

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 725
SENATE BILL 142

AN ACT TO AMEND THE GUARDIANSHIP LAWS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 35 of the General Statutes is hereby amended by adding a new Article 1 A, to read as follows:

"ARTICLE 1A.

"Guardianship of Incompetent Adults.

"PART 1.

"Legislative Purpose.

"§ 35-1.6. Legislative purpose. — The General Assembly of North Carolina recognizes that:

- (1) Some incompetent adults, regardless of where they are living, require the assistance of a guardian in order to help them exercise their rights, including the management of their property and personal affairs.
- (2) Those individuals not able to act effectively on their own behalf have a right to a responsible, impartial guardian.
- (3) The essential purpose of guardianship is to replace an individual's authority to make decisions with the authority of a guardian when the individual does not have adequate capacity to make such decisions.
- (4) Limiting the rights of the individual by appointing a guardian for him should not be undertaken unless it is clear that a guardian will give the individual a fuller capacity for exercising his rights.
- (5) Guardianship should seek to preserve for the incompetent individual the opportunity to exercise those rights that are within his comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent. To the maximum extent of his capabilities, an incompetent individual should be permitted to participate as fully as possible in all decisions that will affect him.

"PART 2.

"Definitions.

"§ 35-1.7. Definitions. — When used in this Article:

- (1) The term 'accounting' refers to the financial or status reports filed with the clerk, designated agency, respondent, or other person or party with whom such reports are required to be filed.
- (2) The term 'clerk' means the clerk of the superior court of the county in which proceedings under this Article are brought or filed.
- (3) The term 'designated agency' means the State or local human resources agency designated by the clerk in his order to prepare, cause to be prepared, or assemble the multidisciplinary evaluation and to receive, comment upon, and certify receipt of a financial or status report or to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional or area mental health, mental retardation,

vocational rehabilitation, public health, diagnostic evaluation centers, social service, and developmental disabilities agencies.

(4) The term 'disinterested public agent' means an adult officer, agent, or employee of a State human resources agency who has no immediate responsibilities for providing services to a ward or the director or assistant directors of a local human resources agency. The fact that a disinterested public agent is employed by a State or local human resources agency that provides financial assistance to a ward does not disqualify that person from being appointed a guardian.

(5) The term 'department' means the Department of Human Resources, unless the context requires otherwise.

(6) The term 'financial report' means the report filed by the guardian concerning all financial transactions, including receipts and expenditures of money of the ward, sale of the ward's property, or other transactions involving the ward's property.

(7) The term 'general guardian' means a guardian of both the estate and the person.

(8) The term 'guardian ad litem' means a guardian appointed pursuant to G.S. 1A-1, Rules of Civil Procedure, Rule 17(b) and (c).

(9) The term 'guardian of the estate' means a guardian appointed solely for the purpose of managing the property, estate, or business affairs of a ward.

(10) The term 'guardian of the person' means a legal guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward.

(11) The term 'incompetent adult' means an adult who lacks sufficient capacity to make or communicate important decisions concerning his person, family, or property because of mental illness, mental retardation, epilepsy, cerebral palsy, or autism.

The term 'incompetent child' means a minor who, other than by reason of his minority, is impaired to the extent that he lacks sufficient capacity to make or communicate important decisions concerning his person, family, or property because of mental illness, mental retardation, epilepsy, cerebral palsy, or autism.

(12) The term 'important decisions concerning his person, family, or property' means decisions by a ward concerning the furnishing of the necessities of life, including without limitation food, shelter, clothing, and medical care, for himself and his family, if any.

(13) The term 'indigent' refers to a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action brought under this Article.

(14) The term 'interested person' means any individual who has an interest or stake in the personal well-being or in the estate, property, or business affairs of a ward.

(15) The term 'interim guardian' means a guardian appointed under the provisions of G.S. 35-1.15.

(16) The terms 'legal guardian' or 'guardian' mean the guardian appointed by the clerk.

(17) The term 'mental health professional' has the same meaning as set out in G.S. 122-36(h).

(18) The term 'mental retardation professional' has the same meaning as set out in G.S. 122-36(i).

(19) The term 'multidisciplinary evaluation' means an evaluation of the respondent that is required to contain current medical, psychological, and social work evaluations and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications-disorders. The evaluations are current if made not more than one year from the date on which a petition for guardianship is filed. The evaluation shall set forth the nature and extent of the ward's disability, and recommend a guardianship plan and program.

