

2023 SENATE JUDICIARY

SB 2224

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2224
1/24/2023

A BILL for an Act relating to guardianship proceedings for minors becoming incapacitated adults and emergency guardianship; relating to guardianship of minors, sale of property by a guardian, termination of a guardianship, waiver of notice, and guardian's ad litem.

9:32 AM **Madam Chair Larson** called the hearing to order. **Madam Chair Larson, Senators, Paulson, Sickler, Braunberger, Estenson, Luick, Myrdal** are present.

Discussion Topics:

- Proposed amendments.
- Juvenile cases
- Attorney representation
- Unintended consequences
- Powers of attorneys
- Minor incapacitated adult
- Closed hearings.
- Approve compensation or reimbursement.
- Removal or resignation of guardian
- Emergency guardian
- Court approval

9:33 AM **Cynthia Feland Judge** introduced SB 2224. Oral testimony and written. #15617 #16472

9:54 AM **Travis Finck, Executive Director for the ND Commission on Legal Counsel for Indigents, testified.** #15811

Additional written testimony:
Roxanne Romanick #15721

9:57 PM **Madam Chair Larson** closed meeting on SB 2224.

Patricia Wilkens, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
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SB 2224
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A BILL for an Act, relating to guardianship proceedings for minors becoming incapacitated adults and emergency guardianship; relating to guardianship of minors, sale of property by a guardian, termination of a guardianship, waiver of notice, and guardian's ad litem.

10:24 AM Madam Chair Larson opened the meeting.

Present: Madam Chair Larson, Senators, Paulson, Sickler, Braunberger, Estenson, Luick, and Myrdal

Discussion Topics:

- Committee action

10:24 AM Senator Luick moved a **DO PASS** on SB 2224

10:24 AM Senator Myrdal seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0

Senator Sickler will carry the bill.

This bill does not affect workforce development.

10:25 AM Madam Chair closed the meeting.

Patricia Wilkens, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2224: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2224 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE JUDICIARY

SB 2224

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2224
3/15/2023

Relating to guardianship of minors, sale of property by a guardian, termination of a guardianship, waiver of notice, and guardians ad litem.
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9:31 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter.

Discussion Topics:

- Guardianship establishment.
- Guardian ad litem.
- Latest revision date.

Cynthia Feland, District Court Judge, South Central Judicial District & Chair of the Guardianship Workgroup. Testimony #24525

Travis Finck, Executive Director, NDCLCI: Testimony #25016

Kim Jacobson, Agassiz Valley Human Service Zone Director. Testimony #25054

The hearing closed at 10:04 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2224
3/15/2023

Relating to guardianship of minors, sale of property by a guardian, termination of a guardianship, waiver of notice, and guardians ad litem.
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10:55 AM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Satrom

Discussion Topics:

- Committee action.

Rep. VanWinkle moved a Do Pass;
Seconded by Rep. Shannon Roers Jones

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 11 Yes 1 No 1 Absent Motion carried.
Carrier: Vice Chairman Karls

The meeting closed at 10:58 AM

DeLores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2224: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2224 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2224

23.0571.01000

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2224

Introduced by

Senators Dwyer, Lee, Sickler

Representatives Klemin, Nelson, Schneider

1 A BILL for an Act to create and enact a new section to chapter 30.1-28 and a new subsection to
2 section 30.1-28-10.1 of the North Dakota Century Code, relating to guardianship proceedings
3 for minors becoming incapacitated adults and emergency guardianship; to amend and reenact
4 section 27-20.1-02, subsection 1 of section 27-20.1-09, subsection 2 of section 27-20.1-17,
5 subsection 60 of section 30.1-01-06, subsection 1 of section 30.1-26-01, subsection 2 of section
6 30.1-27-05, sections 30.1-28-03, 30.1-28-04, and 30.1-28-07, subsection 2 of section
7 30.1-28-09, and subsection 7 of section 30.1-28-12 of the North Dakota Century Code, relating
8 to guardianship of minors, sale of property by a guardian, termination of a guardianship, waiver
9 of notice, and guardians ad litem.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1. AMENDMENT.** Section 27-20.1-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **27-20.1-02. Jurisdiction.**

14 The juvenile court has exclusive original jurisdiction of proceedings to grant, modify, or
15 terminate guardianship for a child, except the testamentary appointment of a guardian for a
16 minor governed by chapter 30.1-27 and the appointment of a guardian for a minor becoming an
17 incapacitated adult under section 7 of this Act.

18 **SECTION 2. AMENDMENT.** Subsection 1 of section 27-20.1-09 of the North Dakota
19 Century Code is amended and reenacted as follows:

- 20 1. If, at any time in the proceeding, the court determines the child is of sufficient age and
21 competency to assist counsel and the interests of the child are or may be inadequately
22 represented, the court may appoint an attorney to represent the child. The court shall
23 make appropriate findings to support the appointment of counsel.

1 **SECTION 3. AMENDMENT.** Subsection 2 of section 27-20.1-17 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 2. A guardian's authority and responsibility terminates upon the death, resignation, or
4 removal of the guardian, or upon the child's death, adoption, marriage, or attainment
5 of majority, but termination does not affect the guardian's liability for prior acts or the
6 guardian's obligation to account for funds and assets of the child. ~~For cases arising~~
7 ~~under section 27-20.3-16, the age of majority is age twenty-one.~~

8 **SECTION 4. AMENDMENT.** Subsection 60 of section 30.1-01-06 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 60. "Visitor" means an individual, in guardianship proceedings, who is trained in nursing
11 ~~or, social work, medical care, mental health care, or rehabilitation~~ and is an ~~officer,~~
12 ~~employee,~~ or special appointee of the court with no personal interest in the
13 proceedings.

