

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1578 Session of
1979

INTRODUCED BY DiCARLO, JUNE 28, 1979

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 29, 1979

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further defining
3 incompetent; adding and changing provisions relating to
4 guardians of incompetents; and making editorial changes.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Sections 5501, 5511, subsection (a) of section
8 5512, sections 5515, 5517, 5524 and 5531 of Title 20, act of
9 November 25, 1970 (P.L.707, No.230), known as the Pennsylvania
10 Consolidated Statutes, section 5531 amended April 28, 1978
11 (P.L.77, No.37), are amended and the title is amended by adding
12 sections to read:

13 § 5501. Meaning of incompetent.

14 ["Incompetent" means a person who, because of infirmities of
15 old age, mental illness, mental deficiency or retardation, drug
16 addiction or inebriety:

17 (1) is unable to manage his property, or is liable to
18 dissipate it or become the victim of designing persons; or

19 (2) lacks sufficient capacity to make or communicate

responsible decisions concerning his person.]

(a) Incompetency as to person.--A person is incompetent as to his person when he has within the past 30 days prior to the date of filing the petition acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter or self-protection and safety against abuse or neglect, such that there is a reasonable probability that death, serious bodily harm or serious physical debilitation would ensue unless a guardian of the person were appointed under this title.

(b) Incompetency as to estate.--A person is incompetent as to his estate when he has within the past 30 days prior to the date of filing the petition acted in such a manner as to evidence either one of the following:

(1) Inability to manage his property and financial affairs so as to be able to provide for his personal support, care and welfare or that of those entitled to be supported by him and such support, care and welfare would not be provided unless a guardian of the estate were appointed under this title.

(2) Inability to protect himself against designing persons so that his estate will be dissipated to his personal detriment or the detriment of those for whom he is responsible unless a guardian of the estate were appointed under this title.

§ 5511. Petition and hearing; [examination by court-appointed physician] court required assessment.

(a) Resident.--The court, upon petition and a hearing at which good cause is shown, may find a person resident or

1 domiciled in the Commonwealth to be incompetent and appoint a
2 guardian or guardians of his person or estate or both. The
3 petitioner may be any person interested in the alleged
4 incompetent's welfare. The court may dismiss a proceeding where
5 it finds as a fact that the proceeding has not been instituted
6 to aid or benefit the alleged incompetent. Notice of the
7 petition and hearing shall be given in such manner as the court
8 shall direct to the alleged incompetent, to all persons residing
9 within the Commonwealth who are sui juris and would be entitled
10 to share in the estate of the alleged incompetent if he died
11 intestate at that time, to the director of the facility, if the
12 person is institutionalized; and to such other parties as the
13 court may direct. A public or private health and welfare agency
14 may petition the court to represent the alleged incompetent as a
15 guardian ad litem. The hearing may be closed to the public and
16 without a jury unless the alleged incompetent or his counsel
17 objects. The hearing shall be closed and with or without a jury
18 if the person alleged to be incompetent or his counsel so
19 requests. The alleged incompetent shall be present at the
20 hearing unless counsel for the alleged incompetent presents
21 testimony satisfactory to the court:

22 (i) [the court is satisfied, upon the presentation
23 of positive testimony,] that because of his physical or
24 mental condition his presence would be detrimental to his
25 welfare [would not be promoted by his presence]; or

26 (ii) that it is impossible for him to be present
27 because of his absence from the Commonwealth. It shall
28 not be necessary for the alleged incompetent to be
29 represented by a guardian ad litem in the proceeding.

30 (b) Nonresident.--The court may find a person [not] neither

1 domiciled nor resident in the Commonwealth, having property in
2 the Commonwealth, to be incompetent and may appoint a guardian
3 of his estate in the Commonwealth. The appointment may be made
4 after petition, hearing and notice, as in the case of a person
5 domiciled or resident in the Commonwealth, or upon the
6 submission of an exemplified copy of a decree establishing his
7 incompetency in another jurisdiction. The court shall give
8 preference in its appointment to the foreign guardian of the
9 nonresident incompetent, unless it finds that such appointment
10 will not be for the best interests of the incompetent.

