

CHAPTER 252A

MENTAL RETARDATION PROTECTION

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252A.01 POLICY AND CITATION. Subdivision 1. It is the policy of the state of Minnesota to provide a coordinated approach to the supervision, protection and habilitation of its mentally retarded citizens. In furtherance of this policy, sections 252A.01 to 252A.21 are enacted to authorize the commissioner of public welfare to supervise those mentally retarded citizens who are unable to fully provide for their own needs and to protect such mentally retarded persons from violation of their human and civil rights by assuring that such individuals receive the full range of needed social, financial, residential and habilitative services to which they are lawfully entitled.

Subd. 2. Sections 252A.01 to 252A.21 may be cited as the "Minnesota mental retardation protection act."

[1975 c 208 s 1]

252A.02 DEFINITIONS. Subdivision 1. For the purposes of sections 252A.01 to 252A.21 the terms defined in this section have the meanings given them.

Subd. 2. "Mentally retarded person" refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for his welfare or the public welfare.

Subd. 3. "Commissioner" means the commissioner of public welfare or his designees.

Subd. 4. "State institution" means a state school or hospital or other residential facility operated by the state of Minnesota or any other state.

Subd. 5. "Licensed physician" means a person licensed under the laws of Minnesota to practice medicine or a medical officer of the government of the United States while in Minnesota in performance of his official duties.

Subd. 6. "Near relative" means a parent, brother, sister or adult child.

Subd. 7. "Public guardian" means the commissioner of public welfare when exercising all the powers designated in section 252A.11.

Subd. 8. "Public conservator" means the commissioner of public welfare when exercising some, but not all the powers designated in section 252A.11.

Subd. 9. "Ward" means a mentally retarded person for whom the court has appointed a public guardian.

Subd. 10. "Conservatee" means a mentally retarded person for whom the court has appointed a public conservator.

Subd. 11. "Interested person" means an interested responsible adult, including, but not limited to, a public official, guardian, spouse, parent, legal counsel, adult child or next of kin of an allegedly mentally retarded person.

Subd. 12. "Comprehensive evaluation" shall consist of a diagnosis of a proposed ward's physical condition, prepared under the direction of a licensed physician, a report on the proposed ward's intellectual capacity and functional abilities, prepared by a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a report on the proposed ward's social history and adjustment, prepared by a social worker who is experienced in working with mentally retarded persons. The psy-

chologist's report shall specify the tests and other data used in reaching its conclusions. The social worker's report shall describe what educational, medical and social services have previously been made available to the person under review and shall specify the data used in reaching its conclusions. The reports of the psychologist and social worker shall contain recommendations as to the ability of the proposed ward to function in society without supervision.

[1975 c 208 s 2]

252A.03 NOMINATION OF COMMISSIONER AS GUARDIAN OR CONSERVATOR. Subdivision 1. The commissioner may be nominated in a sworn written request by any one of the following to act as guardian or conservator for any mentally retarded person:

- (a) An interested person;
- (b) The guardian or conservator of the person of the mentally retarded person to act as his successor;
- (c) The mentally retarded person.

Subd. 2. The commissioner shall accept or reject the nomination in writing within 15 days of the receipt of a comprehensive evaluation provided for in section 252A.04. The commissioner's acceptance shall be binding upon him and his successors. Acceptance of a nomination shall confer no authority on the commissioner unless affirmed at a judicial hearing. Rejection of a nomination by the commissioner shall not bar the filing of a petition pursuant to section 252A.06.

Subd. 3. The commissioner shall accept the nomination if the psychologist's report contained in the comprehensive evaluation concludes that the alleged mentally retarded person is, in fact, mentally retarded and that such person is in need of the supervision and protection of a conservator or guardian.

[1975 c 208 s 3]

252A.04 COMPREHENSIVE EVALUATION. Subdivision 1. Upon receipt of a written nomination, the commissioner shall promptly order the county welfare department in which the proposed ward resides to arrange for a comprehensive evaluation of the proposed ward. The evaluation shall be conducted in a public or private hospital, school, mental health center or other suitable and appropriate facility.

