

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 934

Introduced by Coash, 27.

Read first time January 12, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Public Guardianship Act; to amend
- 2 sections 30-4103, 30-4104, 30-4115, and 30-4116, Revised Statutes
- 3 Cumulative Supplement, 2014; to define a term; to change provisions
- 4 relating to the Office of the Public Guardian and its powers and
- 5 duties; to change provisions relating to the number of appointments
- 6 the Public Guardian may take; to harmonize provisions; and to repeal
- 7 the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-4103, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 30-4103 For purposes of the Public Guardianship Act:

4 (1) Council means the Advisory Council on Public Guardianship;

5 (2) Multidisciplinary team means the team of professionals hired by
6 the Public Guardian pursuant to section 30-4104;

7 (3 2) Office means the Office of Public Guardian;

8 (4 3) Private conservator means an individual or a corporation with
9 general power to serve as trustee who is not with the office and who is
10 appointed by the court to act as conservator for a protected person;

11 (5 4) Private guardian means any person who is not with the office
12 and who is appointed by the court to act as guardian for a ward;

13 (6 5) Protected person is as defined in section 30-2601;

14 (7 6) Public Guardian means the director of the office;

15 (8 7) Successor conservator means an individual or a corporation
16 with general power to serve as trustee who is recruited by the office to
17 become a conservator for a protected person previously served by the
18 office;

19 (9 8) Successor guardian means a person or entity who is recruited
20 by the office to become a guardian for a ward previously served by the
21 office; and

22 (10 9) Ward is as defined in section 30-2601.

23 Sec. 2. Section 30-4104, Revised Statutes Cumulative Supplement,
24 2014, is amended to read:

25 30-4104 (1) The office is created within the judicial branch of
26 government and is directly responsible to the State Court Administrator.
27 The State Court Administrator shall appoint a director of the office who
28 shall be known as the Public Guardian. The Public Guardian shall be an
29 attorney licensed to practice law in Nebraska and be hired based on a
30 broad knowledge of human development, intellectual disabilities,
31 sociology, and psychology and shall have business acuity and experience

1 in public education and volunteer recruitment. ~~The Public Guardian shall~~
2 ~~hire a deputy public guardian and up to twelve associate public guardians~~
3 ~~who shall serve at the pleasure of the Public Guardian and perform such~~
4 ~~duties as assigned by the Public Guardian.~~

5 (2) The Public Guardian shall hire a multidisciplinary team of
6 professionals to fulfill the responsibilities of the Public Guardianship
7 Act. The multidisciplinary team shall include a deputy public guardian
8 and may include one or more associate public guardian legal counsel,
9 associate public guardians, administrative personnel, and any other
10 personnel the Public Guardian deems appropriate. In addition, the Public
11 Guardian may hire support staff as required. The multidisciplinary team
12 may include professionals trained in law, health care, social work,
13 education, business, accounting, administration, geriatrics, psychology,
14 or other specialties with experience working with individuals with
15 dementia, developmental disabilities, chronic and acute medical needs,
16 mental health issues, substance abuse, or other conditions that are
17 served by the Public Guardian.

18 (3) An associate public guardian legal counsel shall be an attorney
19 licensed to practice law in Nebraska. The deputy public guardian shall be
20 an attorney licensed to practice law in Nebraska unless the State Court
21 Administrator directs otherwise.

22 (4) Legal representation provided by the Public Guardian, deputy
23 public guardian, and associate public guardian legal counsel shall be
24 limited to representing the Public Guardian and his or her designees in
25 the roles and responsibilities of a court-appointed guardian or
26 conservator in accordance with the Public Guardianship Act.

27 (5) The Public Guardian shall assume all the duties and
28 responsibilities of a guardian and conservator for any individual
29 appointed to his or her supervision and may designate authority to act on
30 his or her behalf to the deputy public guardian, associate public
31 guardian legal counsel, and associate public guardians. The Public

1 Guardian shall administer public guardianship and public conservatorship
2 and shall serve as staff to the council. ~~The Public Guardian may hire~~
3 ~~support staff as required.~~

4 Sec. 3. Section 30-4115, Revised Statutes Cumulative Supplement,
5 2014, is amended to read:

6 30-4115 (1)(a) The office shall maintain the appropriate personnel
7 and workload scope necessary to fulfill all its responsibilities and
8 duties under the Public Guardianship Act.

