

ASSEMBLY, No. 4649

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 29, 2015

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Requires information and access be provided to certain relatives of persons subject to order of guardianship.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning guardianship arrangements, amending
2 N.J.S.3B:12-57, and supplementing chapter 12 of Title 3B of the
3 New Jersey Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. N.J.S.3B:12-57 is amended to read as follows:
9 3B:12-57. Powers and duties of a guardian of the person of a
10 ward.

11 a. (Deleted by amendment, P.L.2005, c.304.)

12 b. (Deleted by amendment, P.L.2005, c.304.)

13 c. (Deleted by amendment, P.L.2005, c.304.)

14 d. (Deleted by amendment, P.L.2005, c.304.)

15 e. (Deleted by amendment, P.L.2005, c.304.)

16 f. In accordance with Section 12 of P.L.2005, c.304 (C.3B:12-
17 24.1), a guardian of the person of a ward shall exercise authority
18 over matters relating to the rights and best interest of the ward's
19 personal needs, only to the extent adjudicated by a court of
20 competent jurisdiction. In taking or forbearing from any action
21 affecting the personal needs of a ward, a guardian shall give due
22 regard to the preferences of the ward, if known to the guardian or
23 otherwise ascertainable upon reasonable inquiry. To the extent that
24 it is consistent with the terms of any order by a court of competent
25 jurisdiction, the guardian shall:

26 (1) take custody of the ward and establish the ward's place of
27 abode in or outside of this State;

28 (2) personally visit the ward or if a public agency which is
29 authorized to act pursuant to P.L.1965, c.59 (C.30:4-165.1 et seq.)
30 and P.L.1970, c.289 (C.30:4-165.7 et seq.) or the Office of the
31 Public Guardian pursuant to P.L. 1985, c.298 (C.52:27G-20 et seq.)
32 or their representatives which may include a private or public
33 agency, visits the ward not less than once every three months, or as
34 deemed appropriate by the court, and otherwise maintain sufficient
35 contact with the ward to know **[his]** the ward's capacities,
36 limitations, needs, opportunities, and physical and mental health;

37 (3) provide for the care, comfort and maintenance and,
38 whenever appropriate, the education and training of the ward;

39 (4) subject to the provisions of subsection c. of N.J.S.3B:12-56,
40 give or withhold any consents or approvals that may be necessary to
41 enable the ward to receive medical or other professional care,
42 counsel, treatment, or service;

43 (5) take reasonable care of the ward's clothing, furniture,
44 vehicles, and other personal effects and, where appropriate, sell or
45 dispose of such effects to meet the current needs of the ward;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

- 1 (6) institute an action for the appointment of a guardian of the
2 property of the ward, if necessary for the protection of the property;
- 3 (7) develop a plan of supportive services for the needs of the
4 ward and a plan to obtain the supportive services;
- 5 (8) if necessary, institute an action against a person having a
6 duty to support the ward or to pay any sum for the ward's welfare in
7 order to compel the performance of the duties;
- 8 (9) receive money, payable from any source for the current
9 support of the ward, and tangible personal property deliverable to
10 the ward. Any sums so received shall be applied to the ward's
11 current needs for support, health care, education, and training in the
12 exercise of the guardian's reasonable discretion, with or without
13 court order, with or without regard to the duty or ability of any
14 person to support or provide for the ward and with or without
15 regard to any other funds, income, or property that may be available
16 for that purpose, unless an application is made to the court to
17 establish a supplemental needs trust or other trust arrangement.
18 However, the guardian may not use funds from the ward's estate for
19 room and board, which the guardian, the guardian's spouse or
20 domestic partner as defined in section 3 of P.L.2003, c.246
21 (C.26:8A-3), parent or child have furnished the ward, unless agreed
22 to by a guardian of the ward's estate pursuant to N.J.S.3B:12-41, or
23 unless a charge for the service is approved by order of the court
24 made upon notice to at least one of the heirs of the ward, if
25 possible. The guardian shall exercise care to conserve any excess
26 funds for the ward's needs; **[and]**
- 27 (10) **[If]** if necessary, institute an action that could be
28 maintained by the ward including but not limited to, actions
29 alleging fraud, abuse, undue influence, and exploitation; and
- 30 (11) inform the ward's parents and adult children in the event
31 the ward is admitted to a medical facility for acute care for a period
32 of three or more days, the ward's residence has changed, the ward is
33 staying at a location other than the ward's residence for more than
34 seven consecutive days, or the ward dies. In the event of the ward's
35 death, the guardian shall inform the ward's parents and adult
36 children of the funeral arrangements and details concerning the
37 place of burial or other final disposition.
- 38 g. In the exercise of the foregoing powers, the guardian shall
39 encourage the ward to participate with the guardian in the decision-
40 making process to the maximum extent of the ward's ability in order
41 to encourage the ward to act on **[his]** the ward's own behalf
42 whenever **[he]** the ward is able to do so, and to develop or regain
43 higher capacity to make decisions in those areas in which **[he]** the
44 ward is in need of guardianship services, to the maximum extent
45 possible.
- 46 (cf: P.L.2005, c.304, s.39)

