

Comments on the proposed Bill No. 35-0174

Refer to the Sections noted below:

5-120. Compensation of guardian or conservator.

- (a) Define "a person affiliated with the guardian". [This can be done in Section 5-102 with the other definitions for clarity]

5-121. replace "liable to another person" with "liable to a 3rd person" for clarity. [This could also be done with using the phrase "another Person" since Person is defined in Section 5-102]

5-128. Delegation by parent or guardian. Consider 12 months as opposed to six months.

5-204 (e). Consider requiring the parent who needs appointed counsel must be indigent.

With Minor Guardianships: consider granting the court the authority to appoint a Guardian Ad Litem in any proceedings (issuing, modifying, or terminating the Guardianship).

5-306. Add a provision that any report/evaluation must be filed with the court no later than 10 days before any hearing on the petition. [This allows adequate opportunity to review]

5-309(a) change (5) to add "adult child(ren)" then make (6) any other family member....

5-407. Require professional evaluation to be submitted to the court and served on parties at least 10 days prior to any hearing on the petition. [This allows adequate opportunity to review]

5-410. Consider adding adult children of the respondent to the order of priority. [change (5) to add "adult child(ren)" then make (6) any other family member....]

5-416. Consider waiving a bond for small estates (under \$50K), if directed by respondent in a financial power of attorney, and giving the court discretion as to whether or not to require a bond if the person's spouse is acting as conservator.

5-507(c) add requirement for the parent to be indigent.

I have attached a copy of the applicable Sections for the above comments.

BILL NO. 35-0174

Thirty-Fifth Legislature of the Virgin Islands

October 18, 2023

An Act repealing and reenacting title 15, Virgin Islands Code, article V parts 1, 2, 3, 4, enacting part 5 and renumbering part 4A as part 6, to repeal the Uniform Guardianship and Protective Proceedings Act and enact the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act with amendments and for other related purposes

PROPOSED BY: Senator Novelle E. Francis, Jr.

1 *Be enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 15, Virgin Islands Code, article V parts 1, 2, 3, and 4 are repealed
3 and reenacted to read as follows:

4 **“Part 1. General Provisions (§§5-101-5-127)**

5 **§ 5-101. Short title.** Parts 1, 2, 3, 4, and 5 may be cited as the Uniform Guardianship,
6 Conservatorship, and Other Protective Arrangements Act.

7 **§ 5-102. Definitions.** In this article:

8 (1) “Adult” means an individual at least 18 years of age or an emancipated individual
9 under 18 years of age.

10 (2) “Adult subject to conservatorship” means an adult for whom a conservator has been
11 appointed under this article.

1 § 5-118. **Multiple nominations.** If a respondent or other person makes more than one
2 nomination of a guardian or conservator, the latest in time governs.

3 § 5-119. **Compensation and expenses; in general.**

4 (a) Unless otherwise compensated or reimbursed, an attorney for a respondent in a
5 proceeding under this article is entitled to reasonable compensation for services and
6 reimbursement of reasonable expenses from the property of the respondent.

7 (b) Unless otherwise compensated or reimbursed, an attorney or other person whose
8 services resulted in an order beneficial to an individual subject to guardianship or
9 conservatorship or for whom a protective arrangement under part 5 was ordered, is entitled to
10 reasonable compensation for services and reimbursement of reasonable expenses from the
11 property of the individual.

12 (c) The court must approve compensation and expenses payable under this section
13 before payment is made. Approval is not required before a service is provided or an expense is
14 incurred.

15 (d) If the court dismisses a petition under this article and determines the petition was
16 filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or
17 visitor against the petitioner.

18 § 5-120. **Compensation of guardian or conservator.**

19 (a) Subject to court approval, a guardian is entitled to reasonable compensation for
20 services as guardian and to reimbursement for room, board, clothing, and other appropriate
21 expenses advanced for the benefit of the individual subject to guardianship. If a conservator,
22 other than the guardian or a person affiliated with the guardian, is appointed for the individual,
23 reasonable compensation and reimbursement to the guardian may be approved and paid by the
24 conservator without court approval.