14 **SECTION 5. AMENDMENT.** Subsection 1 of section 30.1-26-01 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 1. "Alternative resource plan" means a plan that provides an alternative to guardianship,
17 using available support services and arrangements which are acceptable to the
18 alleged incapacitated person. The plan may include the use of providers of service
19 such as visiting nurses, homemakers, home health aides, personal care attendants,
20 and adult day care and multipurpose senior citizen centers; home and
21 community-based care, human service zones, and developmental disability services;
22 powers of attorney, durable powers of attorney, health care directives, and supported
23 decisionmaking; representative and protective payees; and licensed congregate care
24 facilities.

25 **SECTION 6. AMENDMENT.** Subsection 2 of section 30.1-27-05 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 2. The juvenile court under chapter 27-20.1 has exclusive original jurisdiction over
28 proceedings to consider objections to the testamentary appointment under
29 section 30.1-27-07 and over the court appointment of a guardian of a minor except the
30 appointment of a guardian for a minor becoming an incapacitated adult under
31 section 7 of this Act. Any person interested in the welfare of a minor may petition the

1 juvenile court for the appointment of a guardian under section 27-20.1-05 in the
2 following situations:

- 3 a. If there is a living parent of the minor, known or unknown;
- 4 b. If the testamentary guardian fails to accept appointment as guardian within sixty
5 days after the death of the minor's last living parent;
- 6 c. If both parents are dead or the surviving parent's rights have been terminated by
7 prior court order, but there has been no appointment of a guardian for the minor
8 by will; or
- 9 d. If a guardianship of a minor is sought for any other reason.

10 **SECTION 7.** A new section to chapter 30.1-28 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Guardianship proceedings for minor becoming an incapacitated adult.**

- 13 1. As used in this section:
 - 14 a. "Legal decisionmaking" means the legal right and responsibility to make all legal
15 decisions for a child including those regarding education, health care, and
16 personal care decisions.
 - 17 b. "Child" means an individual who is under the age of eighteen and is not married.
 - 18 c. "Child becoming an incapacitated adult" means a child who has reached age
19 seventeen years and six months and is proposed to become an incapacitated
20 adult at age eighteen.
- 21 2. A petition to establish a guardianship for a child becoming an incapacitated adult may
22 be filed by any person interested in the welfare of the child and having knowledge of
23 the facts alleged or information and belief the facts are true.
- 24 3. The procedure in this chapter for appointment of a guardian of an incapacitated adult
25 must be the procedure used for appointment of a guardian for a child becoming an
26 incapacitated adult except the court shall appoint as the guardian any person that had
27 legal decisionmaking responsibility for the child when the child turned seventeen years
28 and six months of age. If the court finds the appointment of the person with legal
29 decisionmaking authority would be contrary to the best interests of the incapacitated
30 adult, the priorities listed in section 30.1-28-11 may be followed.

1 4. A guardianship order under this section may take effect immediately on the day the
2 child turns eighteen years of age.

3 **SECTION 8. AMENDMENT.** Section 30.1-28-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated**
6 **person.**

7 1. Any person interested in the welfare of an allegedly incapacitated person may petition
8 for the appointment of a guardian. No filing fee under this or any other section may be
9 required when a petition for guardianship of an incapacitated person is filed by a
10 member of the individual treatment plan team for the alleged incapacitated person or
11 by any state employee in the performance of official duties.

12 2. The petition for appointment of a guardian must state:

13 a. The name, address, and corporate or agency status of the petitioner, and its
14 connection with or relationship to the proposed ward;

15 b. The name, age, and address of the proposed ward;

16 c. The name and address of any person or institution having care or custody over
17 the proposed ward;

18 d. The names and addresses of the spouse, parents, and adult children or, if none,
19 any adult siblings and any adult with whom the proposed ward resides in a
20 private residence, or, if none, the nearest adult relative;

21 e. A brief description of and the approximate value of the real and personal property
22 and income of the proposed ward, so far as they are known to the petitioner;

23 f. The extent of guardianship authority sought, including full authority, limited
24 authority, or no authority in each area of residential, educational, medical, legal,
25 vocational, and financial decisionmaking unless the petitioner is undecided on the
26 extent of authority in any area, in which case the petition must state the specific
27 areas in which the authority is sought;

28 g. The occupation and qualifications of the proposed guardian;

29 h. The name and address of the attorney, if known, who most recently represented
30 the proposed ward;

- 1 i. A statement alleging specific facts establishing the necessity for the appointment
2 of a guardian;
- 3 j. The name and address of any current conservator appointed for the proposed
4 ward;
- 5 k. The name and address of any person designated as an attorney in fact or agent
6 in a power of attorney or as an agent in a health care directive;
- 7 l. The name and address of any representative payee for the proposed ward;
- 8 m. That less intrusive alternatives to guardianship have been considered;
- 9 n. In the form of an attached recent statement, the physical, mental, and emotional
10 limitations of the proposed ward from an expert examiner, if available; and
- 11 o. Whether the petition seeks to restrict any of the following rights:
 - 12 (1) To vote;
 - 13 (2) To seek to change marital status; or
 - 14 (3) To obtain or retain a motor vehicle operator's license.
- 15 3. Upon the filing of a petition, the court promptly shall set a date for hearing on the
16 issues of incapacity, appoint an attorney to act as guardian ad litem, appoint an expert
17 examiner to examine the proposed ward, and appoint a visitor to interview the
18 proposed guardian and the proposed ward. The proposed guardian shall attend the
19 hearing on the petition unless excused by the court for good cause.
- 20 4. The duties of the guardian ad litem include:
 - 21 a. Personally interviewing the proposed ward;
 - 22 b. Explaining the guardianship proceeding to the proposed ward in the language,
23 mode of communication, and terms that the proposed ward is most likely to
24 understand, including the nature and possible consequences of the proceeding,
25 the right to which the proposed ward is entitled, and the legal options that are
26 available, including the right to retain an attorney to represent the proposed ward;
 - 27 c. Advocating for the best interests of the proposed ward. The appointed attorney
28 serving as legal guardian ad litem may not represent the proposed ward or ward
29 in a legal capacity;

