

**2025 SENATE JUDICIARY**

**SB 2291**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

SB 2291  
1/29/2025

Relating to incapacitated persons, court-authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated person, and protection of property of persons under disability and minors and relating to visitors in a guardianship proceeding and appointment of successor guardians.

2:31 p.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

### Discussion Topics:

- Clarifying guardianship and conservator-ship procedures
- Incapacity for informed consent
- Gross negligence
- Limited guardian definition

2:32 p.m. Senator Mike Dwyer introduced the bill.

2:32 p.m. Sara Behrens, Staff Attorney of ND Supreme Court, testified in favor and submitted testimony #32549.

2:49 p.m. Jonathan Alm, Chief Legal Officer with the Department of Health and Human Services, testified in favor and submitted testimony #32513.

2:52 p.m. Scott Bernstein, Executive Director of Guardian and Protective Services, testified in favor and submitted testimony #32315.

2:59 p.m. Micah Olson, Attorney, ND Protection & Advocacy Project, testified in opposition and submitted testimony #32277.

3:02 p.m. Sara Behrens Staff Attorney of ND Supreme Court, testified in favor.

3:05 p.m. Chair Larson closed the hearing.

*Kendra McCann, Committee Clerk*



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Senate Judiciary Committee

Senate Bill 2291 - January 29, 2025

Testimony of Micah Olson, P&A Position-In Opposition

My name is Micah Olson. I am attorney at North Dakota Protection and Advocacy (P&A). As written P&A opposes this bill; however, P&A would support this bill with some proposed changes to the definitions section.

First, in Section 4 Amendment on page 8 at number 32 of the definitions section, the definition of “limited guardian” is removed. The bill does not offer an alternative definition of limited guardian. Protection & Advocacy recommends the definition of limited guardian remain as previously written. This is particularly important because the definition of “Guardian” at number 23 on page 7 uses the phrase “and includes limited guardians as defined in this section”.

Protection & Advocacy recommends using the term “Individual under guardianship” rather than “Ward”, as used in number 62 of the definitions section on page 11, and throughout the bill.

Protection & Advocacy is in favor the definition of “least restrictive form of intervention” at number 31 of the definitions section on page 8. This specifies and explains to guardians that an individual under guardianship must have as much freedom as possible. Having this specified in the law would benefit those under guardianship and would assist in explaining a guardian’s obligations.

Protection & Advocacy would support this bill, with the addition of the definition of “limited guardian” and using the term “individual under guardianship” instead of “ward.”

## Senate Judiciary Committee

SB 2291

### PROPOSED AMENDMENT

Scott Bernstein

January 29, 2025

Chairman Larson, members of the Senate Judiciary Committee, I am Scott Bernstein, Executive Director of Guardian and Protective Services and a member of the Task Force on Guardianship Monitoring and serve on the Guardianship Association of North Dakota board.

I stand here in Support of the changes enumerated. However, I offer for your consideration one amendment. The focus is on lines 27 and 28 on page 22 or in Section 14 30.1-28-12. (5-312).

The amendment would read:

**A guardian is not liable to a third person for acts of the person subject to guardianship solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the person subject to guardianship is not liable for injury to the person subject to guardianship resulting from the wrongful conduct of the third person or the wrongful conduct of the person subject to guardianship.**

This is an expansion on the proposed amendment of Section 14 30.1-28-12. (5-312) **General powers and duties of guardian**, as stated in SB 2291. Point 12 as listed in the existing bill is good. I believe the proposed amendment is better because it provides greater clarity. Frankly, this amendment is necessary to protect guardians from being sued. Presently, without this protection, a guardian can be held responsible for the acts of the person subject to guardianship in any relationship.

- If they shoplift at Wal Mart
- Damage an apartment
- Fight with someone and injure a person
- The list goes on...in other words, any person the individual subject to guardianship encounters becomes a potential litigant.

The other reality is guardians arrange and orchestrate a significant amount of medical care and services for the person subject to guardianship. Using licensed providers is no guarantee of perfect care.

The last wording 'unless the guardian is grossly negligent' is not necessary because the Century Code regarding guardianship provides ample opportunity to hold a guardian responsible for negligence.

I will be happy to answer any questions.



**Testimony**  
**Senate Bill No. 2291**  
**Senate Judiciary Committee**  
**Senator Larson, Chairman**  
January 29, 2025

Chairman Larson, and members of the Senate Judiciary Committee, I am Jonathan Alm, Chief Legal Officer with the Department of Health and Human Services (Department). I appear before you in support of Senate Bill No. 2291.

I appear before you to specifically talk about Sections 1 and 2 of this Bill.

**Section 1:**

The proposed changes in Section 1 of this Bill amend subsection 1 of 23-12-13 of the North Dakota Century Code regarding who can provide informed consent to health care for an incapacitated individual. The changes on page 1, lines 20 and 21 will allow a psychiatrist or psychologist to determine if an individual is incapacitated. This change would be consistent with the State's civil commitment, fitness to proceed, and lack of criminal responsibility statutes that allows for a physician, psychiatrist, or psychologist to determine if someone is incapacitated or lacks capacity. This change also updates the citation of incapacitated person to section 30-1-01-06, which is the same definition used in section 30.1-26-01.

**Section 2:**

The proposed changes in Section 2 of this Bill amends subsection 1 section 25-03.1-18.1 of the North Dakota Century Code to add language that allows a Tier 1b mental health professional to request authorization

from a court to treat an individual if the individual was voluntarily admitted to a public treatment facility under the civil commitment law. This will allow a public treatment facility to provide the necessary treatment to a voluntarily admitted individual when that individual or guardian does not have capacity to consent to the treatment.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

**Senate Bill 2291**  
**Senate Judiciary Committee**  
**Testimony Presented by Sara Behrens**  
**January 29, 2025**

Good afternoon Chair Larson, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I also serve as staff to the Guardianship Standards Workgroup. I am here today in support of Senate Bill 2291. This bill was drafted as a collaborative effort by the members of the Guardianship Standards Workgroup. The proposed amendments contained in Senate Bill 2291 are intended to clarify procedures in guardianships and conservatorships.

**Sections 1 and 2**

These sections were requested by the Department of Health and Human Services. Jonathan Alm will testify to the reasons for the changes in these two sections of the bill.

**Section 3:**

Section 3 adds a good cause exception to the expiration of the letters of guardianship in a juvenile matter where a review hearing cannot be held prior to the expiration of those letters. This provides flexibility to ensure that there isn't a

lapse in authority while waiting for a hearing to be held. The extension is limited to 90 days. New letters are required reflecting the extended expiration date.

#### **Section 4:**

Currently, there are definitions in both chapters 30.1-01 and 30.1-26. This bill brings the definitions from section 30.1-26 into chapter 30.1-01 so that the definitions are more easily located. The definitions of “alternative resource plan,” “incapacitated person,” “least restrictive form of intervention,” “protected person,” “protective proceeding,” “refusal,” and “ward” are simply moved from chapter 30.1-01 to 30.1-26.

Page 7, lines 16-30 and page 8, lines 1-8, clarifies the definition of “interested person.” Currently, the definition is geared towards probate and not guardianships and conservatorships. There has been confusion regarding who would be an interested person in a guardianship proceeding. The amendment separates the definition into paragraph a which applies for all purposes other than guardianships and conservatorships, and paragraph b which applies for purposes of guardianships and conservatorships. Those considered interested persons would be:

- the petitioner for appointment of the guardian, which may be someone other than the guardian,
- the spouse, parent, adult children, or siblings of the ward, protected person, or an adult relative if one of those individuals is not found,

- an adult individual who has lived with a ward or protected person for more than 6 months,
- an attorney for the ward or protected person,
- a representative payee for the ward or protected person, and
- any other person designated by the court.

Page 8, lines 29-31, deletes the definition of “limited guardian.” This term is not used anywhere else in the code other than the definition of “ward.” A guardian’s authority can be limited and those limitations would be derived from the letters themselves. We are aware of concerns raised by Mr. Olson from Protection and Advocacy, one of the Workgroup members. The Workgroup had voted to remove the definition; however, we won’t object to the definition being left in.

Page 9, line 18, eliminates the definition for “person with limited capacity.” This section currently refers to section 30.1-26-01; however, this definition has not existed in 30.1-26-01 since 1989. This cleans up this section by removing reference to a nonexistent definition.

### **Section 5:**

Section 5 amends section 30.1-28-03.1 to specify that a report prepared and submitted by a guardian ad litem, a visitor, or an expert examiner, as well as the annual, final and financial reports prepared and submitted by the guardian are

confidential and not open to public inspection. All of these documents routinely contain confidential medical and financial information. Currently, only the expert examiner and visitor reports are confidential.

**Section 6:**

Section 6 amends subsection 3 of section 30.1-28-03.2 to refer to a new section created by the bill, found on page 18, Section 12.

**Section 7:**

Section 7 adds the good cause extension to section 30.1-28-04 for those instances when a hearing cannot be held prior to the expiration of the initial order. Like the prior good cause section, new letters of guardianship are required to reflect that extended date.

Page 14, lines 20-21, adds the visitor and expert examiner to those who are discharged of their duties following the hearing. At that point, these individuals' duties are completed at the point the hearing is completed.

**Section 8:**

Section 8 is simply removing the notice piece because it is provided elsewhere.

**Section 9:**

This section amends 30.1-28-07 to remove the provisions regarding removal or resignation of a guardian and, instead, the section will govern change in or

termination of guardianship. These are the situations where a ward may no longer be incapacitated or no longer be incapacitated to the extent they were when the guardian was initially appointed. An informal request can be made and the clerk will send a copy to the parties and those identified in the new notice provision.

### **Section 10:**

This section creates a new section to chapter 30.1-28 to govern instances of removal, resignation or death of a guardian and appointment of a successor guardian. The new section was created to provide a clearer procedure in these instances as it created confusion being combined with the prior section.

Page 16, lines 22-27, provides the court, the ward, or any interested person can seek removal of the guardian if it's in the best interests of the ward.

Page 16, line 28, allows for the guardian to resign and the court to accept that resignation.

Page 16, lines 29-31, and page 17, lines 1-4, provides for the submission of a final report and accounting when a guardian dies, is removed, or resigns.

Page 17, lines 5-7, requires a hearing no later than 60 days following the filing of the petition or request. The hearing can be held later if good cause exists for the delay. The court must then make written findings and conclusions of law.

Page 17, lines 8-16, provides the procedure for appointment of a successor guardian. The court can appoint a successor guardian or can make other orders if

appointing a successor guardian is not appropriate. A hearing is held if requested.

Otherwise, the court may sign the order appointing the successor guardian.

Procedure for appointment of a successor guardian is currently found in section 30.1-28-15 which is repealed by this bill. Moving the procedure to this new section provides more clarity in what situations a successor is appropriate and how to appoint that successor. The new section makes clear that the court does not need to wait for someone to petition for removal of a guardian and appointment of a successor if the situation requires it.

**Section 11:**

Page 17, lines 19-21, amends subsection 1 of section 30.1-28-09 to remove references to proceedings following the appointment of a guardian. This is now covered in the next section.

**Section 12:**

The new section governs notices in guardianship proceedings following appointment of the guardian. Current law contains various notice provisions scattered throughout chapter 30.1-28 and those provisions are not always consistent. Section 30.1-28-09 provides the notice provision applicable prior to appointment. This new section will provide uniformity and clarity to notices following that appointment.



Following the appointment, those who require notice may be different from those requiring notice of the proceedings to appoint a guardian. Subsequent to the appointment, notice must be given to the parties, the conservator, if any, the ward, and any interested persons designated in the court's order. Throughout the bill, the various notice requirements have been replaced by a reference to this new section.

**Section 13:**

Section 13 clarifies that the hearing on a petition for an emergency guardian must be held within 10 days of the filing of the petition.

**Section 14:**

Section 14 addresses liability of the guardian. Guardians on the Workgroup expressed concerns about being held liable for acts of the ward in a broad range of situations. The fear is that the risk of liability may deter individual from being willing to serve as a guardian. The additions specify that a guardian is liable for breaches of the guardian's fiduciary duty and acts of the ward in cases where the guardian was grossly negligent. The addition also makes clear that a guardian is not required to expend the guardian's own funds simply because they are the guardian.

We are aware that there may be an amendment proposed to expand the immunity from liability for guardians. Prior to 1989, there was a provision that stated "A guardian of an incapacitated person has the same powers, rights, and

duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons solely by reason of the parental relationship.” This was removed in 1989 and, unfortunately, the legislative history does not provide insight as to the reason for the removal.

The issue of liability was brought to the Workgroup and discussed at multiple meetings. The original proposal was to state that “a guardian is not liable to a third person for the acts of the ward solely by reason of the guardianship relationship.” Concerns were raised that the suggested language would provide almost blanket immunity for a guardian. The next iteration presented stated “A guardian is not liable for the acts of the ward unless the guardian is personally negligent.” Concerns were raised that the protection was not substantial enough without a definition of negligence included. The Workgroup then decided on the language that is found in the bill stating that a guardian is only liable if the guardian was grossly negligent which means “in the want of slight care and diligence.” The term has been further defined in case law to mean a lack of care that is essentially willful in nature or no care at all. This provision provides protection to the guardian from liability for acts of ward unless the guardian acted without any care at all and the ward then committed a wrongful act.

Blanket immunity would be inappropriate. There may be instances where the guardian is aware of the likelihood of the ward committing an act against a third

party and immunity from liability would be unjust. Whatever wording the Committee chooses, we would like it to be clear that, while few and far between, there are those instances where a guardian could and should be liable just like any other professional.

#### **Section 15:**

Section 15 simply fixes an error in section 30.1-28-12.1 where the term “interested party” was used where it should be “interested person.”

#### **Section 16:**

Section 16 amends section 30.1-28-12.2 to refer to the new notice provision found in section 12 of this bill.

#### **Section 17:**

We now move from guardianships to conservatorships. Similar to the guardianship changes, this section amends 30.1-29-05 to remove the provision on page 25, lines 1-5 regarding notice following the appointment of a conservator and moves it to its own section.

#### **Section 18:**

Section 18 creates a new section to chapter 30.1-29 regarding notice following appointment of a conservator. Like in the guardianship realm, those requiring notice may be different following the appointment and currently the

provisions are not uniform in the chapter. Amendments are made throughout the bill to refer to the new notice section.

**Section 19:**

Section 19 amends subsection 6 of section 30.1-29-07 to allow those who prepared and submitted reports, such as the expert examiner, to be subpoenaed to testify and be cross-examined. The subpoena can be issued by the court, the guardian ad litem, the petitioner or the person to be protected.

Page 25, lines 18-19 makes clear that both the guardian ad litem and expert examiner are discharged following the hearing as their role has been completed at that point.

**Section 20:**

Section 20 creates a new section to chapter 30.1-29 governing confidentiality of the reports submitted in a conservatorship proceeding. The reports prepared and submitted by the guardian ad litem and expert examiner, as well as the annual and final reports and financial accounting submitted by the conservator are all confidential as they routinely contain confidential medical and financial information. This confidentiality exists for guardianship proceedings and should exist for conservatorship proceedings as well.

**Sections 21 through 24:**

These four sections amend sections 30.1-29-08, 30.1-29-13, 30.1-29-18, and 30.1-29-19, to remove the notice provisions as they are now governed by section 18 of this bill.

**Section 25:**

Section 25 amends subsection 1 of section 30.1-29-01 to make it clear that the court must hold a hearing within 10 days of filing a petition for the appointment of an emergency conservator.

**Sections 26-27:**

These two sections amend sections 30.1-29-22 and 30.1-29-25 to remove the notice provisions as they are now governed by section 18 of this bill.

**Section 28:**

Repeals section 30.1-26-01, 30.1-28-08, and 30.1-28-15. Section 30.1-26-01 includes the definitions which were moved into section 30.1-01-06 in section 4 of the bill. Section 30.1-28-08 contains a definition of visitor which is already defined in section 30.1-01-06. Section 30.1-28-15 pertains to appointment of successor guardians. Successor guardians are now covered in the new section to chapter 30.1-28 which is created by section 10 of the bill.

# 2025 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2291  
2/3/2025

Relating to incapacitated persons, court-authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated person, and protection of property of persons under disability and minors and relating to visitors in a guardianship proceeding and appointment of successor guardians.
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10:38 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

**Discussion Topics:**

- Minnesota Law vs proposed amendment language
- Liability of guardians
- Guardianship definitions
- Perspectives from guardianship professionals

10:40 a.m. Senator Myrdal discussed and explained previous proposed amendment (testimony #32315).

10:46 a.m. Chair Larson closed the hearing.

*Kendra McCann, Committee Clerk*

# 2025 SENATE STANDING COMMITTEE MINUTES

## **Judiciary Committee** Peace Garden Room, State Capitol

SB 2291  
2/11/2025

Relating to incapacitated persons, court-authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated person, and protection of property of persons under disability and minors and relating to visitors in a guardianship proceeding and appointment of successor guardians.

3:39 p.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Braunberger.  
Senator Myrdal absent.

### **Discussion Topics:**

- Terminology changes
- Opposition from protection and advocacy

3:39 p.m. Chair Larson opened discussion and committee discussed proposed amendments, previous testimony in favor, and previous testimony opposed.

3:42 p.m. Chair Larson closed the hearing.

*Kendra McCann, Committee Clerk*

# 2025 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee

Peace Garden Room, State Capitol

SB 2291  
2/12/2025

Relating to incapacitated persons, court-authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated person, and protection of property of persons under disability and minors and relating to visitors in a guardianship proceeding and appointment of successor guardians.

9:24 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

### Discussion Topics:

- Limited guardianship
- Document revisions

9:24 a.m. Senator Paulson introduced verbal amendment to un-strike limited guardian.

9:25 a.m. Senator Paulson moved verbal amendment to un-strike limited guardian.

9:25 a.m. Senator Cory seconded the motion.

9:30 a.m. Voice Vote - Motion Passed.

9:32 a.m. Committee discussion on upcoming schedule.

9:32 a.m. Chair Larson closed the hearing.

*Kendra McCann, Committee Clerk*



February 12, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO**

**SENATE BILL NO. 2291**

Introduced by

Senators Dwyer, Sickler, Larson, Weston

Representatives Hanson, Klemin

1 A BILL for an Act to create and enact two new sections to chapter 30.1-28 and two new sections  
2 to chapter 30.1-29 of the North Dakota Century Code, relating to removal, resignation and  
3 death of a guardian, notices in a guardianship, notices in a conservatorship, and confidentiality  
4 of reports; to amend and reenact subsection 1 of section 23-12-13, subsection 1 of section  
5 25-03.1-18.1, subsection 1 of section 27-20.1-17, sections 30.1-01-06 and 30.1-28-03.1,  
6 subsection 3 of section 30.1-28-03.2, section 30.1-28-04, subsection 1 of section 30.1-28-05,  
7 section 30.1-28-07, subsection 1 of section 30.1-28-09, sections 30.1-28-10.1, 30.1-28-12,  
8 30.1-28-12.1, 30.1-28-12.2, and 30.1-29-05, subsection 6 of section 30.1-29-07, subsection 2 of  
9 section 30.1-29-08, sections 30.1-29-13 and 30.1-29-18, subsection 3 of section 30.1-29-19,  
10 subsection 1 of section 30.1-29-20.1, subsection 2 of section 30.1-29-22, and subsection 5 of  
11 section 30.1-29-25 of the North Dakota Century Code, relating to incapacitated persons, court-  
12 authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated  
13 person, and protection of property of persons under disability and minors; and to repeal  
14 sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North Dakota Century Code, relating to  
15 visitors in a guardianship proceeding and appointment of successor guardians.

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

17 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-12-13 of the North Dakota Century  
18 Code is amended and reenacted as follows:

19 1. Informed consent for health care for a minor patient or a patient who is determined by  
20 a physician, psychiatrist, or psychologist to be an incapacitated person, as defined in

~~subsection 2 of section 30.1-26-01~~30.1-01-06, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority may provide informed consent to health care on behalf of the patient:

- a. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;
- b. The appointed guardian or custodian of the patient, if any;
- c. The patient's spouse who has maintained significant contacts with the incapacitated person;
- d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;
- e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
- f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
- g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;
- h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
- i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.

**SECTION 2. AMENDMENT.** Subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Upon notice and hearing, a tier 1b mental health professional may request authorization from the court to treat an individual under a mental health treatment order, or an individual voluntarily admitted to a public treatment facility under section 25-03.1-04, with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, a



psychiatrist or a final year psychiatric resident physician not involved in the current diagnosis or treatment of the patient shall certify:

- (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;
  - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
  - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
  - (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

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

1. An order appointing or reappointing a guardian under this chapter is effective for up to one year unless the court, upon a finding of good cause, sets a different time frame. An order may not be effective for more than three years. At least sixty days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, the child, if fourteen years of age or older, the child's attorney, if any, the child's parents, and any interested persons regarding whether the need for a guardianship continues to exist. The court, at its discretion, may appoint a guardian ad litem in accordance with section 27-20.1-08, before the hearing. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may:
  - a. Terminate the guardianship if shown by clear and convincing evidence that the circumstances that led to the guardianship no longer exist;

b. Reappoint the guardian for up to three years; or

c. Appoint a new guardian.

The court may extend a guardianship up to ninety days past the expiration of the initial order, for good cause shown, if the hearing cannot be held before the expiration of the order. If the court extends an initial order for guardianship, new letters of guardianship must be issued reflecting the extended expiration date.

**SECTION 4. AMENDMENT.** Section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-01-06. (1-201) General definitions.**

Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
2. "Alternative resource plan" means an alternative plan to guardianship which uses available support services and arrangements acceptable to the alleged incapacitated person. The term includes the use of support services such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care, home and community-based care, human service zones, developmental disability services, powers of attorney, durable powers of attorney, health care directives, supported decisionmaking, representative and protective payees, and licensed congregate care facilities.
3. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
- ~~3.4.~~ "Augmented estate" means the estate described in section 30.1-05-02.
- ~~4.5.~~ "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate



- 1 transfer at death; and, as it relates to a "beneficiary designated in a governing  
2 instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary  
3 of a beneficiary designation, a donee, or a person in whose favor a power of attorney  
4 or a power held in any individual, fiduciary, or representative capacity is exercised.
- 5 ~~5-6.~~ "Beneficiary designation" refers to a governing instrument naming a beneficiary of an  
6 account with payable on death designation, of a security registered in beneficiary form  
7 transferable on death, or other nonprobate transfer at death.
- 8 ~~6-7.~~ "Child" includes an individual entitled to take as a child under this title by intestate  
9 succession from the parent whose relationship is involved and excludes a person who  
10 is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- 11 ~~7-8.~~ "Claims", in respect to estates of decedents and protected persons, includes liabilities  
12 of the decedent or protected person whether arising in contract, in tort, or otherwise,  
13 and liabilities of the estate which arise at or after the death of the decedent or after the  
14 appointment of a conservator, including funeral expenses and expenses of  
15 administration. The term does not include estate or inheritance taxes or demands or  
16 disputes regarding title of a decedent or protected person to specific assets alleged to  
17 be included in the estate.
- 18 ~~8-9.~~ "Conservator" means a person who is appointed by a court to manage the estate of a  
19 protected person, and includes limited conservators as defined in this section.
- 20 ~~9-10.~~ "Court" means the court having jurisdiction in matters relating to the affairs of  
21 decedents.
- 22 ~~10-11.~~ "Descendant" of an individual means all descendants of all generations, with the  
23 relationship of parent and child at each generation being determined by the definition  
24 of child and parent contained in this title.
- 25 ~~11-12.~~ "Devise", when used as a noun, means a testamentary disposition of real or personal  
26 property, and when used as a verb, means to dispose of real or personal property by  
27 will.
- 28 ~~12-13.~~ "Devisee" means a person designated in a will to receive a devise. In the case of a  
29 devise to an existing trust or trustee, or to a trustee or trust described by will, the trust  
30 or trustee is the devisee and the beneficiaries are not devisees.
- 31 ~~13-14.~~ "Disability" means cause for a protective order as described in section 30.1-29-01.

- 1 ~~14-15.~~ "Distributee" means any person who has received property of a decedent from the  
2 decedent's personal representative other than as a creditor or purchaser. A  
3 testamentary trustee is a distributee only to the extent of distributed assets or  
4 increment thereto remaining in the trustee's hands. A beneficiary of a testamentary  
5 trust to whom the trustee has distributed property received from a personal  
6 representative is a distributee of the personal representative. For the purposes of this  
7 provision, "testamentary trustee" includes a trustee to whom assets are transferred by  
8 will to the extent of the devised assets.
- 9 ~~15-16.~~ "Estate" includes the property of the decedent, trust, or other person whose affairs are  
10 subject to this title as originally constituted and as it exists from time to time during  
11 administration.
- 12 ~~16-17.~~ "Exempt property" means that property of a decedent's estate which is described in  
13 section 30.1-07-01.
- 14 ~~17-18.~~ "Expert examiner" means:  
15 a. A licensed physician;  
16 b. A psychiatrist;  
17 c. A licensed psychologist trained in a clinical program;  
18 d. An advanced practice registered nurse who is licensed under chapter 43-12.1  
19 within the role of a certified nurse practitioner or certified clinical nurse specialist,  
20 who has completed the requirements for a minimum of a master's degree from an  
21 accredited program, and who is functioning within the scope of practice in one of  
22 the population foci as approved by the state board of nursing; or  
23 e. A physician assistant who is licensed under chapter 43-17 and authorized by the  
24 state board of medical examiners to practice in this state.
- 25 ~~18-19.~~ "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 26 ~~19-20.~~ "Foreign personal representative" means a personal representative appointed by  
27 another jurisdiction.
- 28 ~~20-21.~~ "Formal proceedings" means proceedings conducted before a judge with notice to  
29 interested persons.
- 30 ~~21-22.~~ "Governing instrument" means a deed, will, trust, insurance or annuity policy, account  
31 with payable on death designation, security registered in beneficiary form transferable



1 on death, pension, profit-sharing, retirement, or similar benefit plan, instrument  
2 creating or exercising a power of appointment or a power of attorney, or a dispositive,  
3 appointive, or nominative instrument of any similar type.

4 22-23. "Guardian" means a person who or nonprofit corporation that has qualified as a  
5 guardian of a minor or incapacitated person pursuant to testamentary or court  
6 appointment, and includes limited guardians as defined in this section, but excludes  
7 one who is merely a guardian ad litem.

8 23-24. "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the  
9 surviving spouse and the state, who are entitled under the statutes of intestate  
10 succession to the property of a decedent.

11 24-25. "Incapacitated person" means ~~an individual described in section 30.1-26-01~~ any adult  
12 individual who is impaired by reason of mental illness, mental deficiency, physical  
13 illness or disability, or chemical dependency to the extent that the individual lacks  
14 capacity to make or communicate responsible decisions concerning the individual's  
15 matters of residence, education, medical treatment, legal affairs, vocation, finance, or  
16 other matters, or if the incapacity endangers the individual's health or safety.

17 25-26. "Informal proceedings" means those conducted by the court for probate of a will or  
18 appointment of a personal representative without notice to interested persons.

19 26-27. "Interested person" includes heirs;

20 a. Except as provided under section b:

21 (1) Heirs and devisees, children, spouses, creditors, beneficiaries, and any  
22 others ;

23 (2) Children;

24 (3) Spouses;

25 (4) Creditors;

26 (5) Beneficiaries;

27 (6) Any individual having a property right in or claim against a trust estate or the  
28 estate of a decedent, ward, or protected person. ~~The term also includes~~  
29 ~~persons;~~

30 (7) Person having priority for appointment as personal representative; and ~~other~~

31 (8) Other fiduciaries representing interested persons.

b. For purposes of guardianships and conservatorships:

(1) The petitioner for appointment of the guardian;

(2) The spouse, parent, adult children, or siblings of the ward, protected person, or an adult relative if a spouse, parent, adult child, sibling, or protected person cannot be found;

(3) An adult individual who has lived with a ward or a protected person for a period of more than six months;

(4) An attorney for the ward or protected person;

(5) A representative payee for the ward or protected person; and

(6) Any other person designated by the court.

The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

~~27-28.~~ "Issue" of a person ~~an individual~~ means descendant as defined in subsection ~~4011.~~

~~28-29.~~ "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~29-30.~~ "Lease" includes an oil, gas, or other mineral lease.

~~30-31.~~ "Least restrictive form of intervention" includes only the limitations necessary to provide the needed care and services for a guardianship, and the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.

32. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~31-33.~~ "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity and includes limited conservators as described by section 30.1-29-20.