11 (c) Court-[appointed physician] required assessment.--Upon
12 the filing of a petition the alleged incompetent [may be
13 examined by a physician] shall be provided with a comprehensive
14 social, medical and psychological assessment performed by a team
15 of appropriate qualified professionals appointed by the court
16 who shall submit [his] their report in writing to the court and
17 to the parties before the hearing.

18 (d) Contents of petition.--The petition shall be executed
19 under oath and set forth the following:

20 (1) Name and residence of the person initiating the
21 petition.

22 (2) Name, birthdate, sex and residence of the alleged
23 incompetent.

24 (3) Names and residences of the alleged incompetent's
25 spouse, parents and children, if any, and the names and
26 residences of any persons residing in the Commonwealth, known
27 to the petitioner, who are sui juris and would be entitled to
28 share in the estate of the alleged incompetent if he died
29 intestate at that time.

30 (4) A concise statement of facts rendering the

1 appointment of a guardian appropriate.

2 (5) A concise statement of the alleged incompetent's
3 property and its approximate value.

4 (6) A concise statement of whether the guardianship
5 sought is to be of the alleged incompetent's estate, his
6 person or both.

7 (7) A statement of whether the guardianship sought is to
8 be plenary or limited or temporary and, if limited:

9 (i) the restrictions to be imposed on the alleged
10 incompetent's freedom or the unrestricted rights to be
11 retained by the alleged incompetent; and

12 (ii) the specific powers and duties of the guardian
13 or the limitations to be imposed on the otherwise plenary
14 powers and duties of the guardian, provided that said
15 statement shall not contain anything which is in conflict
16 with any court order pursuant to the act of July 9, 1976
17 (P.L.817, No.143), known as the "Mental Health Procedures
18 Act."

19 (8) Agencies or persons proposed as guardians.

20 (9) Such other information as the court by rule may deem
21 appropriate.

22 (e) Rights of an alleged incompetent.--If the alleged
23 incompetent is not represented by counsel, the court shall
24 appoint counsel to represent him. The alleged incompetent shall
25 not be called as a witness without his prior consent and shall
26 have the right to confront and cross-examine all witnesses and
27 to present evidence on his own behalf. No inference that a
28 guardian is necessary or unnecessary shall be derived from the
29 fact that the alleged incompetent has been admitted or committed
30 to the care of an institution.

1 (f) Dismissal of petition.--If the alleged incompetent does
2 not meet the criteria for incompetency pursuant to section 5501
3 (relating to meaning of incompetent) the court shall dismiss the
4 petition requesting the appointment.

5 § 5512. County of appointment.

6 (a) Resident incompetent.--A guardian of the person or
7 estate of an incompetent may be appointed by the court of the
8 county in which the incompetent resides or is domiciled.

9 * * *

10 § 5515. Provisions similar to other estates.

11 The provisions relating to a guardian of an incompetent and
12 his surety shall be the same as are set forth in this title
13 relating to a personal representative or a guardian of a minor
14 and their sureties, with regard to the following provisions of
15 this title:

16 [(1) Service of process on nonresident guardian, as in
17 section 5114 (relating to service of process on nonresident
18 guardian).]

19 (2) Appointment of guardian in conveyance, as in section
20 5115 (relating to appointment of guardian in conveyance).

21 (3) Necessity of bond; form and amount, as in section
22 5121 (relating to necessity, form and amount).

23 (4) When bond not required, as in section 5122 (relating
24 to when bond not required).

25 (5) Requiring or changing amount of bond, as in section
26 5123 (relating to requiring or changing amount of bond).

27 (6) Grounds for removal, as in section 3182 (relating to
28 grounds for removal).

29 (7) Procedure for and effect of removal, as in section
30 3183 (relating to procedure for and effect of removal), for

1 which purpose the incompetent shall be deemed a party in
2 interest.

3 (8) Discharge of guardian and surety, as in section 3184
4 (relating to discharge of personal representative and
5 surety).]