- 1 d. Submitting a written report to the court containing the guardian ad litem's
2 response to the petition and an assessment of the proposed ward's ability to
3 attend the hearing either in person or by remote means; and
4 e. Reviewing the visitor's written report submitted in accordance with subdivision h
5 and i of subsection 6 and discussing the report with the proposed ward.
- 6 5. The expert examiner shall examine the proposed ward and submit a written report to
7 the court. The written report must contain:
- 8 a. A description of the nature and degree of any current incapacity or disability,
9 including the medical or psychological history, if reasonably available;
- 10 b. A medical prognosis or psychological evaluation specifying the estimated severity
11 and duration of any current incapacity or disability;
- 12 c. A statement as to how or in what manner any underlying condition of physical or
13 mental health affects the proposed ward's ability to provide for personal needs;
14 and
- 15 d. A statement as to whether any current medication or physical or mental condition
16 affects the demeanor of the proposed ward or the ability of the proposed ward to
17 attend and participate fully in any court proceeding or in any other procedure
18 required by the court or by court rule.
- 19 6. The visitor shall have the following duties:
- 20 a. To meet, interview, and consult with the proposed ward regarding the
21 guardianship proceeding, including explaining the purpose for the interview in a
22 manner the proposed ward can reasonably be expected to understand.
- 23 b. To ascertain the proposed ward's views concerning the proposed guardian, the
24 powers and duties of the proposed guardian, the proposed guardianship, and the
25 scope and duration thereof.
- 26 c. To interview the person seeking appointment as guardian.
- 27 d. To interview other persons interested in the welfare of the proposed ward.
- 28 e. To visit the proposed ward's present place of residence.
- 29 f. To discuss an alternative resource plan with the proposed ward, if appropriate.
- 30 g. To obtain other relevant information as directed by the court.
- 31 h. To submit a written report to the court.

- 1 i. The visitor's written report must contain:
- 2 (1) A description of the nature and degree of any current impairment of the
- 3 proposed ward's understanding or capacity to make or communicate
- 4 decisions;
- 5 (2) A statement of the qualifications and appropriateness of the proposed
- 6 guardian and a recommendation regarding whether the proposed guardian
- 7 should be appointed;
- 8 (3) If the visitor recommends the proposed guardian should not be appointed, a
- 9 recommendation regarding an alternative individual or entity that should be
- 10 appointed as guardian;
- 11 (4) Recommendations, if any, on the powers to be granted to the proposed
- 12 guardian, including an evaluation of the proposed ward's capacity to
- 13 perform the functions enumerated under subsections 3 and 4 of section
- 14 30.1-28-04; and
- 15 (5) An assessment of the capacity of the proposed ward to perform the
- 16 activities of daily living; and
- 17 (6) An assessment of the proposed ward's ability to attend the hearing either in
- 18 person or by remote means.
- 19 7. In determining whether appointment of a guardian is appropriate, the court shall
- 20 consider the reports ordered by the court under this section from a guardian ad litem,
- 21 visitor, and an expert examiner. The court, guardian ad litem, petitioner, or proposed
- 22 ward may subpoena the individual who prepared and submitted the report to appear,
- 23 testify, and be cross-examined.
- 24 8. The proposed ward must be present at the hearing in person or by remote means,
- 25 unless good cause is shown for the absence. Good cause does not consist only of the
- 26 physical difficulty of the proposed ward to attend the hearing. The proposed ward has
- 27 the right to present evidence, and to cross-examine witnesses, including the
- 28 court-appointed expert examiner and the visitor. ~~The issue may be determined at a~~
- 29 ~~closed hearing if the proposed ward or the proposed ward's counsel so requests.~~
- 30 9. Every hearing under this chapter must be closed to the public unless the proposed
- 31 ward, the ward, the attorney, or guardian ad litem of the proposed ward or ward

1 requests it remain open. An individual or entity may request permission to observe or
2 participate in the hearing and the request must be granted if the court determines the
3 applicant's participation would be in the best interest of the proposed ward or ward.

4 10. The court shall take all necessary steps to make the courts and court proceedings
5 accessible and understandable to impaired persons. Accordingly, the court may
6 convene temporarily, or for the entire proceeding, at any other location if it is in the
7 best interest of the proposed ward.

8 ~~40:11.~~ If the court ~~approves~~appoints a visitor, lawyer, or expert examiner, ~~guardian, or~~
9 ~~emergency guardian appointed~~ in a guardianship proceeding, that person may receive
10 reasonable compensation from the ward's estate if the compensation will not
11 unreasonably jeopardize the ward's well-being.