1 2. (New section) a. A ward's parent or adult child who is
2 entitled to notice under paragraph (11) of subsection f. of
3 N.J.S.3B:12-57 may elect not to receive the required notice by
4 providing the guardian with a written request to not be provided
5 such notice. The guardian shall file the written request with the
6 court.

7 b. A guardian may file with the court a motion showing good
8 cause to relieve the guardian of the duty to provide the notice
9 required under paragraph (11) of subsection f. of N.J.S.3B:12-57 to
10 a parent or adult child of a ward. A copy of the motion shall be
11 provided to the parent or adult child named in the motion, except
12 that a guardian shall not be required to provide this notice if the
13 guardian certifies that the guardian was unable to locate the parent
14 or adult child after making reasonable efforts to do so. The court
15 may require the guardian to present proof of such reasonable
16 efforts.

17 c. A parent or adult child who is the subject of a motion filed
18 pursuant to subsection b. of this section shall be provided the
19 opportunity to be heard and to present evidence to the court, which
20 the court shall consider before ruling on the motion.

21 d. A court may relieve a guardian of the duty to provide notice
22 to a parent or adult child of a ward as required under paragraph (11)
23 of subsection f. of N.J.S.3B:12-57 upon finding that:

24 (1) the motion includes a written request from the parent or
25 adult child electing not to receive notice;

26 (2) the guardian was unable to locate or establish
27 communication with the parent or adult child after making
28 reasonable efforts to do so;

29 (3) a protective order was issued against the parent or adult
30 child to protect the ward;

31 (4) a court or other State agency has found that the parent or
32 adult child abused, neglected, or exploited the ward; or

33 (5) providing notice to the parent or adult child is not in the best
34 interests of the ward.

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36 3. (New section) a. A relative of a ward may file an
37 application with the court requesting access to the ward, including
38 the opportunity to establish visitation or communication with the
39 ward.

40 b. (1) Except as provided in paragraph (2) of this subsection,
41 the court shall schedule a hearing on an application filed pursuant to
42 this section no later than 60 days after the date the application is
43 filed. The court may grant a continuance of a hearing under this
44 section for good cause shown.

45 (2) If an application states that the ward's health is in significant
46 decline or that the ward's death may be imminent, the court shall
47 conduct an emergency hearing as soon as practicable, but no later
48 than 10 days after the date the application is filed.

1 c. The guardian of a ward who is the subject of an application
2 filed pursuant to this section shall be personally served with a copy
3 of the application and notice to appear at the scheduled hearing.

4 d. The court shall hold a hearing on an application filed
5 pursuant to this section and shall issue an order prohibiting the
6 guardian from denying the applicant access to the ward upon
7 finding by a preponderance of the evidence that:

8 (1) the guardian has previously denied the applicant access to the
9 ward; and

10 (2) the ward desires contact with the applicant.