(20) The term 'person in loco parentis' means a person, other than a parent or legal, interim, or successor guardian, who has assumed the responsibility for the care, custody, and control of the ward. It includes, without limitation, foster parents, other persons having temporary or permanent care, custody, and control, and State or local government departments of social services or the department or any of its divisions having such care, custody, and control.

(21) The term 'physician' means a medical doctor who is duly licensed by this State to practice medicine.

(22) The term 'psychologist' means a person who is duly licensed by this State as a psychologist or is employed as a psychologist by the Department of Human Resources or any State or local agency under the department's supervision, operation or control.

(23) The term 'treatment facility' means the same as the term 'treatment facility' means under the provisions of G.S. 122-36(g) and G.S. 122-56.2(b), and it includes group homes, halfway houses and other community-based residential facilities for impaired adults.

(24) The term 'status report' means the report required by G.S. 35-1.31 to be filed by the guardian of the ward. A status report shall include a report of a recent medical and dental examination of the ward by one or more physicians or dentists, a report on the legal guardian's performance of his duties as set forth by this Article and in the order of the clerk authorizing the appointment of a legal guardian, and a report on the ward's condition, needs, and development. It also may contain, without limitation, reports of mental health or mental retardation professionals, psychologists, social workers, persons in loco parentis, a member of a multidisciplinary evaluation team, a designated agency, a disinterested public agent or agency, a guardian ad litem, a guardian of the estate, an interim guardian, a successor guardian, an officer, official, employee or agent of the department, or any other interested person, including reports from group home parents or supervisors if the ward lives in a group home, a report from an employer if the ward is employed in competitive employment, a sheltered workshop, a work activities center or in any other working capacity, and a report of a member of the staff of a treatment facility if the ward is a resident patient of one or an outpatient client of one.

(25) The term 'testamentary guardian' means a guardian appointed by the last will and testament of a parent of a ward.

(26) The term 'ward' means the adult person for whom a guardian has been appointed or is sought to be appointed.

"PART 3.

"Jurisdiction and Venue.

"§ 35-1.8. Jurisdiction and venue; exclusive procedure. — (a) The clerks of superior court have original jurisdiction of proceedings brought or filed under this Article. Venue for such proceedings is in the county where the proposed ward resides, has property, or is present or if the proposed ward is an inpatient or resident of a treatment facility, venue shall include the county in which the resident resided when admitted to the facility.

(b) This Article establishes the exclusive procedure for adjudicating the following adults to be incompetent, appointing guardians for them, and adjudicating the restoration of their competency: mentally retarded, epileptic, cerebral palsied or autistic persons. This Article also establishes an alternative procedure, in addition to those established by General Statutes Chapter 35, Article 2, for adjudicating mentally ill persons to be incompetent and for appointing guardians for them.

"§ 35-1.9. Change of venue. — Upon a petition of any of the parties or any interested person and upon a finding by the clerk before whom a proceeding under this Article was originally filed that, from all the facts and circumstances of the case, no hardship or prejudice will result to the proposed ward from a change of venue and that a change of venue will be convenient for all parties, or that the clerk is not disinterested in the proceedings, the clerk may order a change of venue.

"PART 4.

"Proceedings before Clerk.

"§ 35-1.10. Petition before clerk. — Any person may file a verified petition for the appointment of a guardian for any adult person by filing the same with the clerk.

"§ 35-1.11. Costs in action. — Costs shall be assessed, as in special proceedings, to the respondent in any action brought under this Article unless the respondent is indigent, in which case costs shall be borne by the Administrative Office of the Courts.

"§ 35-1.12. Contents of petition. — The petition shall set forth, to the extent known:

- (1) the name, age, address, and county of residence of the proposed ward;
- (2) the name, address, and county of residence of the petitioner, and his interest in the action;
- (3) a general statement of the proposed ward's property, or that the ward is indigent, with an estimate of the value of any property, including any compensation, insurance, pension, or allowance to which he is entitled;
- (4) a statement of the reason or reasons why the appointment of a guardian is sought;
- (5) the name, address, and county of residence of the proposed ward's spouse, or, if none, adult children or next of kin, or, if none, person or persons acting in loco parentis;
- (6) the name, address, and county of residence of all persons who may have any financial interest in the proceedings.