12 12. If the court approves a guardian or emergency guardian in a guardianship proceeding,
13 that person may receive reasonable compensation and reimbursement from the
14 ward's estate if the compensation and reimbursement will not unreasonably jeopardize
15 the ward's well-being and estate. The court shall consider the following factors when
16 determining what constitutes reasonable compensation and reimbursement:

- 17 a. The size and nature of the ward's estate;
- 18 b. The benefit to the ward, or the ward's estate, of the guardian's services;
- 19 c. The necessity for the services performed;
- 20 d. The ward's anticipated future needs and income;
- 21 e. The time spent by the guardian in the performance of the services;
- 22 f. Whether the services were routine or required more than ordinary skill or
23 judgment;
- 24 g. Any unusual skill, expertise, or experience brought to the performance of the
25 services;
- 26 h. The guardian's estimate of the value of the services performed;
- 27 i. The fee customarily charged in the community for similar services;
- 28 j. The nature and length of the relationship with the ward;
- 29 k. The experience, reputation, diligence, and ability of the person performing the
30 service;
- 31 l. Any conflict of interest the guardian may have; and

1 m. Whether the appointment as guardian precluded the guardian from other
2 employment.

3 13. The court may determine the weight to be given to each factor under subsection 12,
4 and to any other factor the court considers relevant. A separate finding is not required
5 for each factor, but the court's findings must contain sufficient specificity to show the
6 factual basis for the court's determination.

7 14. The court must approve compensation and reimbursement before payment to the
8 guardian is made.

9 **SECTION 9. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **30.1-28-04. (5-304) Findings - Order of appointment.**

- 12 1. The court shall exercise the authority conferred in this chapter consistent with the
13 maximum self-reliance and independence of the incapacitated person and make
14 appointive and other orders only to the extent necessitated by the incapacitated
15 person's actual mental and adaptive limitations or other conditions warranting the
16 procedure.
- 17 2. At a hearing held under this chapter, the court shall:
- 18 a. Hear evidence that the proposed ward is an incapacitated person. Age,
19 eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding
20 of incapacity;
- 21 b. Hear evidence and determine whether there are any existing general durable
22 powers of attorney and durable powers of attorney for health care. If there are
23 validly executed durable powers of attorney, the court shall consider the
24 appointed attorneys in fact and agents appointed thereunder when assessing
25 alternative resource plans and the need for a guardian; and
- 26 c. Appoint a guardian and confer specific powers of guardianship only after finding
27 in the record based on clear and convincing evidence that:
- 28 (1) The proposed ward is an incapacitated person;
- 29 (2) There is no available alternative resource plan that is suitable to safeguard
30 the proposed ward's health, safety, or habilitation which could be used
31 instead of a guardianship;

- 1 (3) The guardianship is necessary as the best means of providing care,
2 supervision, or habilitation of the ward; and
- 3 (4) The powers and duties conferred upon the guardian are appropriate as the
4 least restrictive form of intervention consistent with the ability of the ward for
5 self-care.
- 6 3. Except upon specific findings of the court, a ward may not be deprived of any of the
7 following legal rights: to vote, to seek to change marital status, or to obtain or retain a
8 motor vehicle operator's license.
- 9 4. The court may find that the ward retains other specific rights.
- 10 5. The order appointing a guardian confers upon the guardian only those powers and
11 duties specified in the order. In addition to any other powers conferred upon the
12 guardian, the court's order must state whether the guardian has no authority, general
13 authority, or limited authority to make decisions on behalf of the ward in each of the
14 areas of residential, educational, medical, legal, vocational, and financial
15 decisionmaking. A grant of limited authority must specify the limitations upon the
16 authority of the guardian or the authority retained by the ward. The court's order must
17 require the guardian to provide within ninety days from the date of the order a
18 beginning inventory of all assets owned by the ward or in which the ward has an
19 interest. The guardian shall provide a copy of the beginning inventory to the ward and
20 any interested persons designated by the court in its order. Unless terminated earlier
21 by the court, an order appointing or reappointing a guardian under this section is
22 effective for up to five years. At least ninety days before the expiration of the initial
23 order of appointment or any following order of reappointment, the court shall request
24 and consider information submitted by the guardian, ward, ward's attorney, if any, and
25 any interested persons regarding whether the need for a guardian continues to exist. If
26 it is recommended that the guardianship continue, the court may appoint a guardian
27 ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold
28 a hearing on whether the guardianship should continue. Following the hearing and
29 consideration of submitted information, the court may reappoint the guardian for up to
30 another five years, allow the existing order to expire, or appoint a new guardian in

1 accordance with this section. The supreme court, by rule or order, shall provide for the
2 regular review of guardianship in existence on August 1, 2015.

3 6. Unless a court of competent jurisdiction determines otherwise, a durable power of
4 attorney for health care executed pursuant to chapter 23-06.5 takes precedence over
5 any authority to make medical decisions granted to a guardian pursuant to chapter
6 30.1-28.

7 7. A grant of general authority to make medical decisions includes the authority to
8 consent to involuntary treatment with prescribed medications. Except upon specific
9 findings of the court, a grant of limited authority does not include authority to consent
10 to involuntary treatment with prescribed medications.

11 8. The court may require a guardian to furnish a bond in the amount and with sureties as
12 the court specifies.

13 9. After the hearing, the guardian ad litem must be discharged of the person's duties as
14 guardian ad litem.

