

SECOND REGULAR SESSION

SENATE BILL NO. 980

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDDLE.

Read 1st time February 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6283S.011

AN ACT

To repeal section 475.075, RSMo, and to enact in lieu thereof one new section relating to the payment of court costs in certain probate proceedings when the state is the petitioner.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 475.075, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 475.075, to read as follows:

475.075. 1. Except as otherwise provided in section 475.062, when a
2 petition for the appointment of a guardian ad litem, guardian or conservator
3 against any person, hereinafter referred to as the respondent, is filed on grounds
4 other than minority, the court, if satisfied that there is good cause for the exercise
5 of its jurisdiction, shall promptly set the petition for hearing.

6 2. The respondent shall be served in person with the following: A copy
7 of the petition; a written notice stating the time and place the proceeding will be
8 heard by the court, the name and address of appointed counsel, and the names
9 and addresses of the witnesses who may be called to testify in support of the
10 petition; and with a copy of the respondent's rights as set forth in subsections 7
11 and 8 of this section. The notice shall be signed by the judge or clerk of the court
12 and served in person on the respondent a reasonable time before the date set for
13 the hearing. The petition shall state the names and addresses of the spouse,
14 parents, children who have reached eighteen, any person serving as his guardian,
15 conservator, limited guardian or limited conservator, any person having power to
16 act in a fiduciary capacity with respect to any of the respondent's financial
17 resources, and any person having his care and custody known to the
18 petitioner. Each person so listed shall be served with like notice in any manner
19 permitted by section 472.100. If no such spouse, parent or child is known, notice

20 shall be given to at least one of his closest relatives who has reached eighteen.

21 3. Upon the filing of a petition under the provisions of subsection 1 of this
22 section or for the approval on behalf of the respondent of a transaction pursuant
23 to section 475.092 or for the rendition of emergency medical treatment under the
24 provisions of section 475.123, the court shall immediately appoint an attorney to
25 represent the respondent in the proceeding. The attorney shall visit his client
26 prior to the hearing. If the client is capable of understanding the matter in
27 question or of contributing to the advancement of the client's interest, the
28 attorney shall obtain from the client all possible aid. If the disability of a client
29 compels the attorney to make decisions for the client, the attorney shall consider
30 all circumstances then prevailing and act with care to safeguard and advance the
31 interests of the client. The court shall allow a reasonable attorney's fee for the
32 services rendered, to be taxed as costs of the proceeding, **except as provided**
33 **under subsection 12 of this section.** The court-appointed attorney may be
34 permitted to withdraw if the respondent employs private counsel who enters an
35 appearance on behalf of said person.

36 4. The court may direct that the respondent be examined by a physician
37 or licensed psychologist or other appropriate professional designated by the court,
38 and may allow a reasonable fee for the services rendered, to be taxed as costs in
39 the proceeding. The court-appointed physician, licensed psychologist or other
40 professional shall, prior to examination, explain to the respondent in simple
41 language, the following:

42 (1) Incapacity or disability as defined in section 475.010;

43 (2) That the purpose of the examination is to produce evidence which may
44 be used to determine whether the respondent is incapacitated, disabled or
45 partially incapacitated or disabled;

46 (3) That respondent has the right to remain silent;

47 (4) That anything respondent says may be used at the court hearing, and
48 in making the determination of incapacity or disability.

49 5. The court-appointed physician, licensed psychologist or other
50 professional shall submit his report in writing to the court and to counsel for all
51 parties.

52 6. If prima facie proof of partial or complete incapacity or disability is
53 made, a physician or licensed psychologist is competent and may be compelled to
54 testify as to information acquired from the respondent, despite otherwise
55 applicable testimonial privileges. Evidence received under this subsection which

56 would otherwise be privileged may not be used in any other civil action or
57 criminal proceeding without the consent of the holder of the privilege.

58 7. The petitioner has the burden of proving incapacity, partial incapacity,
59 disability, or partial disability by clear and convincing evidence.