"§ 35-1.13. Service of petition. — A copy of the petition and the written notice of the time, date, and place set for a hearing on the petition shall be served by the sheriff on the proposed ward and on the person or persons designated in Section 35-1.12(5). Service shall be made as provided by G.S. 1A-1, Rules of Civil Procedure, Rule 4. A copy of the petition and the written notice of the time, date, and place set for a hearing on the petition shall be mailed by the court to all persons designated in Section 35-1.12(6). The clerk, on his own motion, may order notice to be served on any other person by mail.

"§ 35-1.14. Subsequent service. — Unless otherwise provided, all subsequent notices shall be served as provided by G.S. 1A-1, Rules of Civil Procedure, Rule 5.

"§ 35-1.15. Appointment of interim guardian. — (a) The petitioner or the person or persons designated in G.S. 35-1.12(5) may also file a verified petition with the clerk for the appointment of an interim guardian.

(b) The petition shall set forth facts tending to show that there exists an emergency constituting an imminent danger to the physical well-being of the proposed ward.

(c) Immediately upon receiving the petition for the appointment of an interim guardian, the clerk shall appoint counsel or guardian ad litem to represent the proposed ward if the petition alleges the ward is indigent. The clerk shall also immediately set a time, date, and place for a hearing on the petition. The petition and the order appointing counsel or guardian ad litem and setting the time, date, and place for the hearing shall be promptly served on the proposed ward and on his counsel or guardian ad litem, if any. The hearing shall be set for a date no later than 15 days after the petition has been served on the proposed ward.

(d) If at the hearing the clerk finds that the proposed ward is an incompetent adult and in an emergency constituting an imminent danger to his physical well-being, he shall appoint an interim guardian and set forth his powers and duties.

The powers and duties of the interim guardian shall extend only so far as necessary to meet the emergency. The interim guardian shall be a guardian of the person and not of the estate of the ward. The interim guardian shall not be required to post a bond. The interim guardianship shall terminate upon the clerk's disposition of the petition for the appointment of a guardian filed under G.S. 35-1.10. No multidisciplinary evaluation shall be ordered in any proceedings for the appointment of an interim guardian.

"§ 35-1.16. Rights to counsel, evaluation, and jury; hearing on petition. — (a) Right to counsel. The proposed ward is entitled to be represented by counsel of his own choice or by court-appointed counsel if he is indigent.

If the petition filed under G.S. 35-1.10 alleges that the proposed ward is indigent, and no counsel or guardian ad litem has been appointed under G.S. 35-1.15, the clerk shall immediately appoint counsel to represent him unless the clerk has reason to believe he is not indigent.

If the proposed ward for whom counsel has been appointed seeks to waive the right to counsel and if the clerk determines at the hearing on the petition that he lacks capacity to waive the right to counsel but does not want counsel, the clerk shall appoint a guardian ad litem, pursuant to G.S. 1A-1, Rules of Civil Procedure, Rule 17.

The fees of court-appointed counsel and guardians ad litem shall be borne by the Administrative Office of the Courts.

(b) Right to multidisciplinary evaluation. The clerk, the proposed ward, his counsel or the guardian ad litem, or the petitioner may require a multidisciplinary evaluation of the ward to be performed and filed in the proceedings. If no such evaluation is requested, none shall be performed.

The request by the petitioner, the proposed ward, or his counsel or guardian ad litem for a multidisciplinary evaluation shall be made in writing filed with the clerk. They shall make their request within 10 days after the petition is filed, or after counsel has filed his appearance or the guardian ad litem has been appointed, whichever is later.

If a multidisciplinary evaluation is requested, the clerk shall name a designated agency and order it to prepare or cause to be prepared or to assemble a current multidisciplinary evaluation of the proposed ward. The agency shall file the report of the evaluation with the clerk and shall send copies to the petitioner and the proposed ward not later than 30 days after the agency receives the order of the clerk. The clerk may order an extension of the 30-day period upon good cause shown by the agency.

Upon receipt of the report of the multidisciplinary evaluation, the clerk shall set a time, date, and place for a hearing to determine whether the proposed ward is incompetent and shall notify all interested parties of the time, date, and place for the hearing.