15 **SECTION 10. AMENDMENT.** Section 30.1-28-07 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **30.1-28-07. (5-307) Removal or resignation of guardian - ~~Termination~~Change in or**
18 **termination of guardianship.**

19 1. On petition of the ward or any person interested in the ward's welfare, the court may
20 remove a guardian and appoint a successor if in the best interests of the ward. On
21 petition of the guardian, the court may accept the guardian's resignation and make any
22 other order which may be appropriate.

23 2. The ward or any person interested in the ward's welfare may petition for an order that
24 the ward is no longer incapacitated or no longer incapacitated to the same extent as
25 the ward was when the original guardianship order was made or last reviewed by the
26 court, or that the duties and authority of the guardian require modification, and for
27 removal or resignation of the guardian, termination of the guardianship, or change in
28 the duties and authority of the guardian. A request for this order may be made by
29 informal letter to the court or judge. Any person who knowingly interferes with
30 transmission of this kind of request to the court or judge may be adjudged guilty of
31 contempt of court.

- 1 3. Before removing a guardian, changing the guardian's duties and authority, accepting
2 the resignation of a guardian, or on finding that the ward is no longer incapacitated, or
3 no longer incapacitated to the same extent and ordering the guardianship terminated
4 or modified, the court, following the same procedures to safeguard the rights of the
5 ward as apply to a petition for appointment of a guardian, may send a visitor ~~to the~~
6 ~~residence of the present guardian and~~ to the place where the ward resides or is
7 detained, to observe conditions and report in writing to the court.
- 8 4. A hearing must be held no later than sixty days following the filing of the petition or
9 informal request, unless good cause is shown. Following the hearing, the court shall
10 make written findings of fact. Before terminating or modifying the guardianship, the
11 court shall find by a preponderance of the evidence that the ward is no longer
12 incapacitated, no longer incapacitated to the same extent as the ward was when the
13 original guardianship order was made or last reviewed by the court, or that it is in the
14 best interests of the ward that the duties and authority of the guardian be modified.
15 New letters of guardianship must be issued to the guardian in the same manner as
16 provided in section 30.1-28-05.
- 17 5. In deciding whether to terminate or modify a guardianship, the court may require a
18 report by and consider the recommendations of an expert examiner.
- 19 6. If the guardian dies, or if on the basis of a petition filed under this section or a report or
20 other information, there is probable cause to believe a guardian is not performing the
21 guardian's duties effectively and there is an imminent danger the ward's physical,
22 mental, or emotional health or safety will be seriously impaired, the court shall take
23 whatever action is necessary to protect the ward, including dismissal of the guardian
24 and appointment of an emergency guardian as provided in section 30.1-28-10.1.
- 25 7. On termination of the guardianship, a guardian shall file a final report and accounting
26 and provide a copy of the report and accounting to those given notice under section
27 30.1-28-09. The report and accounting must be filed with the clerk of district court. The
28 filing of the report and accounting does not constitute the court's approval of the report
29 and accounting. The court may approve a report and settle and allow an accounting
30 only upon notice to the ward and other interested persons who have made an
31 appearance or requested notice of the proceedings.

1 **SECTION 11. AMENDMENT.** Subsection 2 of section 30.1-28-09 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 2. The petitioning party, unless otherwise directed by the court, shall cause notice to be
4 served personally on the ward or proposed ward, and the ward's or proposed ward's
5 spouse and parents if they can be found within the state. Notice to the spouse and
6 parents, if they cannot be found within the state, and to all other persons except the
7 ward or proposed ward must be given as provided in section 30.1-03-01. ~~Waiver of~~
8 ~~notice by the ward or proposed ward is not effective unless the ward or proposed ward~~
9 ~~attends the hearing or the ward's or proposed ward's waiver of notice is confirmed in~~
10 ~~an interview with the visitor.~~

11 **SECTION 12.** A new subsection to section 30.1-28-10.1 of the North Dakota Century Code
12 is created and enacted as follows:

13 The petitioner may request the court extend the emergency order for up to an
14 additional ninety days upon good cause shown. The request must be filed with the
15 court at least fourteen days before the expiration of the emergency order and served
16 on the alleged incapacitated individual, the individual's spouse, if any, and any other
17 persons as the court directs. The court shall hold a hearing on the appropriateness of
18 the extension within ten days of the request. No additional extensions of the
19 emergency guardianship may be granted.

20 **SECTION 13. AMENDMENT.** Subsection 7 of section 30.1-28-12 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 7. If no conservator for the estate of the ward has been appointed and if the guardian
23 has been granted authority to make financial decisions on behalf of the ward, the
24 guardian ~~may~~shall:
25 a. Institute proceedings to compel any person under a duty to support the ward or to
26 pay sums for the welfare of the ward to perform that duty.
27 b. Receive money and tangible property deliverable to the ward and apply the
28 money and property for support, care, and education of the ward; but, the
29 guardian may not use funds from the ward's estate for room and board which the
30 guardian or the guardian's spouse, parent, or child have furnished the ward
31 unless a charge for the service is approved by order of the court made upon

- 1 notice to at least one of the next of kin of the ward, if notice is possible. The
2 guardian shall exercise care to conserve any excess for the ward's needs.
- 3 c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or
4 otherwise encumber or transfer ownership or beneficiary of:
- 5 (1) The real property of the ward; or
6 (2) The personal property of the ward valued over two thousand five hundred
7 dollars upon such terms as the court may order, for the purpose of paying
8 the ward's debts; providing for the care, maintenance, rehabilitation,
9 training, or education of the ward or the ward's dependents; or for any other
10 purpose which is in the best interests of the ward. The sale, mortgage, or
11 other encumbrance or transfer of ownership of personal property of the
12 ward valued at two thousand five hundred dollars or less does not require a
13 court order.
- 14 d. Move the court under section 30.1-28-03.2 for authority to lease the real or
15 personal property of the ward.
- 16 e. A guardian may not purchase, lease, or obtain ownership or become the
17 beneficiary of property of the ward unless the price and manner of the sale are
18 approved by the court.