9 (b) The office shall provide appropriate and high-quality care and
10 support, including timely decision making, to all public wards and public
11 protected persons served by the Public Guardian and his or her designees.

12 (c) Public guardianship and public conservatorship cases shall be
13 managed by the Public Guardian and be served by the multidisciplinary
14 team through a caseload distribution of wards and protected persons that
15 takes into consideration the:

16 (i) Identified needs of the service population;

17 (ii) Complexity and status of each case, based upon factors such as
18 the individual's living situation, the type of guardianship being
19 provided, or the existence of complex medical conditions;

20 (iii) Size of the geographical area covered;

21 (iv) Qualifications and professional expertise of each team member;

22 (v) Availability of auxiliary services by support staff and
23 volunteers;

24 (vi) Organizational responsibilities; and

25 (vii) Applicable legal requirements.

26 (2) The Public Guardian may accept an appointment as a public
27 guardian or public conservator for an individual not to exceed an average
28 ratio of twenty public wards or public protected persons to each member
29 of the multidisciplinary team and not to exceed a total cap of 480 public
30 wards or public protected persons. When determining such average ratio,
31 all full-time members of the office's multidisciplinary team may be

1 ~~counted forty individuals per associate public guardian hired by the~~
2 ~~office.~~

3 (3) When the average ratio or total cap described in subsection (2)
4 of this section has been reached, the Public Guardian shall not accept
5 further appointments. The Public Guardian, upon reaching the maximum
6 number of appointments, shall notify the State Court Administrator that
7 such the maximum number of appointments has been reached.

8 Sec. 4. Section 30-4116, Revised Statutes Cumulative Supplement,
9 2014, is amended to read:

10 30-4116 (1) When the court appoints the Public Guardian as guardian
11 or conservator for an individual, the Public Guardian immediately
12 succeeds to (a) all powers and duties of a guardian provided in sections
13 30-2626 and 30-2628, if appointed a guardian, or (b) all powers and
14 duties of a conservator provided in sections 30-2646, 30-2647, 30-2653,
15 30-2654, 30-2655, 30-2656, and 30-2657, if appointed a conservator.

16 (2) The Public Guardian shall:

17 (a) Be considered as an interested party in the welfare of the ward
18 or protected person to which the Public Guardian is nominated. If the
19 office is unable to accept the nomination due to its caseload or the
20 status of its client-to-staff average ratio under section 30-4115, good
21 cause shall be presumed to exist to deny its appointment. In such event,
22 the appearance of the office shall no longer be required and the Public
23 Guardian shall no longer be considered an interested party for purposes
24 of filing a motion for termination or modification of a public
25 guardianship or public conservatorship;

26 (b) Not file petitions for guardianships or conservatorships. After
27 being appointed in a case, the Public Guardian may file a motion for
28 termination, a motion for modification, or take any other legal action
29 required to fulfill the duties and responsibilities of a guardian or
30 conservator in accordance with the Public Guardianship Act.

31 (c) Visit the facility in which the ward or protected person is to

1 be placed if it is proposed that the individual be placed outside his or
2 her home; and

3 (d e) Monitor the ward or protected person and his or her care and
4 progress on a continuing basis. Monitoring shall, at a minimum, consist
5 of monthly personal contact with the ward or protected person. The Public
6 Guardian shall maintain a written record of each visit with a ward or
7 protected person. The Public Guardian shall maintain periodic contact
8 with all individuals and agencies, public or private, providing care or
9 related services to the ward or protected person.

10 Sec. 5. Original sections 30-4103, 30-4104, 30-4115, and 30-4116,
11 Revised Statutes Cumulative Supplement, 2014, are repealed.