The cost of the multidisciplinary evaluation shall be borne by the respondent unless he is indigent, in which case it shall be borne by the department.

The proposed ward may obtain other evaluations at his own expense. If the clerk finds that the proposed ward is indigent and if the proposed ward requests that he be evaluated by other mental health or mental retardation professionals, the clerk, upon good cause shown, may order that the proposed ward be so evaluated. The cost of those evaluations shall be borne by the department.

The report of the multidisciplinary evaluation and other evidence, if any, shall be considered at the hearing held by the clerk.

If no multidisciplinary evaluation has been requested, the clerk shall set a time, date, and place for a hearing and notify all interested parties.

The hearing shall be held not less than 10 days after the notice of the hearing is served and not before the clerk receives the multidisciplinary evaluation, if any.

Upon disposition of the proceedings before the clerk or any appeal, the clerk shall send all copies of the multidisciplinary evaluation to the designated public agency, which shall file them among its records on the ward.

(c) Right to jury trial. At the hearing, the proposed ward has a right, upon request by him, his counsel, or the guardian ad litem, to trial by jury. The jury shall be composed of 12 persons chosen from the jury list of the county in accordance with the provisions of Chapter 9 of the General Statutes. A jury must be requested not later than five days before the day on which the hearing is set. The proposed ward, his counsel, or the guardian ad litem may waive this right by written notice filed with the clerk and their failure to timely request trial by jury constitutes a waiver of the right.

(d) Open hearings. The hearing shall be open to the public unless the proposed ward, his counsel, or the guardian ad litem requests otherwise. The record of the hearing, including without limitation any documentary testimony introduced at the hearing and the report of the multidisciplinary evaluation, shall be open to the public unless, for good cause shown, the clerk, upon petition of the proposed ward, his counsel, or the guardian ad litem, orders otherwise.

(e) Right to present evidence. The petitioner and the proposed ward are entitled to present oral testimony or documentary evidence at the hearing, subpoena witnesses and the production of documents, and examine and cross-examine witnesses.

(f) Clerk's finding. If the clerk or jury shall find by the greater weight of the evidence that the proposed ward is an incompetent adult, the clerk shall appoint a guardian. If the clerk or jury does not so find, the clerk shall dismiss the petition.

(g) Clerk's order. After considering all the evidence and having found the proposed ward is an incompetent adult, the clerk may enter an order setting forth:

- (1) findings on the nature and extent of the ward's incompetency;
- (2) the powers and duties of the guardian or guardians regarding the person or the estate of the ward, or both; such powers and duties shall include, unless the clerk provides to the contrary, the powers and duties of guardians with respect to the person, as provided under G.S. 35-1.34, and with respect to the estate, as provided under G.S. 35-1.35. The clerk may order that the ward retains certain legal rights and privileges to which he was entitled before he was adjudged incompetent; and
- (3) whether there shall be one or more guardians, his or their identity, and, if more than one, who shall be guardian of the person and who shall be guardian or guardians of the estate.

"§ 35-1.17. Hearing before clerk on appointment of guardian. — For the purposes of determining who the guardian or guardians shall be, the clerk shall receive whatever testimony is offered.

"§ 35-1.18. Clerk to issue letters of appointment. — The clerk shall issue to the guardian or guardians letters of appointment signed by him and sealed with his seal of office. In all cases,

the clerk shall specify in his order whether the guardian, or, if there is more than one guardian, which of the guardians, shall be entitled to and have control of the ward's estate.

"§ 35-1.19. Bond. — The Secretary of the Department of Human Resources shall require, or purchase, in such amounts as he deems adequate and proper, individual or blanket bonds for all disinterested public agents appointed to be guardians, as provided by G.S. 35-1.28(d), and whether they serve as guardians of the estate, of the person, or of both, or one blanket bond covering all such agents, such bond or bonds to be conditioned upon faithful performance of their duties as guardians and made payable to the State. The premiums shall be paid by the State.

In all cases in which the clerk appoints a general guardian or a guardian of the person, the clerk shall require the guardian to post a bond in the minimum amount of two thousand dollars (\$2,000). The clerk shall require the guardian of the estate to post a bond as provided by G.S. Chapter 33, Article 2.