SB 2224
68th Legislative Assembly
Senate Judiciary Committee
January 24, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in support of SB 2224.

The Commission is the state agency that provides counsel for the children referenced in 27-20.1-09. The job of the attorney in any representation is to attempt to achieve the goals of their clients. The Commission has adopted performance standards to guide the work of our attorneys and contract attorneys. Performance Standard 5.1 Attorney Client Relationship – Role of counsel provides “The primary role of a public defender or other counsel appointed by the Commission is to provide zealous and quality representation for their clients. Counsel should seek the lawful objectives of the client and should not substitute the attorney’s judgment for that of the client in those case decisions that are the responsibility of the client”. Under current law, an attorney can be appointed for any child and in fact courts have appointed counsel to represent children as young as two years old. This has created a situation where the attorney cannot ascertain their client’s intent as they are unable to communicate their desires. Thus, the Commission supports this bill, specifically Section 2 as it requires the Court determine the client is of sufficient competent age to assist counsel.

Madam Chair, members of the Senate Judiciary Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI



SB 2224
Senate Judiciary
Tuesday, January 24, 2023
Senator Diane Larson, Chair

Madam Chair Larson and Members of the Senate Judiciary Committee:

My name is Roxane Romanick and I am writing as the representative for Designer Genes of ND, Inc., as their Executive Director. Designer Genes’ membership represents 230 individuals with Down syndrome that either live in our state or are represented by family members in North Dakota. Designer Genes’ mission is to strengthen opportunities for individuals with Down syndrome and those who support them to earn, learn, and belong.

Our organization is primarily concerned with Sections 6 and 7 of the proposed legislation. If the bill passes, these sections would allow families of minor children with significant disabilities like Down syndrome to file a petition for guardianship prior to the youth’s 18th birthday so that there would be no gap in decision-making. Many families worry about the timing of the guardianship appointments per our current practices. We ask for your “do pass” consideration of SB 2224 to eliminate this worry for families.

Roxane Romanick
Executive Director
Designer Genes of ND, Inc.
701-391-7421
info@designergenesnd.com

Senate Bill 2224
Senate Judiciary Committee

Testimony Presented by Cynthia M. Feland
District Court Judge
Chair, Guardianship Workgroup

Chair Larson, members of the Senate Judiciary Committee, my name is Cynthia Feland, District Court Judge in the South Central Judicial District and Chair of the Guardianship Workgroup. The Guardianship Workgroup is a multi-disciplinary group of professionals with extensive and varied experience in the area of guardianships and conservatorships created in 2013 to evaluate and improve procedures in cases involving guardianships for incapacitated adults, minors and in conservatorship cases. For the last four legislative sessions, the Guardianship Workgroup has identified and recommended a number of statutory amendments to improve and strengthen procedures in cases involving guardianship for incapacitated adults and conservatorship cases.

The proposed amendments contained in Senate Bill 2224 are intended to clarify the procedures in guardianship cases, to provide factors for determining reasonable compensation for a guardian's services, to authorize an extension of emergency guardianships and to add a new section authorizing the appointment of a guardian for a minor about to become an adult.

Section 1:

Page 1, lines 16-17, amends section 27-20.1-02 to except the appointment of a guardian for a minor becoming an incapacitated adult from the juvenile court's jurisdiction.

Section 2

Page 1, lines 20-23, amends subsection 1 of section 27-20.1-09 to limit appointment of counsel for a child to those children who are of a sufficient age and competency

to assist counsel with their case. The proposal legislation addresses concerns raised by the Indigent Defense Commission concerning the appointment of attorneys for children based on the recommendation of the non-attorney guardian ad litem without any consideration of the child's age and ability to "assist" in their own case. The Workgroup was advised that children as young as 9 months have been appointed attorneys. Given that the role of the guardian ad litem is to represent the "best interest" of the child, appointment of an attorney to represent the client's interest is untenable for a child who is unable to communicate with counsel. The proposed amendment also requires findings by a court supporting the appropriateness of any appointment.

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Page 2, lines 10 through 12, amends subsection 60 of section 30.1-01-06 to expand the definition "visitor" to include other individuals in health related fields. The Workgroup discussed at length the increasing difficulty in locating qualified individuals to serve as visitors. Expanding the definition of "visitor" would remove obstacles in locating additional professionals to provide the required report to the court on the proposed ward's incapacity or disability, and ability to provide for their personal needs.

Section 5

Page 2, lines 20 and 22 through 23, amends subsection 1 of section 30.1-26-01 to revise the list of alternative resource plans to add power of attorney, health care directives and

supported decision making, and remove multipurpose senior citizen centers which no longer exist. The definition has not been revised since its adoption in 1989.

Section 6

Page 2, lines 29 through 31, amends subsection 2 of section 30.1-27-05 to except the appointment of a guardian for a minor becoming an incapacitated adult from the juvenile court's jurisdiction.