1 may order compensation to the guardian or conservator for time spent opposing modification,
2 termination, or removal only to the extent the court determines the opposition was reasonably
3 necessary to protect the interest of the individual subject to guardianship or conservatorship.

4 **§ 5-121. Liability of guardian or conservator for act of individual subject to guardianship
5 or conservatorship.** A guardian or conservator is not personally liable to another person solely

6 because of the guardianship or conservatorship for an act or omission of the individual subject
7 to guardianship or conservatorship.

8 **§ 5-122. Petition after appointment for instruction or ratification.**

9 (a) A guardian or conservator may petition the court for instruction concerning
10 fiduciary responsibility or ratification of a particular act related to the guardianship or
11 conservatorship.

12 (b) On notice and hearing on a petition under subsection (a), the court may give an
13 instruction and issue an appropriate order.

14 **§ 5-123. Third-party acceptance of authority of guardian or conservator.**

15 (a) A person must not recognize the authority of a guardian or conservator to act on
16 behalf of an individual subject to guardianship or conservatorship if:

17 (1) the person has actual knowledge or a reasonable belief that the letters of office
18 of the guardian or conservator are invalid, or the conservator or guardian is exceeding or
19 improperly exercising authority granted by the court; or

20 (2) the person has actual knowledge that the individual subject to guardianship or
21 conservatorship is subject to physical or financial abuse, neglect, exploitation, or
22 abandonment by the guardian or conservator or a person acting for or with the guardian
23 or conservator.

24 (b) A person may refuse to recognize the authority of a guardian or conservator to act

1 response, court records related to the guardianship or conservatorship;

2 (2) shall schedule a hearing if the individual subject to guardianship or
3 conservatorship is an adult and the grievance supports a reasonable belief that:

4 (A) removal of the guardian and appointment of a successor may be
5 appropriate under section 5-318;

6 (B) termination or modification of the guardianship may be appropriate
7 under section 5-319;

8 (C) removal of the conservator and appointment of a successor may be
9 appropriate under section 5-430; or

10 (D) termination or modification of the conservatorship may be appropriate
11 under section 5-431; and

12 (3) may take any action supported by the evidence, including:

13 (A) ordering the guardian or conservator to provide the court a report,
14 accounting, inventory, updated plan, or other information;

15 (B) appointing a guardian ad litem;

16 (C) appointing an attorney for the individual subject to guardianship or
17 conservatorship; or

18 (D) holding a hearing.

19 (c) The court may decline to act under subsection (b) if a similar grievance was filed
20 within the six months preceding the filing of the current grievance and the court followed the
21 procedures of subsection (b) in considering the earlier grievance.

22 **§ 5-128. Delegation by parent or guardian.** A parent or guardian of a minor, or incapacitated
23 person, by a power of attorney, may delegate to another person, for a period not exceeding six
24 months, any powers regarding care, custody, or property of the minor or ward, other than power

1 (d) If a petitioner is unable to serve notice under subsection (a)(1) on a parent of a minor
2 or alleges that the parent waived, in a record, the right to notice under this section, the court
3 shall appoint a visitor who shall:

4 (1) interview the petitioner and the minor;

5 (2) if the petitioner alleges the parent cannot be located, ascertain whether the
6 parent cannot be located with due diligence; and

7 (3) investigate any other matter relating to the petition the court directs.

8 **§ 5-204. Attorney for minor or parent.**

9 (a) The court shall appoint an attorney to represent a minor who is the subject of a
10 proceeding under section 5-202 if:

11 (1) requested by the minor and the minor is 12 years of age or older;

12 (2) recommended by a guardian ad litem; or

13 (3) the court determines the minor needs representation.

14 (b) An attorney appointed under subsection (a) shall:

15 (1) make a reasonable effort to ascertain the minor's wishes;

16 (2) advocate for the minor's wishes to the extent reasonably ascertainable; and

17 (3) if the minor's wishes are not reasonably ascertainable, advocate for the
18 minor's best interest.

19 (c) A minor who is the subject of a proceeding under section 5-202 may retain an
20 attorney to represent the minor in the proceeding.

21 (d) A parent of a minor who is the subject of a proceeding under section 5-202 may
22 retain an attorney to represent the parent in the proceeding.