"§ 35-1.20. Appeals from clerk's orders. — Appeals from the clerk shall be to the superior court de novo and thence to the Court of Appeals. An appeal does not stay the appointment of a guardian unless so ordered by the superior court or the Court of Appeals. The Court of Appeals may request the Attorney General to represent the petitioner on appeal.

"PART 5.

"Qualifications, Priorities, Duties, and Liabilities of Guardians.

"§ 35-1.28. Qualifications of guardians. — (a) The clerk may appoint as guardian an individual, a domestic corporation, or a disinterested public agent. The person filing the petition may submit to the clerk a name or names of potential guardians.

(b) An individual to be appointed as a guardian shall be a resident of the State of North Carolina.

(c) A corporation that serves as a guardian shall be authorized by its charter to serve as a guardian or in similar fiduciary capacities.

(d) A disinterested public agent who is appointed by the clerk to serve as a guardian is authorized and required to do so. When the person ceases to qualify as a disinterested public agent, the clerk shall appoint a successor guardian. No public agent shall be appointed guardian until exhaustive efforts have been made to find individuals or corporations to be guardians.

"§ 35-1.29. Priorities for appointment. — The clerk shall consider appointing a guardian according to the following order of priority: an individual; a corporation; or a disinterested public agent.

"§ 35-1.30. Rule-making power of Secretary of Human Resources. — The Secretary of the Department of Human Resources has the authority to issue rules and regulations for the implementation of the guardianship responsibilities of disinterested public agents who are appointed guardians. The rules and regulations shall provide, among other things, that disinterested public agents shall undertake or have received training concerning the powers and responsibilities of guardians. They shall also set forth uniform statewide accounting procedures for disinterested public agents appointed guardians.

"§ 35-1.31. Status reports. — (a) Within six months after he is appointed, a guardian shall file an initial status report with the designated agency and the ward.

(b) The guardian shall file his second status report with the designated agency and the ward one year after he is appointed, and he shall file all subsequent status reports annually thereafter.

(c) All status reports shall be filed under the oath or affirmation of the guardian that the report is complete and accurate so far as he is informed and can determine.

"§ 35-1.32. Duties of designated agency. — (a) Within 30 days after it receives either a financial or status report from a guardian, the designated agency shall certify to the clerk that it has reviewed the report and shall mail a copy of its certification to the guardian.

(b) At the same time, it may

- (1) send its written comments on the report to the clerk, the guardian, or any other person who may have an interest in the ward's welfare;
- (2) notify the guardian that it is able to help the guardian in the performance of his duties;
- (3) petition the clerk for an order requiring the guardian to perform the duties imposed on him by the clerk or this Article if it appears that the guardian is not performing those duties;
- (4) petition the clerk for an order modifying the terms of the guardianship or the guardianship program or plan if it appears that such should be modified;
- (5) petition the clerk for an order removing the guardian from his duties and appointing a successor guardian if it appears that the guardian should be removed for cause;
- (6) petition the clerk for an adjudication of restoration to competency pursuant to G.S. 35-1.38; or
- (7) petition the clerk for any other appropriate orders.

(c) If the designated agency files such a petition, it shall cause the petition to be signed and acknowledged by the officer, official, employee, or agent who has personal knowledge of the facts set forth in the petition, and it shall set forth all facts known to it that tend to support the relief sought by the petition.

(d) The clerk shall take action upon the petition pursuant to the provisions of G.S. 35-1.37, G.S. 35-1.38, and G.S. 35-1.39.

"§ 35-1.33. Procedure to compel status reports. — The procedures for compelling the guardian to file status reports is the same as set forth in G.S. 35-1.35 with respect to compelling the guardian to file financial reports.

"§ 35-1.34. General powers and duties of guardians with respect to the person. — (a) A guardian of the person or general guardian has the following powers and duties:

- (1) To the extent that it is not inconsistent with the terms of any order by a court of competent jurisdiction relating to the admission, detention, or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of domicile within or without this State. In arranging for a place of domicile, the guardian shall give preference to places within this State over places not within this State if both in- and out-of-state places are substantially equivalent. He also shall give preference to places that are not treatment facilities; if the only available and appropriate places of domicile are treatment facilities, he shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based, such as residential hospitals for the mentally ill as established and provided for by Article 1 of General Statutes Chapter 122 or residential centers for the mentally retarded as established and provided for by Article 9 of General Statutes Chapter 122.
- (2) He shall make provision for the care, comfort, and maintenance of his ward and shall arrange for his training, education, employment, and rehabilitation or habilitation. He shall take reasonable care of his ward's personal property.
- (3) He may commence and defend against any judicial action in the ward's name.
- (4) He may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service. He also may give any other consent or approval that may be required or desirable. He may petition the clerk for the clerk's concurrence in the consent or approval.