Section 7

Page 3, line 10 through 12 through Page 4, line 2, creates a new section to Ch. 30.1-28 to provide a procedure for establishing a guardianship for a child in need of a guardianship upon reaching the age of majority. Under the proposed provisions, a petition for adult guardianship may be filed when the child has reached 17 years and 6 months of age. Hearing on the petition may be held prior to the child reaching age 18. If an adult guardianship is deemed appropriate, the letters of guardianship would become effective on the date the child turns age 18. Varying methods are currently being used by district courts across the state. The proposed amendment eliminates jurisdictional issues and provides for a standardized procedure to address the gap that frequently occurs in cases where a minor will immediately need a guardian upon turning age 18.

Section 8

Page 6, lines 2 through 3, amends subsection 4 of section 30.1-28-03 to expand the contents of the guardian ad litem's report to include an assessment of the ward's ability to attend a hearing in person or by remote means.

Page 6, lines 15 and 17, amends subsection 5 of section 30.1-28-03 to expand the contents of the expert examiner's report to include an assessment of the ward's ability to attend a hearing in person or by remote means.

Page 7, lines 17 through 18, amends subsection 6 of section 30.1-28-03 to expand the contents of the visitor's report to include an assessment of the ward's ability to attend a hearing in person or by remote means.

Page 7, line 24, amends subsection 8 of section 30.1-28-03 to permit the proposed ward to appear at the hearing remote means.

Page 7, line 30 through Page 8, line 3, amends section 30.1-28-03 to add a new subsection closing all guardianship hearing to the public unless otherwise requested by the ward, ward's attorney or guardian ad litem given the sensitive medical, mental health and financial information that may be discussed. Individuals and entities may also request to be present and that request will be granted if determined by the Court to be in the ward's best interest.

Page 8, lines 8 through 9, amends subsection 11 of section 30.1-28-03 to remove guardians and emergency guardians from the subsection as compensation for all guardians will be covered under new subsections.

Page 8, line 12 through Page 9, line 2, amends section 30.1-28-03 to add subsection 12 providing a list factors for courts to consider in determining reasonable compensation for guardianship services.

Although guardians are allowed to receive reasonable compensation for their services, there is currently no statutory provision, rule or case law providing guidance in determining what constitutes reasonable or appropriate compensation. The lack of

guidance is especially problematic in cases where challenges have been made to the compensation sought by guardians. The list of factors provided was comprised by the Workgroup after reviewing other state statutes and case law. Use of factors is consistent with the requirements for judicial determinations in other areas of the law and provided the court with a basis for determining the reasonableness of requested fees.

Page 9, lines 3 through 6, amends section 30.1-28-03 to add subsection 13 to clarify that specific findings are not required for each factor and that not all factors will be present in each case. Determination as to the weight to be given each factor would remain within the court's discretion.

Page 9, lines 7 through 8, amends section 30.1-28-03 to add subsection 14 to clarify that the guardian must receive approval from the court prior to receiving any compensation for services.

Section 9

Page 11, lines 13 through 14, amends subsection 9 of section 30.1-28-04 to clarify that the guardian ad litem is discharged from their duties following the hearing.

Section 10

Page 11, lines 24 through 28, amends subsection 2 of section 30.1-28-07 to clarify that a guardianship may be modified or terminated prior to a review hearing when: (1) the ward is no longer incapacitated to the same extent, (2) modifications to the duties and authority of the guardian are needed, (3) change in person appointed is needed, or (4) a guardianship is no longer appropriate. Currently, there is no clear procedure for requesting the proposed modifications to an existing guardianship other than removal or resignation of a guardian. The Workgroup sought

to provide a clear procedure for addressing other situations that may arise following the original appointment which require action prior to a review hearing.

Page 12, lines 1 through 6, amends subsection 3 of section 30.1-28-07 to authorize the appointment of a visitor by the court prior to taking action in any of the requests made under subsection 2.

Page 12, lines 8 through 16, amends section 30.1-28-07 to add subsection 4 to require a hearing on the proposed modification or termination within 60 days of filing the petition unless good cause is shown. Written findings are required following the hearing. The burden of proof for finding that the ward is no longer incapacitated, no longer incapacitated to the same extent, or it would be in the ward's best interest to modify the duties and authority of the guardian is reduced to preponderance of the evidence. While the determination of incapacity appropriately requires a higher standard, the Workgroup determined that preponderance of evidence was more appropriate for making changes within the guardianship. New letters of guardianship are also required.

Page 12, lines 17 through 18, amends section 30.1-28-07 to add subsection 5 to permit the court to require a report from an expert examiner prior to determining whether termination or modification of the guardianship is appropriate.

Page 12, lines 19 through 24, amends section 30.1-28-07 to add subsection 6 to clarify that an emergency guardian may be appointed after establishment of a guardianship when necessary to provide immediate protection of the ward if the guardian dies or is not properly performing their duties. Currently, the statutory provisions governing emergency guardians in section 30.1-28-10.1 do not specifically authorize the appointment of an emergency guardian after establishment of a guardianship. Although rare, situations have arisen where district courts

have appointed emergency guardians to ensure that the ward's needs are met until a "successor" guardian is located.

Page 12, lines 25 through 31, amends section 30.1-28-07 to add subsection 7 to require that a guardian file a final report and accounting when the guardianship is terminated. The current statutory provisions only require the filing of an annual reporting.

Section 11

Page 13, line 7 through 10, amends subsection 2 of section 30.1-28- 09 to remove the waiver of notice by the ward consistent with amendments being proposed to sections 30.1-03-02 and 30.1-29-05 in Senate Bill 2222. After extensive discussion, the Workgroup determined that as a matter of practice a ward or proposed ward should always be given notice of any hearing. While some wards may have cognitive difficult which make it impossible for them to understand or participate, the proposed amendment prevents potential abuse of a waiver.