60 8. The respondent shall have the following rights in addition to those
61 elsewhere specified:

62 (1) The right to be represented by an attorney;

63 (2) The right to have a jury trial;

64 (3) The right to present evidence in his behalf;

65 (4) The right to cross-examine witnesses who testify against him;

66 (5) The right to remain silent;

67 (6) The right to have the hearing opened or closed to the public as he
68 elects;

69 (7) The right to a hearing conducted in accordance with the rules of
70 evidence in civil proceedings, except as modified by this chapter;

71 (8) The right to be present at the hearing.

72 9. If the court finds that the respondent possesses capacity to meet his
73 essential requirements for food, clothing, shelter, safety and other care or that he
74 possesses the ability to manage his financial resources, it shall deny the petition.
75 On the other hand, if the court finds that the capacity of the respondent to
76 receive and evaluate information or to communicate decisions is impaired to such
77 an extent as to render him incapable of meeting some or all of his essential
78 requirements for food, clothing, shelter, safety or other care so that serious
79 physical injury, illness, or disease is likely to occur, or that the ability of the
80 respondent to receive and evaluate information or to communicate decisions is
81 impaired to such an extent so as to render him unable to manage some or all of
82 his financial resources, it shall make and recite in its order detailed findings of
83 fact stating:

84 (1) The extent of his physical and mental incapacity to care for his person;

85 (2) The extent of his physical and mental disability to manage his
86 financial resources;

87 (3) Whether or not he requires placement in a supervised living situation
88 and, if so, the degree of supervision needed;

89 (4) Whether or not his financial resources require supervision and, if so,
90 the nature and extent of supervision needed.

91 10. If the court finds the respondent to be in some degree incapacitated

92 or disabled, or both, the court, in determining the degree of supervision
93 necessary, shall apply the least restrictive environment principle as defined in
94 this chapter and shall not restrict his personal liberty or his freedom to manage
95 his financial resources to any greater extent than is necessary to protect his
96 person and his financial resources. The court shall consider whether or not the
97 respondent may be fully protected by the rendition of temporary protective
98 services provided by a private or public agency or agencies; or by the appointment
99 of a guardian or conservator ad litem; or by the appointment of a limited
100 guardian or conservator; or, as a last resort, by the appointment of a guardian or
101 conservator. The limitations imposed upon the authority of the guardian or
102 conservator as set forth in the findings of the court shall be stated in the letters
103 of the guardian or conservator and shall be set forth in the notice of first
104 publication of letters of conservatorship granted.

105 11. If an alleged incapacitated or disabled person has no guardian or
106 conservator and an emergency exists which presents a substantial risk that
107 serious physical harm will occur to his person or irreparable damage will occur
108 to his property because of his failure or inability to provide for his essential
109 human needs or to protect his property, the court may, with notice to such
110 person's attorney, as provided in subsection 3 of this section, and service of notice
111 upon such person as provided in subsection 2 of this section, and, with or without
112 notice to other persons interested in the proceeding, after hearing, appoint a
113 guardian or conservator ad litem for a specified period not to exceed thirty days
114 and for specified purposes. Orders appointing the guardian or conservator ad
115 litem may be modified upon motion and hearing. After hearing and a showing of
116 continuing emergency need, orders appointing the guardian or conservator ad
117 litem may be extended from time to time, not to exceed thirty days each. A
118 guardian or conservator ad litem may be removed at any time and shall make any
119 report the court requires. Proceedings under this subsection shall not be
120 employed as alternative to proceedings for the involuntary detention and
121 treatment of a mentally ill person under the provisions of chapter 632.

122 **12. If the petitioner in an action filed under this section is a**
123 **state agency and the appointed guardian or conservator is a public**
124 **administrator, the costs of the proceeding shall be reimbursed to the**
125 **county by the state in accordance with rules and regulations**
126 **promulgated by the state courts administrator from funds appropriated**
127 **to the office of administration for such purposes. However, no**

128 **attorney's fees shall be allowed for services rendered by any attorney**
129 **who is a salaried employee of a public agency or a private agency that**
130 **receives public funds.**

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