6 Section 5114 (relating to service of process on
7 nonresident guardian).

8 Section 5115 (relating to appointment of guardian in
9 conveyance).

10 Section 5121 (relating to necessity, form and amount).

11 Section 5122 (relating to when bond not required).

12 Section 5123 (relating to requiring or changing amount of
13 bond).

14 Section 3182 (relating to grounds for removal), and in
15 addition thereto, the court may remove or discharge a
16 guardian when for any reason the interests of the incompetent
17 are likely to be promoted by such action.

18 Section 3183 (relating to procedure for and effect of
19 removal), for which purpose the incompetent shall be deemed a
20 party in interest.

21 Section 3184 (relating to discharge of personal
22 representative and surety).

23 § 5517. Adjudication of competency and review.

24 (a) Adjudication of competency.--The court, upon petition
25 and after such notice as it shall direct, may find, after a
26 hearing at which good cause is shown, that a person previously
27 adjudged incompetent has become competent.

28 (b) Review of guardianship.--The order appointing a guardian
29 shall specify a date on which the incompetent's need for
30 guardianship shall be reviewed.

1 (c) Request for review.--The guardian of an incompetent's
2 person or estate, a public or private agency or the incompetent
3 himself may petition the court to review any issue involving the
4 guardianship at any time.

5 § 5519. Scope of decree, extent of guardian's powers and
6 duties.

7 (a) In general.--The court shall set forth in its decree
8 appointing a guardian:

9 (1) A finding of incompetency.

10 (2) Whether the guardianship is of the person or of the
11 estate, or both.

12 (3) Whether the guardianship is plenary or limited, or
13 temporary and if limited:

14 (i) the restrictions imposed upon the incompetent's
15 freedom or the unrestricted rights to be retained by the
16 incompetent; and

17 (ii) the specific powers and duties of the guardian
18 or the limitations imposed on the otherwise plenary
19 powers and duties of the guardian.

20 (b) Standards.--In framing its decree, the court shall
21 impose thereby the least restrictions on the freedom and
22 activities of the incompetent, consistent with the incompetent's
23 welfare and may consider the following:

24 (1) In general, plenary guardianship of the person and
25 estate shall be utilized for those incompetent persons:

26 (i) who are unable to make adequate routine day-to-
27 day decisions and are incapable of basic management of
28 themselves and their affairs; and

29 (ii) whose best interests would be served by such
30 plenary guardianship.

1 (2) In general limited guardianship of the person shall
2 be utilized for those incompetent persons who are over the
3 age of 18 years and substantially capable of caring for
4 themselves, but whose best interests require guardianship
5 with regard to one or more specific activities which they are
6 incapable of managing for themselves.

7 (3) In general, limited guardianship of the estate shall
8 be utilized for those incompetents who are over the age of 18
9 years and who are wholly or partly self-supporting through
10 employment or other income sources. In such cases the limited
11 guardian of the estate shall receive, manage, disburse and
12 account for only such property of the incompetent as the
13 court shall direct, and the incompetent shall have the right
14 to receive and expend either all or such portion of his
15 earnings from employment or income from other sources as the
16 court shall direct, and shall have the power to contract or
17 legally bind himself to whatever extent the court may not
18 have expressly disqualified him. Except as the decree
19 otherwise provides, a limited guardian of the estate shall
20 have the same duties and responsibilities as are provided in
21 this chapter for guardians of the estate.

22 § 5520. Selection of guardians.

23 In appointing a guardian of an incompetent's person or estate
24 or both, the court shall be guided by the best interest of the
25 incompetent, and may considered only the following persons for
26 appointments:

27 (1) A nominee of the incompetent if he has sufficient
28 capacity to make an intelligent choice.

29 (2) His parents, subject to the provisions of Subchapter
30 B of Chapter 51 (relating to appointment of guardian).

1 (3) A nominee in the probated will of the last surviving
2 parent or adopting parent.

3 (4) His spouse and other members of his family.

4 (5) Individuals, not associated with the facility caring
5 for the incompetent, who are professionally, personally or
6 otherwise particularly qualified.

7 (6) In the case of a guardian of the estate, a
8 corporation having the powers to act as guardian.