Section 12

Page 13, line 13 through 19, amends section 30.1-28- 09 to create a new subsection authorizing one extension of an emergency guardianship order for a period of up to an 90 days if good cause is shown. A hearing is required and no further extensions are permitted.

The current statute is silent on whether an emergency guardianship may be extended beyond the 90 day period resulting in inconsistencies among the district courts in responding to requests for extensions, the length of those extensions, and successive requests for extensions. The length of an emergency appointment was extended from 60 days to the current 90 day period during the 2015 legislative session. In recommending the extension to 90 days in 2015, the Workgroup noted that the 90 day period was consistent with the time period included in the earlier temporary guardianship statute and covered the intervening time between the filing of a

petition for guardianship and the guardianship hearing. Although most guardianship hearing occur within that 90 day time frame, the Workgroup noted that on occasion there are cases which may take additional time. The proposed amendment would authorize one extension for up to an additional 90 days only if good cause is shown. The maximum period of 6 months is consistent with the earlier temporary guardianship statute and ensures that the subject of the emergency guardianship is not subjected to lengthy restrictions of their decision making authority prior to a determination of their incapacity.

Section 13

Page 13, line 24, amends subsection 7 of section 30.1-28-12 to require guardians to seek court approval prior to the sale of real property and certain personal property.

Last session, Chapter 30.1-28 was amended to add subsection 7 which provided a procedure for the sale of the ward's property by the guardian if no conservator of the ward's estate had been appointed. After adoption of subsection 7, the Workgroup realized the word "may" and not "shall" was used making the additional duty of the guardian permissive. The proposed correction would clarify that the additional duties under subsection 7 are required.

Respectfully Submitted:



Cynthia M. Feland
District Judge
South Central Judicial District
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Senate Bill 2224
Senate Judiciary Committee

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March 15, 2023

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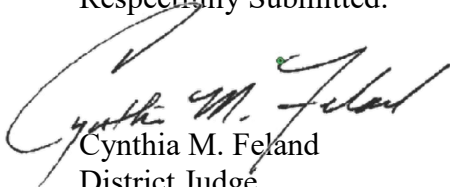
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Respectfully Submitted:



Cynthia M. Feland
District Judge
South Central Judicial District
Chair, Guardianship Workgroup

Guardianship Workgroup Members: Judge **Cynthia M. Feland**, Chair; Judge **Pamela Nesvig**, South Central Judicial District; Judge **Stacey Louser**, North Central Judicial District; Judge

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Engrossed SB 2224
68th Legislative Assembly
House Judiciary Committee
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Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in support of SB 2224.

The Commission is the state agency that provides counsel for the children referenced in 27-20.1-09. The job of the attorney in any representation is to attempt to achieve the goals of their clients. The Commission has adopted performance standards to guide the work of our attorneys and contract attorneys. Performance Standard 5.1 Attorney Client Relationship – Role of counsel provides “The primary role of a public defender or other counsel appointed by the Commission is to provide zealous and quality representation for their clients. Counsel should seek the lawful objectives of the client and should not substitute the attorney’s judgment for that of the client in those case decisions that are the responsibility of the client”. Under current law, an attorney can be appointed for any child and in fact courts have appointed counsel to represent children as young as two years old. This has created a situation where the attorney cannot ascertain their client’s intent as they are unable to communicate their desires. Thus, the Commission supports this bill, specifically Section 2 as it requires the Court determine the client is of sufficient competent age to assist counsel.

Mr. Chairman, members of the House Judiciary Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI

Testimony Prepared for the
House Judiciary Committee

March 15, 2023

By: Kim Jacobson, Agassiz Valley Human Service Zone Director

RE: SB 2224: Guardianship proceedings for minors becoming incapacitated adults

Chairman Klemin and Members of the House Judiciary Committee. My name is Kim Jacobson, and I am the Director of the Agassiz Valley Human Service Zone, which serves the service area of Traill and Steele Counties. In addition, I serve as the President of the North Dakota Human Service Zone Director Association. Please accept my written testimony in support of SB 2224.

Human Service Zones, the Division of Juvenile Services and Tribal child welfare agencies serve as legal custodians when care/custody/control of children is removed from their parents or legal caregivers. As such, there are occasions where youth in care, or those who have other child welfare involvement, have ongoing cognitive limitations, including significant mental health conditions and developmental delays. When those youth transition to adulthood, the need to have formal support in decision-making support, without interruption, is imperative to ensure the safety and well-being of a proposed ward.

This bill allows for guardianship proceedings to be initiated in the circumstance where a minor child is proposed to become an incapacitated adult. Any person interested in the welfare of the child, including the child welfare agency, may initiate guardianship proceedings prior to the proposed ward's eighteenth birthday. This allows for time for proceedings to occur, and a guardianship to be in place, without any gap in decision-making support. It is not uncommon for youth in any situation to desire to be "free" of parental or guardian decision-making on their behalf upon their eighteenth birthday. However, youth with cognitive impairments are exceptionally vulnerable to risks to their physical safety and well-being, including

homelessness, medical self-neglect, trafficking, and exploitation by others. Typically these youth/young adults are involved in a variety of complex service systems, such as social security, economic assistance programs, medical specialty services, to name a few. It is critical that legal decision-making authority is seamless to assist in navigating these systems as an adult.

The creation of this new chapter outlines processes and procedures to protect vulnerable youth at a critical time in their life and to increase likelihood of safe and successful transition to adulthood. Thank you for considering my testimony relating to this bill. I stand for questions from the committee.