11 The order shall specify the frequency, time, place, location, and
12 any other terms of access.

13 e. (1) In determining whether to issue an order upon an
14 application made pursuant to subsection a. of this section or
15 whether to modify an order issued pursuant to subsection d. of this
16 section, the court shall consider:

17 (a) whether any protective orders have been issued against the
18 applicant to protect the ward;

19 (b) whether a court or other State agency has found that the
20 applicant abused, neglected, or exploited the ward; and

21 (c) the best interests of the ward.

22 (2) In addition to the factors considered under paragraph (1) of
23 this section, the court may consider:

24 (a) whether visitation by the applicant should be limited to
25 situations in which a third person, specified by the court, is present;
26 and

27 (b) whether supervision should be suspended or denied.

28 f. The court may, in its discretion, award the prevailing party
29 in any action brought under this section court costs and attorney's
30 fees. An award of court costs or attorney's fees shall not be paid
31 out of the ward's estate.

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33 4. This act shall take effect immediately and shall apply to a
34 guardianship created before, on, or after the date of enactment.

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STATEMENT

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39 This bill establishes certain requirements concerning information
40 and access to persons who are the subject of an order of
41 guardianship, also known as a "ward," by the ward's relatives.

42 Specifically, the bill requires guardians to notify the ward's
43 parents and adult children in the event: the ward is admitted to a
44 medical facility for acute care for a period of three or more days;
45 the ward's residence has changed; the ward is staying at a location
46 other than the ward's residence for more than seven consecutive
47 days; or the ward has died. In the case of the ward's death, the
48 guardian will be required to notify the parents and adult children of

1 the funeral arrangements and details concerning the place of burial
2 or other final disposition.

3 A parent or adult child of a ward would be permitted to submit a
4 written request to the guardian electing not to receive the notice
5 required under the bill, which would be filed with the court. A
6 guardian would additionally be permitted to file a motion with the
7 court seeking relief from the notice requirement. The guardian
8 would be required to provide the parent or adult child who is the
9 subject of the motion with notice of the motion, unless the guardian
10 is unable to locate the parent or adult child after making reasonable
11 efforts to do so.

12 The court would hold a hearing on the motion, at which the
13 parent or adult child would be permitted to be heard and submit
14 evidence. The motion may be granted if the court finds that: (1) the
15 motion includes a written request from the parent or adult child
16 electing not to receive notice; (2) the guardian was unable to locate
17 or establish communication with the parent or adult child after
18 making reasonable efforts to do so; (3) a protective order was
19 issued against the parent or adult child to protect the ward; (4) a
20 court or other State agency has found that the parent or adult child
21 abused, neglected, or exploited the ward; or (5) providing notice to
22 the parent or adult child is not in the best interests of the ward.

23 The bill permits a ward's relatives to file an application with the
24 court requesting access to and visitation or communication with the
25 ward. The court would schedule a hearing within 60 days of
26 receiving the application, except that emergent applications
27 involving the ward's declining health or imminent death would be
28 heard within 10 days. The bill requires that the guardian receive
29 personal service of the application and notice to appear.

30 A court will be permitted to issue an order prohibiting the
31 guardian from denying the applicant access to the ward upon
32 finding by a preponderance of the evidence that the guardian has
33 previously denied the applicant access to the ward and the ward
34 desires contact with the applicant. The order will specify the
35 frequency, time, place, location, and any other terms of access.

36 In reviewing an application for access to the ward or an
37 application to modify an existing order, the court will be required to
38 consider whether any protective orders have been issued against the
39 applicant by the ward; whether a court or other State agency has
40 found that the applicant abused, neglected, or exploited the ward;
41 and the best interests of the ward. The court would additionally be
42 permitted to consider whether visitation by the applicant should be
43 limited to situations in which a third person, specified by the court,
44 is present and whether supervision should be suspended or denied.

45 The court would be permitted to award court costs and attorney's
46 fees to the prevailing party in an application for access to a ward.
47 The bill prohibits an award of court costs or attorney's fees from
48 being paid out of the ward's estate.

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1 The bill would apply to any guardianship order issued before, on,
2 or after its effective date.

3 This bill is similar to laws recently enacted in Texas and Iowa
4 and legislation which has been introduced in California and New
5 York.