9 (7) A public agency or officer determined by the court
10 to be appropriate in the particular case, except that such
11 agency or officer shall only be selected as guardian as a
12 last resort, after reasonable efforts have been made to
13 secure the services of the other enumerated persons.

14 § 5524. Effect of determination of incompetency.

15 [An] Unless otherwise provided in a decree setting forth the
16 powers and duties of a guardian of the estate, an incompetent
17 shall be incapable of making any contract or gift or any
18 instrument in writing after he is adjudged incompetent and
19 before he is adjudged to have regained his competency. This
20 section shall not impair the interest in real estate acquired by
21 a bona fide grantee of, or a bona fide holder of a lien on, real
22 estate in a county other than that in which the decree
23 establishing the incompetency is entered, unless the decree or a
24 duplicate original or certified copy thereof is recorded in the
25 office of the recorder of deeds in the county in which the real
26 estate lies before the recording or entering of the instrument
27 or lien under which the grantee or lienholder claims.

28 § 5526. Powers and duties of a guardian of the person.

29 (a) In general.--Except as otherwise decreed by the court, a
30 guardian of the person of an incompetent shall have the powers

1 and duties of a guardian of the person of a minor.

2 (b) Care and protection of incompetent.--A guardian of the
3 person shall exercise reasonable care to insure that insofar as
4 resources available permit, the competent is given the care and
5 protection that his physical, mental and social well-being
6 requires and the maximum opportunity to develop physically,
7 mentally and socially. If the incompetent requires medical care
8 the guardian shall be subject to the following standards:

9 (1) When emergency surgery or medication is necessary to
10 prevent loss of life or to prevent permanent or irrevocable
11 damage to the incompetent the guardian may direct that such
12 surgery be performed or that such medication be administered
13 without court order and/or without the consent of the
14 incompetent.

15 (2) When elective surgery, electro-convulsive therapy or
16 lobotomy is being contemplated for the incompetent the
17 guardian shall petition the appropriate court of common pleas
18 to hold a hearing, at which the incompetent shall be
19 represented by counsel, be permitted to confront and cross-
20 examine witnesses and present evidence in his own behalf,
21 before authorizing the procedure.

22 (3) Abortion or sterilization shall only be permitted
23 when it is a medically unavoidable and incidental result of
24 one of the medical procedures authorized pursuant to this
25 section.

26 (c) Report.--When directed by the court a guardian of the
27 person shall prepare and file with the court a report on the
28 activities of the incompetent and the care given to him and
29 shall serve a copy of the report on such persons or agencies as
30 the court shall designate. Such report shall include:

1 (1) the name and address of all places where the
2 incompetent resided during the preceding year;
3 (2) his length of stay at each place;
4 (3) a resume of the incompetent's educational,
5 vocational and employment activities;
6 (4) a resume of professional treatment, if any, given
7 the incompetent;
8 (5) a resume of the guardian's activities and visits
9 with the incompetent;
10 (6) a statement by the guardian regarding whether or not
11 the competency of the incompetent should be readjudicated and
12 his guardianship program redesigned; and
13 (7) any other similar information that the guardian may
14 deem pertinent.

15 (d) Authority of court.--Nothing in this subchapter shall
16 limit the authority of the court to require a report on the
17 status and condition of the incompetent from the guardian at any
18 time, or to otherwise supervise the conduct or activities of any
19 guardian.

20 (e) Commitment.--A guardian of the person of an incompetent
21 shall not consent to the commitment of his ward to a State
22 mental hospital or to any other hospital or institution except
23 under the provisions of the law applicable to involuntary
24 treatment procedures.

25 § 5527. Compensation of guardians.

26 The court shall allow such compensation to the guardian of
27 the person or of the estate from the estate of the incompetent
28 as shall in the circumstances be reasonable and just, and in the
29 case of a guardian of the estate may calculate such compensation
30 on a graduated percentage.

1 § 5531. When accounting filed.

2 A guardian of an incompetent's estate shall file an account
3 of his administration whenever directed to do so by the court
4 [or may] and shall file an account at the termination of the
5 guardianship, [or] and at any other time or times authorized by
6 the court, but at least annually.

7 Section 2. This act shall take effect in 60 days.