- 1 ~~32-34.~~ "Limited guardian" means a person or nonprofit corporation, appointed by the court, to  
2 supervise certain specified aspects of the care of a person with limited capacity and  
3 includes limited guardians as described by section 30.1-28-04.
- 4 ~~33-34-35.~~ "Minor" means a person who is under eighteen years of age.
- 5 ~~34-35-36.~~ "Mortgage" means any conveyance, agreement, or arrangement in which  
6 property is encumbered or used as security.
- 7 ~~35-36-37.~~ "Nonresident decedent" means a decedent who was domiciled in another  
8 jurisdiction at the time of death.
- 9 ~~36-37-38.~~ "Organization" means a corporation, limited liability company, government or  
10 governmental subdivision or agency, business trust, estate, trust, partnership, joint  
11 venture, association, or any other legal or commercial entity.
- 12 ~~37-38-39.~~ "Parent" includes any ~~person~~individual entitled to take, or who would be  
13 entitled to take if the child died without a will, as a parent under this title, by intestate  
14 succession from the child whose relationship is in question and excludes any person  
15 who is only a stepparent, foster parent, or grandparent.
- 16 ~~38-39-40.~~ "Payer" means a trustee, insurer, business entity, employer, government,  
17 governmental agency or subdivision, or any other person authorized or obligated by  
18 law or a governing instrument to make payments.
- 19 ~~39-40-41.~~ "Person" means an individual, a corporation, a limited liability company, an  
20 organization, or other legal entity.
- 21 ~~40.~~ "~~Person with limited capacity~~" ~~is as defined in section 30.1-26-01.~~
- 22 ~~41-42.~~ "Personal representative" includes executor, administrator, successor personal  
23 representative, special administrator, and persons who perform substantially the same  
24 function under the law governing their status. "General personal representative"  
25 excludes special administrator.
- 26 ~~42-43.~~ "Petition" means a written request to the court for an order after notice.
- 27 ~~43-44.~~ "Proceeding" includes action at law and suit in equity.
- 28 ~~44-45.~~ "Property" includes both real and personal property or any interest therein and means  
29 anything that may be the subject of ownership.

- 1 ~~45.46.~~ "Protected person" ~~is as defined in section 30.1-26-04~~ means a minor or other  
2 individual for whom a conservator or limited conservator has been appointed, or other  
3 protective order has been made.
- 4 ~~46.47.~~ "Protective proceeding" means a proceeding described in ~~section 30.1-26-04~~ under  
5 section 30.1-29-01 to determine that an individual cannot effectively manage or apply  
6 the individual's estate to necessary ends, either because the individual lacks the ability  
7 or is otherwise inconvenienced, or because the individual is a minor, and to secure  
8 administration of the individual's estate by a conservator or other appropriate relief.
- 9 ~~47.48.~~ "Record" means information that is inscribed on a tangible medium or that is stored in  
10 an electronic or other medium and is retrievable in perceivable form.
- 11 ~~48.49.~~ "Refusal" means declining to accept prescribed mood stabilizer or antipsychotic  
12 medication by a clear and unequivocal response.
- 13 ~~49.50.~~ "Security" includes any note, stock, treasury stock, bond, debenture, membership  
14 interest in a limited liability company, evidence of indebtedness, certificate of interest  
15 or participation in an oil, gas, or mining title or lease or in payments out of production  
16 under such a title or lease, collateral trust certificate, transferable share, voting trust  
17 certificate or, in general, any interest or instrument commonly known as a security, or  
18 any certificate of interest or participation, any temporary or interim certificate, receipt,  
19 or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of  
20 the foregoing.
- 21 ~~49.50.51.~~ "Settlement", in reference to a decedent's estate, includes the full process of  
22 administration, distribution, and closing.
- 23 ~~50.51.52.~~ "Sign" means, with present intent to authenticate or adopt a record other than a  
24 will, to execute or adopt a tangible symbol or to attach to or logically associate with the  
25 record an electronic symbol, sound, or process.
- 26 ~~51.52.53.~~ "Special administrator" means a personal representative as described by  
27 sections 30.1-17-14 through 30.1-17-18.
- 28 ~~52.53.54.~~ "State" means a state of the United States, the District of Columbia, the  
29 Commonwealth of Puerto Rico, or any territory or insular possession subject to the  
30 jurisdiction of the United States.



- 1 | ~~53-54-55.~~ "Successor personal representative" means a personal representative, other  
2 | than a special administrator, who is appointed to succeed a previously appointed  
3 | personal representative.
- 4 | ~~54-55-56.~~ "Successors" means persons, other than creditors, who are entitled to property  
5 | of a decedent under the decedent's will or this title.
- 6 | ~~55-56-57.~~ "Supervised administration" refers to the proceedings described in chapter  
7 | 30.1-16.
- 8 | ~~56-57-58.~~ "Survive" means that an individual has neither predeceased an event, including  
9 | the death of another individual, nor predeceased an event under sections 30.1-04-04  
10 | and 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived",  
11 | "survivor", and "surviving".
- 12 | ~~57-58-59.~~ "Testacy proceeding" means a proceeding to establish a will or determine  
13 | intestacy.
- 14 | ~~58-59-60.~~ "Trust" includes an express trust, private or charitable, with additions thereto,  
15 | wherever and however created. The term also includes a trust created or determined  
16 | by judgment or decree under which the trust is to be administered in the manner of an  
17 | express trust. The term excludes other constructive trusts and excludes resulting  
18 | trusts, conservatorships, personal representatives, trust accounts as defined in  
19 | custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19  
20 | to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24,  
21 | chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries,  
22 | common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts  
23 | for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,  
24 | pensions, or employee benefits of any kind, and any arrangement under which a  
25 | person is nominee or escrowee for another.
- 26 | ~~59-60-61.~~ "Trustee" includes an original, additional, or successor trustee, whether or not  
27 | appointed or confirmed by court.
- 28 | ~~60-61-62.~~ "Visitor" means an individual, in guardianship proceedings, who is trained in  
29 | nursing, social work, medical care, mental health care, or rehabilitation and is an  
30 | employee or special appointee of the court with no personal interest in the  
31 | proceedings.

1 ~~61.62.63.~~ "Ward" means an individual described in ~~section 30.1-26-01~~ for whom a  
2 guardian has been appointed. A "minor ward" is a minor for whom a guardian has  
3 been appointed solely because of minority.

4 ~~62.63.64.~~ "Will" includes codicil and any testamentary instrument that merely appoints an  
5 executor, revokes or revises another will, nominates a guardian, or expressly excludes  
6 or limits the right of an individual or class to succeed to property of the decedent  
7 passing by intestate succession.

8 **SECTION 5. AMENDMENT.** Section 30.1-28-03.1 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **30.1-28-03.1. Confidentiality - Reports - Personal information.**

- 11 1. A written report prepared and submitted ~~under subsection 5 or 6 of section 30.1-28-03~~  
12 is by a guardian ad litem, visitor, or expert examiner and annual and final reports and  
13 financial accounting prepared and submitted by a guardian are closed to the public  
14 and ~~is~~ are not open to inspection except by the court, parties to the proceeding or their  
15 counsel, other persons for those purposes as the court may order for good cause, and  
16 others authorized by court rule.
- 17 2. Medical, psychological, or other treatment information protected by federal law or  
18 regulation and any financial account numbers related to a ward or proposed ward are  
19 confidential and may not be disclosed except to parties to the proceeding, their  
20 counsel, and others authorized by court rule. The court may permit access by other  
21 persons for good cause.

22 **SECTION 6. AMENDMENT.** Subsection 3 of section 30.1-28-03.2 of the North Dakota  
23 Century Code is amended and reenacted as follows:

- 24 3. The motion must be served upon ~~the ward, the ward's spouse, and all interested~~  
25 persons those identified in section 12 of this Act.

26 **SECTION 7. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is  
27 amended and reenacted as follows:

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

- 29 1. The court shall exercise the authority conferred in this chapter consistent with the  
30 maximum self-reliance and independence of the incapacitated person and make  
31 appointive and other orders only to the extent necessitated by the incapacitated



- 1 person's actual mental and adaptive limitations or other conditions warranting the
- 2 procedure.
- 3 2. At a hearing held under this chapter, the court shall:
- 4 a. Hear evidence that the proposed ward is an incapacitated person. Age,
- 5 eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding
- 6 of incapacity;
- 7 b. Hear evidence and determine whether there are any existing general durable
- 8 powers of attorney and durable powers of attorney for health care. If there are
- 9 validly executed durable powers of attorney, the court shall consider the
- 10 appointed attorneys in fact and agents appointed thereunder when assessing
- 11 alternative resource plans and the need for a guardian; and
- 12 c. Appoint a guardian and confer specific powers of guardianship only after finding
- 13 in the record based on clear and convincing evidence that:
- 14 (1) The proposed ward is an incapacitated person;
- 15 (2) There is no available alternative resource plan that is suitable to safeguard
- 16 the proposed ward's health, safety, or habilitation which could be used
- 17 instead of a guardianship;
- 18 (3) The guardianship is necessary as the best means of providing care,
- 19 supervision, or habilitation of the ward; and
- 20 (4) The powers and duties conferred upon the guardian are appropriate as the
- 21 least restrictive form of intervention consistent with the ability of the ward for
- 22 self-care.
- 23 3. Except upon specific findings of the court, a ward may not be deprived of any of the
- 24 following legal rights: to vote, to seek to change marital status, or to obtain or retain a
- 25 motor vehicle operator's license.
- 26 4. The court may find that the ward retains other specific rights.
- 27 5. The order appointing a guardian confers upon the guardian only those powers and
- 28 duties specified in the order. In addition to any other powers conferred upon the
- 29 guardian, the court's order must state whether the guardian has no authority, general
- 30 authority, or limited authority to make decisions on behalf of the ward in each of the
- 31 areas of residential, educational, medical, legal, vocational, and financial

1 decisionmaking. A grant of limited authority must specify the limitations upon the  
2 authority of the guardian or the authority retained by the ward. The court's order must  
3 require the guardian to provide within ninety days from the date of the order a  
4 beginning inventory of all assets owned by the ward or in which the ward has an  
5 interest. The guardian shall provide a copy of the beginning inventory to ~~the ward and~~  
6 ~~any interested persons designated by the court in its order~~those identified in  
7 section 12 of this Act. Unless terminated earlier by the court, an order appointing or  
8 reappointing a guardian under this section is effective for up to five years. At least  
9 ninety days before the expiration of the initial order of appointment or any following  
10 order of reappointment, the court shall request and consider information submitted by  
11 the guardian, ward, ward's attorney, if any, and any interested persons regarding  
12 whether the need for a guardian continues to exist. If it is recommended that the  
13 guardianship continue, the court may appoint a guardian ad litem or, visitor, or ~~both~~hall,  
14 in accordance with section 30.1-28-03. The court shall hold a hearing on whether the  
15 guardianship should continue. Following the hearing and consideration of submitted  
16 information, the court may reappoint the guardian for up to another five years, allow  
17 the existing order to expire, or appoint a new guardian in accordance with this section.  
18 If a review hearing cannot be held before the expiration of an initial order for  
19 guardianship, the court may extend the initial order for up to an additional ninety days  
20 upon good cause shown. New letters of guardianship must be issued reflecting the  
21 extended expiration date. The supreme court, by rule or order, shall provide for the  
22 regular review of guardianship in existence on August 1, 2015.

- 23 6. Unless a court of competent jurisdiction determines otherwise, a durable power of  
24 attorney for health care executed pursuant to chapter 23-06.5 takes precedence over  
25 any authority to make medical decisions granted to a guardian pursuant to chapter  
26 30.1-28.
- 27 7. The court may require a guardian to furnish a bond in the amount and with sureties as  
28 the court specifies.
- 29 8. After the hearing, the guardian ad litem, visitor, and expert examiner must be  
30 discharged of ~~the person's~~their duties as guardian ad litem.



**SECTION 8. AMENDMENT.** Subsection 1 of section 30.1-28-05 of the North Dakota Century Code is amended and reenacted as follows:

1. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. ~~Notice of any proceeding so instituted must be served upon the guardian by the petitioner.~~

**SECTION 9. AMENDMENT.** Section 30.1-28-07 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order which may be appropriate.~~
2. The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated or no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that the duties and authority of the guardian require modification, ~~and for removal or resignation of the guardian, termination of the guardianship,~~ or change in the duties and authority of the guardian. A request for this order may be made by informal letter to the court or judge. The clerk of district court shall send a copy of the informal request to the parties and those identified in section 12 of this Act. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.
- ~~3-2.~~ Before ~~removing a guardian,~~ changing the guardian's duties and authority, accepting the resignation of a guardian, or on finding that the ward is no longer incapacitated, or no longer incapacitated to the same extent and ordering the guardianship terminated or modified, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

1     ~~4.3.~~   A hearing must be held no later than sixty days following the filing of the petition or  
2           informal request, unless good cause is shown. Following the hearing, the court shall  
3           make written findings of fact. Before terminating or modifying the guardianship, the  
4           court shall find by a preponderance of the evidence that the ward is no longer  
5           incapacitated, no longer incapacitated to the same extent as the ward was when the  
6           original guardianship order was made or last reviewed by the court, or that it is in the  
7           best interests of the ward that the duties and authority of the guardian be modified.  
8           New letters of guardianship must be issued to the guardian in the same manner as  
9           provided in section 30.1-28-05.

10    ~~5.4.~~   In deciding whether to terminate or modify a guardianship, the court may require a  
11           report by and consider the recommendations of an expert examiner.

12    ~~6.~~     ~~If the guardian dies, or if on the basis of a petition filed under this section or a report or~~  
13           ~~other information, there is probable cause to believe a guardian is not performing the~~  
14           ~~guardian's duties effectively and there is an imminent danger the ward's physical,~~  
15           ~~mental, or emotional health or safety will be seriously impaired, the court shall take~~  
16           ~~whatever action is necessary to protect the ward, including dismissal of the guardian~~  
17           ~~and appointment of an emergency guardian as provided in section 30.1-28-10.1.~~

18    ~~7.5.~~   On termination of the guardianship, a guardian shall file a final report and accounting  
19           and provide a copy of the report and accounting to those given notice under section  
20           ~~30.1-28-09~~12 of this Act. The report and accounting must be filed with the clerk of  
21           district court. The filing of the report and accounting does not constitute the court's  
22           approval of the report and accounting. The court may approve a report and settle and  
23           allow an accounting only upon notice ~~to the ward and other interested persons who~~  
24           ~~have made an appearance or requested notice of the proceedings~~to those identified in  
25           section 12 of this Act.

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

28       **Removal, resignation, or death of guardian - Appointment of successor guardian.**

29       1.   The court may remove a guardian on its own motion or on petition of the ward or any  
30       interested person if removal is in the best interests of the ward. A request for this order  
31       may be made by informal letter to the court or judge. The clerk of district court shall



- 1        send a copy of the informal request to the parties and those identified in section 12 of  
2        this Act. Any person that knowingly interferes with the transmission of a request under  
3        this section may be adjudged guilty of contempt of court.
- 4        2. The court may accept the resignation of a guardian upon petition by the guardian.
- 5        3. Upon the death of a guardian, the personal representative of the guardian shall submit  
6        a final report and accounting to the court. Upon removal or resignation of the guardian,  
7        the guardian shall submit a final report and accounting to the court. The report and  
8        accounting must be filed with the clerk of district court. The filing of the report and  
9        accounting does not constitute the court's approval of the report and accounting. The  
10       court may approve a report and settle and allow an accounting only upon notice to  
11       those identified in section 12 of this Act.
- 12       4. A hearing must be held no later than sixty days following the filing of the petition or  
13       informal request, unless good cause is shown. Following the hearing, the court shall  
14       make written findings of fact and conclusions of law.
- 15       5. Upon the removal, resignation, or death of a guardian, the court, upon the court's own  
16       motion or upon a motion filed by any interested person, may appoint a successor  
17       guardian or make any other appropriate order.
- 18       6. A notice of motion must accompany the motion for appointment of successor guardian  
19       and must include a statement that provides an opportunity for hearing if requested in  
20       regard to the appointment of a successor guardian. The notice of motion and motion  
21       must be served on those identified in section 12 of this Act.
- 22       7. If a hearing is not requested by or on behalf of the ward listed in the notice, the court  
23       may sign an order appointing a successor guardian for that ward.

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

- 26       1. ~~In a proceeding for the appointment or removal of a guardian or for an alteration or~~  
27       ~~termination of a guardianship other than~~ and, if notice is required, for the appointment  
28       ~~of an emergency guardian or for the temporary suspension of a guardian,~~ notice of  
29       hearing shall be given by the petitioning party, unless otherwise directed by the court,  
30       to each of the following:

- 1 a. The ward or the proposed ward and the ward's or proposed ward's spouse,
- 2 parents, and adult children;
- 3 b. Any person, corporation, or institution who is serving as the ward's guardian,
- 4 attorney in fact, representative payee for public benefits, or conservator, or who
- 5 has the ward's care and custody;
- 6 c. If no other person is notified under subdivision a, then the adult siblings and any
- 7 adult with whom the proposed ward resides in a private residence, or if none can
- 8 be found, any known adult relative; and
- 9 d. The attorney for the proposed ward, the visitor, and the expert examiner, together
- 10 with a copy of the respective order of appointment for each.

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

13 **Notices in guardianship proceedings subsequent to appointment.**

14 Notice in a guardianship proceeding subsequent to appointment of a guardian must be  
15 given to the parties, the conservator, if any, the ward, and any interested persons designated in  
16 the order of the court.

17 **SECTION 13. AMENDMENT.** Section 30.1-28-10.1 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **30.1-28-10.1. Emergency guardian.**

- 20 1. On petition by a person interested in the alleged incapacitated individual's welfare, the
- 21 court may appoint an emergency guardian if the court finds that compliance with the
- 22 procedures of this chapter likely will result in substantial harm to the alleged
- 23 incapacitated individual's health, safety, or welfare, and that no other person appears
- 24 to have authority and willingness to act in the circumstances. The court may appoint
- 25 the guardian for a specified period of time, not to exceed ninety days. Immediately
- 26 upon receipt of the petition for an emergency guardianship, the court shall appoint a
- 27 guardian ad litem to advocate for the best interests of the alleged incapacitated
- 28 individual in the proceeding and any subsequent proceeding. ~~Except as otherwise~~
- 29 ~~provided in subsection 2, reasonable notice of the time and place of a hearing on the~~
- 30 ~~petition must be given to the alleged incapacitated individual, the individual's spouse, if~~
- 31 ~~any, and any other person as the court directs.~~ The court shall hold a hearing within



1        ten days of the filing of the petition to determine if appointment of an emergency  
2        guardian is appropriate.

3        2. An emergency guardian may be appointed without notice to the alleged incapacitated  
4        individual and the alleged incapacitated individual's guardian ad litem only if the court  
5        finds from affidavit or other sworn testimony that the alleged incapacitated individual  
6        will be substantially harmed before a hearing on the appointment can be held. If the  
7        court appoints an emergency guardian without notice to the alleged incapacitated  
8        individual, the alleged incapacitated individual and the individual's spouse, if any, and  
9        any other person the court directs must be given notice of the appointment within forty-  
10       eight hours after the appointment. The court shall hold a hearing on the  
11       appropriateness of the appointment within ten days after the appointment.

12       3. If a conservator has not been appointed for the alleged incapacitated individual and  
13       the emergency guardian has authority for financial decisionmaking, the court's order of  
14       appointment must state that the guardian shall safeguard any assets held by the  
15       alleged incapacitated individual and, during the period of appointment and subject to  
16       any further order of the court, may expend the individual's assets only for the  
17       necessary support and care of the individual.

18       4. Appointment of an emergency guardian, with or without notice, is not a determination  
19       of the alleged incapacitated individual's incapacity.

20       5. The court may remove an emergency guardian at any time. An emergency guardian  
21       shall make any report the court requires. In all other respects, the provisions of this  
22       chapter concerning guardians apply to an emergency guardian.

23       6. The petitioner may request the court extend the emergency order for up to an  
24       additional ninety days upon good cause shown. The request must be filed with the  
25       court at least fourteen days before the expiration of the emergency order and served  
26       on the alleged incapacitated individual, the individual's spouse, if any, and any other  
27       persons as the court directs. The court shall hold a hearing on the appropriateness of  
28       the extension within ten days of the request. No additional extensions of the  
29       emergency guardianship may be granted.

30       **SECTION 14. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is  
31       amended and reenacted as follows:

**30.1-28-12. (5-312) General powers and duties of guardian.**

1. A guardian of an incapacitated person has only the powers and duties specified by the court.
2. To the extent that it is consistent with the terms of an order by a court of competent jurisdiction, the guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or without this state. However, no guardian may voluntarily admit a ward to a mental health facility or state institution for a period of more than forty-five days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of this subsection, the guardian may readmit a ward to a mental health facility or a state institution within sixty days of discharge from that institution, if the original admission to the facility or institution had been authorized by the court.
3. If entitled to custody of the ward, the guardian should make provision for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training, education, or habilitative services. The guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and personal effects.
4. Notwithstanding general or limited authority to make medical decisions on behalf of the ward, no guardian may consent to psychosurgery, abortion, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court.
5. When exercising the authority granted by the court, the guardian shall safeguard the civil rights and personal autonomy of the ward to the fullest extent possible by:
  - a. Meeting with the ward following the hearing, unless the ward is represented by an attorney, and explaining to the fullest extent possible the contents of the court's order and the extent of the guardian's authority;
  - b. Involving the ward as fully as is practicable in making decisions with respect to the ward's living arrangements, health care, and other aspects of the ward's care; and
  - c. Ensuring the ward's maximum personal freedom by using the least restrictive forms of intervention and only as necessary for the safety of the ward or others.



- 1       6. If no conservator for the estate of the ward has been appointed and if the guardian  
2       has been granted authority to make financial decisions on behalf of the ward, the  
3       guardian shall:
- 4       a. Institute proceedings to compel any person under a duty to support the ward or to  
5       pay sums for the welfare of the ward to perform that duty.
- 6       b. Receive money and tangible property deliverable to the ward and apply the  
7       money and property for support, care, and education of the ward; but, the  
8       guardian may not use funds from the ward's estate for room and board which the  
9       guardian or the guardian's spouse, parent, or child have furnished the ward  
10      unless a charge for the service is approved by order of the court made upon  
11      notice to ~~at least one of the next of kin of the ward, if notice is possible~~ those  
12      identified in section 12 of this Act. The guardian shall exercise care to conserve  
13      any excess for the ward's needs.
- 14      c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or  
15      otherwise encumber or transfer ownership or beneficiary of:
- 16          (1) The real property of the ward; or
- 17          (2) The personal property of the ward valued over two thousand five hundred  
18          dollars upon such terms as the court may order, for the purpose of paying  
19          the ward's debts; providing for the care, maintenance, rehabilitation,  
20          training, or education of the ward or the ward's dependents; or for any other  
21          purpose which is in the best interests of the ward. The sale, mortgage, or  
22          other encumbrance or transfer of ownership of personal property of the  
23          ward valued at two thousand five hundred dollars or less does not require a  
24          court order.
- 25      d. Move the court under section 30.1-28-03.2 for authority to lease the real or  
26      personal property of the ward.
- 27      e. A guardian may not purchase, lease, or obtain ownership or become the  
28      beneficiary of property of the ward unless the price and manner of the sale are  
29      approved by the court.
- 30      7. If a conservator has been appointed, all of the ward's estate received by the guardian  
31      in excess of those funds expended to meet current expenses for support, care, and

education of the ward must be paid to the conservator for management as provided in this title, and the guardian must account to the conservator for funds expended.

8. A guardian shall file an annual report with the court regarding the exercise of powers and duties in areas of authority specified in the court's order of appointment. The report must describe the status or condition of the ward, including any change of residence and reasons for the change, any medical treatment received by or withheld from the ward, any expenditure and income affecting the ward, any sale or transfer of property affecting the ward, and any exercise of legal authority by the guardian affecting the ward. The report must include changes that have occurred since the previous reporting period and an accounting of the ward's estate. The guardian also shall report whether the ward continues to require guardianship and whether any powers of the guardian should be increased or limited. The report must be filed with the clerk of district court. The filing of the report does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The court may approve a report and allow and settle an accounting only upon notice to the ward's guardian ad litem and other interested persons who have made an appearance or requested notice of proceedings. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.

9. Copies of the guardian's annual report to the court and of any other reports required by the court must be mailed to ~~the ward and any interested persons designated by the court in its order~~ those identified in section 12 of this Act. The ward's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the ward's right to seek alteration, limitation, or termination of the guardianship at any time.

10. The guardian is entitled to receive reasonable sums for services and for room and board furnished to the ward as approved by the court or as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the



1 ward's estate by payment to third persons or institutions for the ward's care and  
2 maintenance.

3 11. A guardian has a fiduciary duty to the ward and may be held liable for a breach of that  
4 duty.

5 12. A guardian is not liable for the acts of the ward, unless the guardian is grossly  
6 negligent as defined in section 1-01-17.

7 13. A guardian is not required to expend personal funds on behalf of the ward solely by  
8 reason of the guardian relationship.

9 **SECTION 15. AMENDMENT.** Section 30.1-28-12.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **30.1-28-12.1. Annual reports and accounts - Failure of guardian to file.**

12 If a guardian fails to file an annual report as required by section 30.1-28-12, fails to file a  
13 report at other times as the court may direct, or fails to provide an accounting of an estate, the  
14 court, upon its own motion or upon petition of any interested ~~party~~ person, may issue an order  
15 compelling the guardian to show cause why the guardian should not immediately make and file  
16 the report or account, or be found in contempt for failure to comply.

17 **SECTION 16. AMENDMENT.** Section 30.1-28-12.2 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **30.1-28-12.2. Restrictions on visitation, communication, and interaction with the**  
20 **ward - Removal of restriction.**

- 21 1. If it is in the best interests of the ward, a guardian may restrict visitation,  
22 communication, and interaction with the ward.
- 23 2. A family member, friend, the ward, clergy member, attorney, agency charged with the  
24 protection of vulnerable adults, or other interested person may move the court to  
25 remove the restriction on visitation, communication, and interaction with the ward.
- 26 3. The motion must state:
  - 27 a. The movant's relationship to the ward;
  - 28 b. Whether the guardian is unreasonably or arbitrarily denying or restricting  
29 visitation, communication, or interaction between the restricted party and the  
30 ward; and

- 1 c. The facts supporting the movant's allegation that the guardian is unreasonably or
- 2 arbitrarily denying or restricting visitation, communication, or interaction between
- 3 the restricted party and the ward.
- 4 4. The movant shall serve the motion on ~~the guardian, the ward, the ward's spouse, and~~
- 5 ~~any other interested person~~ those identified in section 12 of this Act.
- 6 5. The court shall set a hearing on the motion and provide notice of the hearing to the
- 7 movant, ~~the guardian, the ward, the ward's spouse, and any other interested person~~
- 8 and those identified in section 12 of this Act.
- 9 6. The court shall take into consideration the ward's wishes, and may conduct an
- 10 in-camera interview with the ward and appoint a visitor or guardian ad litem.
- 11 7. If the court grants the motion for visitation, communication, or interaction, the court
- 12 may impose conditions on visitation, communication, and interaction between the
- 13 restricted party and the ward.
- 14 8. If the visitation, communication, or interaction is not in the best interests of the ward,
- 15 the court may prohibit visitation, communication, or interaction between the restricted
- 16 party and the ward.
- 17 9. The court may award reasonable costs and attorney's fees to the prevailing party if the
- 18 court finds:
- 19 a. The guardian unreasonably, arbitrarily, or in bad faith denied or restricted
- 20 visitation, communication, or interaction between the restricted party and the
- 21 ward; or
- 22 b. The motion was frivolous.
- 23 10. Costs and attorney's fees awarded against the guardian may not be paid from the
- 24 ward's estate.
- 25 11. If a movant for visitation, communication, and interaction states the ward's health is in
- 26 significant decline or the ward's death may be imminent, the court shall conduct an
- 27 emergency hearing on the motion as soon as practicable but not later than fourteen
- 28 days after the date the motion is filed or at a later date upon a showing of good cause.

29 **SECTION 17. AMENDMENT.** Section 30.1-29-05 of the North Dakota Century Code is  
30 amended and reenacted as follows:



**30.1-29-05. (5-405) Notice.**

4. On a petition for appointment of a conservator or other protective order, the petitioning party shall cause notice of the proceeding to be served personally on the person to be protected and the spouse of the person to be protected or, if none, the parents of the person to be protected, or any guardian or conservator, at least fourteen days before the date of hearing. If none of these parties can be found, any government agency paying benefits to the person sought to be protected, if the person seeking the appointment has knowledge of the existence of these benefits, must be given notice in accordance with section 30.1-03-01.

~~2. Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 30.1-29-06 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection 1, notice shall be given in accordance with section 30.1-03-01.~~

**SECTION 18.** A new section to chapter 30.1-29 of the North Dakota Century Code is created and enacted as follows:

**Notices in conservatorship proceedings subsequent to appointment.**

Notice in a conservatorship proceeding subsequent to appointment of a conservator must be given to the parties, the guardian, if any, the individual in need of protection, and any interested persons designated by the court.

**SECTION 19. AMENDMENT.** Subsection 6 of section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

6. After hearing, upon finding that the appointment of a conservator or other protective order is appropriate, the court shall make an appointment or other appropriate protective order. The court, guardian ad litem, petitioner, or person to be protected may subpoena the individual who prepared and submitted the report to appear, testify, and be cross-examined. After the hearing, the guardian ad litem and expert examiner must be discharged of ~~the~~their duties as ~~guardian ad litem~~.