(b) A guardian of the person is entitled to be reimbursed out of the ward's estate for expenditures incurred in the performance of his duties.

(c) The guardian of the person and a general guardian shall not be liable, by reason of his authorizing or giving any consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service or other consent or approval that may be required or desirable, for damages to the ward or his estate resulting from the negligence or other acts of a third person if the guardian has acted within the limits imposed on him by this Article or the clerk or both. A guardian of the person and a general guardian shall not be liable for damages to the ward or his estate by reason of authorizing medical treatment or surgery for his ward if the guardian acted after consulting with the ward's physician, acted in good faith, was not negligent, and acted within the limits imposed on him by this Article or the clerk or both.

"§ 35-1.35. Powers and duties of guardians with respect to the estate. — A general guardian and a guardian of the estate shall have all the powers and duties under Articles 2, 3, 4, 5, 5A, 5B, and 5C of Chapter 35 of the General Statutes and by Articles 2, 3, 4, and 5 of Chapter 33 of the General Statutes unless the provisions of this Chapter are inconsistent therewith, in which case the provisions of this Chapter shall prevail, or unless the provisions of the order of the clerk appointing a guardian are inconsistent therewith, in which case the provisions of the clerk's order shall prevail.

"§ 35-1.36. Reports filed with designated agency. — A guardian shall simultaneously file with the designated agency all reports that he is required to file with the clerk.

"§ 35-1.37. Clerk's continuing jurisdiction over guardians. — (a) Upon appointment of a guardian, the clerk shall retain jurisdiction of the matter in order to assure compliance with his orders and those of the superior court. He shall have authority to remove a guardian for cause and he shall appoint a successor guardian after removal, death, or resignation of a guardian. He shall have authority to determine disputes between guardians and to adjust the amount of the guardian's bond.

(b) The clerk shall follow the criteria set forth in G.S. 35-1.28 and G.S. 35-1.29 in appointing a successor guardian.

(c) Any party to the original proceeding and any other interested person may petition the clerk to exercise the authority conferred on him by this section.

"§ 35-1.38. Clerk's continuing jurisdiction over proceedings. — (a) Any party to the original proceeding and any other interested person may petition the clerk for modification or termination of his order or for consideration of any matter pertaining to the guardianship.

(b) He may order a multidisciplinary evaluation or other evaluation to be made.

(c) When a petition for an adjudication for restoration to competency has been filed, the clerk shall notify the ward, his guardian or guardians, and any other parties to the original proceeding that a petition has been filed, shall set a date for a hearing on the petition and give notice of that date to the aforesaid persons, afford the ward the right to trial by jury pursuant to G.S. 35-1.16(c), hold an open hearing pursuant to G.S. 35-1.16(d), afford the ward and other parties the right to present evidence pursuant to G.S. 35-1.16(e), and, upon a finding that the ward is no longer an incompetent adult, enter an order adjudicating that the ward is restored to competency and the ward's guardian or guardians are discharged.

"§ 35-1.39. Subsequent hearings. — (a) A hearing shall be held pursuant to a petition filed under G.S. 35-1.37 or G.S. 35-1.38. Ten days' notice shall be given to the parties to the original proceedings and may be given to any other interested persons known to the petitioner or to the clerk.

(b) Unless inconsistent with G.S. 35-1.37 or G.S. 35-1.38, the provisions of G.S. 35-1.16 through G.S. 35-1.21 shall be applicable to the hearing.

(c) If an emergency exists which threatens the physical well-being of the ward, the clerk may enter ex parte an appropriate order pending disposition of the matter at the hearing.