Subd. 2. If, at the time the comprehensive evaluation is to be performed, the proposed ward has been under medical care, he shall not be so under the influence or so suffer the effects of drugs, medication, or other treatment as to be hampered in the testing or evaluation process. When in the opinion of the licensed physician attending the proposed ward, the discontinuance of medication or other treatment is not in his best interest, the physician shall record a list of all drugs, medication or other treatment which the proposed ward received 48 hours immediately prior to any examination, test or interview conducted in preparation for the comprehensive evaluation.

Subd. 3. The county welfare department shall prepare and forward the comprehensive evaluation to the commissioner within 30 days of the date the commissioner orders the evaluation.

Subd. 4. The comprehensive evaluation shall be kept on file at the department of public welfare and shall be open to the inspection of the proposed ward and such other persons as may be given permission by the commissioner.

[1975 c 208 s 4]

252A.05 COMMISSIONER'S PETITION FOR APPOINTMENT AS PUBLIC GUARDIAN OR PUBLIC CONSERVATOR. In every case in which he agrees to accept a nomination, the commissioner, within 15 days of such acceptance, shall petition in the county or probate court of the county of residence of the mentally retarded person for his appointment to act as conservator or guardian of the mentally retarded person.

[1975 c 208 s 5]

252A.06 CONTENTS OF PETITION FOR APPOINTMENT OF PUBLIC GUARDIAN OR PUBLIC CONSERVATOR. Subdivision 1. The commissioner, a mentally retarded person or any parent, spouse or relative of a mentally retarded person may file a verified petition alleging that the appointment of a public conservator or public guardian is required. If the commissioner is bringing the petition following acceptance of his nomination as conservator or guardian, the petition shall so state and

shall set forth the name and address of the nominating person.

Subd. 2. The petition shall set forth:

(a) The name and address of the petitioner, and, in the case of a petition brought by a person other than the commissioner, whether the petitioner is a parent, spouse, or relative of the proposed ward;

(b) The name and address of the proposed ward;

(c) The names and addresses of the nearest relatives and spouse, if any, of the proposed ward;

(d) The probable value and general character of the proposed ward's real and personal property and the probable amount of the proposed ward's debts; and

(e) The reasons and supporting facts why the conservatorship or guardianship should be awarded.

[1975 c 208 s 6]

252A.07 FILING OF COMPREHENSIVE EVALUATION. Subdivision 1. When a petition is brought by the commissioner following acceptance of his nomination, a copy of the comprehensive evaluation shall be filed with the petition. If a petition is brought by a person other than the commissioner and a comprehensive evaluation has been prepared within a year of the filing of the petition, the commissioner shall forward a copy of the comprehensive evaluation to the court upon notice of the filing of said petition. If a comprehensive evaluation has not been prepared within a year of the filing of the petition, the commissioner, upon notice of the filing of said petition, shall arrange for a comprehensive evaluation to be prepared and forwarded to the court within 30 days.

Subd. 2. A copy of the comprehensive evaluation shall be made available by the court to the proposed ward, his counsel, the county attorney, the attorney general and the petitioner.

Subd. 3. No action for the appointment of a public guardian may proceed to hearing unless a comprehensive evaluation has been first filed with the court; provided, however, that such action may proceed and a guardian appointed if the director of the county welfare department responsible for conducting the comprehensive evaluation has filed an affidavit that the proposed ward refused to participate in the comprehensive evaluation and the court finds on the basis of clear and convincing evidence that the proposed ward is mentally retarded and in need of the supervision and protection of a guardian.

[1975 c 208 s 7]

252A.08 NOTICE OF PETITION AND HEARING. Subdivision 1. Notice of the filing of the petition shall be promptly forwarded by the court to the proposed ward, his counsel, his spouse or nearest relative, the county attorney and attorney general and such other persons as the court directs. Notice shall be personally served upon the proposed ward by a nonuniformed person. The contents of all documents served shall be read to the proposed ward or served upon his counsel who shall, to the extent possible, explain the documents' meaning to the proposed ward. If the proposed ward is a patient or resident of any institution, hospital or other residential facility, notice by mail shall also be given to the chief executive officer or administrator thereof.