**SECTION 20.** A new section to chapter 30.1-29 of the North Dakota Century Code is created and enacted as follows:

**Confidentiality - Reports - Personal information.**

1. A written report prepared and submitted by a guardian ad litem or expert examiner and annual and final reports and financial accounting prepared and submitted by a conservator are closed to the public and are not open to inspection except by the court, parties to the proceeding or their counsel, other persons for those purposes as the court may order for good cause, and others authorized by court rule.
2. Any medical, psychological, or other treatment information protected by federal law or regulation, and any financial account numbers related to a protected person or proposed protected person are confidential and may not be disclosed except to parties to the proceeding, their counsel, and others authorized by court rule. The court may permit access by other persons for good cause.

**SECTION 21. AMENDMENT.** Subsection 2 of section 30.1-29-08 of the North Dakota Century Code is amended and reenacted as follows:

2. The court has the following powers which may be exercised directly or through a conservator, subject to section 30.1-29-22, in respect to the estate and affairs of protected persons:
  - a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without prior notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the benefit of the person to be protected or the benefit of the dependents of the person to be protected.
  - b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
  - c. After hearing and upon determining that appointment of a conservator or other protective order is appropriate with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will.



These powers include power to make gifts, to convey or release the person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, to exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond the person's disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise the person's right to an elective share in the estate of the person's deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.

- d. The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice to those identified in section 18 of this Act and hearing, that it is in the best interests of the protected person, and that the protected person either is incapable of consenting or has consented to the proposed exercise of power.
- e. An order made pursuant to this section determining that appointment of a conservator or other protective order is appropriate has no effect on the capacity of the protected person.

**SECTION 22. AMENDMENT.** Section 30.1-29-13 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-13. (5-413) Acceptance of appointment - Consent to jurisdiction.**

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding, relating to the estate, that may be instituted by any interested person. ~~Notice of any proceeding shall be delivered to the conservator, or mailed to the conservator by registered or certified mail at the conservator's address as listed in the petition for appointment~~

or as thereafter reported to the court and to the conservator's address as then known to the petitioner.

**SECTION 23. AMENDMENT.** Section 30.1-29-18 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-18. (5-418) Inventory and records.**

Within ninety days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy thereof to the protected person if the protected person can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any guardian, spouse, or parent, if the protected person is a minor, and to any interested persons designated by the court in its order to those identified in section 18 of this Act. The conservator shall keep suitable records of the conservator's administration and exhibit the same on request of any interested person.

**SECTION 24. AMENDMENT.** Subsection 3 of section 30.1-29-19 of the North Dakota Century Code is amended and reenacted as follows:

3. Copies of the conservator's annual report to the court and of any other reports required by the court must be mailed by the conservator to the protected person and other parties as required under section 30.1-29-18 provided to those identified in section 18 of this Act. The protected person's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the protected person's right to seek alteration, limitation, or termination of the conservatorship at any time.

**SECTION 25. AMENDMENT.** Subsection 1 of section 30.1-29-20.1 of the North Dakota Century Code is amended and reenacted as follows:

1. On petition by a person interested in the estate of the person to be protected, the court may appoint an emergency conservator if the court finds that compliance with the procedures in this chapter likely will result in substantial harm to the estate of the person to be protected, and that no other person appears to have authority and willingness to act in the circumstances. The court may appoint the conservator for a specified period of time, not to exceed ninety days. Immediately upon receipt of the



petition for an emergency conservator, the court shall appoint a guardian ad litem to advocate for the best interests of the estate of the person to be protected in the proceeding and any subsequent proceeding. The court shall hold a hearing within ten days of the filing of the petition to determine if appointment of an emergency conservator is appropriate. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to ~~the person whose estate is to be protected, the person's spouse, if any, and any other persons as the court directs~~ those identified in section 18 of this Act.

**SECTION 26. AMENDMENT.** Subsection 2 of section 30.1-29-22 of the North Dakota Century Code is amended and reenacted as follows:

2. A conservator shall move the court for authorization to sell real property of the person to be protected, upon such terms as the court may order, for the purpose of paying the protected person's debts; providing for the care, maintenance, rehabilitation, training, or education of the person to be protected or the dependents of the person to be protected; or for any other purpose in the best interests of the person to be protected.
  - a. The motion must contain:
    - (1) A description of the property;
    - (2) The details of the sale;
    - (3) The reason for the transaction;
    - (4) The current fair market value of the property, including an appraisal unless good cause is shown;
    - (5) An explanation of why the transaction is in the best interest of the person to be protected; and
    - (6) A notice that any person interested in the real property of the person to be protected must file an objection to the transaction within ten days of the notice and demand a hearing.
  - b. The motion must be served upon ~~the protected person, the spouse of the person to be protected, and all interested persons~~ those identified in section 18 of this Act.
  - c. Consent of the spouse of the person to be protected or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the

transaction without a hearing or may conduct a hearing and require proof of the matters necessary to support the authorization of the transaction.

- d. The court's order must include specific findings regarding whether the transaction is in the best interests of the person to be protected.

**SECTION 27. AMENDMENT.** Subsection 5 of section 30.1-29-25 of the North Dakota Century Code is amended and reenacted as follows:

5. If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the executor or a beneficiary named therein that the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 30.1-13-04, those identified in section 18 of this Act, and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section has the effect of an order of appointment of a personal representative as provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

**SECTION 28. REPEAL.** Sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North Dakota Century Code are repealed.

# 2025 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

SB 2291  
2/12/2025

Relating to incapacitated persons, court-authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated person, and protection of property of persons under disability and minors and relating to visitors in a guardianship proceeding and appointment of successor guardians.

10:39 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

### Discussion Topics:

- Committee Action

10:39 a.m. Senator Cory moved a Do Pass as amended.

10:39 a.m. Senator Paulson seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

10:39 a.m. Senator Paulson will carry the bill.

10:42 a.m. Chair Larson closed the hearing.

*Kendra McCann, Committee Clerk*

**REPORT OF STANDING COMMITTEE  
SB 2291**

**Judiciary Committee (Sen. Larson, Chairman)** recommends **AMENDMENTS** ([25.1110.01001](#)) and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2291 was placed on the Sixth order on the calendar. This bill does not affect workforce development.



**2025 HOUSE HUMAN SERVICES**

**SB 2291**

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2291  
3/10/2025

relating to visitors in a guardianship proceeding and appointment of successor guardians.
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10:46 a.m. Chairman M. Ruby opened the hearing.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios, Rohr

### Discussion Topics:

- Appointment of Guardians
- Emergency Guardians
- Guardians on the Workgroup
- Determination of Incapacitation

10:47 a.m. Senator Mike Dwyer, District 47, introduced the bill.

10:47 a.m. Sara Behrens, Staff Attorney, North Dakota Supreme Court, testified in favor and submitted testimony #39782.

11:03 a.m. Johnathan Alm, Member, Department of Health and Human Services, testified in favor and submitted testimony #39858.

11:05 a.m. Micah Olson, Member, North Dakota Protection and Advocacy Project, testified in favor and submitted testimony #39610.

11:06 a.m. Scott Bernstein, Executive Director, Guardian and Protective Services, testified in opposition and submitted testimony #39998.

11:08 a.m. Chairman M. Ruby closed the hearing.

*Madaline Cooper, Committee Clerk for Jackson Toman, Committee Clerk*



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House Human Services Committee

Senate Bill 2291 - March 10, 2025

Testimony of Micah Olson, P&A Position-In Support

My name is Micah Olson. I am attorney at North Dakota Protection and Advocacy (P&A). P&A is in support of SB 2291.

An earlier version of this bill removed the definition of “limited guardianship.” P&A supports this version, as the definition has been put back in.

P&A is in favor the definition of “least restrictive form of intervention” at number 31 of the definitions section on page 8. This specifies and explains to guardians that an individual under guardianship must have as much freedom as possible. Having this specified in the law would benefit those under guardianship and would assist in explaining a guardian’s obligations.

P&A recommends using the term “Individual under guardianship” rather than “Ward”, as used in number 63 of the definitions section on page 11, and throughout the bill. P&A recognizes this is a significant undertaking, as “ward” is used throughout state law, but P&A would support a plan to update the language.

**Senate Bill 2291**  
**House Human Services Committee**  
**Testimony Presented by Sara Behrens**  
**March 10, 2025**

Good morning Chairman Ruby, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I also serve as staff to the Guardianship Standards Workgroup. I am here today in support of Senate Bill 2291. This bill was drafted as a collaborative effort by the members of the Guardianship Standards Workgroup. The proposed amendments contained in Senate Bill 2291 are intended to clarify procedures in guardianships and conservatorships.

**Sections 1 and 2**

These sections were requested by the Department of Health and Human Services. Jonathan Alm will testify to the reasons for the changes in these two sections of the bill.

**Section 3:**

Section 3 adds a good cause exception to the expiration of the letters of guardianship in a juvenile matter where a review hearing cannot be held prior to the expiration of those letters. This provides flexibility to ensure that there isn't a

lapse in authority while waiting for a hearing to be held. The extension is limited to 90 days. New letters are required reflecting the extended expiration date.

#### **Section 4:**

Currently, there are definitions in both chapters 30.1-01 and 30.1-26. This bill brings the definitions from section 30.1-26 into chapter 30.1-01 so that the definitions are more easily located. The definitions of “alternative resource plan,” “incapacitated person,” “least restrictive form of intervention,” “protected person,” “protective proceeding,” “refusal,” and “ward” are simply moved from chapter 30.1-01 to 30.1-26.

Page 7, lines 18-31 and page 8, lines 1-9, clarifies the definition of “interested person.” Currently, the definition is geared towards probate and not guardianships and conservatorships. There has been confusion regarding who would be an interested person in a guardianship proceeding. The amendment separates the definition into paragraph a which applies for all purposes other than guardianships and conservatorships, and paragraph b which applies for purposes of guardianships and conservatorships. Those considered interested persons would be:

- the petitioner for appointment of the guardian, which may be someone other than the guardian,
- the spouse, parent, adult children, or siblings of the ward, protected person, or an adult relative if one of those individuals is not found,



- an adult individual who has lived with a ward or protected person for more than 6 months,
- an attorney for the ward or protected person,
- a representative payee for the ward or protected person, and
- any other person designated by the court.

Page 9, line 21, eliminates the definition for “person with limited capacity.”

This section currently refers to section 30.1-26-01; however, this definition has not existed in 30.1-26-01 since 1989. This cleans up this section by removing reference to a nonexistent definition.

#### **Section 5:**

Section 5 amends section 30.1-28-03.1 to specify that a report prepared and submitted by a guardian ad litem, a visitor, or an expert examiner, as well as the annual, final and financial reports prepared and submitted by the guardian are confidential and not open to public inspection. All of these documents routinely contain confidential medical and financial information. Currently, only the expert examiner and visitor reports are confidential.

#### **Section 6:**

Section 6 amends subsection 3 of section 30.1-28-03.2 to refer to a new section created by the bill, found on page 18, Section 12.

### **Section 7:**

Section 7 adds the good cause extension to section 30.1-28-04 for those instances when a hearing cannot be held prior to the expiration of the initial order. Like the prior good cause section, new letters of guardianship are required to reflect that extended date.

Page 14, lines 26-27, adds the visitor and expert examiner to those who are discharged of their duties following the hearing. At that point, these individuals' duties are completed at the point the hearing is completed.

### **Section 8:**

Section 8 is simply removing the notice piece because it is provided elsewhere.

### **Section 9:**

This section amends 30.1-28-07 to remove the provisions regarding removal or resignation of a guardian and, instead, the section will govern change in or termination of guardianship. These are the situations where a ward may no longer be incapacitated or no longer be incapacitated to the extent they were when the guardian was initially appointed. An informal request can be made and the clerk will send a copy to the parties and those identified in the new notice provision.

## **Section 10:**

This section creates a new section to chapter 30.1-28 to govern instances of removal, resignation or death of a guardian and appointment of a successor guardian. The new section was created to provide a clearer procedure in these instances as it created confusion being combined with the prior section.

Page 16, lines 25-30, provides the court, the ward, or any interested person can seek removal of the guardian if it's in the best interests of the ward.

Page 16, line 31, allows for the guardian to resign and the court to accept that resignation.

Page 17, lines 1-7, provides for the submission of a final report and accounting when a guardian dies, is removed, or resigns.

Page 17, lines 8-10, requires a hearing no later than 60 days following the filing of the petition or request. The hearing can be held later if good cause exists for the delay. The court must then make written findings and conclusions of law.

Page 17, lines 11-19, provides the procedure for appointment of a successor guardian. The court can appoint a successor guardian or can make other orders if appointing a successor guardian is not appropriate. A hearing is held if requested. Otherwise, the court may sign the order appointing the successor guardian.

Procedure for appointment of a successor guardian is currently found in section 30.1-28-15 which is repealed by this bill. Moving the procedure to this new section

provides more clarity in what situations a successor is appropriate and how to appoint that successor. The new section makes clear that the court does not need to wait for someone to petition for removal of a guardian and appointment of a successor if the situation requires it.

**Section 11:**

Page 17, lines 22-24, amends subsection 1 of section 30.1-28-09 to remove references to proceedings following the appointment of a guardian. This is now covered in the next section.

**Section 12:**

The new section governs notices in guardianship proceedings following appointment of the guardian. Current law contains various notice provisions scattered throughout chapter 30.1-28 and those provisions are not always consistent. Section 30.1-28-09 provides the notice provision applicable prior to appointment. This new section will provide uniformity and clarity to notices following that appointment.

Following the appointment, those who require notice may be different from those requiring notice of the proceedings to appoint a guardian. Subsequent to the appointment, notice must be given to the parties, the conservator, if any, the ward, and any interested persons designated in the court's order. Throughout the bill, the various notice requirements have been replaced by a reference to this new section.

### **Section 13:**

Section 13 clarifies that the hearing on a petition for an emergency guardian must be held within 10 days of the filing of the petition.

### **Section 14:**

Section 14 addresses liability of the guardian. Guardians on the Workgroup expressed concerns about being held liable for acts of the ward in a broad range of situations. The fear is that the risk of liability may deter individual from being willing to serve as a guardian. The additions specify that a guardian is liable for breaches of the guardian's fiduciary duty and acts of the ward in cases where the guardian was grossly negligent. The addition also makes clear that a guardian is not required to expend the guardian's own funds simply because they are the guardian.

We are aware that there may be an amendment proposed to expand the immunity from liability for guardians. Prior to 1989, there was a provision that stated "A guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons solely by reason of the parental relationship." This was removed in 1989 and, unfortunately, the legislative history does not provide insight as to the reason for the removal.



The issue of liability was brought to the Workgroup and discussed at multiple meetings. The original proposal was to state that “a guardian is not liable to a third person for the acts of the ward solely by reason of the guardianship relationship.” Concerns were raised that the suggested language would provide almost blanket immunity for a guardian. The next iteration presented stated “A guardian is not liable for the acts of the ward unless the guardian is personally negligent.” Concerns were raised that the protection was not substantial enough without a definition of negligence included. The Workgroup then decided on the language that is found in the bill stating that a guardian is only liable if the guardian was grossly negligent which means “in the want of slight care and diligence.” The term has been further defined in case law to mean a lack of care that is essentially willful in nature or no care at all. This provision provides protection to the guardian from liability for acts of ward unless the guardian acted without any care at all and the ward then committed a wrongful act.

Blanket immunity would be inappropriate. There may be instances where the guardian is aware of the likelihood of the ward committing an act against a third party and immunity from liability would be unjust. Whatever wording the Committee chooses, we would like it to be clear that, while few and far between, there are those instances where a guardian could and should be liable just like any other professional.

### **Section 15:**

Section 15 simply fixes an error in section 30.1-28-12.1 where the term “interested party” was used where it should be “interested person.”

### **Section 16:**

Section 16 amends section 30.1-28-12.2 to refer to the new notice provision found in section 12 of this bill.

### **Section 17:**

We now move from guardianships to conservatorships. Similar to the guardianship changes, this section amends 30.1-29-05 to remove the provision on page 25, lines 3-7 regarding notice following the appointment of a conservator and moves it to its own section.

### **Section 18:**

Section 18 creates a new section to chapter 30.1-29 regarding notice following appointment of a conservator. Like in the guardianship realm, those requiring notice may be different following the appointment and currently the provisions are not uniform in the chapter. Amendments are made throughout the bill to refer to the new notice section.

### **Section 19:**

Section 19 amends subsection 6 of section 30.1-29-07 to allow those who prepared and submitted reports, such as the expert examiner, to be subpoenaed to

testify and be cross-examined. The subpoena can be issued by the court, the guardian ad litem, the petitioner or the person to be protected.

Page 25, lines 20-21 makes clear that both the guardian ad litem and expert examiner are discharged following the hearing as their role has been completed at that point.

**Section 20:**

Section 20 creates a new section to chapter 30.1-29 governing confidentiality of the reports submitted in a conservatorship proceeding. The reports prepared and submitted by the guardian ad litem and expert examiner, as well as the annual and final reports and financial accounting submitted by the conservator are all confidential as they routinely contain confidential medical and financial information. This confidentiality exists for guardianship proceedings and should exist for conservatorship proceedings as well.

**Sections 21 through 24:**

These four sections amend sections 30.1-29-08, 30.1-29-13, 30.1-29-18, and 30.1-29-19, to remove the notice provisions as they are now governed by section 18 of this bill.

**Section 25:**

Section 25 amends subsection 1 of section 30.1-29-01 to make it clear that the court must hold a hearing within 10 days of filing a petition for the appointment of an emergency conservator.

**Sections 26-27:**

These two sections amend sections 30.1-29-22 and 30.1-29-25 to remove the notice provisions as they are now governed by section 18 of this bill.

**Section 28:**

Repeals section 30.1-26-01, 30.1-28-08, and 30.1-28-15. Section 30.1-26-01 includes the definitions which were moved into section 30.1-01-06 in section 4 of the bill. Section 30.1-28-08 contains a definition of visitor which is already defined in section 30.1-01-06. Section 30.1-28-15 pertains to appointment of successor guardians. Successor guardians are now covered in the new section to chapter 30.1-28 which is created by section 10 of the bill.



Health &amp; Human Services

**Testimony**  
**Engrossed Senate Bill No. 2291**  
**House Human Services Committee**  
**Representative Ruby, Chairman**  
March 10, 2025

Chairman Ruby, and members of the House Human Services Committee, I am Jonathan Alm, Chief Legal Officer with the Department of Health and Human Services (Department). I appear before you in support of Engrossed Senate Bill No. 2291.

I appear before you to specifically talk about Sections 1 and 2 of this Bill.

**Section 1:**

The proposed changes in Section 1 of this Bill amend subsection 1 of 23-12-13 of the North Dakota Century Code regarding who can provide informed consent to health care for an incapacitated individual. The changes on page 1, lines 20 and 21 will allow a psychiatrist or psychologist to determine if an individual is incapacitated. This change would be consistent with the State's civil commitment, fitness to proceed, and lack of criminal responsibility statutes that allows for a physician, psychiatrist, or psychologist to determine if someone is incapacitated or lacks capacity. This change also updates the citation of incapacitated person to section 30-1-01-06, which is the same definition used in section 30.1-26-01. There is another bill, Engrossed Senate Bill No. 2297, that is scheduled to be heard by this committee on March 12<sup>th</sup> that also amends section 23-12-13. The Department of Health and Human Services will present an amendment to Engrossed Senate Bill No. 2297 to incorporate the request on page 1, line 20 of this Bill.



**Section 2:**

The proposed changes in Section 2 of this Bill amends subsection 1 section 25-03.1-18.1 of the North Dakota Century Code to add language that allows a Tier 1b mental health professional to request authorization from a court to treat an individual if the individual was voluntarily admitted to a public treatment facility under the civil commitment law. This will allow a public treatment facility to provide the necessary treatment to a voluntarily admitted individual when that individual or guardian does not have capacity to consent to the treatment.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

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Legislative Assembly

12. A guardian is not liable for the acts of the ward, solely based on the guardianship, unless the guardian is grossly negligent as defined in section 1-01-17.

13. A guardian is not required to expend personal funds on behalf of the ward solely by reason of the guardian relationship.

14. A guardian who exercises reasonable care in choosing a person to provide medical or other care, treatment, or service for a ward is not liable for injury to the ward resulting from the wrongful conduct of the person or the wrongful conduct of the ward.

**SECTION 15. AMENDMENT.** Section 30.1-28-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-12.1. Annual reports and accounts - Failure of guardian to file.**

If a guardian fails to file an annual report as required by section 30.1-28-12, fails to file a report at other times as the court may direct, or fails to provide an accounting of an estate, the court, upon its own motion or upon petition of any interested ~~party~~person, may issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account, or be found in contempt for failure to comply.

**SECTION 16. AMENDMENT.** Section 30.1-28-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-12.2. Restrictions on visitation, communication, and interaction with the ward - Removal of restriction.**

1. If it is in the best interests of the ward, a guardian may restrict visitation, communication, and interaction with the ward.
2. A family member, friend, the ward, clergy member, attorney, agency charged with the protection of vulnerable adults, or other interested person may move the court to remove the restriction on visitation, communication, and interaction with the ward.
3. The motion must state:
  - a. The movant's relationship to the ward;
  - b. Whether the guardian is unreasonably or arbitrarily denying or restricting visitation, communication, or interaction between the restricted party and the ward; and

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2291  
3/10/2025

relating to visitors in a guardianship proceeding and appointment of successor guardians.
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4:22 p.m. Chairman M. Ruby opened the meeting.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Bolinske, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios, Rohr.

Members Absent: Representative Beltz

### Discussion Topics:

- Committee Action

4:22 p.m. Representative Holle moved a Do Pass.

4:22 p.m. Representative Frelich seconded the motion.

4:24 p.m. Representative Holle withdrew his motion.

4:24 p.m. Representative Holle moved to adopt amendment from Scott Bernstein, #39998 from the 3/10/2025 11:30 a.m. meeting.

4:24 p.m. Representative Frelich seconded the motion.

4:28 p.m. Voice Vote passed.

4:28 p.m. Representative Holle moved a Do Pass as Amended.

4:28 p.m. Representative Anderson seconded the motion.

Representatives	Vote
Representative Matthew Ruby	Y
Representative Kathy Frelich	Y
Representative Karen Anderson	Y
Representative Mike Beltz	AB
Representative Macy Bolinske	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Cleyton Fegley	Y
Representative Jared Hendrix	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Nico Rios	Y
Representative Karen Rohr	Y

4:30 p.m. Motion carried 12-0-1.

4:30 p.m. Representative Bolinske moved to place on the consent calendar.

4:30 p.m. Representative Frelich seconded the motion.

4:30 p.m. Voice vote-motion carried.

Representative Dobervich will carry the bill.

4:31 p.m. Chairman M. Ruby closed the meeting.

*Madeline Cooper, Committee Clerk, for Jackson Toman, Committee Clerk*

*Bill was not placed on Consent Calendar.*

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
FIRST ENGROSSMENT**

**ENGROSSED SENATE BILL NO. 2291**

Introduced by

Senators Dwyer, Sickler, Larson, Weston

Representatives Hanson, Klemin

1 A BILL for an Act to create and enact two new sections to chapter 30.1-28 and two new sections  
2 to chapter 30.1-29 of the North Dakota Century Code, relating to removal, resignation and  
3 death of a guardian, notices in a guardianship, notices in a conservatorship, and confidentiality  
4 of reports; to amend and reenact subsection 1 of section 23-12-13, subsection 1 of section  
5 25-03.1-18.1, subsection 1 of section 27-20.1-17, sections 30.1-01-06 and 30.1-28-03.1,  
6 subsection 3 of section 30.1-28-03.2, section 30.1-28-04, subsection 1 of section 30.1-28-05,  
7 section 30.1-28-07, subsection 1 of section 30.1-28-09, sections 30.1-28-10.1, 30.1-28-12,  
8 30.1-28-12.1, 30.1-28-12.2, and 30.1-29-05, subsection 6 of section 30.1-29-07, subsection 2 of  
9 section 30.1-29-08, sections 30.1-29-13 and 30.1-29-18, subsection 3 of section 30.1-29-19,  
10 subsection 1 of section 30.1-29-20.1, subsection 2 of section 30.1-29-22, and subsection 5 of  
11 section 30.1-29-25 of the North Dakota Century Code, relating to incapacitated persons, court-  
12 authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated  
13 person, and protection of property of persons under disability and minors; and to repeal  
14 sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North Dakota Century Code, relating to  
15 visitors in a guardianship proceeding and appointment of successor guardians.

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

17 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-12-13 of the North Dakota Century  
18 Code is amended and reenacted as follows:

19 1. Informed consent for health care for a minor patient or a patient who is determined by  
20 a physician, psychiatrist, or psychologist to be an incapacitated person, as defined in



~~subsection 2 of section 30.1-26-04~~30.1-01-06, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority may provide informed consent to health care on behalf of the patient:

- a. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;
- b. The appointed guardian or custodian of the patient, if any;
- c. The patient's spouse who has maintained significant contacts with the incapacitated person;
- d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;
- e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
- f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
- g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;
- h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
- i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.

**SECTION 2. AMENDMENT.** Subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Upon notice and hearing, a tier 1b mental health professional may request authorization from the court to treat an individual under a mental health treatment order,or an individual voluntarily admitted to a public treatment facility under section 25-03.1-04, with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, a

psychiatrist or a final year psychiatric resident physician not involved in the current diagnosis or treatment of the patient shall certify:

- (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;
  - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
  - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
  - (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

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

1. An order appointing or reappointing a guardian under this chapter is effective for up to one year unless the court, upon a finding of good cause, sets a different time frame. An order may not be effective for more than three years. At least sixty days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, the child, if fourteen years of age or older, the child's attorney, if any, the child's parents, and any interested persons regarding whether the need for a guardianship continues to exist. The court, at its discretion, may appoint a guardian ad litem in accordance with section 27-20.1-08, before the hearing. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may:
  - a. Terminate the guardianship if shown by clear and convincing evidence that the circumstances that led to the guardianship no longer exist;



b. Reappoint the guardian for up to three years; or

c. Appoint a new guardian.

The court may extend a guardianship up to ninety days past the expiration of the initial order, for good cause shown, if the hearing cannot be held before the expiration of the order. If the court extends an initial order for guardianship, new letters of guardianship must be issued reflecting the extended expiration date.

**SECTION 4. AMENDMENT.** Section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-01-06. (1-201) General definitions.**

Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
2. "Alternative resource plan" means an alternative plan to guardianship which uses available support services and arrangements acceptable to the alleged incapacitated person. The term includes the use of support services such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care, home and community-based care, human service zones, developmental disability services, powers of attorney, durable powers of attorney, health care directives, supported decisionmaking, representative and protective payees, and licensed congregate care facilities.
3. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
- ~~3.4.~~ "Augmented estate" means the estate described in section 30.1-05-02.
- ~~4.5.~~ "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate

1 transfer at death; and, as it relates to a "beneficiary designated in a governing  
2 instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary  
3 of a beneficiary designation, a donee, or a person in whose favor a power of attorney  
4 or a power held in any individual, fiduciary, or representative capacity is exercised.

5 ~~5-6.~~ "Beneficiary designation" refers to a governing instrument naming a beneficiary of an  
6 account with payable on death designation, of a security registered in beneficiary form  
7 transferable on death, or other nonprobate transfer at death.

8 ~~6-7.~~ "Child" includes an individual entitled to take as a child under this title by intestate  
9 succession from the parent whose relationship is involved and excludes a person who  
10 is only a stepchild, a foster child, a grandchild, or any more remote descendant.

11 ~~7-8.~~ "Claims", in respect to estates of decedents and protected persons, includes liabilities  
12 of the decedent or protected person whether arising in contract, in tort, or otherwise,  
13 and liabilities of the estate which arise at or after the death of the decedent or after the  
14 appointment of a conservator, including funeral expenses and expenses of  
15 administration. The term does not include estate or inheritance taxes or demands or  
16 disputes regarding title of a decedent or protected person to specific assets alleged to  
17 be included in the estate.

18 ~~8-9.~~ "Conservator" means a person who is appointed by a court to manage the estate of a  
19 protected person, and includes limited conservators as defined in this section.

20 ~~9-10.~~ "Court" means the court having jurisdiction in matters relating to the affairs of  
21 decedents.

22 ~~10-11.~~ "Descendant" of an individual means all descendants of all generations, with the  
23 relationship of parent and child at each generation being determined by the definition  
24 of child and parent contained in this title.

25 ~~11-12.~~ "Devise", when used as a noun, means a testamentary disposition of real or personal  
26 property, and when used as a verb, means to dispose of real or personal property by  
27 will.

28 ~~12-13.~~ "Devisee" means a person designated in a will to receive a devise. In the case of a  
29 devise to an existing trust or trustee, or to a trustee or trust described by will, the trust  
30 or trustee is the devisee and the beneficiaries are not devisees.

31 ~~13-14.~~ "Disability" means cause for a protective order as described in section 30.1-29-01.