23 (e) The court shall appoint an attorney to represent a parent of a minor who is the subject
24 of a proceeding under section 5-202 if:

1 (8) a statement whether the respondent is able to participate in a hearing and
2 which identifies any technology or other form of support that would enhance the
3 respondent's ability to participate; and

4 (9) any other matter the court directs.

5 **§5-305. Appointment and role of attorney for adult.**

6 (a) Unless the respondent in a proceeding for appointment of a guardian for an adult is
7 represented by an attorney, the court shall appoint an attorney to represent the respondent,
8 regardless of the respondent's ability to pay.

9 (b) An attorney representing the respondent in a proceeding for appointment of a
10 guardian for an adult shall:

11 (1) make reasonable efforts to ascertain the respondent's wishes;

12 (2) advocate for the respondent's wishes to the extent reasonably ascertainable;

13 and

14 (3) if the respondent's wishes are not reasonably ascertainable, advocate for the
15 result that is the least restrictive in type, duration, and scope, consistent with the
16 respondent's interests.

17 **§ 5-306. Professional evaluation.**

18 (a) At or before a hearing on a petition for a guardianship for an adult, the court shall
19 order a professional evaluation of the respondent:

20 (1) if the respondent requests the evaluation; or

21 (2) in other cases, unless the court finds that it has sufficient information to
22 determine the respondent's needs and abilities without the evaluation.

23 (b) If the court orders an evaluation under subsection (a), the respondent must be
24 examined by a licensed physician, psychologist, social worker, or other individual appointed by

1 attorney for health care or power of attorney for finances in which the respondent is the
2 principal; and

3 (5) any other person if it is in the public interest or for a purpose the court orders
4 for good cause.

5 **§5-309. Who may be guardian for adult; order of priority.**

6 (a) Except as otherwise provided in subsection (c), the court in appointing a guardian
7 for an adult shall consider persons qualified to be guardian in the following order of priority:

8 (1) a guardian, other than a temporary or emergency guardian, currently acting
9 for the respondent in another jurisdiction;

10 (2) a person nominated as guardian by the respondent, including the respondent's
11 most recent nomination made in a power of attorney;

12 (3) an agent appointed by the respondent under a power of attorney for health
13 care;

14 (4) a spouse of the respondent; and

15 (5) a family member or other individual who has shown special care and concern
16 for the respondent.

17 (b) If two or more persons have equal priority under subsection (a), the court shall select
18 as guardian the person the court considers best qualified. In determining the best qualified
19 person, the court shall consider the person's relationship with the respondent, the person's skills,
20 the expressed wishes of the respondent, the extent to which the person and the respondent have
21 similar values and preferences, and the likelihood the person will be able to perform the duties
22 of a guardian successfully.

23 (c) The court, acting in the best interest of the respondent, may decline to appoint as
24 guardian a person having priority under subsection (a) and appoint a person having a lower

1 which identifies any technology or other form of support that would enhance the
2 respondent's ability to participate; and

3 (7) any other matter the court directs.

4 **§ 5-406. Appointment and role of attorney.**

5 (a) Unless the respondent in a proceeding for appointment of a conservator is
6 represented by an attorney, the court shall appoint an attorney to represent the respondent,
7 regardless of the respondent's ability to pay.

8 (b) An attorney representing the respondent in a proceeding for appointment of a
9 conservator shall:

10 (1) make reasonable efforts to ascertain the respondent's wishes;

11 (2) advocate for the respondent's wishes to the extent reasonably ascertainable;

12 and

13 (3) if the respondent's wishes are not reasonably ascertainable, advocate for the
14 result that is the least-restrictive in type, duration, and scope, consistent with the
15 respondent's interests.

16 (c) The court shall appoint an attorney to represent a parent of a minor who is the subject
17 of a proceeding under section 5-402 if:

18 (1) the parent objects to appointment of a conservator;

19 (2) the court determines that counsel is needed to ensure that consent to
20 appointment of a conservator is informed; or

21 (3) the court otherwise determines the parent needs representation.

22 **§ 5-407. Professional evaluation.**

23 (a) At or before a hearing on a petition for conservatorship for an adult, the court shall
24 order a professional evaluation of the respondent:

1 the public interest and does not endanger the welfare or financial interests of the respondent or
2 individual.