Subd. 2. When a petition has been filed by a person other than the commissioner, a copy of the petition and any other documents filed with or issued by the court shall be promptly forwarded by the court to the commissioner.

Subd. 3. The court shall fix a time and place for the hearing which shall be held not less than 10 days nor more than 20 days from the filing of the comprehensive evaluation. The court, in its discretion, or upon the request of counsel and for good cause shown, may extend the time of the hearing for an additional 30 days.

Subd. 4. The proposed ward, his counsel, his spouse or nearest relative, the petitioner, the county attorney and attorney general, and such other persons as the court directs shall be given at least seven days' written notice of the time and date of the hearing.

[1975 c 208 s 8]

252A.09 APPOINTMENT OF COUNSEL. Subdivision 1. Upon the filing of the petition, the court shall appoint an attorney for the proposed ward, unless such counsel is provided by others.

Subd. 2. Counsel shall visit with and, to the extent possible, consult with the proposed ward prior to the hearing and shall be given adequate time to prepare therefor. Counsel shall be given the full right of subpoena and shall be supplied with a copy of all documents filed with or issued by the court.

[1975 c 208 s 9]

252A.10 HEARING. Subdivision 1. The proposed ward, the petitioner, and all other persons to whom notice has been given pursuant to section 252A.08, subdivision 4, may attend the hearing and, except for counsel, may testify. The court shall notify such persons of their right to attend the hearing and to testify.

Subd. 2. The proposed ward and the petitioner may present and cross-examine witnesses, including those participating in the preparation of the evaluation reports, and the court may in its discretion receive the testimony of any other person.

Subd. 3. The court may exclude from the hearing any person not necessary for the conduct of the proceedings except those persons to whom notice was given pursuant to subdivision 1 and any other persons requested to be present by the proposed ward.

Subd. 4. If, at the time of the hearing, the proposed ward has been under medical care, he shall have the same rights regarding limitation on the use of drugs, medication or other treatment prior to the hearing as are available under section 252A.04, subdivision 2.

Subd. 5. Subject to the right of the proposed ward to attend the hearing, the court may permit the proposed ward to be absent from the hearing if the court determines that such attendance would not be in the proposed ward's best interest and if the person conducting the hearing shall have observed and consulted with the proposed ward prior to the hearing. In any instance in which a proposed ward has been excused from a hearing pursuant to this subdivision, the court shall make findings of fact stating the basis for such action.

Subd. 6. The hearing shall be conducted in a manner consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental or physical health of the proposed ward. The hearing may be held at the proposed ward's residence or such other suitable and appropriate place as the court may determine.

Subd. 7. In all such proceedings, the court shall have taken and preserved an accurate stenographic record or tape recording of the proceedings. The court shall not be bound by the evidence contained in the comprehensive evaluation, but shall make its determination upon the entire record. In all cases the court shall find the facts specifically, state separately its conclusions of law thereon and direct the entry of an appropriate judgment.

Subd. 8. The county attorney may appear and represent the petitioner or shall appear and represent the petitioner upon the request of the court or the petitioner. The petitioner shall be notified of his right to request that the county attorney appear. The attorney general may appear and represent the commissioner in any proceedings brought pursuant to Laws 1975, Chapter 208.

Subd. 9. If upon the completion of the hearing and consideration of the record, the court finds that the proposed ward is not mentally retarded or is mentally retarded, but not in need of the supervision and protection of a conservator or guardian, it shall dismiss the application.

Subd. 10. If upon completion of the hearing and consideration of the record, the court finds the proposed ward is mentally retarded and in need of the supervision and protection of a conservator or guardian, it shall enter judgment specifying the powers of the conservator or guardian pursuant to section 252A.11.