- 1 ~~14-15.~~ "Distributee" means any person who has received property of a decedent from the  
2 decedent's personal representative other than as a creditor or purchaser. A  
3 testamentary trustee is a distributee only to the extent of distributed assets or  
4 increment thereto remaining in the trustee's hands. A beneficiary of a testamentary  
5 trust to whom the trustee has distributed property received from a personal  
6 representative is a distributee of the personal representative. For the purposes of this  
7 provision, "testamentary trustee" includes a trustee to whom assets are transferred by  
8 will to the extent of the devised assets.
- 9 ~~15-16.~~ "Estate" includes the property of the decedent, trust, or other person whose affairs are  
10 subject to this title as originally constituted and as it exists from time to time during  
11 administration.
- 12 ~~16-17.~~ "Exempt property" means that property of a decedent's estate which is described in  
13 section 30.1-07-01.
- 14 ~~17-18.~~ "Expert examiner" means:  
15 a. A licensed physician;  
16 b. A psychiatrist;  
17 c. A licensed psychologist trained in a clinical program;  
18 d. An advanced practice registered nurse who is licensed under chapter 43-12.1  
19 within the role of a certified nurse practitioner or certified clinical nurse specialist,  
20 who has completed the requirements for a minimum of a master's degree from an  
21 accredited program, and who is functioning within the scope of practice in one of  
22 the population foci as approved by the state board of nursing; or  
23 e. A physician assistant who is licensed under chapter 43-17 and authorized by the  
24 state board of medical examiners to practice in this state.
- 25 ~~18-19.~~ "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 26 ~~19-20.~~ "Foreign personal representative" means a personal representative appointed by  
27 another jurisdiction.
- 28 ~~20-21.~~ "Formal proceedings" means proceedings conducted before a judge with notice to  
29 interested persons.
- 30 ~~21-22.~~ "Governing instrument" means a deed, will, trust, insurance or annuity policy, account  
31 with payable on death designation, security registered in beneficiary form transferable



1 on death, pension, profit-sharing, retirement, or similar benefit plan, instrument  
2 creating or exercising a power of appointment or a power of attorney, or a dispositive,  
3 appointive, or nominative instrument of any similar type.

4 ~~22-23.~~ "Guardian" means a person who or nonprofit corporation that has qualified as a  
5 guardian of a minor or incapacitated person pursuant to testamentary or court  
6 appointment, and includes limited guardians as defined in this section, but excludes  
7 one who is merely a guardian ad litem.

8 ~~23-24.~~ "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the  
9 surviving spouse and the state, who are entitled under the statutes of intestate  
10 succession to the property of a decedent.

11 ~~24-25.~~ "Incapacitated person" means ~~an individual described in section 30.1-26-01~~ any adult  
12 individual who is impaired by reason of mental illness, mental deficiency, physical  
13 illness or disability, or chemical dependency to the extent that the individual lacks  
14 capacity to make or communicate responsible decisions concerning the individual's  
15 matters of residence, education, medical treatment, legal affairs, vocation, finance, or  
16 other matters, or if the incapacity endangers the individual's health or safety.

17 ~~25-26.~~ "Informal proceedings" means those conducted by the court for probate of a will or  
18 appointment of a personal representative without notice to interested persons.

19 ~~26-27.~~ "Interested person" includes ~~heirs;~~

20 a. Except as provided under section b:

21 (1) Heirs and devisees, children, spouses, creditors, beneficiaries, and any  
22 others;

23 (2) Children;

24 (3) Spouses;

25 (4) Creditors;

26 (5) Beneficiaries;

27 (6) Any individual having a property right in or claim against a trust estate or the  
28 estate of a decedent, ward, or protected person. ~~The term also includes~~  
29 ~~persons;~~

30 (7) Person having priority for appointment as personal representative; ~~and other~~

31 (8) Other fiduciaries representing interested persons.

b. For purposes of guardianships and conservatorships:

(1) The petitioner for appointment of the guardian;

(2) The spouse, parent, adult children, or siblings of the ward, protected person, or an adult relative if a spouse, parent, adult child, sibling, or protected person cannot be found;

(3) An adult individual who has lived with a ward or a protected person for a period of more than six months;

(4) An attorney for the ward or protected person;

(5) A representative payee for the ward or protected person; and

(6) Any other person designated by the court.

The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

~~27-28.~~ "Issue" of a ~~person~~ an individual means descendant as defined in subsection ~~4011.~~

~~28-29.~~ "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~29-30.~~ "Lease" includes an oil, gas, or other mineral lease.

~~30-31.~~ "Least restrictive form of intervention" includes only the limitations necessary to provide the needed care and services for a guardianship, and the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.

~~32.~~ "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~31-33.~~ "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity and includes limited conservators as described by section 30.1-29-20.

- 1 ~~32-34.~~ "Limited guardian" means a person or nonprofit corporation, appointed by the court, to  
2 supervise certain specified aspects of the care of a person with limited capacity and  
3 includes limited guardians as described by section 30.1-28-04.
- 4 ~~33-35.~~ "Minor" means a person who is under eighteen years of age.
- 5 ~~34-36.~~ "Mortgage" means any conveyance, agreement, or arrangement in which property is  
6 encumbered or used as security.
- 7 ~~35-37.~~ "Nonresident decedent" means a decedent who was domiciled in another jurisdiction  
8 at the time of death.
- 9 ~~36-38.~~ "Organization" means a corporation, limited liability company, government or  
10 governmental subdivision or agency, business trust, estate, trust, partnership, joint  
11 venture, association, or any other legal or commercial entity.
- 12 ~~37-39.~~ "Parent" includes any ~~person~~individual entitled to take, or who would be entitled to  
13 take if the child died without a will, as a parent under this title, by intestate succession  
14 from the child whose relationship is in question and excludes any person who is only a  
15 stepparent, foster parent, or grandparent.
- 16 ~~38-40.~~ "Payer" means a trustee, insurer, business entity, employer, government,  
17 governmental agency or subdivision, or any other person authorized or obligated by  
18 law or a governing instrument to make payments.
- 19 ~~39-41.~~ "Person" means an individual, a corporation, a limited liability company, an  
20 organization, or other legal entity.
- 21 ~~40.~~ "~~Person with limited capacity~~" is ~~as defined in section 30.1-26-01.~~
- 22 ~~41-42.~~ "Personal representative" includes executor, administrator, successor personal  
23 representative, special administrator, and persons who perform substantially the same  
24 function under the law governing their status. "General personal representative"  
25 excludes special administrator.
- 26 ~~42-43.~~ "Petition" means a written request to the court for an order after notice.
- 27 ~~43-44.~~ "Proceeding" includes action at law and suit in equity.
- 28 ~~44-45.~~ "Property" includes both real and personal property or any interest therein and means  
29 anything that may be the subject of ownership.



- 1 ~~45-46.~~ "Protected person" ~~is as defined in section 30.1-26-01~~ means a minor or other  
2 individual for whom a conservator or limited conservator has been appointed, or other  
3 protective order has been made.
- 4 ~~46-47.~~ "Protective proceeding" means a proceeding described in ~~section 30.1-26-01~~ under  
5 section 30.1-29-01 to determine that an individual cannot effectively manage or apply  
6 the individual's estate to necessary ends, either because the individual lacks the ability  
7 or is otherwise inconvenienced, or because the individual is a minor, and to secure  
8 administration of the individual's estate by a conservator or other appropriate relief.
- 9 ~~47-48.~~ "Record" means information that is inscribed on a tangible medium or that is stored in  
10 an electronic or other medium and is retrievable in perceivable form.
- 11 ~~48-49.~~ "Refusal" means declining to accept prescribed mood stabilizer or antipsychotic  
12 medication by a clear and unequivocal response.
- 13 50. "Security" includes any note, stock, treasury stock, bond, debenture, membership  
14 interest in a limited liability company, evidence of indebtedness, certificate of interest  
15 or participation in an oil, gas, or mining title or lease or in payments out of production  
16 under such a title or lease, collateral trust certificate, transferable share, voting trust  
17 certificate or, in general, any interest or instrument commonly known as a security, or  
18 any certificate of interest or participation, any temporary or interim certificate, receipt,  
19 or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of  
20 the foregoing.
- 21 ~~49-51.~~ "Settlement", in reference to a decedent's estate, includes the full process of  
22 administration, distribution, and closing.
- 23 ~~50-52.~~ "Sign" means, with present intent to authenticate or adopt a record other than a will, to  
24 execute or adopt a tangible symbol or to attach to or logically associate with the record  
25 an electronic symbol, sound, or process.
- 26 ~~51-53.~~ "Special administrator" means a personal representative as described by sections  
27 30.1-17-14 through 30.1-17-18.
- 28 ~~52-54.~~ "State" means a state of the United States, the District of Columbia, the  
29 Commonwealth of Puerto Rico, or any territory or insular possession subject to the  
30 jurisdiction of the United States.

1 ~~53-55.~~ "Successor personal representative" means a personal representative, other than a  
2 special administrator, who is appointed to succeed a previously appointed personal  
3 representative.

4 ~~54-56.~~ "Successors" means persons, other than creditors, who are entitled to property of a  
5 decedent under the decedent's will or this title.

6 ~~55-57.~~ "Supervised administration" refers to the proceedings described in chapter 30.1-16.

7 ~~56-58.~~ "Survive" means that an individual has neither predeceased an event, including the  
8 death of another individual, nor predeceased an event under sections 30.1-04-04 and  
9 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived",  
10 "survivor", and "surviving".

11 ~~57-59.~~ "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

12 ~~58-60.~~ "Trust" includes an express trust, private or charitable, with additions thereto, wherever  
13 and however created. The term also includes a trust created or determined by  
14 judgment or decree under which the trust is to be administered in the manner of an  
15 express trust. The term excludes other constructive trusts and excludes resulting  
16 trusts, conservatorships, personal representatives, trust accounts as defined in  
17 custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19  
18 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24,  
19 chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries,  
20 common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts  
21 for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,  
22 pensions, or employee benefits of any kind, and any arrangement under which a  
23 person is nominee or escrowee for another.

24 ~~59-61.~~ "Trustee" includes an original, additional, or successor trustee, whether or not  
25 appointed or confirmed by court.

26 ~~60-62.~~ "Visitor" means an individual, in guardianship proceedings, who is trained in nursing,  
27 social work, medical care, mental health care, or rehabilitation and is an employee or  
28 special appointee of the court with no personal interest in the proceedings.

29 ~~61-63.~~ "Ward" means an individual ~~described in section 30.1-26-01~~ for whom a guardian has  
30 been appointed. A "minor ward" is a minor for whom a guardian has been appointed  
31 solely because of minority.



1 ~~62-64.~~ "Will" includes codicil and any testamentary instrument that merely appoints an  
2 executor, revokes or revises another will, nominates a guardian, or expressly excludes  
3 or limits the right of an individual or class to succeed to property of the decedent  
4 passing by intestate succession.

5 **SECTION 5. AMENDMENT.** Section 30.1-28-03.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **30.1-28-03.1. Confidentiality - Reports - Personal information.**

- 8 1. A written report prepared and submitted ~~under subsection 5 or 6 of section 30.1-28-03~~  
9 ~~is by a guardian ad litem, visitor, or expert examiner and annual and final reports and~~  
10 ~~financial accounting prepared and submitted by a guardian are~~ closed to the public  
11 and ~~is~~are not open to inspection except by the court, parties to the proceeding or their  
12 counsel, other persons for those purposes as the court may order for good cause, and  
13 others authorized by court rule.
- 14 2. Medical, psychological, or other treatment information protected by federal law or  
15 regulation and any financial account numbers related to a ward or proposed ward are  
16 confidential and may not be disclosed except to parties to the proceeding, their  
17 counsel, and others authorized by court rule. The court may permit access by other  
18 persons for good cause.

19 **SECTION 6. AMENDMENT.** Subsection 3 of section 30.1-28-03.2 of the North Dakota  
20 Century Code is amended and reenacted as follows:

- 21 3. The motion must be served upon ~~the ward, the ward's spouse, and all interested~~  
22 ~~persons~~ those identified in section 12 of this Act.

23 **SECTION 7. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **30.1-28-04. (5-304) Findings - Order of appointment.**

- 26 1. The court shall exercise the authority conferred in this chapter consistent with the  
27 maximum self-reliance and independence of the incapacitated person and make  
28 appointive and other orders only to the extent necessitated by the incapacitated  
29 person's actual mental and adaptive limitations or other conditions warranting the  
30 procedure.
- 31 2. At a hearing held under this chapter, the court shall:

- 1 a. Hear evidence that the proposed ward is an incapacitated person. Age,  
2 eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding  
3 of incapacity;
- 4 b. Hear evidence and determine whether there are any existing general durable  
5 powers of attorney and durable powers of attorney for health care. If there are  
6 validly executed durable powers of attorney, the court shall consider the  
7 appointed attorneys in fact and agents appointed thereunder when assessing  
8 alternative resource plans and the need for a guardian; and
- 9 c. Appoint a guardian and confer specific powers of guardianship only after finding  
10 in the record based on clear and convincing evidence that:
  - 11 (1) The proposed ward is an incapacitated person;
  - 12 (2) There is no available alternative resource plan that is suitable to safeguard  
13 the proposed ward's health, safety, or habilitation which could be used  
14 instead of a guardianship;
  - 15 (3) The guardianship is necessary as the best means of providing care,  
16 supervision, or habilitation of the ward; and
  - 17 (4) The powers and duties conferred upon the guardian are appropriate as the  
18 least restrictive form of intervention consistent with the ability of the ward for  
19 self-care.
- 20 3. Except upon specific findings of the court, a ward may not be deprived of any of the  
21 following legal rights: to vote, to seek to change marital status, or to obtain or retain a  
22 motor vehicle operator's license.
- 23 4. The court may find that the ward retains other specific rights.
- 24 5. The order appointing a guardian confers upon the guardian only those powers and  
25 duties specified in the order. In addition to any other powers conferred upon the  
26 guardian, the court's order must state whether the guardian has no authority, general  
27 authority, or limited authority to make decisions on behalf of the ward in each of the  
28 areas of residential, educational, medical, legal, vocational, and financial  
29 decisionmaking. A grant of limited authority must specify the limitations upon the  
30 authority of the guardian or the authority retained by the ward. The court's order must  
31 require the guardian to provide within ninety days from the date of the order a



beginning inventory of all assets owned by the ward or in which the ward has an interest. The guardian shall provide a copy of the beginning inventory to ~~the ward and any interested persons designated by the court in its order~~ those identified in section 12 of this Act. Unless terminated earlier by the court, an order appointing or reappointing a guardian under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, ward, ward's attorney, if any, and any interested persons regarding whether the need for a guardian continues to exist. If it is recommended that the guardianship continue, the court may appoint a guardian ad litem ~~or~~ visitor, or both, in accordance with section 30.1-28-03. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may reappoint the guardian for up to another five years, allow the existing order to expire, or appoint a new guardian in accordance with this section. If a review hearing cannot be held before the expiration of an initial order for guardianship, the court may extend the initial order for up to an additional ninety days upon good cause shown. New letters of guardianship must be issued reflecting the extended expiration date. The supreme court, by rule or order, shall provide for the regular review of guardianship in existence on August 1, 2015.

6. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
7. The court may require a guardian to furnish a bond in the amount and with sureties as the court specifies.
8. After the hearing, the guardian ad litem, visitor, and expert examiner must be discharged of ~~the person's~~ their duties as ~~guardian ad litem~~.

**SECTION 8. AMENDMENT.** Subsection 1 of section 30.1-28-05 of the North Dakota Century Code is amended and reenacted as follows:

1. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any

interested person. ~~Notice of any proceeding so instituted must be served upon the guardian by the petitioner.~~

**SECTION 9. AMENDMENT.** Section 30.1-28-07 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order which may be appropriate.~~
2. The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated or no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that the duties and authority of the guardian require modification, ~~and for removal or resignation of the guardian, termination of the guardianship,~~ or change in the duties and authority of the guardian. A request for this order may be made by informal letter to the court or judge. The clerk of district court shall send a copy of the informal request to the parties and those identified in section 12 of this Act. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.
- ~~3.2.~~ Before ~~removing a guardian,~~ changing the guardian's duties and authority, accepting the resignation of a guardian, or on finding that the ward is no longer incapacitated, or no longer incapacitated to the same extent and ordering the guardianship terminated or modified, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the place where the ward resides or is detained, to observe conditions and report in writing to the court.
- ~~4.3.~~ A hearing must be held no later than sixty days following the filing of the petition or informal request, unless good cause is shown. Following the hearing, the court shall make written findings of fact. Before terminating or modifying the guardianship, the court shall find by a preponderance of the evidence that the ward is no longer



incapacitated, no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that it is in the best interests of the ward that the duties and authority of the guardian be modified. New letters of guardianship must be issued to the guardian in the same manner as provided in section 30.1-28-05.

~~5-4.~~ In deciding whether to terminate or modify a guardianship, the court may require a report by and consider the recommendations of an expert examiner.

~~6.~~ If the guardian dies, or if on the basis of a petition filed under this section or a report or other information, there is probable cause to believe a guardian is not performing the guardian's duties effectively and there is an imminent danger the ward's physical, mental, or emotional health or safety will be seriously impaired, the court shall take whatever action is necessary to protect the ward, including dismissal of the guardian and appointment of an emergency guardian as provided in section 30.1-28-10.1.

~~7-5.~~ On termination of the guardianship, a guardian shall file a final report and accounting and provide a copy of the report and accounting to those given notice under section ~~30.1-28-09~~ 12 of this Act. The report and accounting must be filed with the clerk of district court. The filing of the report and accounting does not constitute the court's approval of the report and accounting. The court may approve a report and settle and allow an accounting only upon notice ~~to the ward and other interested persons who have made an appearance or requested notice of the proceedings~~ to those identified in section 12 of this Act.

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

**Removal, resignation, or death of guardian - Appointment of successor guardian.**

1. The court may remove a guardian on its own motion or on petition of the ward or any interested person if removal is in the best interests of the ward. A request for this order may be made by informal letter to the court or judge. The clerk of district court shall send a copy of the informal request to the parties and those identified in section 12 of this Act. Any person that knowingly interferes with the transmission of a request under this section may be adjudged guilty of contempt of court.
2. The court may accept the resignation of a guardian upon petition by the guardian.



- 1       3. Upon the death of a guardian, the personal representative of the guardian shall submit  
2       a final report and accounting to the court. Upon removal or resignation of the guardian,  
3       the guardian shall submit a final report and accounting to the court. The report and  
4       accounting must be filed with the clerk of district court. The filing of the report and  
5       accounting does not constitute the court's approval of the report and accounting. The  
6       court may approve a report and settle and allow an accounting only upon notice to  
7       those identified in section 12 of this Act.
- 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 and conclusions of law.
- 11      5. Upon the removal, resignation, or death of a guardian, the court, upon the court's own  
12      motion or upon a motion filed by any interested person, may appoint a successor  
13      guardian or make any other appropriate order.
- 14      6. A notice of motion must accompany the motion for appointment of successor guardian  
15      and must include a statement that provides an opportunity for hearing if requested in  
16      regard to the appointment of a successor guardian. The notice of motion and motion  
17      must be served on those identified in section 12 of this Act.
- 18      7. If a hearing is not requested by or on behalf of the ward listed in the notice, the court  
19      may sign an order appointing a successor guardian for that ward.

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

- 22      1. In a proceeding for the appointment ~~or removal~~ of a guardian ~~or for an alteration or~~  
23      ~~termination of a guardianship other than~~ and, if notice is required, for the appointment  
24      of an emergency guardian ~~or for the temporary suspension of a guardian~~, notice of  
25      hearing shall be given by the petitioning party, unless otherwise directed by the court,  
26      to each of the following:
- 27          a. The ward or the proposed ward and the ward's or proposed ward's spouse,  
28             parents, and adult children;
- 29          b. Any person, corporation, or institution who is serving as the ward's guardian,  
30             attorney in fact, representative payee for public benefits, or conservator, or who  
31             has the ward's care and custody;

- 1 c. If no other person is notified under subdivision a, then the adult siblings and any  
2 adult with whom the proposed ward resides in a private residence, or if none can  
3 be found, any known adult relative; and  
4 d. The attorney for the proposed ward, the visitor, and the expert examiner, together  
5 with a copy of the respective order of appointment for each.

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

8 **Notices in guardianship proceedings subsequent to appointment.**

9 Notice in a guardianship proceeding subsequent to appointment of a guardian must be  
10 given to the parties, the conservator, if any, the ward, and any interested persons designated in  
11 the order of the court.

12 **SECTION 13. AMENDMENT.** Section 30.1-28-10.1 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **30.1-28-10.1. Emergency guardian.**

- 15 1. On petition by a person interested in the alleged incapacitated individual's welfare, the  
16 court may appoint an emergency guardian if the court finds that compliance with the  
17 procedures of this chapter likely will result in substantial harm to the alleged  
18 incapacitated individual's health, safety, or welfare, and that no other person appears  
19 to have authority and willingness to act in the circumstances. The court may appoint  
20 the guardian for a specified period of time, not to exceed ninety days. Immediately  
21 upon receipt of the petition for an emergency guardianship, the court shall appoint a  
22 guardian ad litem to advocate for the best interests of the alleged incapacitated  
23 individual in the proceeding and any subsequent proceeding. ~~Except as otherwise~~  
24 ~~provided in subsection 2, reasonable notice of the time and place of a hearing on the~~  
25 ~~petition must be given to the alleged incapacitated individual, the individual's spouse, if~~  
26 ~~any, and any other person as the court directs~~ The court shall hold a hearing within  
27 ten days of the filing of the petition to determine if appointment of an emergency  
28 guardian is appropriate.  
29 2. An emergency guardian may be appointed without notice to the alleged incapacitated  
30 individual and the alleged incapacitated individual's guardian ad litem only if the court  
31 finds from affidavit or other sworn testimony that the alleged incapacitated individual



- 1 will be substantially harmed before a hearing on the appointment can be held. If the  
2 court appoints an emergency guardian without notice to the alleged incapacitated  
3 individual, the alleged incapacitated individual and the individual's spouse, if any, and  
4 any other person the court directs must be given notice of the appointment within forty-  
5 eight hours after the appointment. The court shall hold a hearing on the  
6 appropriateness of the appointment within ten days after the appointment.
- 7 3. If a conservator has not been appointed for the alleged incapacitated individual and  
8 the emergency guardian has authority for financial decisionmaking, the court's order of  
9 appointment must state that the guardian shall safeguard any assets held by the  
10 alleged incapacitated individual and, during the period of appointment and subject to  
11 any further order of the court, may expend the individual's assets only for the  
12 necessary support and care of the individual.
- 13 4. Appointment of an emergency guardian, with or without notice, is not a determination  
14 of the alleged incapacitated individual's incapacity.
- 15 5. The court may remove an emergency guardian at any time. An emergency guardian  
16 shall make any report the court requires. In all other respects, the provisions of this  
17 chapter concerning guardians apply to an emergency guardian.
- 18 6. The petitioner may request the court extend the emergency order for up to an  
19 additional ninety days upon good cause shown. The request must be filed with the  
20 court at least fourteen days before the expiration of the emergency order and served  
21 on the alleged incapacitated individual, the individual's spouse, if any, and any other  
22 persons as the court directs. The court shall hold a hearing on the appropriateness of  
23 the extension within ten days of the request. No additional extensions of the  
24 emergency guardianship may be granted.

25 **SECTION 14. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **30.1-28-12. (5-312) General powers and duties of guardian.**

- 28 1. A guardian of an incapacitated person has only the powers and duties specified by the  
29 court.
- 30 2. To the extent that it is consistent with the terms of an order by a court of competent  
31 jurisdiction, the guardian is entitled to custody of the person of the ward and may

- 1 establish the ward's place of residence within or without this state. However, no  
2 guardian may voluntarily admit a ward to a mental health facility or state institution for  
3 a period of more than forty-five days without a mental health commitment proceeding  
4 or other court order. Notwithstanding the other provisions of this subsection, the  
5 guardian may readmit a ward to a mental health facility or a state institution within sixty  
6 days of discharge from that institution, if the original admission to the facility or  
7 institution had been authorized by the court.
- 8 3. If entitled to custody of the ward, the guardian should make provision for the care,  
9 comfort, and maintenance of the ward and, whenever appropriate, arrange for the  
10 ward's training, education, or habilitative services. The guardian shall take reasonable  
11 care of the ward's clothing, furniture, vehicles, and personal effects.
- 12 4. Notwithstanding general or limited authority to make medical decisions on behalf of  
13 the ward, no guardian may consent to psychosurgery, abortion, sterilization, or  
14 experimental treatment of any kind unless the procedure is first approved by order of  
15 the court.
- 16 5. When exercising the authority granted by the court, the guardian shall safeguard the  
17 civil rights and personal autonomy of the ward to the fullest extent possible by:
- 18 a. Meeting with the ward following the hearing, unless the ward is represented by  
19 an attorney, and explaining to the fullest extent possible the contents of the  
20 court's order and the extent of the guardian's authority;
- 21 b. Involving the ward as fully as is practicable in making decisions with respect to  
22 the ward's living arrangements, health care, and other aspects of the ward's care;  
23 and
- 24 c. Ensuring the ward's maximum personal freedom by using the least restrictive  
25 forms of intervention and only as necessary for the safety of the ward or others.
- 26 6. If no conservator for the estate of the ward has been appointed and if the guardian  
27 has been granted authority to make financial decisions on behalf of the ward, the  
28 guardian shall:
- 29 a. Institute proceedings to compel any person under a duty to support the ward or to  
30 pay sums for the welfare of the ward to perform that duty.



- 1           b. Receive money and tangible property deliverable to the ward and apply the  
2           money and property for support, care, and education of the ward; but, the  
3           guardian may not use funds from the ward's estate for room and board which the  
4           guardian or the guardian's spouse, parent, or child have furnished the ward  
5           unless a charge for the service is approved by order of the court made upon  
6           notice to ~~at least one of the next of kin of the ward, if notice is possible~~those  
7           identified in section 12 of this Act. The guardian shall exercise care to conserve  
8           any excess for the ward's needs.
- 9           c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or  
10          otherwise encumber or transfer ownership or beneficiary of:
- 11          (1) The real property of the ward; or  
12          (2) The personal property of the ward valued over two thousand five hundred  
13          dollars upon such terms as the court may order, for the purpose of paying  
14          the ward's debts; providing for the care, maintenance, rehabilitation,  
15          training, or education of the ward or the ward's dependents; or for any other  
16          purpose which is in the best interests of the ward. The sale, mortgage, or  
17          other encumbrance or transfer of ownership of personal property of the  
18          ward valued at two thousand five hundred dollars or less does not require a  
19          court order.
- 20          d. Move the court under section 30.1-28-03.2 for authority to lease the real or  
21          personal property of the ward.
- 22          e. A guardian may not purchase, lease, or obtain ownership or become the  
23          beneficiary of property of the ward unless the price and manner of the sale are  
24          approved by the court.
- 25        7. If a conservator has been appointed, all of the ward's estate received by the guardian  
26        in excess of those funds expended to meet current expenses for support, care, and  
27        education of the ward must be paid to the conservator for management as provided in  
28        this title, and the guardian must account to the conservator for funds expended.
- 29        8. A guardian shall file an annual report with the court regarding the exercise of powers  
30        and duties in areas of authority specified in the court's order of appointment. The  
31        report must describe the status or condition of the ward, including any change of

1 residence and reasons for the change, any medical treatment received by or withheld  
2 from the ward, any expenditure and income affecting the ward, any sale or transfer of  
3 property affecting the ward, and any exercise of legal authority by the guardian  
4 affecting the ward. The report must include changes that have occurred since the  
5 previous reporting period and an accounting of the ward's estate. The guardian also  
6 shall report whether the ward continues to require guardianship and whether any  
7 powers of the guardian should be increased or limited. The report must be filed with  
8 the clerk of district court. The filing of the report does not constitute an adjudication or  
9 a determination of the merits of the report nor does the filing of the report constitute  
10 the court's approval of the report. The court may approve a report and allow and settle  
11 an accounting only upon notice to the ward's guardian ad litem and other interested  
12 persons who have made an appearance or requested notice of proceedings. The  
13 office of the state court administrator shall provide printed forms that may be used to  
14 fulfill reporting requirements. Any report must be similar in substance to the state court  
15 administrator's form. The forms must be available in the office of clerk of district court  
16 or obtainable through the supreme court's internet website.

17 9. Copies of the guardian's annual report to the court and of any other reports required  
18 by the court must be mailed to ~~the ward and any interested persons designated by the~~  
19 ~~court in its order~~ those identified in section 12 of this Act. The ward's copy must be  
20 accompanied by a statement, printed with not less than double-spaced twelve-point  
21 type, of the ward's right to seek alteration, limitation, or termination of the guardianship  
22 at any time.

23 10. The guardian is entitled to receive reasonable sums for services and for room and  
24 board furnished to the ward as approved by the court or as agreed upon between the  
25 guardian and the conservator, provided the amounts agreed upon are reasonable  
26 under the circumstances. The guardian may request the conservator to expend the  
27 ward's estate by payment to third persons or institutions for the ward's care and  
28 maintenance.

