exercise such powers before or~~[if,]~~ during
4 the pendency of a proceeding for a determination of partial disability or disability or
5 an appeal therefrom, if it appears that there is danger of serious impairment to the
6 health or safety of the respondent or damage or dissipation to his property if
7 immediate action is not taken.
- 8 (2) Prior to a hearing on the need for an emergency appointment of a limited guardian
9 or limited conservator, a petition shall be filed by any person or entity which sets
10 forth the following:
- 11 (a) The name, age, and address of the respondent;
- 12 (b) The danger alleged to be imminent;
- 13 (c) The type of appointment and the protection and assistance requested;
- 14 (d) The facts and reasons supporting the request;
- 15 (e) The name, address, and qualifications of the proposed limited guardian or
16 limited conservator, if any;
- 17 (f) The name, address, and interest of the petitioner;
- 18 (g) The names and addresses of the respondent's next of kin, if known;
- 19 (h) The name and address of the individual or facility, if any, having custody of
20 the respondent; and
- 21 (i) The date of filing of the petition for determination of disability or partial
22 disability.
- 23 (3) (a) Within one (1) week of the filing of a petition pursuant to this section, the
24 court shall conduct a hearing at which the respondent shall be entitled to
25 counsel.
- 26 (b) Notice of the time and place of the hearing shall be given not less than forty-
27 eight (48) hours prior to the hearing to all persons named in the petition, the

1 petitioner, and~~[-to]~~ the county attorney.

2 (c) A petitioner shall not be denied the right to be heard at the hearing required
3 under this section unless the petitioner waives that right either in writing or
4 on the record.

5 (4) The petitioner shall have the right to present evidence in support of the petition at
6 the hearing, in addition to any evidence presented by the Commonwealth, and
7 shall have the right to cross-examine witnesses.

8 ~~(5)~~~~[(4)]~~ The burden shall be on the Commonwealth to prove by clear and convincing
9 evidence the need for the emergency appointment of a limited guardian or
10 conservator.

11 ~~(6)~~~~[(5)]~~ If the court exercises the powers of a limited guardian or limited conservator
12 or appoints another to do so in an emergency situation as set forth in subsection (1)
13 of this section, the court shall state on the record findings of fact as to the danger
14 determined to be imminent, the sources relied on in arriving at such determination,
15 the type of assistance to be provided, and the powers and duties of the emergency
16 guardian or conservator. The authority of the guardian or conservator shall expire
17 upon resolution of the appeal or action.

18 ➔Section 8. Sections 1 to 6 of this Act shall be known and may be cited as the
19 Conservatorship Advocacy to Remove Exploitation (C.A.R.E.) Act.

20 ➔Section 9. Section 7 of this Act shall be known and may be cited as the Jeff
21 Tyler Act.