"PART 6.**"Testamentary Appointment of Guardians.**

§ 35-1.41. Testamentary appointment. — (a) Any person authorized by law to appoint a guardian for a minor by his last will and testament or other writing may direct that the guardian appointed by him for his incompetent child shall petition the clerk at any time during the six months before the child reaches majority for appointment of a guardian under the provisions of this Article. If so directed, the guardian shall timely file such a petition. Notwithstanding the absence of such provision, a guardian appointed by a last will and testament or other writing for an incompetent child may petition the clerk at any time during the six months before the child reaches majority, or thereafter, for the appointment of a guardian under the provisions of this Article.

(b) A testamentary guardian who files such a petition shall set forth his desire to be appointed or not as guardian. Such a guardian shall be considered by the clerk if the guardian desires to serve.

(c) Notwithstanding the appointment of a testamentary guardian for a minor, any person may petition for the appointment of a guardian for an incompetent child under this Article six months or less before the child reaches majority."

Sec. 2. G.S. 7A-451(a) is amended by adding a new subsection (12) to read as follows:

"(12) A proceeding to find a person incompetent under Chapter 35, Article 1A, of the General Statutes."

Sec. 3. G.S. 108-106.2(c) is amended by adding after the words "G.S. 33-7" at the end of the next to last sentence the words "or, if applicable, Article 1A, Chapter 35".

Sec. 4. Chapter 33 of the General Statutes is amended as follows:

- a. G.S. 33-1 is amended by striking the words "idiots, lunatics," and "and inmates of the Caswell School" on lines 4 and 5 and inserting the words "incompetents or" following the word "infants" on line 4 and by striking the words "idiots, lunatics" on line 6 and substituting the word "incompetents".
- b. G.S. 33-6 is amended by striking the words "during minority, ineptitude, idiocy or lunacy" in line 4, striking the words "orphan's, ineptiate's, idiot's, or lunatic's" and substituting the word "ward's" on line 5, and striking the words on line 9 "idiot, lunatic" and inserting the word "incompetent".
- c. G.S. 33-7 is amended by striking the words ", idiot, ineptiate, lunatic, or inmate of the Caswell School" on lines 3, 5, 6, 11, 12, 14 and 15 and inserting in their place the words "or incompetent" in each instance.
- d. G.S. 33-12 is amended by striking the words ", idiot, lunatic, insane person, or ineptiate" on lines 2, 3, 6, 7 and 8 and inserting in their place the words "or incompetent" in each case.
- e. G.S. 33-13 is amended by striking the words ", idiot, lunatic, insane person" on line 22 and inserting in their place the words "or incompetent".
- f. G.S. 33-15 is amended by striking the words ", idiots, lunatics or insane persons" on lines 1 and 2 and inserting the words "or incompetents" in their place.
- g. G.S. 33-18 is amended by striking the words ", idiot, lunatic, insane person" on lines 2 and 3 and inserting the word "incompetent" in their place.
- h. G.S. 33-25 is amended by striking all words after the word "fiduciary" in line 2 through "appointed," in line 5.
- i. G.S. 33-27 is amended by striking the words "of any minor child or of an idiot, lunatic, ineptiate or insane person" in lines 2 and 3 and by striking the words "any such minor child, idiot, lunatic, insane person or ineptiate" in line 7 and substituting the words "the ward".

- j. G.S. 33-47(1) is amended by striking the words "idiot, lunatic, insane person" and substituting the word "incompetent".
- k. Article 6 of Chapter 33 is amended by adding a new section, G.S. 33-47.1, to read as follows:

"§ 33-47.1. Article applicable only to minors. — This Article shall not apply to adults found incompetent under Article 1A, Chapter 35 of the General Statutes."

- l. G.S. 33-48 is amended by striking the words "infant", "idiot", "lunatic" and "insane person" wherever they appear and substituting for them the words "ward" on lines 14 and 16 only.
- m. G.S. 33-49.1 is amended by striking the words ", mental defective, mentally disordered person," wherever they appear.
- n. G.S. 33-54 is amended by striking the words "idiot, lunatic or insane person" and substituting for them the words "incompetent person".