29 11. A guardian has a fiduciary duty to the ward and may be held liable for a breach of that  
30 duty.



12. A guardian is not liable for the acts of the ward solely by reason of the guardian relationship, unless the guardian is grossly negligent as defined in section 1-01-17.

13. A guardian is not required to expend personal funds on behalf of the ward solely by reason of the guardian relationship.

14. A guardian who exercises reasonable care in selecting an individual to provide medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the individual or the wrongful conduct of the ward.

**SECTION 15. AMENDMENT.** Section 30.1-28-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-12.1. Annual reports and accounts - Failure of guardian to file.**

If a guardian fails to file an annual report as required by section 30.1-28-12, fails to file a report at other times as the court may direct, or fails to provide an accounting of an estate, the court, upon its own motion or upon petition of any interested ~~party~~person, may issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account, or be found in contempt for failure to comply.

**SECTION 16. AMENDMENT.** Section 30.1-28-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-12.2. Restrictions on visitation, communication, and interaction with the ward - Removal of restriction.**

1. If it is in the best interests of the ward, a guardian may restrict visitation, communication, and interaction with the ward.
2. A family member, friend, the ward, clergy member, attorney, agency charged with the protection of vulnerable adults, or other interested person may move the court to remove the restriction on visitation, communication, and interaction with the ward.
3. The motion must state:
  - a. The movant's relationship to the ward;
  - b. Whether the guardian is unreasonably or arbitrarily denying or restricting visitation, communication, or interaction between the restricted party and the ward; and

- 1 c. The facts supporting the movant's allegation that the guardian is unreasonably or
- 2 arbitrarily denying or restricting visitation, communication, or interaction between
- 3 the restricted party and the ward.
- 4 4. The movant shall serve the motion on ~~the guardian, the ward, the ward's spouse, and~~
- 5 ~~any other interested person~~ those identified in section 12 of this Act.
- 6 5. The court shall set a hearing on the motion and provide notice of the hearing to the
- 7 movant, ~~the guardian, the ward, the ward's spouse, and any other interested person~~
- 8 and those identified in section 12 of this Act.
- 9 6. The court shall take into consideration the ward's wishes, and may conduct an
- 10 in-camera interview with the ward and appoint a visitor or guardian ad litem.
- 11 7. If the court grants the motion for visitation, communication, or interaction, the court
- 12 may impose conditions on visitation, communication, and interaction between the
- 13 restricted party and the ward.
- 14 8. If the visitation, communication, or interaction is not in the best interests of the ward,
- 15 the court may prohibit visitation, communication, or interaction between the restricted
- 16 party and the ward.
- 17 9. The court may award reasonable costs and attorney's fees to the prevailing party if the
- 18 court finds:
- 19 a. The guardian unreasonably, arbitrarily, or in bad faith denied or restricted
- 20 visitation, communication, or interaction between the restricted party and the
- 21 ward; or
- 22 b. The motion was frivolous.
- 23 10. Costs and attorney's fees awarded against the guardian may not be paid from the
- 24 ward's estate.
- 25 11. If a movant for visitation, communication, and interaction states the ward's health is in
- 26 significant decline or the ward's death may be imminent, the court shall conduct an
- 27 emergency hearing on the motion as soon as practicable but not later than fourteen
- 28 days after the date the motion is filed or at a later date upon a showing of good cause.

29 **SECTION 17. AMENDMENT.** Section 30.1-29-05 of the North Dakota Century Code is  
30 amended and reenacted as follows:



**30.1-29-05. (5-405) Notice.**

1- On a petition for appointment of a conservator or other protective order, the petitioning party shall cause notice of the proceeding to be served personally on the person to be protected and the spouse of the person to be protected or, if none, the parents of the person to be protected, or any guardian or conservator, at least fourteen days before the date of hearing. If none of these parties can be found, any government agency paying benefits to the person sought to be protected, if the person seeking the appointment has knowledge of the existence of these benefits, must be given notice in accordance with section 30.1-03-01.

~~2- Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 30.1-29-06 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection 1, notice shall be given in accordance with section 30.1-03-01.~~

**SECTION 18.** A new section to chapter 30.1-29 of the North Dakota Century Code is created and enacted as follows:

**Notices in conservatorship proceedings subsequent to appointment.**

Notice in a conservatorship proceeding subsequent to appointment of a conservator must be given to the parties, the guardian, if any, the individual in need of protection, and any interested persons designated by the court.

**SECTION 19. AMENDMENT.** Subsection 6 of section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

6. After hearing, upon finding that the appointment of a conservator or other protective order is appropriate, the court shall make an appointment or other appropriate protective order. The court, guardian ad litem, petitioner, or person to be protected may subpoena the individual who prepared and submitted the report to appear, testify, and be cross-examined. After the hearing, the guardian ad litem and expert examiner must be discharged of ~~the~~their duties as ~~guardian ad litem~~.

**SECTION 20.** A new section to chapter 30.1-29 of the North Dakota Century Code is created and enacted as follows:

**Confidentiality - Reports - Personal information.**

1. A written report prepared and submitted by a guardian ad litem or expert examiner and annual and final reports and financial accounting prepared and submitted by a conservator are closed to the public and are not open to inspection except by the court, parties to the proceeding or their counsel, other persons for those purposes as the court may order for good cause, and others authorized by court rule.
2. Any medical, psychological, or other treatment information protected by federal law or regulation, and any financial account numbers related to a protected person or proposed protected person are confidential and may not be disclosed except to parties to the proceeding, their counsel, and others authorized by court rule. The court may permit access by other persons for good cause.

**SECTION 21. AMENDMENT.** Subsection 2 of section 30.1-29-08 of the North Dakota Century Code is amended and reenacted as follows:

2. The court has the following powers which may be exercised directly or through a conservator, subject to section 30.1-29-22, in respect to the estate and affairs of protected persons:
  - a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without prior notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the benefit of the person to be protected or the benefit of the dependents of the person to be protected.
  - b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
  - c. After hearing and upon determining that appointment of a conservator or other protective order is appropriate with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will.



1           These powers include power to make gifts, to convey or release the person's  
2           contingent and expectant interests in property, including marital property rights  
3           and any right of survivorship incident to joint tenancy, to exercise or release the  
4           person's powers as trustee, personal representative, custodian for minors,  
5           conservator, or donee of a power of appointment, to enter into contracts, to  
6           create revocable or irrevocable trusts of property of the estate which may extend  
7           beyond the person's disability or life, to exercise options of the disabled person to  
8           purchase securities or other property, to exercise the person's rights to elect  
9           options and change beneficiaries under insurance and annuity policies and to  
10          surrender the policies for their cash value, to exercise the person's right to an  
11          elective share in the estate of the person's deceased spouse, and to renounce  
12          any interest by testate or intestate succession or by inter vivos transfer.

13          d. The court may exercise or direct the exercise of its authority to exercise or  
14          release powers of appointment of which the protected person is donee, to  
15          renounce interests, to make gifts in trust or otherwise exceeding twenty percent  
16          of any year's income of the estate, or to change beneficiaries under insurance  
17          and annuity policies, only if satisfied, after notice to those identified in section 18  
18          of this Act and hearing, that it is in the best interests of the protected person, and  
19          that the protected person either is incapable of consenting or has consented to  
20          the proposed exercise of power.

21          e. An order made pursuant to this section determining that appointment of a  
22          conservator or other protective order is appropriate has no effect on the capacity  
23          of the protected person.

24          **SECTION 22. AMENDMENT.** Section 30.1-29-13 of the North Dakota Century Code is  
25          amended and reenacted as follows:

26          **30.1-29-13. (5-413) Acceptance of appointment - Consent to jurisdiction.**

27          By accepting appointment, a conservator submits personally to the jurisdiction of the court  
28          in any proceeding, relating to the estate, that may be instituted by any interested person. Notice  
29          of any proceeding shall be delivered to the conservator, or mailed to the conservator by  
30          registered or certified mail at the conservator's address as listed in the petition for appointment

1 or as thereafter reported to the court and to the conservator's address as then known to the  
2 petitioner.

3 **SECTION 23. AMENDMENT.** Section 30.1-29-18 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **30.1-29-18. (5-418) Inventory and records.**

6 Within ninety days after appointment, every conservator shall prepare and file with the  
7 appointing court a complete inventory of the estate of the protected person together with the  
8 conservator's oath or affirmation that it is complete and accurate so far as the conservator is  
9 informed. The conservator shall provide a copy thereof to the protected person if the protected  
10 person can be located, has attained the age of fourteen years, and has sufficient mental  
11 capacity to understand these matters, and to any guardian, spouse, or parent, if the protected  
12 person is a minor, and to any interested persons designated by the court in its order to those  
13 identified in section 18 of this Act. The conservator shall keep suitable records of the  
14 conservator's administration and exhibit the same on request of any interested person.

15 **SECTION 24. AMENDMENT.** Subsection 3 of section 30.1-29-19 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 3. Copies of the conservator's annual report to the court and of any other reports  
18 required by the court must be mailed by the conservator to the protected person and  
19 other parties as required under section 30.1-29-18 provided to those identified in  
20 section 18 of this Act. The protected person's copy must be accompanied by a  
21 statement, printed with not less than double-spaced twelve-point type, of the protected  
22 person's right to seek alteration, limitation, or termination of the conservatorship at any  
23 time.

24 **SECTION 25. AMENDMENT.** Subsection 1 of section 30.1-29-20.1 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26 1. On petition by a person interested in the estate of the person to be protected, the court  
27 may appoint an emergency conservator if the court finds that compliance with the  
28 procedures in this chapter likely will result in substantial harm to the estate of the  
29 person to be protected, and that no other person appears to have authority and  
30 willingness to act in the circumstances. The court may appoint the conservator for a  
31 specified period of time, not to exceed ninety days. Immediately upon receipt of the



petition for an emergency conservator, the court shall appoint a guardian ad litem to advocate for the best interests of the estate of the person to be protected in the proceeding and any subsequent proceeding. The court shall hold a hearing within ten days of the filing of the petition to determine if appointment of an emergency conservator is appropriate. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to ~~the person whose estate is to be protected, the person's spouse, if any, and any other persons as the court directs~~ those identified in section 18 of this Act.

**SECTION 26. AMENDMENT.** Subsection 2 of section 30.1-29-22 of the North Dakota Century Code is amended and reenacted as follows:

2. A conservator shall move the court for authorization to sell real property of the person to be protected, upon such terms as the court may order, for the purpose of paying the protected person's debts; providing for the care, maintenance, rehabilitation, training, or education of the person to be protected or the dependents of the person to be protected; or for any other purpose in the best interests of the person to be protected.
  - a. The motion must contain:
    - (1) A description of the property;
    - (2) The details of the sale;
    - (3) The reason for the transaction;
    - (4) The current fair market value of the property, including an appraisal unless good cause is shown;
    - (5) An explanation of why the transaction is in the best interest of the person to be protected; and
    - (6) A notice that any person interested in the real property of the person to be protected must file an objection to the transaction within ten days of the notice and demand a hearing.
  - b. The motion must be served upon ~~the protected person, the spouse of the person to be protected, and all interested persons~~ those identified in section 18 of this Act.
  - c. Consent of the spouse of the person to be protected or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the

1 transaction without a hearing or may conduct a hearing and require proof of the  
2 matters necessary to support the authorization of the transaction.

3 d. The court's order must include specific findings regarding whether the transaction  
4 is in the best interests of the person to be protected.

5 **SECTION 27. AMENDMENT.** Subsection 5 of section 30.1-29-25 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 5. If a protected person dies, the conservator shall deliver to the court for safekeeping  
8 any will of the deceased protected person which may have come into the  
9 conservator's possession, inform the executor or a beneficiary named therein that the  
10 conservator has done so, and retain the estate for delivery to a duly appointed  
11 personal representative of the decedent or other persons entitled thereto. If after forty  
12 days from the death of the protected person no other person has been appointed  
13 personal representative and no application or petition for appointment is before the  
14 court, the conservator may apply to exercise the powers and duties of a personal  
15 representative so that the conservator may proceed to administer and distribute the  
16 decedent's estate without additional or further appointment. Upon application for an  
17 order granting the powers of a personal representative to a conservator, after notice to  
18 any person demanding notice under section 30.1-13-04, those identified in section 18  
19 of this Act, and to any person nominated executor in any will of which the applicant is  
20 aware, the court may order the conferral of the power upon determining that there is  
21 no objection, and endorse the letters of the conservator to note that the formerly  
22 protected person is deceased and that the conservator has acquired all of the powers  
23 and duties of a personal representative. The making and entry of an order under this  
24 section has the effect of an order of appointment of a personal representative as  
25 provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that  
26 estate in the name of the conservator, after administration, may be distributed to the  
27 decedent's successors without prior retransfer to the conservator as personal  
28 representative.

29 **SECTION 28. REPEAL.** Sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North  
30 Dakota Century Code are repealed.

**REPORT OF STANDING COMMITTEE  
ENGROSSED SB 2291**

**Human Services Committee (Rep. M. Ruby, Chairman)** recommends **AMENDMENTS** ([25.1110.02002](#)) and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). SB 2291 was placed on the Sixth order on the calendar.

**2025 CONFERENCE COMMITTEE**

**SB 2291**



# 2025 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee

Peace Garden Room, State Capitol

SB 2291

4/7/2025

Conference Committee

Relating to incapacitated persons, court-authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated person, and protection of property of persons under disability and minors and relating to visitors in a guardianship proceeding and appointment of successor guardians.

4:00 p.m. Chairman Paulson opened the hearing.

Members present:

Chairman Paulson, Senators: Castaneda and Braunberger and Representatives: Holle, Dobervich, and Kiefert.

### Discussion Topics:

- Liability of guardians
- Clarification of legal terms

4:01 p.m. Chairman Paulson introduced House amendment LC# 25.1110.02002, proposed amendment LC# 25.1110.02004 and submitted testimony #44748, and opened the floor for discussion.

4:05 p.m. Representative Holle moved amendment LC# 25.1110.02004 in place of House amendments LC #25.1110.02002.

4:05 p.m. Representative Dobervich seconded.

4:05 p.m. Roll Call Vote - Motion Passed 6-0-0.

4:05 p.m. Senator Paulson will carry the bill.

4:05 p.m. Representative Dobervich will carry the bill.

4:09 p.m. Chairman Paulson adjourned.

*Kendra McCann, Committee Clerk*

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
FIRST ENGROSSMENT**

VG 4/7/25  
1 of 30

**ENGROSSED SENATE BILL NO. 2291**

Introduced by

Senators Dwyer, Sickler, Larson, Weston

Representatives Hanson, Klemin

*In place of the amendments (25.1110.02002) adopted by the House, Engrossed Senate Bill No. 2291 is amended by amendment (25.1110.02004) as follows:*

1 A BILL for an Act to create and enact two new sections to chapter 30.1-28 and two new sections  
2 to chapter 30.1-29 of the North Dakota Century Code, relating to removal, resignation and  
3 death of a guardian, notices in a guardianship, notices in a conservatorship, and confidentiality  
4 of reports; to amend and reenact subsection 1 of section 23-12-13, subsection 1 of section  
5 25-03.1-18.1, subsection 1 of section 27-20.1-17, sections 30.1-01-06 and 30.1-28-03.1,  
6 subsection 3 of section 30.1-28-03.2, section 30.1-28-04, subsection 1 of section 30.1-28-05,  
7 section 30.1-28-07, subsection 1 of section 30.1-28-09, sections 30.1-28-10.1, 30.1-28-12,  
8 30.1-28-12.1, 30.1-28-12.2, and 30.1-29-05, subsection 6 of section 30.1-29-07, subsection 2 of  
9 section 30.1-29-08, sections 30.1-29-13 and 30.1-29-18, subsection 3 of section 30.1-29-19,  
10 subsection 1 of section 30.1-29-20.1, subsection 2 of section 30.1-29-22, and subsection 5 of  
11 section 30.1-29-25 of the North Dakota Century Code, relating to incapacitated persons, court-  
12 authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated  
13 person, and protection of property of persons under disability and minors; and to repeal  
14 sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North Dakota Century Code, relating to  
15 visitors in a guardianship proceeding and appointment of successor guardians.

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

17 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-12-13 of the North Dakota Century  
18 Code is amended and reenacted as follows:

19 1. Informed consent for health care for a minor patient or a patient who is determined by  
20 a physician, psychiatrist, or psychologist to be an incapacitated person, as defined in

~~subsection 2 of section 30.1-26-01~~30.1-01-06, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority may provide informed consent to health care on behalf of the patient:

- a. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;
- b. The appointed guardian or custodian of the patient, if any;
- c. The patient's spouse who has maintained significant contacts with the incapacitated person;
- d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;
- e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
- f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
- g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;
- h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
- i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.

**SECTION 2. AMENDMENT.** Subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Upon notice and hearing, a tier 1b mental health professional may request authorization from the court to treat an individual under a mental health treatment order, or an individual voluntarily admitted to a public treatment facility under section 25-03.1-04, with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, a



- 1 psychiatrist or a final year psychiatric resident physician not involved in the  
2 current diagnosis or treatment of the patient shall certify:
- 3 (1) That the proposed prescribed medication is clinically appropriate and  
4 necessary to effectively treat the patient and that the patient is a person  
5 requiring treatment;
- 6 (2) That the patient was offered that treatment and refused it or that the patient  
7 lacks the capacity to make or communicate a responsible decision about  
8 that treatment;
- 9 (3) That prescribed medication is the least restrictive form of intervention  
10 necessary to meet the treatment needs of the patient; and
- 11 (4) That the benefits of the treatment outweigh the known risks to the patient.
- 12 b. The court shall inquire whether the patient has had a sufficient opportunity to  
13 adequately prepare to meet the issue of involuntary treatment with prescribed  
14 medication and, at the request of the patient, the court may continue the  
15 involuntary treatment hearing for a period not exceeding seven days or may  
16 appoint an independent expert examiner as provided in subsection 4.

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

- 19 1. An order appointing or reappointing a guardian under this chapter is effective for up to  
20 one year unless the court, upon a finding of good cause, sets a different time frame.  
21 An order may not be effective for more than three years. At least sixty days before the  
22 expiration of the initial order of appointment or any following order of reappointment,  
23 the court shall request and consider information submitted by the guardian, the child, if  
24 fourteen years of age or older, the child's attorney, if any, the child's parents, and any  
25 interested persons regarding whether the need for a guardianship continues to exist.  
26 The court, at its discretion, may appoint a guardian ad litem in accordance with section  
27 27-20.1-08, before the hearing. The court shall hold a hearing on whether the  
28 guardianship should continue. Following the hearing and consideration of submitted  
29 information, the court may:
- 30 a. Terminate the guardianship if shown by clear and convincing evidence that the  
31 circumstances that led to the guardianship no longer exist;



b. Reappoint the guardian for up to three years; or

c. Appoint a new guardian.

The court may extend a guardianship up to ninety days past the expiration of the initial order, for good cause shown, if the hearing cannot be held before the expiration of the order. If the court extends an initial order for guardianship, new letters of guardianship must be issued reflecting the extended expiration date.

**SECTION 4. AMENDMENT.** Section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-01-06. (1-201) General definitions.**

Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
2. "Alternative resource plan" means an alternative plan to guardianship which uses available support services and arrangements acceptable to the alleged incapacitated person. The term includes the use of support services such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care, home and community-based care, human service zones, developmental disability services, powers of attorney, durable powers of attorney, health care directives, supported decisionmaking, representative and protective payees, and licensed congregate care facilities.
3. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
- ~~3.4.~~ "Augmented estate" means the estate described in section 30.1-05-02.
- ~~4.5.~~ "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate

- 1 transfer at death; and, as it relates to a "beneficiary designated in a governing  
2 instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary  
3 of a beneficiary designation, a donee, or a person in whose favor a power of attorney  
4 or a power held in any individual, fiduciary, or representative capacity is exercised.
- 5 ~~5-6.~~ "Beneficiary designation" refers to a governing instrument naming a beneficiary of an  
6 account with payable on death designation, of a security registered in beneficiary form  
7 transferable on death, or other nonprobate transfer at death.
- 8 ~~6-7.~~ "Child" includes an individual entitled to take as a child under this title by intestate  
9 succession from the parent whose relationship is involved and excludes a person who  
10 is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- 11 ~~7-8.~~ "Claims", in respect to estates of decedents and protected persons, includes liabilities  
12 of the decedent or protected person whether arising in contract, in tort, or otherwise,  
13 and liabilities of the estate which arise at or after the death of the decedent or after the  
14 appointment of a conservator, including funeral expenses and expenses of  
15 administration. The term does not include estate or inheritance taxes or demands or  
16 disputes regarding title of a decedent or protected person to specific assets alleged to  
17 be included in the estate.
- 18 ~~8-9.~~ "Conservator" means a person who is appointed by a court to manage the estate of a  
19 protected person, and includes limited conservators as defined in this section.
- 20 ~~9-10.~~ "Court" means the court having jurisdiction in matters relating to the affairs of  
21 decedents.
- 22 ~~10-11.~~ "Descendant" of an individual means all descendants of all generations, with the  
23 relationship of parent and child at each generation being determined by the definition  
24 of child and parent contained in this title.
- 25 ~~11-12.~~ "Devise", when used as a noun, means a testamentary disposition of real or personal  
26 property, and when used as a verb, means to dispose of real or personal property by  
27 will.
- 28 ~~12-13.~~ "Devisee" means a person designated in a will to receive a devise. In the case of a  
29 devise to an existing trust or trustee, or to a trustee or trust described by will, the trust  
30 or trustee is the devisee and the beneficiaries are not devisees.
- 31 ~~13-14.~~ "Disability" means cause for a protective order as described in section 30.1-29-01.



- 1 ~~14-15.~~ "Distributee" means any person who has received property of a decedent from the  
2 decedent's personal representative other than as a creditor or purchaser. A  
3 testamentary trustee is a distributee only to the extent of distributed assets or  
4 increment thereto remaining in the trustee's hands. A beneficiary of a testamentary  
5 trust to whom the trustee has distributed property received from a personal  
6 representative is a distributee of the personal representative. For the purposes of this  
7 provision, "testamentary trustee" includes a trustee to whom assets are transferred by  
8 will to the extent of the devised assets.
- 9 ~~15-16.~~ "Estate" includes the property of the decedent, trust, or other person whose affairs are  
10 subject to this title as originally constituted and as it exists from time to time during  
11 administration.
- 12 ~~16-17.~~ "Exempt property" means that property of a decedent's estate which is described in  
13 section 30.1-07-01.
- 14 ~~17-18.~~ "Expert examiner" means:  
15 a. A licensed physician;  
16 b. A psychiatrist;  
17 c. A licensed psychologist trained in a clinical program;  
18 d. An advanced practice registered nurse who is licensed under chapter 43-12.1  
19 within the role of a certified nurse practitioner or certified clinical nurse specialist,  
20 who has completed the requirements for a minimum of a master's degree from an  
21 accredited program, and who is functioning within the scope of practice in one of  
22 the population foci as approved by the state board of nursing; or  
23 e. A physician assistant who is licensed under chapter 43-17 and authorized by the  
24 state board of medical examiners to practice in this state.
- 25 ~~18-19.~~ "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 26 ~~19-20.~~ "Foreign personal representative" means a personal representative appointed by  
27 another jurisdiction.
- 28 ~~20-21.~~ "Formal proceedings" means proceedings conducted before a judge with notice to  
29 interested persons.
- 30 ~~21-22.~~ "Governing instrument" means a deed, will, trust, insurance or annuity policy, account  
31 with payable on death designation, security registered in beneficiary form transferable

1 on death, pension, profit-sharing, retirement, or similar benefit plan, instrument  
2 creating or exercising a power of appointment or a power of attorney, or a dispositive,  
3 appointive, or nominative instrument of any similar type.

4 ~~22-23.~~ "Guardian" means a person who or nonprofit corporation that has qualified as a  
5 guardian of a minor or incapacitated person pursuant to testamentary or court  
6 appointment, and includes limited guardians as defined in this section, but excludes  
7 one who is merely a guardian ad litem.

8 ~~23-24.~~ "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the  
9 surviving spouse and the state, who are entitled under the statutes of intestate  
10 succession to the property of a decedent.

11 ~~24-25.~~ "Incapacitated person" means ~~an individual described in section 30.1-26-01~~ any adult  
12 individual who is impaired by reason of mental illness, mental deficiency, physical  
13 illness or disability, or chemical dependency to the extent that the individual lacks  
14 capacity to make or communicate responsible decisions concerning the individual's  
15 matters of residence, education, medical treatment, legal affairs, vocation, finance, or  
16 other matters, or if the incapacity endangers the individual's health or safety.

17 ~~25-26.~~ "Informal proceedings" means those conducted by the court for probate of a will or  
18 appointment of a personal representative without notice to interested persons.

19 ~~26-27.~~ "Interested person" includes ~~heirs;~~

20 a. Except as provided under section b:

21 (1) Heirs and devisees, children, spouses, creditors, beneficiaries, and any  
22 others;

23 (2) Children;

24 (3) Spouses;

25 (4) Creditors;

26 (5) Beneficiaries;

27 (6) Any individual having a property right in or claim against a trust estate or the  
28 estate of a decedent, ward, or protected person. The term also includes  
29 persons;

30 (7) Person having priority for appointment as personal representative; and other

31 (8) Other fiduciaries representing interested persons.



b. For purposes of guardianships and conservatorships:

(1) The petitioner for appointment of the guardian;

(2) The spouse, parent, adult children, or siblings of the ward, protected person, or an adult relative if a spouse, parent, adult child, sibling, or protected person cannot be found;

(3) An adult individual who has lived with a ward or a protected person for a period of more than six months;

(4) An attorney for the ward or protected person;

(5) A representative payee for the ward or protected person; and

(6) Any other person designated by the court.

The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

~~27-28.~~ "Issue" of a person an individual means descendant as defined in subsection 4011.

~~28-29.~~ "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~29-30.~~ "Lease" includes an oil, gas, or other mineral lease.

~~30-31.~~ "Least restrictive form of intervention" includes only the limitations necessary to provide the needed care and services for a guardianship, and the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.

~~32.~~ "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~31-33.~~ "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity and includes limited conservators as described by section 30.1-29-20.

- 1 ~~32-34.~~ "Limited guardian" means a person or nonprofit corporation, appointed by the court, to  
2 supervise certain specified aspects of the care of a person with limited capacity and  
3 includes limited guardians as described by section 30.1-28-04.
- 4 ~~33-35.~~ "Minor" means a person who is under eighteen years of age.
- 5 ~~34-36.~~ "Mortgage" means any conveyance, agreement, or arrangement in which property is  
6 encumbered or used as security.
- 7 ~~35-37.~~ "Nonresident decedent" means a decedent who was domiciled in another jurisdiction  
8 at the time of death.
- 9 ~~36-38.~~ "Organization" means a corporation, limited liability company, government or  
10 governmental subdivision or agency, business trust, estate, trust, partnership, joint  
11 venture, association, or any other legal or commercial entity.
- 12 ~~37-39.~~ "Parent" includes any ~~person~~individual entitled to take, or who would be entitled to  
13 take if the child died without a will, as a parent under this title, by intestate succession  
14 from the child whose relationship is in question and excludes any person who is only a  
15 stepparent, foster parent, or grandparent.
- 16 ~~38-40.~~ "Payer" means a trustee, insurer, business entity, employer, government,  
17 governmental agency or subdivision, or any other person authorized or obligated by  
18 law or a governing instrument to make payments.
- 19 ~~39-41.~~ "Person" means an individual, a corporation, a limited liability company, an  
20 organization, or other legal entity.
- 21 ~~40.~~ "~~Person with limited capacity~~" is ~~as defined in section 30.1-26-01.~~
- 22 ~~41-42.~~ "Personal representative" includes executor, administrator, successor personal  
23 representative, special administrator, and persons who perform substantially the same  
24 function under the law governing their status. "General personal representative"  
25 excludes special administrator.
- 26 ~~42-43.~~ "Petition" means a written request to the court for an order after notice.
- 27 ~~43-44.~~ "Proceeding" includes action at law and suit in equity.
- 28 ~~44-45.~~ "Property" includes both real and personal property or any interest therein and means  
29 anything that may be the subject of ownership.