[1975 c 208 s 10]

252A.11 POWERS OF GUARDIAN AND CONSERVATOR. Subdivision 1. The court may appoint the commissioner guardian if it determines that a guardian is needed to supervise and protect the retarded person through the exercise of the following powers:

(a) The power to exercise general supervisory authority over the ward. This includes choosing or changing the residence, care, habilitation, education and employment of the ward and the power to approve or withhold approval for the ward's request to sell or in any way encumber his personal and real property;

(b) The power to take possession of the personal property of the ward and liquidate or hold it for the ward's benefit as provided in section 256.93;

(c) The power to permit or withhold permission for the ward to marry;

(d) The power to approve or withhold approval of any contract, except for necessities, which the ward may make or wish to make;

(e) The power to commence judicial action or defend against judicial action in the name of the ward;

(f) The power to consent to the ward's sterilization as provided in section 252A.13;

(g) The power to consent to surgical operations in non-emergency cases as provided in section 252A.13, subdivision 1;

(h) The power to consent to the adoption of a ward as provided in section 259.24.

Subd. 2. The court may appoint the commissioner conservator for the mentally retarded person if it determines that a conservator is needed to supervise and protect the retarded person through the exercise of some, but not all the powers reserved for guardians in subdivision 1. The court may further restrict each individual power.

Subd. 3. Nothing in sections 252A.01 to 252A.21 shall give the commissioner authority to place a ward in a state institution except pursuant to sections 253A.01 to 253A.21 or for outpatient services.

Subd. 4. In any case in which the ward has a personal estate beyond that which is necessary for his personal and immediate needs, the commissioner shall determine whether a guardian of the estate has been appointed for the ward. If no such guardian has been appointed, the commissioner, after consulting with the parents, spouse or nearest relative of the ward, may petition the probate court for the appointment of a private guardian or conservator of the estate of the ward.

Subd. 5. The commissioner shall exercise his supervisory authority over the ward in a manner which is least restrictive of the ward's personal freedom consistent with the need for supervision and protection.

[1975 c 208 s 11]

252A.12 APPOINTMENT OF CONSERVATOR NOT A FINDING OF INCOMPETENCY. An appointment of the commissioner as conservator shall not constitute a judicial finding that the mentally retarded person is legally incompetent except for the restrictions which the conservatorship places on the conservatee. The appointment of a conservator shall not deprive the conservatee of the right to vote.

[1975 c 208 s 12]

252A.13 MEDICAL TREATMENT; STERILIZATION. Subdivision 1. Except as otherwise provided in this subdivision, the commissioner shall obtain consent from the proper relatives for a surgical operation necessary to save the life, health, eyesight, hearing or limb of any ward or conservatee. If such persons cannot be found after diligent search, or in the case of an emergency, the commissioner may give such consent upon the advice of the chief medical officer of the hospital to which the ward or conservatee has been admitted. When a conservatee whose right to consent to surgery has not been restricted pursuant to section 252A.11 is admitted to a hospital for surgery, the chief medical officer shall determine if the person's medical condition is such that the person has sufficient capacity to make a responsible decision. If the person has such capacity, his consent shall be obtained before such surgery. In such cases the person's consent shall be determinative and no other consent is necessary; provided, however, that in the case of a minor, consent shall also be obtained from his parent or near relative. No person who consents to the performance of a surgical operation pursuant to the provisions of this subdivision shall be civilly or criminally liable for the performance or the manner of performing such operation. No person who acts within the scope of the authority conferred by such consent in the course of discharging his official duties shall be civilly or criminally liable for the performance of such operation, but sections 252A.01 to 252A.21 shall not affect any liability which he

may incur as a consequence of the manner in which such operation is performed.

Subd. 2. Consent for surgery for mentally deficient persons committed or voluntarily admitted to a state hospital shall be governed by section 253A.17, subdivision 8, irrespective of whether such persons may be under the guardianship or conservatorship of the commissioner.

Subd. 3. Any conservatee whose right to consent to a sterilization has not been restricted pursuant to section 252A.11 may be sterilized only if such conservatee consents in writing or there is a sworn acknowledgment by an interested person of a non-written consent by such conservatee. The consent must certify that the conservatee has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization operation. No conservatee who is a minor may be sterilized without the written consent of his parent or near relative.