Sec. 5. Chapter 35 of the General Statutes is amended as follows:

- a. G.S. 35-3.1 is amended by striking the words "insane or" in subdivision (2), the words "or insane" in subdivision (3), the words "insane person or" in the second and third paragraphs and the words "or insanity" and "insane person or" in the third paragraph.
- b. G.S. 35-6 is amended by striking the words "of nonsane mind" and substituting the word "incompetent".
- c. G.S. 35-8 is amended by striking all the words following "person" in line 2 through the word "causes," on line 5.
- d. G.S. 35-9 is amended by striking the words "of the inebriate, lunatic, or incompetent".
- e. G.S. 35-10 is amended by striking the words "mental defective," and "mentally disordered person" in the first sentence and substituting for the latter the words "person found incompetent".
- f. G.S. 35-11 is amended by striking the words "mental defective", and "mentally disordered person" in the first sentence and substituting for the latter the words "person found incompetent".
- g. G.S. 35-20 is amended by striking the word "nonsane" in the first and second sentences and substituting for it the word "incompetent" and by striking the word "insanity" in the second sentence and substituting for it the word "incompetency".
- h. G.S. 35-21 is amended by striking the word "nonsane" and substituting for it the word "incompetent".
- i. G.S. 35-23 is amended by striking the word "nonsane" and substituting for it the word "incompetent".
- j. G.S. 35-24 is amended by striking the word "nonsane" and substituting for it the word "incompetent".
- k. G.S. 35-2 is amended as follows: by deleting "inquisition of lunacy;" in the catch line; on lines 2 and 3, by deleting the words "mental defective, inebriate, or mentally disordered, or"; on line 4, by adding the words "or inebriate" after the word "affairs", and by deleting the words "or other cause"; on line 6, by deleting the words "supposed mentally defective, inebriate, or mentally disordered"; on lines 8 and 9, by deleting the words "supposed mentally defective, inebriate or mentally disordered"; on line 16, by deleting the words "a mental defective," and the words "mentally disordered, "; on line 17, by deleting the word "person"; on lines 18 and 19, by deleting the words "the supposed mental defective, inebriate, mentally disordered, or incompetent person" and substituting for them the words "the

ward"; on lines 22 and 23, by deleting the words "supposed mental defective, inebriate, mentally disordered, or incompetent"; and on the third and fourth lines of the third paragraph, by deleting the words "a mental defective," and the words ", mentally disordered or" and the word "person".

1. G.S. 35-2 is amended by adding a new sentence at the end of the first paragraph to read as follows:

"The clerk shall appoint a guardian ad litem to represent the supposed inebriate or incompetent person."

- m. G.S. 35-2.1 is amended by deleting the words "insane or" in lines 2 and 5.
- n. G.S. 35-3 is amended as follows: by deleting the words "from hospital for insane or training school" in the catch line; on line 2 by deleting the words "asylum or hospital for the insane" and inserting for them the words "hospital for the mentally ill"; by deleting the words "or State training school" on lines 2 and 3; on line 5 by deleting the words "or training school"; on line 6 by deleting the words "of insane mind and memory or mentally retarded" and inserting for them the words "mentally ill"; on line 9 by deleting the words "or training school"; on lines 10 and 11 by deleting the words "idiot, lunatic or insane"; on lines 21 and 22 by deleting the words "idiots," and ", lunatics,".

Sec. 6. G.S. Chapter 108 is amended by adding a new section, G.S. 108-102, to read as follows:

"§ 108-102. Social Services officials and employees as public guardians. — The director and assistant directors of social services of each county are authorized to serve as guardians for adults adjudicated incompetent under the provisions of G.S. Chapter 35, Article 1A, and they shall do so if ordered to serve in that capacity by the clerk of the superior court having jurisdiction of a guardianship proceeding brought under that Article."

Sec. 7. G.S. Chapter 122 is amended by adding a new section, G.S. 122-24.1, to read as follows:

"§ 122-24.1. Mental Health officials and employees as public guardians. — The officials and employees of the State Department of Human Resources, Division of Mental Health Services, or any successor division or agency thereof, and the director and assistant directors of local mental health programs or clinics established under G.S. Chapter 122, Article 2A, and of area mental health programs or clinics established under G.S. Chapter 122, Article 2C, are authorized to serve as guardians for adults adjudicated incompetent under the provisions of G.S. Chapter 35, Article 1A, and they shall do so if ordered to serve in that capacity by the clerk of the superior court having jurisdiction of a guardianship proceeding brought under that Article."

Sec. 8. This act shall become effective on March 1, 1978, and shall apply only to appointments made on or after that date.

In the General Assembly read three times and ratified, this the 24th day of June, 1977.