- 1 ~~45-46.~~ "Protected person" ~~is as defined in section 30.1-26-01~~ means a minor or other  
2 individual for whom a conservator or limited conservator has been appointed, or other  
3 protective order has been made.
- 4 ~~46-47.~~ "Protective proceeding" means a proceeding described in ~~section 30.1-26-01~~ under  
5 section 30.1-29-01 to determine that an individual cannot effectively manage or apply  
6 the individual's estate to necessary ends, either because the individual lacks the ability  
7 or is otherwise inconvenienced, or because the individual is a minor, and to secure  
8 administration of the individual's estate by a conservator or other appropriate relief.
- 9 ~~47-48.~~ "Record" means information that is inscribed on a tangible medium or that is stored in  
10 an electronic or other medium and is retrievable in perceivable form.
- 11 ~~48-49.~~ "Refusal" means declining to accept prescribed mood stabilizer or antipsychotic  
12 medication by a clear and unequivocal response.
- 13 50. "Security" includes any note, stock, treasury stock, bond, debenture, membership  
14 interest in a limited liability company, evidence of indebtedness, certificate of interest  
15 or participation in an oil, gas, or mining title or lease or in payments out of production  
16 under such a title or lease, collateral trust certificate, transferable share, voting trust  
17 certificate or, in general, any interest or instrument commonly known as a security, or  
18 any certificate of interest or participation, any temporary or interim certificate, receipt,  
19 or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of  
20 the foregoing.
- 21 ~~49-51.~~ "Settlement", in reference to a decedent's estate, includes the full process of  
22 administration, distribution, and closing.
- 23 ~~50-52.~~ "Sign" means, with present intent to authenticate or adopt a record other than a will, to  
24 execute or adopt a tangible symbol or to attach to or logically associate with the record  
25 an electronic symbol, sound, or process.
- 26 ~~51-53.~~ "Special administrator" means a personal representative as described by sections  
27 30.1-17-14 through 30.1-17-18.
- 28 ~~52-54.~~ "State" means a state of the United States, the District of Columbia, the  
29 Commonwealth of Puerto Rico, or any territory or insular possession subject to the  
30 jurisdiction of the United States.

- 1 ~~53-55.~~ "Successor personal representative" means a personal representative, other than a  
2 special administrator, who is appointed to succeed a previously appointed personal  
3 representative.
- 4 ~~54-56.~~ "Successors" means persons, other than creditors, who are entitled to property of a  
5 decedent under the decedent's will or this title.
- 6 ~~55-57.~~ "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- 7 ~~56-58.~~ "Survive" means that an individual has neither predeceased an event, including the  
8 death of another individual, nor predeceased an event under sections 30.1-04-04 and  
9 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived",  
10 "survivor", and "surviving".
- 11 ~~57-59.~~ "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- 12 ~~58-60.~~ "Trust" includes an express trust, private or charitable, with additions thereto, wherever  
13 and however created. The term also includes a trust created or determined by  
14 judgment or decree under which the trust is to be administered in the manner of an  
15 express trust. The term excludes other constructive trusts and excludes resulting  
16 trusts, conservatorships, personal representatives, trust accounts as defined in  
17 custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19  
18 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24,  
19 chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries,  
20 common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts  
21 for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,  
22 pensions, or employee benefits of any kind, and any arrangement under which a  
23 person is nominee or escrowee for another.
- 24 ~~59-61.~~ "Trustee" includes an original, additional, or successor trustee, whether or not  
25 appointed or confirmed by court.
- 26 ~~60-62.~~ "Visitor" means an individual, in guardianship proceedings, who is trained in nursing,  
27 social work, medical care, mental health care, or rehabilitation and is an employee or  
28 special appointee of the court with no personal interest in the proceedings.
- 29 ~~61-63.~~ "Ward" means an individual described in section 30.1-26-01 for whom a guardian has  
30 been appointed. A "minor ward" is a minor for whom a guardian has been appointed  
31 solely because of minority.



62-64. "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

**SECTION 5. AMENDMENT.** Section 30.1-28-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-03.1. Confidentiality - Reports - Personal information.**

1. A written report prepared and submitted ~~under subsection 5 or 6 of section 30.1-28-03~~ is by a guardian ad litem, visitor, or expert examiner and annual and final reports and financial accounting prepared and submitted by a guardian are closed to the public and ~~is~~are not open to inspection except by the court, parties to the proceeding or their counsel, other persons for those purposes as the court may order for good cause, and others authorized by court rule.
2. Medical, psychological, or other treatment information protected by federal law or regulation and any financial account numbers related to a ward or proposed ward are confidential and may not be disclosed except to parties to the proceeding, their counsel, and others authorized by court rule. The court may permit access by other persons for good cause.

**SECTION 6. AMENDMENT.** Subsection 3 of section 30.1-28-03.2 of the North Dakota Century Code is amended and reenacted as follows:

3. The motion must be served upon ~~the ward, the ward's spouse, and all interested persons~~ those identified in section 12 of this Act.

**SECTION 7. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.
2. At a hearing held under this chapter, the court shall:

- 1           a.   Hear evidence that the proposed ward is an incapacitated person. Age,  
2           eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding  
3           of incapacity;
- 4           b.   Hear evidence and determine whether there are any existing general durable  
5           powers of attorney and durable powers of attorney for health care. If there are  
6           validly executed durable powers of attorney, the court shall consider the  
7           appointed attorneys in fact and agents appointed thereunder when assessing  
8           alternative resource plans and the need for a guardian; and
- 9           c.   Appoint a guardian and confer specific powers of guardianship only after finding  
10          in the record based on clear and convincing evidence that:
  - 11           (1)   The proposed ward is an incapacitated person;
  - 12           (2)   There is no available alternative resource plan that is suitable to safeguard  
13           the proposed ward's health, safety, or habilitation which could be used  
14           instead of a guardianship;
  - 15           (3)   The guardianship is necessary as the best means of providing care,  
16           supervision, or habilitation of the ward; and
  - 17           (4)   The powers and duties conferred upon the guardian are appropriate as the  
18           least restrictive form of intervention consistent with the ability of the ward for  
19           self-care.
- 20          3.   Except upon specific findings of the court, a ward may not be deprived of any of the  
21          following legal rights: to vote, to seek to change marital status, or to obtain or retain a  
22          motor vehicle operator's license.
- 23          4.   The court may find that the ward retains other specific rights.
- 24          5.   The order appointing a guardian confers upon the guardian only those powers and  
25          duties specified in the order. In addition to any other powers conferred upon the  
26          guardian, the court's order must state whether the guardian has no authority, general  
27          authority, or limited authority to make decisions on behalf of the ward in each of the  
28          areas of residential, educational, medical, legal, vocational, and financial  
29          decisionmaking. A grant of limited authority must specify the limitations upon the  
30          authority of the guardian or the authority retained by the ward. The court's order must  
31          require the guardian to provide within ninety days from the date of the order a



1 beginning inventory of all assets owned by the ward or in which the ward has an  
2 interest. The guardian shall provide a copy of the beginning inventory to ~~the ward and~~  
3 ~~any interested persons designated by the court in its order~~those identified in  
4 section 12 of this Act. Unless terminated earlier by the court, an order appointing or  
5 reappointing a guardian under this section is effective for up to five years. At least  
6 ninety days before the expiration of the initial order of appointment or any following  
7 order of reappointment, the court shall request and consider information submitted by  
8 the guardian, ward, ward's attorney, if any, and any interested persons regarding  
9 whether the need for a guardian continues to exist. If it is recommended that the  
10 guardianship continue, the court may appoint a guardian ad litem ~~or~~ visitor, or both,  
11 in accordance with section 30.1-28-03. The court shall hold a hearing on whether the  
12 guardianship should continue. Following the hearing and consideration of submitted  
13 information, the court may reappoint the guardian for up to another five years, allow  
14 the existing order to expire, or appoint a new guardian in accordance with this section.  
15 If a review hearing cannot be held before the expiration of an initial order for  
16 guardianship, the court may extend the initial order for up to an additional ninety days  
17 upon good cause shown. New letters of guardianship must be issued reflecting the  
18 extended expiration date. The supreme court, by rule or order, shall provide for the  
19 regular review of guardianship in existence on August 1, 2015.

- 20 6. Unless a court of competent jurisdiction determines otherwise, a durable power of  
21 attorney for health care executed pursuant to chapter 23-06.5 takes precedence over  
22 any authority to make medical decisions granted to a guardian pursuant to chapter  
23 30.1-28.
- 24 7. The court may require a guardian to furnish a bond in the amount and with sureties as  
25 the court specifies.
- 26 8. After the hearing, the guardian ad litem, visitor, and expert examiner must be  
27 discharged of ~~the person's~~their duties as guardian ad litem.

28 **SECTION 8. AMENDMENT.** Subsection 1 of section 30.1-28-05 of the North Dakota  
29 Century Code is amended and reenacted as follows:

- 30 1. By accepting appointment, a guardian submits personally to the jurisdiction of the  
31 court in any proceeding relating to the guardianship that may be instituted by any

1 interested person. Notice of any proceeding so instituted must be served upon the  
2 guardian by the petitioner.

3 **SECTION 9. AMENDMENT.** Section 30.1-28-07 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **30.1-28-07. (5-307) Removal or resignation of guardian - Change in or termination of**  
6 **guardianship.**

7 1. ~~On petition of the ward or any person interested in the ward's welfare, the court may~~  
8 ~~remove a guardian and appoint a successor if in the best interests of the ward. On~~  
9 ~~petition of the guardian, the court may accept the guardian's resignation and make any~~  
10 ~~other order which may be appropriate.~~

11 2. The ward or any person interested in the ward's welfare may petition for an order that  
12 the ward is no longer incapacitated or no longer incapacitated to the same extent as  
13 the ward was when the original guardianship order was made or last reviewed by the  
14 court, or that the duties and authority of the guardian require modification, ~~and for~~  
15 ~~removal or resignation of the guardian, termination of the guardianship, or change in~~  
16 the duties and authority of the guardian. A request for this order may be made by  
17 informal letter to the court or judge. The clerk of district court shall send a copy of the  
18 informal request to the parties and those identified in section 12 of this Act. Any person  
19 who knowingly interferes with transmission of this kind of request to the court or judge  
20 may be adjudged guilty of contempt of court.

21 ~~3.2.~~ Before ~~removing a guardian,~~ changing the guardian's duties and authority, accepting  
22 the resignation of a guardian, or on finding that the ward is no longer incapacitated, or  
23 no longer incapacitated to the same extent and ordering the guardianship terminated  
24 or modified, the court, following the same procedures to safeguard the rights of the  
25 ward as apply to a petition for appointment of a guardian, may send a visitor to the  
26 place where the ward resides or is detained, to observe conditions and report in  
27 writing to the court.

28 ~~4.3.~~ A hearing must be held no later than sixty days following the filing of the petition or  
29 informal request, unless good cause is shown. Following the hearing, the court shall  
30 make written findings of fact. Before terminating or modifying the guardianship, the  
31 court shall find by a preponderance of the evidence that the ward is no longer



incapacitated, no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that it is in the best interests of the ward that the duties and authority of the guardian be modified. New letters of guardianship must be issued to the guardian in the same manner as provided in section 30.1-28-05.

5.4. In deciding whether to terminate or modify a guardianship, the court may require a report by and consider the recommendations of an expert examiner.

~~6. If the guardian dies, or if on the basis of a petition filed under this section or a report or other information, there is probable cause to believe a guardian is not performing the guardian's duties effectively and there is an imminent danger the ward's physical, mental, or emotional health or safety will be seriously impaired, the court shall take whatever action is necessary to protect the ward, including dismissal of the guardian and appointment of an emergency guardian as provided in section 30.1-28-10.1.~~

7.5. On termination of the guardianship, a guardian shall file a final report and accounting and provide a copy of the report and accounting to those given notice under section ~~30.1-28-09~~12 of this Act. The report and accounting must be filed with the clerk of district court. The filing of the report and accounting does not constitute the court's approval of the report and accounting. The court may approve a report and settle and allow an accounting only upon notice to the ward and other interested persons who have made an appearance or requested notice of the proceedings to those identified in section 12 of this Act.

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

**Removal, resignation, or death of guardian - Appointment of successor guardian.**

1. The court may remove a guardian on its own motion or on petition of the ward or any interested person if removal is in the best interests of the ward. A request for this order may be made by informal letter to the court or judge. The clerk of district court shall send a copy of the informal request to the parties and those identified in section 12 of this Act. Any person that knowingly interferes with the transmission of a request under this section may be adjudged guilty of contempt of court.
2. The court may accept the resignation of a guardian upon petition by the guardian.

- 1       3. Upon the death of a guardian, the personal representative of the guardian shall submit  
2       a final report and accounting to the court. Upon removal or resignation of the guardian,  
3       the guardian shall submit a final report and accounting to the court. The report and  
4       accounting must be filed with the clerk of district court. The filing of the report and  
5       accounting does not constitute the court's approval of the report and accounting. The  
6       court may approve a report and settle and allow an accounting only upon notice to  
7       those identified in section 12 of this Act.
- 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 and conclusions of law.
- 11      5. Upon the removal, resignation, or death of a guardian, the court, upon the court's own  
12      motion or upon a motion filed by any interested person, may appoint a successor  
13      guardian or make any other appropriate order.
- 14      6. A notice of motion must accompany the motion for appointment of successor guardian  
15      and must include a statement that provides an opportunity for hearing if requested in  
16      regard to the appointment of a successor guardian. The notice of motion and motion  
17      must be served on those identified in section 12 of this Act.
- 18      7. If a hearing is not requested by or on behalf of the ward listed in the notice, the court  
19      may sign an order appointing a successor guardian for that ward.

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

- 22      1. In a proceeding for the appointment ~~or removal~~ of a guardian ~~or for an alteration or~~  
23      ~~termination of a guardianship other than~~ and, if notice is required, for the appointment  
24      of an emergency guardian or for the temporary suspension of a guardian, notice of  
25      hearing shall be given by the petitioning party, unless otherwise directed by the court,  
26      to each of the following:
  - 27          a. The ward or the proposed ward and the ward's or proposed ward's spouse,  
28             parents, and adult children;
  - 29          b. Any person, corporation, or institution who is serving as the ward's guardian,  
30             attorney in fact, representative payee for public benefits, or conservator, or who  
31             has the ward's care and custody;



- 1 c. If no other person is notified under subdivision a, then the adult siblings and any  
2 adult with whom the proposed ward resides in a private residence, or if none can  
3 be found, any known adult relative; and  
4 d. The attorney for the proposed ward, the visitor, and the expert examiner, together  
5 with a copy of the respective order of appointment for each.

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

8 **Notices in guardianship proceedings subsequent to appointment.**

9 Notice in a guardianship proceeding subsequent to appointment of a guardian must be  
10 given to the parties, the conservator, if any, the ward, and any interested persons designated in  
11 the order of the court.

12 **SECTION 13. AMENDMENT.** Section 30.1-28-10.1 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **30.1-28-10.1. Emergency guardian.**

- 15 1. On petition by a person interested in the alleged incapacitated individual's welfare, the  
16 court may appoint an emergency guardian if the court finds that compliance with the  
17 procedures of this chapter likely will result in substantial harm to the alleged  
18 incapacitated individual's health, safety, or welfare, and that no other person appears  
19 to have authority and willingness to act in the circumstances. The court may appoint  
20 the guardian for a specified period of time, not to exceed ninety days. Immediately  
21 upon receipt of the petition for an emergency guardianship, the court shall appoint a  
22 guardian ad litem to advocate for the best interests of the alleged incapacitated  
23 individual in the proceeding and any subsequent proceeding. ~~Except as otherwise~~  
24 ~~provided in subsection 2, reasonable notice of the time and place of a hearing on the~~  
25 ~~petition must be given to the alleged incapacitated individual, the individual's spouse, if~~  
26 ~~any, and any other person as the court directs.~~ The court shall hold a hearing within  
27 ten days of the filing of the petition to determine if appointment of an emergency  
28 guardian is appropriate.  
29 2. An emergency guardian may be appointed without notice to the alleged incapacitated  
30 individual and the alleged incapacitated individual's guardian ad litem only if the court  
31 finds from affidavit or other sworn testimony that the alleged incapacitated individual

- 1 will be substantially harmed before a hearing on the appointment can be held. If the  
2 court appoints an emergency guardian without notice to the alleged incapacitated  
3 individual, the alleged incapacitated individual and the individual's spouse, if any, and  
4 any other person the court directs must be given notice of the appointment within forty-  
5 eight hours after the appointment. The court shall hold a hearing on the  
6 appropriateness of the appointment within ten days after the appointment.
- 7 3. If a conservator has not been appointed for the alleged incapacitated individual and  
8 the emergency guardian has authority for financial decisionmaking, the court's order of  
9 appointment must state that the guardian shall safeguard any assets held by the  
10 alleged incapacitated individual and, during the period of appointment and subject to  
11 any further order of the court, may expend the individual's assets only for the  
12 necessary support and care of the individual.
- 13 4. Appointment of an emergency guardian, with or without notice, is not a determination  
14 of the alleged incapacitated individual's incapacity.
- 15 5. The court may remove an emergency guardian at any time. An emergency guardian  
16 shall make any report the court requires. In all other respects, the provisions of this  
17 chapter concerning guardians apply to an emergency guardian.
- 18 6. The petitioner may request the court extend the emergency order for up to an  
19 additional ninety days upon good cause shown. The request must be filed with the  
20 court at least fourteen days before the expiration of the emergency order and served  
21 on the alleged incapacitated individual, the individual's spouse, if any, and any other  
22 persons as the court directs. The court shall hold a hearing on the appropriateness of  
23 the extension within ten days of the request. No additional extensions of the  
24 emergency guardianship may be granted.

25 **SECTION 14. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **30.1-28-12. (5-312) General powers and duties of guardian.**

- 28 1. A guardian of an incapacitated person has only the powers and duties specified by the  
29 court.
- 30 2. To the extent that it is consistent with the terms of an order by a court of competent  
31 jurisdiction, the guardian is entitled to custody of the person of the ward and may



- 1 establish the ward's place of residence within or without this state. However, no  
2 guardian may voluntarily admit a ward to a mental health facility or state institution for  
3 a period of more than forty-five days without a mental health commitment proceeding  
4 or other court order. Notwithstanding the other provisions of this subsection, the  
5 guardian may readmit a ward to a mental health facility or a state institution within sixty  
6 days of discharge from that institution, if the original admission to the facility or  
7 institution had been authorized by the court.
- 8 3. If entitled to custody of the ward, the guardian should make provision for the care,  
9 comfort, and maintenance of the ward and, whenever appropriate, arrange for the  
10 ward's training, education, or habilitative services. The guardian shall take reasonable  
11 care of the ward's clothing, furniture, vehicles, and personal effects.
- 12 4. Notwithstanding general or limited authority to make medical decisions on behalf of  
13 the ward, no guardian may consent to psychosurgery, abortion, sterilization, or  
14 experimental treatment of any kind unless the procedure is first approved by order of  
15 the court.
- 16 5. When exercising the authority granted by the court, the guardian shall safeguard the  
17 civil rights and personal autonomy of the ward to the fullest extent possible by:
- 18 a. Meeting with the ward following the hearing, unless the ward is represented by  
19 an attorney, and explaining to the fullest extent possible the contents of the  
20 court's order and the extent of the guardian's authority;
- 21 b. Involving the ward as fully as is practicable in making decisions with respect to  
22 the ward's living arrangements, health care, and other aspects of the ward's care;  
23 and
- 24 c. Ensuring the ward's maximum personal freedom by using the least restrictive  
25 forms of intervention and only as necessary for the safety of the ward or others.
- 26 6. If no conservator for the estate of the ward has been appointed and if the guardian  
27 has been granted authority to make financial decisions on behalf of the ward, the  
28 guardian shall:
- 29 a. Institute proceedings to compel any person under a duty to support the ward or to  
30 pay sums for the welfare of the ward to perform that duty.

- 1           b. Receive money and tangible property deliverable to the ward and apply the  
2           money and property for support, care, and education of the ward; but, the  
3           guardian may not use funds from the ward's estate for room and board which the  
4           guardian or the guardian's spouse, parent, or child have furnished the ward  
5           unless a charge for the service is approved by order of the court made upon  
6           notice to ~~at least one of the next of kin of the ward, if notice is possible~~those  
7           identified in section 12 of this Act. The guardian shall exercise care to conserve  
8           any excess for the ward's needs.
- 9           c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or  
10          otherwise encumber or transfer ownership or beneficiary of:  
11          (1) The real property of the ward; or  
12          (2) The personal property of the ward valued over two thousand five hundred  
13          dollars upon such terms as the court may order, for the purpose of paying  
14          the ward's debts; providing for the care, maintenance, rehabilitation,  
15          training, or education of the ward or the ward's dependents; or for any other  
16          purpose which is in the best interests of the ward. The sale, mortgage, or  
17          other encumbrance or transfer of ownership of personal property of the  
18          ward valued at two thousand five hundred dollars or less does not require a  
19          court order.
- 20          d. Move the court under section 30.1-28-03.2 for authority to lease the real or  
21          personal property of the ward.
- 22          e. A guardian may not purchase, lease, or obtain ownership or become the  
23          beneficiary of property of the ward unless the price and manner of the sale are  
24          approved by the court.
- 25          7. If a conservator has been appointed, all of the ward's estate received by the guardian  
26          in excess of those funds expended to meet current expenses for support, care, and  
27          education of the ward must be paid to the conservator for management as provided in  
28          this title, and the guardian must account to the conservator for funds expended.
- 29          8. A guardian shall file an annual report with the court regarding the exercise of powers  
30          and duties in areas of authority specified in the court's order of appointment. The  
31          report must describe the status or condition of the ward, including any change of



1 residence and reasons for the change, any medical treatment received by or withheld  
2 from the ward, any expenditure and income affecting the ward, any sale or transfer of  
3 property affecting the ward, and any exercise of legal authority by the guardian  
4 affecting the ward. The report must include changes that have occurred since the  
5 previous reporting period and an accounting of the ward's estate. The guardian also  
6 shall report whether the ward continues to require guardianship and whether any  
7 powers of the guardian should be increased or limited. The report must be filed with  
8 the clerk of district court. The filing of the report does not constitute an adjudication or  
9 a determination of the merits of the report nor does the filing of the report constitute  
10 the court's approval of the report. The court may approve a report and allow and settle  
11 an accounting only upon notice to the ward's guardian ad litem and other interested  
12 persons who have made an appearance or requested notice of proceedings. The  
13 office of the state court administrator shall provide printed forms that may be used to  
14 fulfill reporting requirements. Any report must be similar in substance to the state court  
15 administrator's form. The forms must be available in the office of clerk of district court  
16 or obtainable through the supreme court's internet website.

17 9. Copies of the guardian's annual report to the court and of any other reports required  
18 by the court must be mailed to ~~the ward and any interested persons designated by the~~  
19 ~~court in its order~~ those identified in section 12 of this Act. The ward's copy must be  
20 accompanied by a statement, printed with not less than double-spaced twelve-point  
21 type, of the ward's right to seek alteration, limitation, or termination of the guardianship  
22 at any time.

23 10. The guardian is entitled to receive reasonable sums for services and for room and  
24 board furnished to the ward as approved by the court or as agreed upon between the  
25 guardian and the conservator, provided the amounts agreed upon are reasonable  
26 under the circumstances. The guardian may request the conservator to expend the  
27 ward's estate by payment to third persons or institutions for the ward's care and  
28 maintenance.

29 11. A guardian has a fiduciary duty to the ward and may be held liable for a breach of that  
30 duty.

1     12. A guardian is not liable for the acts of the ward, unless the guardian is grossly  
2     negligent as defined in section 1-01-17.

3     13. A guardian is not required to expend personal funds on behalf of the ward solely by  
4     reason of the guardian relationship.

5     14. A guardian who exercises reasonable care in selecting an individual to provide  
6     medical or other care, treatment, or service for the ward is not liable for injury to the  
7     ward resulting from the wrongful conduct of the individual.

8     **SECTION 15. AMENDMENT.** Section 30.1-28-12.1 of the North Dakota Century Code is  
9     amended and reenacted as follows:

10     **30.1-28-12.1. Annual reports and accounts - Failure of guardian to file.**

11     If a guardian fails to file an annual report as required by section 30.1-28-12, fails to file a  
12     report at other times as the court may direct, or fails to provide an accounting of an estate, the  
13     court, upon its own motion or upon petition of any interested ~~party~~ person, may issue an order  
14     compelling the guardian to show cause why the guardian should not immediately make and file  
15     the report or account, or be found in contempt for failure to comply.

16     **SECTION 16. AMENDMENT.** Section 30.1-28-12.2 of the North Dakota Century Code is  
17     amended and reenacted as follows:

18     **30.1-28-12.2. Restrictions on visitation, communication, and interaction with the**  
19     **ward - Removal of restriction.**

- 20     1. If it is in the best interests of the ward, a guardian may restrict visitation,  
21     communication, and interaction with the ward.
- 22     2. A family member, friend, the ward, clergy member, attorney, agency charged with the  
23     protection of vulnerable adults, or other interested person may move the court to  
24     remove the restriction on visitation, communication, and interaction with the ward.
- 25     3. The motion must state:
- 26     a. The movant's relationship to the ward;
- 27     b. Whether the guardian is unreasonably or arbitrarily denying or restricting  
28     visitation, communication, or interaction between the restricted party and the  
29     ward; and



- 1           c. The facts supporting the movant's allegation that the guardian is unreasonably or
- 2           arbitrarily denying or restricting visitation, communication, or interaction between
- 3           the restricted party and the ward.
- 4       4. The movant shall serve the motion on ~~the guardian, the ward, the ward's spouse, and~~
- 5       ~~any other interested person~~those identified in section 12 of this Act.
- 6       5. The court shall set a hearing on the motion and provide notice of the hearing to the
- 7       movant, ~~the guardian, the ward, the ward's spouse, and any other interested person~~
- 8       and those identified in section 12 of this Act.
- 9       6. The court shall take into consideration the ward's wishes, and may conduct an
- 10      in-camera interview with the ward and appoint a visitor or guardian ad litem.
- 11      7. If the court grants the motion for visitation, communication, or interaction, the court
- 12      may impose conditions on visitation, communication, and interaction between the
- 13      restricted party and the ward.
- 14      8. If the visitation, communication, or interaction is not in the best interests of the ward,
- 15      the court may prohibit visitation, communication, or interaction between the restricted
- 16      party and the ward.
- 17      9. The court may award reasonable costs and attorney's fees to the prevailing party if the
- 18      court finds:
- 19          a. The guardian unreasonably, arbitrarily, or in bad faith denied or restricted
- 20          visitation, communication, or interaction between the restricted party and the
- 21          ward; or
- 22          b. The motion was frivolous.
- 23      10. Costs and attorney's fees awarded against the guardian may not be paid from the
- 24      ward's estate.
- 25      11. If a movant for visitation, communication, and interaction states the ward's health is in
- 26      significant decline or the ward's death may be imminent, the court shall conduct an
- 27      emergency hearing on the motion as soon as practicable but not later than fourteen
- 28      days after the date the motion is filed or at a later date upon a showing of good cause.

29       **SECTION 17. AMENDMENT.** Section 30.1-29-05 of the North Dakota Century Code is  
30      amended and reenacted as follows:

**30.1-29-05. (5-405) Notice.**

1. On a petition for appointment of a conservator or other protective order, the petitioning party shall cause notice of the proceeding to be served personally on the person to be protected and the spouse of the person to be protected or, if none, the parents of the person to be protected, or any guardian or conservator, at least fourteen days before the date of hearing. If none of these parties can be found, any government agency paying benefits to the person sought to be protected, if the person seeking the appointment has knowledge of the existence of these benefits, must be given notice in accordance with section 30.1-03-01.

~~2. Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 30.1-29-06 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection 1, notice shall be given in accordance with section 30.1-03-01.~~

**SECTION 18.** A new section to chapter 30.1-29 of the North Dakota Century Code is created and enacted as follows:

**Notices in conservatorship proceedings subsequent to appointment.**

Notice in a conservatorship proceeding subsequent to appointment of a conservator must be given to the parties, the guardian, if any, the individual in need of protection, and any interested persons designated by the court.

**SECTION 19. AMENDMENT.** Subsection 6 of section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

6. After hearing, upon finding that the appointment of a conservator or other protective order is appropriate, the court shall make an appointment or other appropriate protective order. The court, guardian ad litem, petitioner, or person to be protected may subpoena the individual who prepared and submitted the report to appear, testify, and be cross-examined. After the hearing, the guardian ad litem and expert examiner must be discharged of ~~the~~their duties as guardian ad litem and expert examiner.

**SECTION 20.** A new section to chapter 30.1-29 of the North Dakota Century Code is created and enacted as follows:



**Confidentiality - Reports - Personal information.**

26 of 30

1. A written report prepared and submitted by a guardian ad litem or expert examiner and annual and final reports and financial accounting prepared and submitted by a conservator are closed to the public and are not open to inspection except by the court, parties to the proceeding or ~~their~~ the parties' counsel, other persons for those purposes as the court may order for good cause, and others authorized by court rule.
2. Any medical, psychological, or other treatment information protected by federal law or regulation, and any financial account numbers related to a protected person or proposed protected person are confidential and may not be disclosed except to parties to the proceeding, ~~their~~ the parties' counsel, and others authorized by court rule. The court may permit access by other persons for good cause.

**SECTION 21. AMENDMENT.** Subsection 2 of section 30.1-29-08 of the North Dakota Century Code is amended and reenacted as follows:

2. The court has the following powers which may be exercised directly or through a conservator, subject to section 30.1-29-22, in respect to the estate and affairs of protected persons:
  - a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without prior notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the benefit of the person to be protected or the benefit of the dependents of the person to be protected.
  - b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
  - c. After hearing and upon determining that appointment of a conservator or other protective order is appropriate with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will.