Subd. 4. Except as otherwise provided in subdivision 3, no person committed to the guardianship or conservatorship of the commissioner may be sterilized unless the commissioner consents to such operation and, if the ward is a minor, unless consent is also obtained from the ward's parent or near relative. In every case a probate or county court shall determine if such operation is in the best interest of the ward. In making its determination the court shall require the commissioner to provide written reports from a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation and a social worker who is familiar with the ward's social history and adjustment. The reports shall consider whether sterilization is in the best interest of the ward and the medical report shall specifically consider the medical risks of sterilization and whether alternative methods of contraception would be as effective in protecting the best interest of the ward. The court shall appoint an attorney to represent the ward before the court, unless such counsel is provided by others.

[1975 c 208 s 13]

252A.14 COMMISSIONER AS ADVISOR. The commissioner, acting through the county welfare departments, shall seek out those mentally retarded persons who are not under state guardianship and shall advise such persons as to the availability of suitable services and assistance. The provision of advice and guidance may be made without prior appointment by a court and shall not be dependent upon a finding of incompetency. The provision of such services by the commissioner does not authorize the care, treatment, supervision or any control over any mentally retarded person.

[1975 c 208 s 14]

252A.15 DUTIES OF COMMISSIONER AS PUBLIC GUARDIAN OR PUBLIC CONSERVATOR. Subdivision 1. When acting as guardian or conservator of a mentally retarded individual, the commissioner shall maintain close contact with the mentally retarded person no matter where such person is living in this state and shall permit and encourage maximum self-reliance on the part of the mentally retarded person under his protection. The commissioner shall permit and encourage involvement by the parents and/or spouse of the ward in planning and decision making on behalf of the ward.

Subd. 2. In addition to the supervisory powers vested in the commissioner by the court pursuant to section 252A.11, the commissioner shall provide for an individualized program plan, which shall:

- (a) Assure that educational services are provided to each ward who is of school age;
- (b) Assure that the medical and dental needs of each ward are met;
- (c) Arrange for therapeutic and habilitative services, adult education, vocational rehabilitation or other appropriate programs for any adult ward who is still in need of training;
- (d) Arrange for counseling and assistance to the ward so as to maximize his potential and opportunities for social and financial independence.

Subd. 3. The commissioner may carry out the duties prescribed by this section directly through the department of public welfare or county welfare departments or may contract for services with any public or private agency or individual.

[1975 c 208 s 15]

252A.16 ANNUAL REVIEW. Subdivision 1. The commissioner shall provide an annual review of the physical, mental and social adjustment and progress of every ward and conservatee. A copy of this review shall be kept on file at the department of public welfare and may be inspected by the ward or conservatee, his parents, spouse or relatives and such other persons as receive the permission of the commissioner.

Subd. 2. The commissioner shall annually review the legal status of each ward in light of the progress indicated in the annual review. If the commissioner determines the ward is no longer in need of guardianship or conservatorship or is capable of functioning under a less restrictive conservatorship, the commissioner shall petition the court pursuant to section 252A.19 to restore the ward to capacity or for a modification of the court's previous order.

[1975 c 208 s 16]

252A.17 EFFECT OF SUCCESSION IN OFFICE. The appointment by the court of the commissioner of public welfare as conservator or guardian shall be by the title of his office. The authority of the commissioner as conservator or guardian shall cease upon the termination of his term of office and his authority shall vest in his successor or successors in office without further court proceedings.

[1975 c 208 s 17]

252A.18 PERSONS UNDER GUARDIANSHIP BY PRIOR LAW. Any interested person may nominate the commissioner as conservator or guardian or may initiate proceedings pursuant to section 252A.06 for any person committed to the guardianship of the commissioner pursuant to any prior law. Any proceeding brought pursuant to this section shall have no retroactive effect upon the placement of a mentally deficient ward in a state institution by the commissioner of welfare unless the petition requests the court to review the need for further institutionalization.

[1975 c 208 s 18]

252A.19 MODIFICATION OF CONSERVATORSHIP; RESTORATION TO LEGAL CAPACITY. Subdivision 1. The commissioner shall serve as guardian or conservator with all the powers awarded pursuant to the guardianship or conservatorship, until termination or modification thereof by the court.