3 (c) A report under section 5-405 of a visitor or professional evaluation under section 5-
4 407 is confidential and must be sealed on filing, but is available to:

5 (1) the court;

6 (2) the individual who is the subject of the report or evaluation, without limitation
7 as to use;

8 (3) the petitioner, visitor, and petitioner's and respondent's attorneys, for
9 purposes of the proceeding;

10 (4) unless the court directs otherwise, an agent appointed under a power of
11 attorney for finances in which the respondent is identified as the principal; and

12 (5) any other person if it is in the public interest or for a purpose the court orders
13 for good cause.

14 **§ 5-410. Who may be conservator; order of priority.**

15 (a) Except as otherwise provided in subsection (c), the court in appointing a conservator
16 shall consider persons qualified to be a conservator in the following order of priority:

17 (1) a conservator, other than a temporary or emergency conservator, currently
18 acting for the respondent in another jurisdiction;

19 (2) a person nominated as conservator by the respondent, including the
20 respondent's most recent nomination made in a power of attorney for finances;

21 (3) an agent appointed by the respondent to manage the respondent's property
22 under a power of attorney for finances;

23 (4) a spouse of the respondent; and

24 (5) a family member or other individual who has shown special care and concern

- 1 (2) requiring an accounting for the administration of the conservatorship estate;
- 2 (3) directing distribution;
- 3 (4) removing the conservator and appointing a temporary or successor
- 4 conservator;
- 5 (5) modifying the type of appointment or powers granted to the conservator, if the
- 6 extent of protection or management previously granted is excessive or insufficient to meet
- 7 the individual's needs, including because the individual's abilities or supports have
- 8 changed;
- 9 (6) rejecting or modifying the conservator's plan under section 5-419, the
- 10 conservator's inventory under section 5-420, or the conservator's report under section 5-
- 11 423; or
- 12 (7) granting other appropriate relief.

13 **§ 5-416. Bond; alternative asset-protection arrangement.**

14 (a) Except as otherwise provided in subsection (c), the court shall require a conservator
15 to furnish a bond with a surety the court specifies, or require an alternative asset-protection
16 arrangement, conditioned on faithful discharge of all duties of the conservator. The court may
17 waive the requirement only if the court finds that a bond or other asset-protection arrangement
18 is not necessary to protect the interests of the individual subject to conservatorship. Except as
19 otherwise provided in subsection (c), the court may not waive the requirement if the conservator
20 is in the business of serving as a conservator and is being paid for the conservator's service.

21 (b) Unless the court directs otherwise, the bond required under this section must be in
22 the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated
23 income, less the value of property deposited under an arrangement requiring a court order for
24 its removal and real property the conservator lacks power to sell or convey without specific

1 **§ 5-507. Appointment and role of attorney.**

2 (a) Unless the respondent in a proceeding under this part is represented by an attorney,
3 the court shall appoint an attorney to represent the respondent, regardless of the respondent's
4 ability to pay.

5 (b) An attorney representing the respondent in a proceeding under this part shall:

6 (1) make reasonable efforts to ascertain the respondent's wishes;

7 (2) advocate for the respondent's wishes to the extent reasonably ascertainable;

8 and

9 (3) if the respondent's wishes are not reasonably ascertainable, advocate for the
10 result that is the least restrictive alternative in type, duration, and scope, consistent with
11 the respondent's interests.

12 (c) The court shall appoint an attorney to represent a parent of a minor who is the subject
13 of a proceeding under this part if:

14 (1) the parent objects to the entry of an order for a protective arrangement instead
15 of guardianship or conservatorship;

16 (2) the court determines that counsel is needed to ensure that consent to the entry
17 of an order for a protective arrangement is informed; or

18 (3) the court otherwise determines the parent needs representation.

19 **§ 5-508. Professional evaluation.**

20 (a) At or before a hearing on a petition under this part for a protective arrangement, the
21 court shall order a professional evaluation of the respondent:

22 (1) if the respondent requests the evaluation: or

23 (2) or in other cases, unless the court finds that it has sufficient information to
24 determine the respondent's needs and abilities without the evaluation.