1           These powers include power to make gifts, to convey or release the person's  
2           contingent and expectant interests in property, including marital property rights  
3           and any right of survivorship incident to joint tenancy, to exercise or release the  
4           person's powers as trustee, personal representative, custodian for minors,  
5           conservator, or donee of a power of appointment, to enter into contracts, to  
6           create revocable or irrevocable trusts of property of the estate which may extend  
7           beyond the person's disability or life, to exercise options of the disabled person to  
8           purchase securities or other property, to exercise the person's rights to elect  
9           options and change beneficiaries under insurance and annuity policies and to  
10          surrender the policies for their cash value, to exercise the person's right to an  
11          elective share in the estate of the person's deceased spouse, and to renounce  
12          any interest by testate or intestate succession or by inter vivos transfer.

13          d.   The court may exercise or direct the exercise of its authority to exercise or  
14          release powers of appointment of which the protected person is donee, to  
15          renounce interests, to make gifts in trust or otherwise exceeding twenty percent  
16          of any year's income of the estate, or to change beneficiaries under insurance  
17          and annuity policies, only if satisfied, after notice to those identified in section 18  
18          of this Act and hearing, that it is in the best interests of the protected person, and  
19          that the protected person either is incapable of consenting or has consented to  
20          the proposed exercise of power.

21          e.   An order made pursuant to this section determining that appointment of a  
22          conservator or other protective order is appropriate has no effect on the capacity  
23          of the protected person.

24          **SECTION 22. AMENDMENT.** Section 30.1-29-13 of the North Dakota Century Code is  
25          amended and reenacted as follows:

26          **30.1-29-13. (5-413) Acceptance of appointment - Consent to jurisdiction.**

27          By accepting appointment, a conservator submits personally to the jurisdiction of the court  
28          in any proceeding, relating to the estate, that may be instituted by any interested person. ~~Notice~~  
29          ~~of any proceeding shall be delivered to the conservator, or mailed to the conservator by~~  
30          ~~registered or certified mail at the conservator's address as listed in the petition for appointment~~



1 or as thereafter reported to the court and to the conservator's address as then known to the  
2 petitioner.

3 **SECTION 23. AMENDMENT.** Section 30.1-29-18 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **30.1-29-18. (5-418) Inventory and records.**

6 Within ninety days after appointment, every conservator shall prepare and file with the  
7 appointing court a complete inventory of the estate of the protected person together with the  
8 conservator's oath or affirmation that it is complete and accurate so far as the conservator is  
9 informed. The conservator shall provide a copy thereof to the protected person if the protected  
10 person can be located, has attained the age of fourteen years, and has sufficient mental  
11 capacity to understand these matters, and to any guardian, spouse, or parent, if the protected  
12 person is a minor, and to any interested persons designated by the court in its order to those  
13 identified in section 18 of this Act. The conservator shall keep suitable records of the  
14 conservator's administration and exhibit the same on request of any interested person.

15 **SECTION 24. AMENDMENT.** Subsection 3 of section 30.1-29-19 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 3. Copies of the conservator's annual report to the court and of any other reports  
18 required by the court must be mailed by the conservator to the protected person and  
19 other parties as required under section 30.1-29-18 provided to those identified in  
20 section 18 of this Act. The protected person's copy must be accompanied by a  
21 statement, printed with not less than double-spaced twelve-point type, of the protected  
22 person's right to seek alteration, limitation, or termination of the conservatorship at any  
23 time.

24 **SECTION 25. AMENDMENT.** Subsection 1 of section 30.1-29-20.1 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26 1. On petition by a person interested in the estate of the person to be protected, the court  
27 may appoint an emergency conservator if the court finds that compliance with the  
28 procedures in this chapter likely will result in substantial harm to the estate of the  
29 person to be protected, and that no other person appears to have authority and  
30 willingness to act in the circumstances. The court may appoint the conservator for a  
31 specified period of time, not to exceed ninety days. Immediately upon receipt of the

petition for an emergency conservator, the court shall appoint a guardian ad litem to advocate for the best interests of the estate of the person to be protected in the proceeding and any subsequent proceeding. The court shall hold a hearing within ten days of the filing of the petition to determine if appointment of an emergency conservator is appropriate. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to ~~the person whose estate is to be protected, the person's spouse, if any, and any other persons as the court directs~~ those identified in section 18 of this Act.

**SECTION 26. AMENDMENT.** Subsection 2 of section 30.1-29-22 of the North Dakota Century Code is amended and reenacted as follows:

2. A conservator shall move the court for authorization to sell real property of the person to be protected, upon such terms as the court may order, for the purpose of paying the protected person's debts; providing for the care, maintenance, rehabilitation, training, or education of the person to be protected or the dependents of the person to be protected; or for any other purpose in the best interests of the person to be protected.
  - a. The motion must contain:
    - (1) A description of the property;
    - (2) The details of the sale;
    - (3) The reason for the transaction;
    - (4) The current fair market value of the property, including an appraisal unless good cause is shown;
    - (5) An explanation of why the transaction is in the best interest of the person to be protected; and
    - (6) A notice that any person interested in the real property of the person to be protected must file an objection to the transaction within ten days of the notice and demand a hearing.
  - b. The motion must be served upon ~~the protected person, the spouse of the person to be protected, and all interested persons~~ those identified in section 18 of this Act.
  - c. Consent of the spouse of the person to be protected or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the



1 transaction without a hearing or may conduct a hearing and require proof of the  
2 matters necessary to support the authorization of the transaction.

3 d. The court's order must include specific findings regarding whether the transaction  
4 is in the best interests of the person to be protected.

5 **SECTION 27. AMENDMENT.** Subsection 5 of section 30.1-29-25 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 5. If a protected person dies, the conservator shall deliver to the court for safekeeping  
8 any will of the deceased protected person which may have come into the  
9 conservator's possession, inform the executor or a beneficiary named therein that the  
10 conservator has done so, and retain the estate for delivery to a duly appointed  
11 personal representative of the decedent or other persons entitled thereto. If after forty  
12 days from the death of the protected person no other person has been appointed  
13 personal representative and no application or petition for appointment is before the  
14 court, the conservator may apply to exercise the powers and duties of a personal  
15 representative so that the conservator may proceed to administer and distribute the  
16 decedent's estate without additional or further appointment. Upon application for an  
17 order granting the powers of a personal representative to a conservator, after notice to  
18 any person demanding notice under section 30.1-13-04, those identified in section 18  
19 of this Act, and to any person nominated executor in any will of which the applicant is  
20 aware, the court may order the conferral of the power upon determining that there is  
21 no objection, and endorse the letters of the conservator to note that the formerly  
22 protected person is deceased and that the conservator has acquired all of the powers  
23 and duties of a personal representative. The making and entry of an order under this  
24 section has the effect of an order of appointment of a personal representative as  
25 provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that  
26 estate in the name of the conservator, after administration, may be distributed to the  
27 decedent's successors without prior retransfer to the conservator as personal  
28 representative.

29 **SECTION 28. REPEAL.** Sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North  
30 Dakota Century Code are repealed.



## SB 2291 040725 1605 PM Roll Call Vote

### Amendment

**SB 2291**

**Date Submitted:** April 7, 2025, 4:05 p.m.

**Action:** Passed

**Amendment LC #:** 25.1110.02004

**Description of Amendment:** N/A

**Motioned By:** Holle, Dawson

**Seconded By:** Dobervich, Gretchen

**Emergency Clause:** None

**Vote Results:** 6 - 0 - 0

Sen. Paulson, Bob	Yea
Sen. Castaneda, Jose	Yea
Sen. Braunberger, Ryan	Yea
Rep. Holle, Dawson	Yea
Rep. Dobervich, Gretchen	Yea
Rep. Kiefert, Dwight	Yea

## SB 2291 040725 1615 PM Roll Call Vote

### Final Recommendation

**SB 2291**

**Date Submitted:** April 7, 2025, 4:15 p.m.

**Recommendation:** In Place Of

**Amendment LC #:** 25.1110.02004

**Engrossed LC #:** N/A

**Description:**

**Motioned By:** Holle, Dawson

**Seconded By:** Dobervich, Gretchen

**House Carrier:** Dobervich, Gretchen

**Senate Carrier:** Paulson, Bob

**Emergency Clause:** None

**Vote Results:** 6 - 0 - 0

Sen. Paulson, Bob	Yea
Sen. Castaneda, Jose	Yea
Sen. Braunberger, Ryan	Yea
Rep. Holle, Dawson	Yea
Rep. Dobervich, Gretchen	Yea
Rep. Kiefert, Dwight	Yea

Insert LC: 25.1110.02004  
Senate Carrier: Paulson  
House Carrier: Dobervich

**REPORT OF CONFERENCE COMMITTEE  
ENGROSSED SB 2291**

Your conference committee (Sens. Paulson, Castaneda, Braunberger and Reps. Holle, Dobervich, Kiefert) recommends that in place of amendment [25.1110.02002](#) adopted by the House, Engrossed SB 2291 is amended by amendment [25.1110.02004](#).

Engrossed SB 2291 was placed on the Seventh order of business on the calendar.



25.1110.02004  
Title.

Prepared by the Legislative Council  
staff for Senator Paulson  
April 7, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## **PROPOSED AMENDMENTS TO FIRST ENGROSSMENT**

### **ENGROSSED SENATE BILL NO. 2291**

Introduced by

Senators Dwyer, Sickler, Larson, Weston

Representatives Hanson, Klemin

*In place of the amendments (25.1110.02002) adopted by the House, Engrossed Senate Bill No. 2291 is amended by amendment (25.1110.02004) as follows:*

1 A BILL for an Act to create and enact two new sections to chapter 30.1-28 and two new sections  
2 to chapter 30.1-29 of the North Dakota Century Code, relating to removal, resignation and  
3 death of a guardian, notices in a guardianship, notices in a conservatorship, and confidentiality  
4 of reports; to amend and reenact subsection 1 of section 23-12-13, subsection 1 of section  
5 25-03.1-18.1, subsection 1 of section 27-20.1-17, sections 30.1-01-06 and 30.1-28-03.1,  
6 subsection 3 of section 30.1-28-03.2, section 30.1-28-04, subsection 1 of section 30.1-28-05,  
7 section 30.1-28-07, subsection 1 of section 30.1-28-09, sections 30.1-28-10.1, 30.1-28-12,  
8 30.1-28-12.1, 30.1-28-12.2, and 30.1-29-05, subsection 6 of section 30.1-29-07, subsection 2 of  
9 section 30.1-29-08, sections 30.1-29-13 and 30.1-29-18, subsection 3 of section 30.1-29-19,  
10 subsection 1 of section 30.1-29-20.1, subsection 2 of section 30.1-29-22, and subsection 5 of  
11 section 30.1-29-25 of the North Dakota Century Code, relating to incapacitated persons, court-  
12 authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated  
13 person, and protection of property of persons under disability and minors; and to repeal  
14 sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North Dakota Century Code, relating to  
15 visitors in a guardianship proceeding and appointment of successor guardians.

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

17 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-12-13 of the North Dakota Century  
18 Code is amended and reenacted as follows:

- 19 1. Informed consent for health care for a minor patient or a patient who is determined by  
20 a physician, psychiatrist, or psychologist to be an incapacitated person, as defined in

subsection 2 of section ~~30.1-26-01~~30.1-01-06, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority may provide informed consent to health care on behalf of the patient:

- a. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;
- b. The appointed guardian or custodian of the patient, if any;
- c. The patient's spouse who has maintained significant contacts with the incapacitated person;
- d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;
- e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
- f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
- g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;
- h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
- i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.

**SECTION 2. AMENDMENT.** Subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Upon notice and hearing, a tier 1b mental health professional may request authorization from the court to treat an individual under a mental health treatment order, or an individual voluntarily admitted to a public treatment facility under section 25-03.1-04, with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, a

psychiatrist or a final year psychiatric resident physician not involved in the current diagnosis or treatment of the patient shall certify:

- (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;
  - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
  - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
  - (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

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

1. An order appointing or reappointing a guardian under this chapter is effective for up to one year unless the court, upon a finding of good cause, sets a different time frame. An order may not be effective for more than three years. At least sixty days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, the child, if fourteen years of age or older, the child's attorney, if any, the child's parents, and any interested persons regarding whether the need for a guardianship continues to exist. The court, at its discretion, may appoint a guardian ad litem in accordance with section 27-20.1-08, before the hearing. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may:
  - a. Terminate the guardianship if shown by clear and convincing evidence that the circumstances that led to the guardianship no longer exist;



b. Reappoint the guardian for up to three years; or

c. Appoint a new guardian.

The court may extend a guardianship up to ninety days past the expiration of the initial order, for good cause shown, if the hearing cannot be held before the expiration of the order. If the court extends an initial order for guardianship, new letters of guardianship must be issued reflecting the extended expiration date.

**SECTION 4. AMENDMENT.** Section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-01-06. (1-201) General definitions.**

Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
2. "Alternative resource plan" means an alternative plan to guardianship which uses available support services and arrangements acceptable to the alleged incapacitated person. The term includes the use of support services such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care, home and community-based care, human service zones, developmental disability services, powers of attorney, durable powers of attorney, health care directives, supported decisionmaking, representative and protective payees, and licensed congregate care facilities.
3. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
- ~~3.4.~~ "Augmented estate" means the estate described in section 30.1-05-02.
- ~~4.5.~~ "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate

- 1 transfer at death; and, as it relates to a "beneficiary designated in a governing  
2 instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary  
3 of a beneficiary designation, a donee, or a person in whose favor a power of attorney  
4 or a power held in any individual, fiduciary, or representative capacity is exercised.
- 5 ~~5-6.~~ "Beneficiary designation" refers to a governing instrument naming a beneficiary of an  
6 account with payable on death designation, of a security registered in beneficiary form  
7 transferable on death, or other nonprobate transfer at death.
- 8 ~~6-7.~~ "Child" includes an individual entitled to take as a child under this title by intestate  
9 succession from the parent whose relationship is involved and excludes a person who  
10 is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- 11 ~~7-8.~~ "Claims", in respect to estates of decedents and protected persons, includes liabilities  
12 of the decedent or protected person whether arising in contract, in tort, or otherwise,  
13 and liabilities of the estate which arise at or after the death of the decedent or after the  
14 appointment of a conservator, including funeral expenses and expenses of  
15 administration. The term does not include estate or inheritance taxes or demands or  
16 disputes regarding title of a decedent or protected person to specific assets alleged to  
17 be included in the estate.
- 18 ~~8-9.~~ "Conservator" means a person who is appointed by a court to manage the estate of a  
19 protected person, and includes limited conservators as defined in this section.
- 20 ~~9-10.~~ "Court" means the court having jurisdiction in matters relating to the affairs of  
21 decedents.
- 22 ~~10-11.~~ "Descendant" of an individual means all descendants of all generations, with the  
23 relationship of parent and child at each generation being determined by the definition  
24 of child and parent contained in this title.
- 25 ~~11-12.~~ "Devise", when used as a noun, means a testamentary disposition of real or personal  
26 property, and when used as a verb, means to dispose of real or personal property by  
27 will.
- 28 ~~12-13.~~ "Devisee" means a person designated in a will to receive a devise. In the case of a  
29 devise to an existing trust or trustee, or to a trustee or trust described by will, the trust  
30 or trustee is the devisee and the beneficiaries are not devisees.
- 31 ~~13-14.~~ "Disability" means cause for a protective order as described in section 30.1-29-01.

- 1 ~~14.15.~~ "Distributee" means any person who has received property of a decedent from the  
2 decedent's personal representative other than as a creditor or purchaser. A  
3 testamentary trustee is a distributee only to the extent of distributed assets or  
4 increment thereto remaining in the trustee's hands. A beneficiary of a testamentary  
5 trust to whom the trustee has distributed property received from a personal  
6 representative is a distributee of the personal representative. For the purposes of this  
7 provision, "testamentary trustee" includes a trustee to whom assets are transferred by  
8 will to the extent of the devised assets.
- 9 ~~15.16.~~ "Estate" includes the property of the decedent, trust, or other person whose affairs are  
10 subject to this title as originally constituted and as it exists from time to time during  
11 administration.
- 12 ~~16.17.~~ "Exempt property" means that property of a decedent's estate which is described in  
13 section 30.1-07-01.
- 14 ~~17.18.~~ "Expert examiner" means:  
15 a. A licensed physician;  
16 b. A psychiatrist;  
17 c. A licensed psychologist trained in a clinical program;  
18 d. An advanced practice registered nurse who is licensed under chapter 43-12.1  
19 within the role of a certified nurse practitioner or certified clinical nurse specialist,  
20 who has completed the requirements for a minimum of a master's degree from an  
21 accredited program, and who is functioning within the scope of practice in one of  
22 the population foci as approved by the state board of nursing; or  
23 e. A physician assistant who is licensed under chapter 43-17 and authorized by the  
24 state board of medical examiners to practice in this state.
- 25 ~~18.19.~~ "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 26 ~~19.20.~~ "Foreign personal representative" means a personal representative appointed by  
27 another jurisdiction.
- 28 ~~20.21.~~ "Formal proceedings" means proceedings conducted before a judge with notice to  
29 interested persons.
- 30 ~~21.22.~~ "Governing instrument" means a deed, will, trust, insurance or annuity policy, account  
31 with payable on death designation, security registered in beneficiary form transferable



on death, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

~~22-23.~~ "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as defined in this section, but excludes one who is merely a guardian ad litem.

~~23-24.~~ "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

~~24-25.~~ "Incapacitated person" means ~~an individual described in section 30.1-26-01~~any adult individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, or chemical dependency to the extent that the individual lacks capacity to make or communicate responsible decisions concerning the individual's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or if the incapacity endangers the individual's health or safety.

~~25-26.~~ "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.

~~26-27.~~ "Interested person" includes heirs,;

a. Except as provided under section b:

(1) ~~Heirs and~~ devisees, children, spouses, creditors, beneficiaries, and any others;

(2) Children;

(3) Spouses;

(4) Creditors;

(5) Beneficiaries;

(6) Any individual having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. ~~The term also includes persons;~~

(7) Person having priority for appointment as personal representative; and ~~other~~

(8) Other fiduciaries representing interested persons.

b. For purposes of guardianships and conservatorships:

(1) The petitioner for appointment of the guardian;

(2) The spouse, parent, adult children, or siblings of the ward, protected person, or an adult relative if a spouse, parent, adult child, sibling, or protected person cannot be found;

(3) An adult individual who has lived with a ward or a protected person for a period of more than six months;

(4) An attorney for the ward or protected person;

(5) A representative payee for the ward or protected person; and

(6) Any other person designated by the court.

The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

~~27-28.~~ "Issue" of a person~~an individual~~ means descendant as defined in subsection 4011.

~~28-29.~~ "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~29-30.~~ "Lease" includes an oil, gas, or other mineral lease.

~~30-31.~~ "Least restrictive form of intervention" includes only the limitations necessary to provide the needed care and services for a guardianship, and the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.

~~32.~~ "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~34-33.~~ "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity and includes limited conservators as described by section 30.1-29-20.

- 1   ~~32.34.~~   "Limited guardian" means a person or nonprofit corporation, appointed by the court, to  
2           supervise certain specified aspects of the care of a person with limited capacity and  
3           includes limited guardians as described by section 30.1-28-04.
- 4   ~~33.35.~~   "Minor" means a person who is under eighteen years of age.
- 5   ~~34.36.~~   "Mortgage" means any conveyance, agreement, or arrangement in which property is  
6           encumbered or used as security.
- 7   ~~35.37.~~   "Nonresident decedent" means a decedent who was domiciled in another jurisdiction  
8           at the time of death.
- 9   ~~36.38.~~   "Organization" means a corporation, limited liability company, government or  
10          governmental subdivision or agency, business trust, estate, trust, partnership, joint  
11          venture, association, or any other legal or commercial entity.
- 12   ~~37.39.~~   "Parent" includes any ~~person~~individual entitled to take, or who would be entitled to  
13          take if the child died without a will, as a parent under this title, by intestate succession  
14          from the child whose relationship is in question and excludes any person who is only a  
15          stepparent, foster parent, or grandparent.
- 16   ~~38.40.~~   "Payer" means a trustee, insurer, business entity, employer, government,  
17          governmental agency or subdivision, or any other person authorized or obligated by  
18          law or a governing instrument to make payments.
- 19   ~~39.41.~~   "Person" means an individual, a corporation, a limited liability company, an  
20          organization, or other legal entity.
- 21    40.   ~~"Person with limited capacity" is as defined in section 30.1-26-01.~~
- 22   ~~41.42.~~   "Personal representative" includes executor, administrator, successor personal  
23          representative, special administrator, and persons who perform substantially the same  
24          function under the law governing their status. "General personal representative"  
25          excludes special administrator.
- 26   ~~42.43.~~   "Petition" means a written request to the court for an order after notice.
- 27   ~~43.44.~~   "Proceeding" includes action at law and suit in equity.
- 28   ~~44.45.~~   "Property" includes both real and personal property or any interest therein and means  
29          anything that may be the subject of ownership.

- 1    ~~45.46.~~    "Protected person" is as defined in section 30.1-26-04 means a minor or other  
2                    individual for whom a conservator or limited conservator has been appointed, or other  
3                    protective order has been made.
- 4    ~~46.47.~~    "Protective proceeding" means a proceeding described in section 30.1-26-04 under  
5                    section 30.1-29-01 to determine that an individual cannot effectively manage or apply  
6                    the individual's estate to necessary ends, either because the individual lacks the ability  
7                    or is otherwise inconvenienced, or because the individual is a minor, and to secure  
8                    administration of the individual's estate by a conservator or other appropriate relief.
- 9    ~~47.48.~~    "Record" means information that is inscribed on a tangible medium or that is stored in  
10                   an electronic or other medium and is retrievable in perceivable form.
- 11   ~~48.49.~~    "Refusal" means declining to accept prescribed mood stabilizer or antipsychotic  
12                   medication by a clear and unequivocal response.
- 13        50.        "Security" includes any note, stock, treasury stock, bond, debenture, membership  
14                   interest in a limited liability company, evidence of indebtedness, certificate of interest  
15                   or participation in an oil, gas, or mining title or lease or in payments out of production  
16                   under such a title or lease, collateral trust certificate, transferable share, voting trust  
17                   certificate or, in general, any interest or instrument commonly known as a security, or  
18                   any certificate of interest or participation, any temporary or interim certificate, receipt,  
19                   or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of  
20                   the foregoing.
- 21   ~~49.51.~~    "Settlement", in reference to a decedent's estate, includes the full process of  
22                   administration, distribution, and closing.
- 23   ~~50.52.~~    "Sign" means, with present intent to authenticate or adopt a record other than a will, to  
24                   execute or adopt a tangible symbol or to attach to or logically associate with the record  
25                   an electronic symbol, sound, or process.
- 26   ~~51.53.~~    "Special administrator" means a personal representative as described by sections  
27                   30.1-17-14 through 30.1-17-18.
- 28   ~~52.54.~~    "State" means a state of the United States, the District of Columbia, the  
29                   Commonwealth of Puerto Rico, or any territory or insular possession subject to the  
30                   jurisdiction of the United States.



- 1 ~~53.55.~~ "Successor personal representative" means a personal representative, other than a  
2 special administrator, who is appointed to succeed a previously appointed personal  
3 representative.
- 4 ~~54.56.~~ "Successors" means persons, other than creditors, who are entitled to property of a  
5 decedent under the decedent's will or this title.
- 6 ~~55.57.~~ "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- 7 ~~56.58.~~ "Survive" means that an individual has neither predeceased an event, including the  
8 death of another individual, nor predeceased an event under sections 30.1-04-04 and  
9 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived",  
10 "survivor", and "surviving".
- 11 ~~57.59.~~ "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- 12 ~~58.60.~~ "Trust" includes an express trust, private or charitable, with additions thereto, wherever  
13 and however created. The term also includes a trust created or determined by  
14 judgment or decree under which the trust is to be administered in the manner of an  
15 express trust. The term excludes other constructive trusts and excludes resulting  
16 trusts, conservatorships, personal representatives, trust accounts as defined in  
17 custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19  
18 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24,  
19 chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries,  
20 common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts  
21 for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,  
22 pensions, or employee benefits of any kind, and any arrangement under which a  
23 person is nominee or escrowee for another.
- 24 ~~59.61.~~ "Trustee" includes an original, additional, or successor trustee, whether or not  
25 appointed or confirmed by court.
- 26 ~~60.62.~~ "Visitor" means an individual, in guardianship proceedings, who is trained in nursing,  
27 social work, medical care, mental health care, or rehabilitation and is an employee or  
28 special appointee of the court with no personal interest in the proceedings.
- 29 ~~61.63.~~ "Ward" means an individual described in section 30.1-26-04 for whom a guardian has  
30 been appointed. A "minor ward" is a minor for whom a guardian has been appointed  
31 solely because of minority.

1 ~~62-64.~~ "Will" includes codicil and any testamentary instrument that merely appoints an  
2 executor, revokes or revises another will, nominates a guardian, or expressly excludes  
3 or limits the right of an individual or class to succeed to property of the decedent  
4 passing by intestate succession.

5 **SECTION 5. AMENDMENT.** Section 30.1-28-03.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **30.1-28-03.1. Confidentiality - Reports - Personal information.**

- 8 1. A written report prepared and submitted ~~under subsection 5 or 6 of section 30.1-28-03-~~  
9 ~~is~~by a guardian ad litem, visitor, or expert examiner and annual and final reports and  
10 financial accounting prepared and submitted by a guardian are closed to the public  
11 and ~~is~~are not open to inspection except by the court, parties to the proceeding or their  
12 counsel, other persons for those purposes as the court may order for good cause, and  
13 others authorized by court rule.
- 14 2. Medical, psychological, or other treatment information protected by federal law or  
15 regulation and any financial account numbers related to a ward or proposed ward are  
16 confidential and may not be disclosed except to parties to the proceeding, their  
17 counsel, and others authorized by court rule. The court may permit access by other  
18 persons for good cause.

19 **SECTION 6. AMENDMENT.** Subsection 3 of section 30.1-28-03.2 of the North Dakota  
20 Century Code is amended and reenacted as follows:

- 21 3. The motion must be served upon ~~the ward, the ward's spouse, and all interested~~  
22 ~~persons~~those identified in section 12 of this Act.

23 **SECTION 7. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **30.1-28-04. (5-304) Findings - Order of appointment.**

- 26 1. The court shall exercise the authority conferred in this chapter consistent with the  
27 maximum self-reliance and independence of the incapacitated person and make  
28 appointive and other orders only to the extent necessitated by the incapacitated  
29 person's actual mental and adaptive limitations or other conditions warranting the  
30 procedure.
- 31 2. At a hearing held under this chapter, the court shall:

- 1           a.   Hear evidence that the proposed ward is an incapacitated person. Age,  
2               eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding  
3               of incapacity;
- 4           b.   Hear evidence and determine whether there are any existing general durable  
5               powers of attorney and durable powers of attorney for health care. If there are  
6               validly executed durable powers of attorney, the court shall consider the  
7               appointed attorneys in fact and agents appointed thereunder when assessing  
8               alternative resource plans and the need for a guardian; and
- 9           c.   Appoint a guardian and confer specific powers of guardianship only after finding  
10               in the record based on clear and convincing evidence that:
  - 11               (1)   The proposed ward is an incapacitated person;
  - 12               (2)   There is no available alternative resource plan that is suitable to safeguard  
13                      the proposed ward's health, safety, or habilitation which could be used  
14                      instead of a guardianship;
  - 15               (3)   The guardianship is necessary as the best means of providing care,  
16                      supervision, or habilitation of the ward; and
  - 17               (4)   The powers and duties conferred upon the guardian are appropriate as the  
18                      least restrictive form of intervention consistent with the ability of the ward for  
19                      self-care.
- 20       3.   Except upon specific findings of the court, a ward may not be deprived of any of the  
21               following legal rights: to vote, to seek to change marital status, or to obtain or retain a  
22               motor vehicle operator's license.
- 23       4.   The court may find that the ward retains other specific rights.
- 24       5.   The order appointing a guardian confers upon the guardian only those powers and  
25               duties specified in the order. In addition to any other powers conferred upon the  
26               guardian, the court's order must state whether the guardian has no authority, general  
27               authority, or limited authority to make decisions on behalf of the ward in each of the  
28               areas of residential, educational, medical, legal, vocational, and financial  
29               decisionmaking. A grant of limited authority must specify the limitations upon the  
30               authority of the guardian or the authority retained by the ward. The court's order must  
31               require the guardian to provide within ninety days from the date of the order a

beginning inventory of all assets owned by the ward or in which the ward has an interest. The guardian shall provide a copy of the beginning inventory to ~~the ward and any interested persons designated by the court in its order~~ those identified in section 12 of this Act. Unless terminated earlier by the court, an order appointing or reappointing a guardian under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, ward, ward's attorney, if any, and any interested persons regarding whether the need for a guardian continues to exist. If it is recommended that the guardianship continue, the court may appoint a guardian ad litem ~~or~~ visitor, or ~~both~~ all, in accordance with section 30.1-28-03. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may reappoint the guardian for up to another five years, allow the existing order to expire, or appoint a new guardian in accordance with this section. If a review hearing cannot be held before the expiration of an initial order for guardianship, the court may extend the initial order for up to an additional ninety days upon good cause shown. New letters of guardianship must be issued reflecting the extended expiration date. The supreme court, by rule or order, shall provide for the regular review of guardianship in existence on August 1, 2015.

6. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
7. The court may require a guardian to furnish a bond in the amount and with sureties as the court specifies.
8. After the hearing, the guardian ad litem, visitor, and expert examiner must be discharged of ~~the person's~~ their duties as ~~guardian ad litem~~.

**SECTION 8. AMENDMENT.** Subsection 1 of section 30.1-28-05 of the North Dakota Century Code is amended and reenacted as follows:

1. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any



1 interested person. Notice of any proceeding so instituted must be served upon the  
2 guardian by the petitioner.

3 **SECTION 9. AMENDMENT.** Section 30.1-28-07 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **30.1-28-07. (5-307) Removal or resignation of guardian - Change in or termination of**  
6 **guardianship.**

7 1. ~~On petition of the ward or any person interested in the ward's welfare, the court may~~  
8 ~~remove a guardian and appoint a successor if in the best interests of the ward. On~~  
9 ~~petition of the guardian, the court may accept the guardian's resignation and make any~~  
10 ~~other order which may be appropriate.~~

11 2. The ward or any person interested in the ward's welfare may petition for an order that  
12 the ward is no longer incapacitated or no longer incapacitated to the same extent as  
13 the ward was when the original guardianship order was made or last reviewed by the  
14 court, or that the duties and authority of the guardian require modification, ~~and for~~  
15 ~~removal or resignation of the guardian, termination of the guardianship,~~ or change in  
16 the duties and authority of the guardian. A request for this order may be made by  
17 informal letter to the court or judge. The clerk of district court shall send a copy of the  
18 informal request to the parties and those identified in section 12 of this Act. Any person  
19 who knowingly interferes with transmission of this kind of request to the court or judge  
20 may be adjudged guilty of contempt of court.

21 ~~3.2.~~ Before ~~removing a guardian,~~ changing the guardian's duties and authority, accepting  
22 the resignation of a guardian, or on finding that the ward is no longer incapacitated, or  
23 no longer incapacitated to the same extent and ordering the guardianship terminated  
24 or modified, the court, following the same procedures to safeguard the rights of the  
25 ward as apply to a petition for appointment of a guardian, may send a visitor to the  
26 place where the ward resides or is detained, to observe conditions and report in  
27 writing to the court.

28 ~~4.3.~~ A hearing must be held no later than sixty days following the filing of the petition or  
29 informal request, unless good cause is shown. Following the hearing, the court shall  
30 make written findings of fact. Before terminating or modifying the guardianship, the  
31 court shall find by a preponderance of the evidence that the ward is no longer

incapacitated, no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that it is in the best interests of the ward that the duties and authority of the guardian be modified. New letters of guardianship must be issued to the guardian in the same manner as provided in section 30.1-28-05.

5.4. In deciding whether to terminate or modify a guardianship, the court may require a report by and consider the recommendations of an expert examiner.

~~6. If the guardian dies, or if on the basis of a petition filed under this section or a report or other information, there is probable cause to believe a guardian is not performing the guardian's duties effectively and there is an imminent danger the ward's physical, mental, or emotional health or safety will be seriously impaired, the court shall take whatever action is necessary to protect the ward, including dismissal of the guardian and appointment of an emergency guardian as provided in section 30.1-28-10.1.~~

7.5. On termination of the guardianship, a guardian shall file a final report and accounting and provide a copy of the report and accounting to those given notice under section ~~30.1-28-09~~12 of this Act. The report and accounting must be filed with the clerk of district court. The filing of the report and accounting does not constitute the court's approval of the report and accounting. The court may approve a report and settle and allow an accounting only upon notice ~~to the ward and other interested persons who have made an appearance or requested notice of the proceedings~~to those identified in section 12 of this Act.

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

**Removal, resignation, or death of guardian - Appointment of successor guardian.**

1. The court may remove a guardian on its own motion or on petition of the ward or any interested person if removal is in the best interests of the ward. A request for this order may be made by informal letter to the court or judge. The clerk of district court shall send a copy of the informal request to the parties and those identified in section 12 of this Act. Any person that knowingly interferes with the transmission of a request under this section may be adjudged guilty of contempt of court.

2. The court may accept the resignation of a guardian upon petition by the guardian.

- 1        3. Upon the death of a guardian, the personal representative of the guardian shall submit  
2        a final report and accounting to the court. Upon removal or resignation of the guardian,  
3        the guardian shall submit a final report and accounting to the court. The report and  
4        accounting must be filed with the clerk of district court. The filing of the report and  
5        accounting does not constitute the court's approval of the report and accounting. The  
6        court may approve a report and settle and allow an accounting only upon notice to  
7        those identified in section 12 of this Act.
- 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 and conclusions of law.
- 11       5. Upon the removal, resignation, or death of a guardian, the court, upon the court's own  
12       motion or upon a motion filed by any interested person, may appoint a successor  
13       guardian or make any other appropriate order.
- 14       6. A notice of motion must accompany the motion for appointment of successor guardian  
15       and must include a statement that provides an opportunity for hearing if requested in  
16       regard to the appointment of a successor guardian. The notice of motion and motion  
17       must be served on those identified in section 12 of this Act.
- 18       7. If a hearing is not requested by or on behalf of the ward listed in the notice, the court  
19       may sign an order appointing a successor guardian for that ward.

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

- 22        1. In a proceeding for the appointment ~~or removal~~ of a guardian ~~or for an alteration or~~  
23        ~~termination of a guardianship other than~~ and, if notice is required, for the appointment  
24        of an emergency guardian ~~or for the temporary suspension of a guardian,~~ notice of  
25        hearing shall be given by the petitioning party, unless otherwise directed by the court,  
26        to each of the following:
  - 27        a. The ward or the proposed ward and the ward's or proposed ward's spouse,  
28        parents, and adult children;
  - 29        b. Any person, corporation, or institution who is serving as the ward's guardian,  
30        attorney in fact, representative payee for public benefits, or conservator, or who  
31        has the ward's care and custody;

- 1           c.    If no other person is notified under subdivision a, then the adult siblings and any  
2               adult with whom the proposed ward resides in a private residence, or if none can  
3               be found, any known adult relative; and  
4           d.    The attorney for the proposed ward, the visitor, and the expert examiner, together  
5               with a copy of the respective order of appointment for each.

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

8           **Notices in guardianship proceedings subsequent to appointment.**

9           Notice in a guardianship proceeding subsequent to appointment of a guardian must be  
10 given to the parties, the conservator, if any, the ward, and any interested persons designated in  
11 the order of the court.

12          **SECTION 13. AMENDMENT.** Section 30.1-28-10.1 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14          **30.1-28-10.1. Emergency guardian.**

- 15          1.    On petition by a person interested in the alleged incapacitated individual's welfare, the  
16               court may appoint an emergency guardian if the court finds that compliance with the  
17               procedures of this chapter likely will result in substantial harm to the alleged  
18               incapacitated individual's health, safety, or welfare, and that no other person appears  
19               to have authority and willingness to act in the circumstances. The court may appoint  
20               the guardian for a specified period of time, not to exceed ninety days. Immediately  
21               upon receipt of the petition for an emergency guardianship, the court shall appoint a  
22               guardian ad litem to advocate for the best interests of the alleged incapacitated  
23               individual in the proceeding and any subsequent proceeding. ~~Except as otherwise-~~  
24               ~~provided in subsection 2, reasonable notice of the time and place of a hearing on the~~  
25               ~~petition must be given to the alleged incapacitated individual, the individual's spouse, if~~  
26               ~~any, and any other person as the court directs~~ The court shall hold a hearing within  
27               ten days of the filing of the petition to determine if appointment of an emergency  
28               guardian is appropriate.  
29          2.    An emergency guardian may be appointed without notice to the alleged incapacitated  
30               individual and the alleged incapacitated individual's guardian ad litem only if the court  
31               finds from affidavit or other sworn testimony that the alleged incapacitated individual



will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the alleged incapacitated individual, the alleged incapacitated individual and the individual's spouse, if any, and any other person the court directs must be given notice of the appointment within forty-eight hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within ten days after the appointment.

3. If a conservator has not been appointed for the alleged incapacitated individual and the emergency guardian has authority for financial decisionmaking, the court's order of appointment must state that the guardian shall safeguard any assets held by the alleged incapacitated individual and, during the period of appointment and subject to any further order of the court, may expend the individual's assets only for the necessary support and care of the individual.

4. Appointment of an emergency guardian, with or without notice, is not a determination of the alleged incapacitated individual's incapacity.

5. The court may remove an emergency guardian at any time. An emergency guardian shall make any report the court requires. In all other respects, the provisions of this chapter concerning guardians apply to an emergency guardian.

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

**SECTION 14. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-12. (5-312) General powers and duties of guardian.**

1. A guardian of an incapacitated person has only the powers and duties specified by the court.

2. To the extent that it is consistent with the terms of an order by a court of competent jurisdiction, the guardian is entitled to custody of the person of the ward and may

1 establish the ward's place of residence within or without this state. However, no  
2 guardian may voluntarily admit a ward to a mental health facility or state institution for  
3 a period of more than forty-five days without a mental health commitment proceeding  
4 or other court order. Notwithstanding the other provisions of this subsection, the  
5 guardian may readmit a ward to a mental health facility or a state institution within sixty  
6 days of discharge from that institution, if the original admission to the facility or  
7 institution had been authorized by the court.

8 3. If entitled to custody of the ward, the guardian should make provision for the care,  
9 comfort, and maintenance of the ward and, whenever appropriate, arrange for the  
10 ward's training, education, or habilitative services. The guardian shall take reasonable  
11 care of the ward's clothing, furniture, vehicles, and personal effects.

12 4. Notwithstanding general or limited authority to make medical decisions on behalf of  
13 the ward, no guardian may consent to psychosurgery, abortion, sterilization, or  
14 experimental treatment of any kind unless the procedure is first approved by order of  
15 the court.

16 5. When exercising the authority granted by the court, the guardian shall safeguard the  
17 civil rights and personal autonomy of the ward to the fullest extent possible by:

- 18 a. Meeting with the ward following the hearing, unless the ward is represented by  
19 an attorney, and explaining to the fullest extent possible the contents of the  
20 court's order and the extent of the guardian's authority;  
21 b. Involving the ward as fully as is practicable in making decisions with respect to  
22 the ward's living arrangements, health care, and other aspects of the ward's care;  
23 and  
24 c. Ensuring the ward's maximum personal freedom by using the least restrictive  
25 forms of intervention and only as necessary for the safety of the ward or others.

26 6. If no conservator for the estate of the ward has been appointed and if the guardian  
27 has been granted authority to make financial decisions on behalf of the ward, the  
28 guardian shall:

- 29 a. Institute proceedings to compel any person under a duty to support the ward or to  
30 pay sums for the welfare of the ward to perform that duty.

- 1           b. Receive money and tangible property deliverable to the ward and apply the  
2           money and property for support, care, and education of the ward; but, the  
3           guardian may not use funds from the ward's estate for room and board which the  
4           guardian or the guardian's spouse, parent, or child have furnished the ward  
5           unless a charge for the service is approved by order of the court made upon  
6           notice to ~~at least one of the next of kin of the ward, if notice is possible~~those  
7           identified in section 12 of this Act. The guardian shall exercise care to conserve  
8           any excess for the ward's needs.
- 9           c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or  
10          otherwise encumber or transfer ownership or beneficiary of:
- 11          (1) The real property of the ward; or
- 12          (2) The personal property of the ward valued over two thousand five hundred  
13          dollars upon such terms as the court may order, for the purpose of paying  
14          the ward's debts; providing for the care, maintenance, rehabilitation,  
15          training, or education of the ward or the ward's dependents; or for any other  
16          purpose which is in the best interests of the ward. The sale, mortgage, or  
17          other encumbrance or transfer of ownership of personal property of the  
18          ward valued at two thousand five hundred dollars or less does not require a  
19          court order.
- 20          d. Move the court under section 30.1-28-03.2 for authority to lease the real or  
21          personal property of the ward.
- 22          e. A guardian may not purchase, lease, or obtain ownership or become the  
23          beneficiary of property of the ward unless the price and manner of the sale are  
24          approved by the court.
- 25          7. If a conservator has been appointed, all of the ward's estate received by the guardian  
26          in excess of those funds expended to meet current expenses for support, care, and  
27          education of the ward must be paid to the conservator for management as provided in  
28          this title, and the guardian must account to the conservator for funds expended.
- 29          8. A guardian shall file an annual report with the court regarding the exercise of powers  
30          and duties in areas of authority specified in the court's order of appointment. The  
31          report must describe the status or condition of the ward, including any change of

1 residence and reasons for the change, any medical treatment received by or withheld  
2 from the ward, any expenditure and income affecting the ward, any sale or transfer of  
3 property affecting the ward, and any exercise of legal authority by the guardian  
4 affecting the ward. The report must include changes that have occurred since the  
5 previous reporting period and an accounting of the ward's estate. The guardian also  
6 shall report whether the ward continues to require guardianship and whether any  
7 powers of the guardian should be increased or limited. The report must be filed with  
8 the clerk of district court. The filing of the report does not constitute an adjudication or  
9 a determination of the merits of the report nor does the filing of the report constitute  
10 the court's approval of the report. The court may approve a report and allow and settle  
11 an accounting only upon notice to the ward's guardian ad litem and other interested  
12 persons who have made an appearance or requested notice of proceedings. The  
13 office of the state court administrator shall provide printed forms that may be used to  
14 fulfill reporting requirements. Any report must be similar in substance to the state court  
15 administrator's form. The forms must be available in the office of clerk of district court  
16 or obtainable through the supreme court's internet website.

17 9. Copies of the guardian's annual report to the court and of any other reports required  
18 by the court must be mailed to the ward and any interested persons designated by the  
19 court in its order those identified in section 12 of this Act. The ward's copy must be  
20 accompanied by a statement, printed with not less than double-spaced twelve-point  
21 type, of the ward's right to seek alteration, limitation, or termination of the guardianship  
22 at any time.

23 10. The guardian is entitled to receive reasonable sums for services and for room and  
24 board furnished to the ward as approved by the court or as agreed upon between the  
25 guardian and the conservator, provided the amounts agreed upon are reasonable  
26 under the circumstances. The guardian may request the conservator to expend the  
27 ward's estate by payment to third persons or institutions for the ward's care and  
28 maintenance.

29 11. A guardian has a fiduciary duty to the ward and may be held liable for a breach of that  
30 duty.



1     12. A guardian is not liable for the acts of the ward, unless the guardian is grossly  
2     negligent as defined in section 1-01-17.

3     13. A guardian is not required to expend personal funds on behalf of the ward solely by  
4     reason of the guardian relationship.

5     14. A guardian who exercises reasonable care in selecting an individual to provide  
6     medical or other care, treatment, or service for the ward is not liable for injury to the  
7     ward resulting from the wrongful conduct of the individual.

8     **SECTION 15. AMENDMENT.** Section 30.1-28-12.1 of the North Dakota Century Code is  
9     amended and reenacted as follows:

10     **30.1-28-12.1. Annual reports and accounts - Failure of guardian to file.**

11     If a guardian fails to file an annual report as required by section 30.1-28-12, fails to file a  
12     report at other times as the court may direct, or fails to provide an accounting of an estate, the  
13     court, upon its own motion or upon petition of any interested ~~party~~person, may issue an order  
14     compelling the guardian to show cause why the guardian should not immediately make and file  
15     the report or account, or be found in contempt for failure to comply.

16     **SECTION 16. AMENDMENT.** Section 30.1-28-12.2 of the North Dakota Century Code is  
17     amended and reenacted as follows:

18     **30.1-28-12.2. Restrictions on visitation, communication, and interaction with the**  
19     **ward - Removal of restriction.**

- 20     1. If it is in the best interests of the ward, a guardian may restrict visitation,  
21     communication, and interaction with the ward.
- 22     2. A family member, friend, the ward, clergy member, attorney, agency charged with the  
23     protection of vulnerable adults, or other interested person may move the court to  
24     remove the restriction on visitation, communication, and interaction with the ward.
- 25     3. The motion must state:
- 26         a. The movant's relationship to the ward;
- 27         b. Whether the guardian is unreasonably or arbitrarily denying or restricting  
28         visitation, communication, or interaction between the restricted party and the  
29         ward; and

- 1           c.    The facts supporting the movant's allegation that the guardian is unreasonably or
- 2                arbitrarily denying or restricting visitation, communication, or interaction between
- 3                the restricted party and the ward.
- 4        4.    The movant shall serve the motion on ~~the guardian, the ward, the ward's spouse, and~~
- 5               ~~any other interested person~~ those identified in section 12 of this Act.
- 6        5.    The court shall set a hearing on the motion and provide notice of the hearing to the
- 7               movant, ~~the guardian, the ward, the ward's spouse, and any other interested person~~
- 8               and those identified in section 12 of this Act.
- 9        6.    The court shall take into consideration the ward's wishes, and may conduct an
- 10             in-camera interview with the ward and appoint a visitor or guardian ad litem.
- 11        7.    If the court grants the motion for visitation, communication, or interaction, the court
- 12             may impose conditions on visitation, communication, and interaction between the
- 13             restricted party and the ward.
- 14        8.    If the visitation, communication, or interaction is not in the best interests of the ward,
- 15             the court may prohibit visitation, communication, or interaction between the restricted
- 16             party and the ward.
- 17        9.    The court may award reasonable costs and attorney's fees to the prevailing party if the
- 18             court finds:
- 19             a.    The guardian unreasonably, arbitrarily, or in bad faith denied or restricted
- 20                visitation, communication, or interaction between the restricted party and the
- 21                ward; or
- 22             b.    The motion was frivolous.
- 23        10.   Costs and attorney's fees awarded against the guardian may not be paid from the
- 24             ward's estate.
- 25        11.   If a movant for visitation, communication, and interaction states the ward's health is in
- 26             significant decline or the ward's death may be imminent, the court shall conduct an
- 27             emergency hearing on the motion as soon as practicable but not later than fourteen
- 28             days after the date the motion is filed or at a later date upon a showing of good cause.

29        **SECTION 17. AMENDMENT.** Section 30.1-29-05 of the North Dakota Century Code is  
30        amended and reenacted as follows:

1       **30.1-29-05. (5-405) Notice.**

2       4. On a petition for appointment of a conservator or other protective order, the petitioning  
3 party shall cause notice of the proceeding to be served personally on the person to be protected  
4 and the spouse of the person to be protected or, if none, the parents of the person to be  
5 protected, or any guardian or conservator, at least fourteen days before the date of hearing. If  
6 none of these parties can be found, any government agency paying benefits to the person  
7 sought to be protected, if the person seeking the appointment has knowledge of the existence  
8 of these benefits, must be given notice in accordance with section 30.1-03-01.

9       ~~2. Notice of a petition for appointment of a conservator or other initial protective order,~~  
10       ~~and of any subsequent hearing, must be given to any person who has filed a request~~  
11       ~~for notice under section 30.1-29-06 and to interested persons and other persons as~~  
12       ~~the court may direct. Except as otherwise provided in subsection 1, notice shall be~~  
13       ~~given in accordance with section 30.1-03-01.~~

14       **SECTION 18.** A new section to chapter 30.1-29 of the North Dakota Century Code is  
15 created and enacted as follows:

16       **Notices in conservatorship proceedings subsequent to appointment.**

17       Notice in a conservatorship proceeding subsequent to appointment of a conservator must  
18 be given to the parties, the guardian, if any, the individual in need of protection, and any  
19 interested persons designated by the court.

20       **SECTION 19. AMENDMENT.** Subsection 6 of section 30.1-29-07 of the North Dakota  
21 Century Code is amended and reenacted as follows:

22       6. After hearing, upon finding that the appointment of a conservator or other protective  
23 order is appropriate, the court shall make an appointment or other appropriate  
24 protective order. The court, guardian ad litem, petitioner, or person to be protected  
25 may subpoena the individual who prepared and submitted the report to appear, testify,  
26 and be cross-examined. After the hearing, the guardian ad litem and expert examiner  
27 must be discharged of the~~their~~ duties as guardian ad litem.

28       **SECTION 20.** A new section to chapter 30.1-29 of the North Dakota Century Code is  
29 created and enacted as follows:

1       **Confidentiality - Reports - Personal information.**

2       1.   A written report prepared and submitted by a guardian ad litem or expert examiner and  
3       annual and final reports and financial accounting prepared and submitted by a  
4       conservator are closed to the public and are not open to inspection except by the  
5       court, parties to the proceeding or their counsel, other persons for those purposes as  
6       the court may order for good cause, and others authorized by court rule.

7       2.   Any medical, psychological, or other treatment information protected by federal law or  
8       regulation, and any financial account numbers related to a protected person or  
9       proposed protected person are confidential and may not be disclosed except to parties  
10      to the proceeding, their counsel, and others authorized by court rule. The court may  
11      permit access by other persons for good cause.

12      **SECTION 21. AMENDMENT.** Subsection 2 of section 30.1-29-08 of the North Dakota  
13      Century Code is amended and reenacted as follows:

- 14      2.   The court has the following powers which may be exercised directly or through a  
15      conservator, subject to section 30.1-29-22, in respect to the estate and affairs of  
16      protected persons:
- 17      a.   While a petition for appointment of a conservator or other protective order is  
18      pending and after preliminary hearing and without prior notice to others, the court  
19      has power to preserve and apply the property of the person to be protected as  
20      may be required for the benefit of the person to be protected or the benefit of the  
21      dependents of the person to be protected.
- 22      b.   After hearing and upon determining that a basis for an appointment or other  
23      protective order exists with respect to a minor, the court has all those powers  
24      over the estate and affairs of the minor which are or might be necessary for the  
25      best interests of the minor, the minor's family, and members of the minor's  
26      household.
- 27      c.   After hearing and upon determining that appointment of a conservator or other  
28      protective order is appropriate with respect to a person for reasons other than  
29      minority, the court has, for the benefit of the person and members of the person's  
30      household, all the powers over the person's estate and affairs which the person  
31      could exercise if present and not under disability, except the power to make a will.



1           These powers include power to make gifts, to convey or release the person's  
2           contingent and expectant interests in property, including marital property rights  
3           and any right of survivorship incident to joint tenancy, to exercise or release the  
4           person's powers as trustee, personal representative, custodian for minors,  
5           conservator, or donee of a power of appointment, to enter into contracts, to  
6           create revocable or irrevocable trusts of property of the estate which may extend  
7           beyond the person's disability or life, to exercise options of the disabled person to  
8           purchase securities or other property, to exercise the person's rights to elect  
9           options and change beneficiaries under insurance and annuity policies and to  
10          surrender the policies for their cash value, to exercise the person's right to an  
11          elective share in the estate of the person's deceased spouse, and to renounce  
12          any interest by testate or intestate succession or by inter vivos transfer.

13          d.   The court may exercise or direct the exercise of its authority to exercise or  
14          release powers of appointment of which the protected person is donee, to  
15          renounce interests, to make gifts in trust or otherwise exceeding twenty percent  
16          of any year's income of the estate, or to change beneficiaries under insurance  
17          and annuity policies, only if satisfied, after notice to those identified in section 18  
18          of this Act and hearing, that it is in the best interests of the protected person, and  
19          that the protected person either is incapable of consenting or has consented to  
20          the proposed exercise of power.

21          e.   An order made pursuant to this section determining that appointment of a  
22          conservator or other protective order is appropriate has no effect on the capacity  
23          of the protected person.

24          **SECTION 22. AMENDMENT.** Section 30.1-29-13 of the North Dakota Century Code is  
25          amended and reenacted as follows:

26          **30.1-29-13. (5-413) Acceptance of appointment - Consent to jurisdiction.**

27          By accepting appointment, a conservator submits personally to the jurisdiction of the court  
28          in any proceeding, relating to the estate, that may be instituted by any interested person. ~~Notice~~  
29          ~~of any proceeding shall be delivered to the conservator, or mailed to the conservator by~~  
30          ~~registered or certified mail at the conservator's address as listed in the petition for appointment~~

1 or as thereafter reported to the court and to the conservator's address as then known to the  
2 petitioner.

3 **SECTION 23. AMENDMENT.** Section 30.1-29-18 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **30.1-29-18. (5-418) Inventory and records.**

6 Within ninety days after appointment, every conservator shall prepare and file with the  
7 appointing court a complete inventory of the estate of the protected person together with the  
8 conservator's oath or affirmation that it is complete and accurate so far as the conservator is  
9 informed. The conservator shall provide a copy thereof to the protected person if the protected  
10 person can be located, has attained the age of fourteen years, and has sufficient mental  
11 capacity to understand these matters, and to any guardian, spouse, or parent, if the protected  
12 person is a minor, and to any interested persons designated by the court in its order to those  
13 identified in section 18 of this Act. The conservator shall keep suitable records of the  
14 conservator's administration and exhibit the same on request of any interested person.

15 **SECTION 24. AMENDMENT.** Subsection 3 of section 30.1-29-19 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 3. Copies of the conservator's annual report to the court and of any other reports  
18 required by the court must be mailed by the conservator to the protected person and  
19 other parties as required under section 30.1-29-18 provided to those identified in  
20 section 18 of this Act. The protected person's copy must be accompanied by a  
21 statement, printed with not less than double-spaced twelve-point type, of the protected  
22 person's right to seek alteration, limitation, or termination of the conservatorship at any  
23 time.

24 **SECTION 25. AMENDMENT.** Subsection 1 of section 30.1-29-20.1 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26 1. On petition by a person interested in the estate of the person to be protected, the court  
27 may appoint an emergency conservator if the court finds that compliance with the  
28 procedures in this chapter likely will result in substantial harm to the estate of the  
29 person to be protected, and that no other person appears to have authority and  
30 willingness to act in the circumstances. The court may appoint the conservator for a  
31 specified period of time, not to exceed ninety days. Immediately upon receipt of the

petition for an emergency conservator, the court shall appoint a guardian ad litem to advocate for the best interests of the estate of the person to be protected in the proceeding and any subsequent proceeding. The court shall hold a hearing within ten days of the filing of the petition to determine if appointment of an emergency conservator is appropriate. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to ~~the person whose estate is to be protected, the person's spouse, if any, and any other persons as the court directs~~ those identified in section 18 of this Act.

**SECTION 26. AMENDMENT.** Subsection 2 of section 30.1-29-22 of the North Dakota Century Code is amended and reenacted as follows:

2. A conservator shall move the court for authorization to sell real property of the person to be protected, upon such terms as the court may order, for the purpose of paying the protected person's debts; providing for the care, maintenance, rehabilitation, training, or education of the person to be protected or the dependents of the person to be protected; or for any other purpose in the best interests of the person to be protected.

a. The motion must contain:

- (1) A description of the property;
- (2) The details of the sale;
- (3) The reason for the transaction;
- (4) The current fair market value of the property, including an appraisal unless good cause is shown;
- (5) An explanation of why the transaction is in the best interest of the person to be protected; and
- (6) A notice that any person interested in the real property of the person to be protected must file an objection to the transaction within ten days of the notice and demand a hearing.

b. The motion must be served upon ~~the protected person, the spouse of the person to be protected, and all interested persons~~ those identified in section 18 of this Act.

c. Consent of the spouse of the person to be protected or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the

1 transaction without a hearing or may conduct a hearing and require proof of the  
2 matters necessary to support the authorization of the transaction.

3 d. The court's order must include specific findings regarding whether the transaction  
4 is in the best interests of the person to be protected.

5 **SECTION 27. AMENDMENT.** Subsection 5 of section 30.1-29-25 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 5. If a protected person dies, the conservator shall deliver to the court for safekeeping  
8 any will of the deceased protected person which may have come into the  
9 conservator's possession, inform the executor or a beneficiary named therein that the  
10 conservator has done so, and retain the estate for delivery to a duly appointed  
11 personal representative of the decedent or other persons entitled thereto. If after forty  
12 days from the death of the protected person no other person has been appointed  
13 personal representative and no application or petition for appointment is before the  
14 court, the conservator may apply to exercise the powers and duties of a personal  
15 representative so that the conservator may proceed to administer and distribute the  
16 decedent's estate without additional or further appointment. Upon application for an  
17 order granting the powers of a personal representative to a conservator, after notice to  
18 any person demanding notice under section 30.1-13-04, those identified in section 18  
19 of this Act, and to any person nominated executor in any will of which the applicant is  
20 aware, the court may order the conferral of the power upon determining that there is  
21 no objection, and endorse the letters of the conservator to note that the formerly  
22 protected person is deceased and that the conservator has acquired all of the powers  
23 and duties of a personal representative. The making and entry of an order under this  
24 section has the effect of an order of appointment of a personal representative as  
25 provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that  
26 estate in the name of the conservator, after administration, may be distributed to the  
27 decedent's successors without prior retransfer to the conservator as personal  
28 representative.

29 **SECTION 28. REPEAL.** Sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North  
30 Dakota Century Code are repealed.