Subd. 2. The commissioner, ward or any interested person may petition the appointing court or the court to which venue has been transferred for an order to remove the guardianship or to limit or expand the powers of the conservatorship or to restore the ward or conservatee to full legal capacity or to review de novo any decision made by the public guardian or public conservator for or on behalf of a ward or conservatee or for such other order as the court may deem just and equitable.

Subd. 3. Upon the filing of the petition the court shall fix the time and place for the hearing. Notice of the filing of the petition and of the hearing shall be provided in the manner set forth in section 252A.08.

Subd. 4. The commissioner shall, at the court's request, arrange for the preparation of a comprehensive evaluation of the ward or conservatee.

Subd. 5. Upon proof of the allegations of the petition the court shall enter an order removing the guardianship or limiting or expanding the powers of the conservatorship or restoring the ward or conservatee to full legal capacity or may enter such other order as the court may deem just and equitable.

Subd. 6. The county attorney may attend the hearing and may oppose the petition in the probate or county court and in the appellate courts if he deems it for the best interest of the public.

Subd. 7. The attorney general may appear and represent the commissioner in such proceedings. The commissioner shall support or oppose the petition if he deems such action necessary for the protection and supervision of the ward or conservatee.

Subd. 8. In all such proceedings, the conservatee or ward shall be afforded an opportunity to be represented by counsel, and if neither the conservatee or ward nor others provide counsel the court shall appoint counsel to represent the conservatee or ward.

[1975 c 208 s 19]

252A.20 COSTS OF HEARINGS. Subdivision 1. In each proceeding under sections 252A.01 to 252A.21, the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law; to each physician, psychologist or social worker who assists in the preparation of the comprehensive evaluation and who is not in the employ of the county welfare department, state department of public welfare or area mental health-mental retardation board, a reasonable sum for his services and for travel; and to the ward's counsel, when appointed by the court, a reasonable sum for travel and for each day or portion thereof actually employed in court or actually consumed in preparing for the hearing. Upon such order the county auditor shall issue a warrant on the county treasurer for payment of the amount allowed.

Subd. 2. When the settlement of the ward is found to be in another county, the court shall transmit to the county auditor a statement of the expenses incurred pursuant to subdivision 1. The auditor shall transmit the statement to the auditor of the county of the ward's settlement and this claim shall be paid as other claims against that county. If the auditor to whom this claim is transmitted denies the claim, he shall transmit it, together with his objections thereto, to the commissioner, who shall determine the question of settlement and certify his findings to each auditor. If the claim is not paid within 30 days after such certification, an action may be maintained thereon in the district court of the claimant county.

Subd. 3. Whenever venue of a proceeding has been transferred under sections 252A.01 to 252A.21, the costs of such proceedings shall be reimbursed to the county of the ward's settlement by the state.

[1975 c 208 s 20]

252A.21 GENERAL PROVISIONS. Subdivision 1. The commissioner may appeal from an order of the court entered under sections 252A.01 to 252A.21 to the district court in the manner prescribed by sections 525.71 to 525.731, for appeals by the state. Any persons, other than the commissioner, aggrieved by an order of the court entered under sections 252A.01 to 252A.21, may appeal to the district court in the manner prescribed by sections 525.71 to 525.731.

Subd. 2. The commissioner shall establish such rules and regulations not inconsistent with the provisions of sections 252A.01 to 252A.21 as he may find to be necessary for the proper and efficient administration thereof. In promulgating such regulations, the commissioner shall specifically develop methods of administration under which the county welfare departments shall have sufficient authority to effectively implement the duties and responsibilities of the commissioner under sections 252A.01 to 252A.21, consistent with the commissioner's ultimate responsibility as public guardian or public conservator.

Subd. 3. Whenever the term "guardian" is used in sections 252A.01 to 252A.21, it shall include "conservator," and the term "ward" shall include "conservatee" unless another intention clearly appears from the context.

Subd. 4. Nothing in sections 252A.01 to 252A.21 shall impair the right of individuals to establish private guardianships or conservatorships in accordance with applicable law.

[1975 c 208 s 21]