

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 or her relationship to the respondent. If it is proposed that a  
7       standby limited guardian, guardian, limited conservator, or conservator be  
8       designated, the petition shall also be accompanied by the application of the person  
9       or entity desiring to be so designated. Additional petitions may be filed prior to the  
10      date of the hearing 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 or her 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 or her 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 or her 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 4 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 or her preference regarding the person or entity to be  
11 appointed limited guardian, guardian, limited conservator, or conservator, and any  
12 preference indicated shall be given due consideration. If the respondent has  
13 designated another as his or her attorney in fact or agent by executing a power of  
14 attorney in writing, that designation ~~may~~ shall be treated as an indication of the  
15 respondent's preference as to the person or entity to be appointed as his or her  
16 limited guardian, guardian, limited conservator, or conservator, and that preference  
17 shall be given due consideration. The court shall appoint the person or entity best  
18 qualified and willing to serve.

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

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

23 (a) Termination or modification of an order of partial disability or disability;

24 (b) Removal and/or replacement of a limited guardian, guardian, limited  
25 conservator or conservator; or

26 (c) Renewal of the appointment of a limited guardian, guardian, limited  
27 conservator, or conservator.

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

1 for termination or modification determined by a jury.

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

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

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

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

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

21 (a) Dismiss the petition;

22 (b) Remove the guardian or conservator and dissolve the guardianship or  
23 conservatorship order;

24 (c) Remove the limited guardian, guardian, limited conservator, or conservator  
25 and appoint a successor;

26 (d) Modify the original guardianship or conservatorship order; or

27 (e) Make any other order which the court deems appropriate and in the best

1 interest of the ward, including but not limited to establishing a visitation  
 2 arrangement with any person.

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

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

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

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

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

16 (2) Encourage the ward to:

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

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

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

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

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

1       **(b) Provide information to the ward's family about how they can be considered**  
2       **for appointment as the guardian or limited guardian, if information is**  
3       **requested; and**

4       **(c) Provide the family of the ward with guidance, including but not limited to a**  
5       **case plan, for changes necessary for the cabinet to consider the family**  
6       **member for visitation with, or as a placement for, the ward.**

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

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

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

26      (2) To make provision for the ward's care, comfort, and maintenance and arrange for  
27      such educational, social, vocational, and rehabilitation services as are appropriate

1 and as will assist the ward in the development of maximum self-reliance and  
2 independence;

- 3 (3) To give any necessary consent or approval to enable the ward to receive medical or  
4 other professional care, counsel, treatment or service, except that a guardian may  
5 not consent on behalf of a ward to an abortion, sterilization, psychosurgery,  
6 removal of a bodily organ, or amputation of a limb unless the procedure is first  
7 approved by order of the court or is necessary, in an emergency situation, to  
8 preserve the life or prevent serious impairment of the physical health of the ward;
- 9 (4) To act with respect to the ward in a manner which limits the deprivation of civil  
10 rights and restricts his or her personal freedom only to the extent necessary to  
11 provide needed care and services to him or her; ~~and~~
- 12 (5) To expend sums from the financial resources of the ward reasonable and necessary  
13 to carry out the powers and duties assigned to him or her by the court; and

14 **(6) If the guardian or limited guardian is the Cabinet for Health and Family**  
15 **Services, to:**

16 **(a) Facilitate and encourage the ward's connection to his or her family**  
17 **members where appropriate;**

18 **(b) Provide information to the ward's family about how they can be considered**  
19 **for appointment as the guardian or limited guardian, if information is**  
20 **requested; and**

21 **(c) Provide the family of the ward with guidance, including but not limited to a**  
22 **case plan, for changes necessary for the cabinet to consider the family**  
23 **member for visitation with, or as a placement for, the ward.**

24 If a separate limited conservator or conservator has been appointed for the ward, the  
25 expenditure of funds by the limited guardian shall be consistent with the duties assigned  
26 to and procedures and policies established by such limited conservator or conservator.  
27 Conflicts arising between a limited guardian and a limited conservator or conservator

1 regarding the expenditure of funds which are unable to be otherwise resolved shall be  
2 submitted to the court for resolution.

3       ➔Section 7. This Act may be cited as the Conservatorship Advocacy to Remove  
4 Exploitation (C.A.R.E.) Act.