

3A:6-16.10 et al

LEGISLATIVE HISTORY CHECKLIST

WSA 3A:6-16.10 et al; 3A:9-8 (Probate--Estates--Minors and incompetents --Guardians duties)

LAWS OF 1979 CHAPTER 482

Bill No. A8

Sponsor(s) Burstein

Date Introduced Pre-filed

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly April 20, 1978

Senate Sept. 10, 1979

Date of approval Feb. 28, 1980

Following statements are attached if available:

Sponsor statement	Yes	XX
Committee Statement:	Assembly	XX
	Senate	XX
Fiscal Note	Yes	No
Veto message	Yes	No
Message on signing	Yes	XX
Following were printed:		
Reports	Yes	No
Hearings	Yes	No

Earlier proposed legislation:

- A1711 (1976-77)
- S1009, A3136 (1974-75)
- S2329 (1972-73)

(over)

9/14/73

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Hearings and reports on earlier (i.e. similar) proposed legislation:

974.90 New Jersey. Legislative Services Agency. Division of Law
C866 Revision.
1973k 1972-1973 legislation adopted from the proposed uniform
probate code. Trenton, 1973. (see pp.78-93 re: S2329).

974.90 New Jersey. Legislature. Senate. Judiciary Committee.
C866 Public hearing on uniform probate code bills, held
1973h 9-11-73. Trenton, 1973.

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ASSEMBLY, No. 8

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblymen BURSTEIN and BATE

AN ACT concerning guardians of minors and mental incompetents, supplementing Title 3A of the New Jersey Statutes, amending N. J. S. 3A:6-17, 3A:6-18, 3A:6-20, 3A:6-22, 3A:6-23, 3A:6-24, 3A:6-25, 3A:6-28, 3A:6-29, 3A:6-33, 3A:6-36, 3A:6-43 and 3A:9-8 and repealing N. J. S. 3A:6-21, 3A:6-27, 3A:6-37, 3A:6-41, 3A:6-42, ~~3A:6-43~~ 3A:9-6, 3A:20-1 through 3A:20-4, 3A:22-1 and 3A:22-3.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

A. DEFINITIONS

1 1. As used in this act:

2 a. "Estate" means all of the property of the minor or mental
3 incompetent as the property is originally constituted and as it
4 exists from time to time during administration.

5 b. "Guardian" means a person who has qualified as a guardian
6 of the person or estate of a minor or mental incompetent pursuant
7 to testamentary or court appointment, but excludes one who is
8 merely a guardian ad litem.

9 c. "Mental incompetent" means a person who is impaired by
10 reason of ~~idiocy, insanity, lunacy, unsoundness of mind or~~
11 ~~other~~ ~~***~~ mental illness or mental deficiency to the extent that he
12 lacks sufficient capacity to govern himself and manage his affairs
13 ~~***~~ ~~and to make and communicate responsible decisions concerning~~
14 his person or his estate ~~***~~.

15 The term "mental incompetent" is also used to designate a
16 person who is impaired by reason of physical illness or disability,
17 chronic use of drugs, chronic alcoholism or other cause (except

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

18 minority) to the extent that he lacks sufficient capacity to govern
 19 himself and manage his affairs ***[and make and communicate
 20 responsible decisions concerning his person or his estate]***.

21 The term "mental incompetency" and "mentally incompetent"
 22 refer to the state or condition of a "mental incompetent" as
 23 defined in this section.

24 d. "Minor" means a person who is under 18 years of age.

25 e. "Ward" means a person for whom a guardian has been
 26 appointed or a person under the protection of the court.

B. IN GENERAL

1 2. If a guardian has been appointed as to the person of a minor
 2 or mentally incompetent person, the court shall have full authority
 3 over the ward's person and all matters relating thereto; and if a
 4 guardian has been appointed as to the estate of a minor or mentally
 5 incompetent person, the court shall have full authority over the
 6 ward's estate, and all matters relating thereto.

1 3. The court may, at the time of appointment or later, limit the
 2 powers of a guardian otherwise conferred by this act, or previously
 3 conferred by the court, and may at any time relieve him of any
 4 limitation. If the court limits any power conferred on the guardian,
 5 the limitation shall be stated in certificates of letters of guardian-
 6 ship thereafter issued.

1 4. The appointment of a guardian of the estate of a minor or
 2 mental incompetent vests in him title as trustee to all property of
 3 his ward, presently held or thereafter acquired, including title to
 4 any property theretofore held for the ward by attorneys in fact.
 5 The appointment of a guardian is not a transfer or alienation
 6 within the meaning of general provisions of any Federal or State
 7 statute or regulation, insurance policy, pension plan, contract, will
 8 or trust instrument, imposing restrictions upon or penalties for
 9 transfer or alienation by the ward of his rights or interest, but
 10 this section does not restrict the ability of persons to make specific
 11 provision by contract or dispositive instrument relating to a
 12 guardian.

1 5. A judgment, made upon notice and hearing, allowing an inter-
 2 mediate account of a guardian, shall have the same effect as a
 3 judgment allowing an intermediate account of any other fiduciary.

1 6. N. J. S. 3A:9-8 is amended to read as follows:

2 3A:9-8. a. When***[, in the Superior Court or in the County
 3 Court,]*** in an account, or in a complaint in an action for the
 4 settlement of an account, or in any writing annexed to the complaint

5 or account, there appear lists of or statements or information as to
 6 the investments or other assets in a fiduciary's hands at the close
 7 of, or during, the period covered by the account or as to changes
 8 made in investments or other assets during that period, or there
 9 appear allegations or information as to other matters done or
 10 omitted by the fiduciary during the period, the complaint and such
 11 writing, statements, lists, information and allegations shall be
 12 deemed to be part of the account.

13 b. A judgment allowing, after due notice, an account [other than
 14 a guardian's intermediate account,] shall be res adjudicata as to
 15 all exceptions which could or might have been taken to the account,
 16 and shall constitute an approval of the correctness and propriety
 17 of the account, the legality and propriety of such investments and
 18 other assets, the legality and propriety of such changes in invest-
 19 ments or other assets, and the legality and propriety of such other
 20 matters, and also shall exonerate and discharge the fiduciary from
 21 all claims of all interested parties and of those in privity with or
 22 represented by such interested parties, (1) except for the invest-
 23 ments and other assets in the fiduciary's hands at the close of the
 24 period covered by the account, and assets which may come into his
 25 hands after the close thereof, and (2) except insofar as exceptions
 26 to the account shall be taken and sustained, and (3) except as relief
 27 may be had from a judgment in any civil action.

1 7. A parent **other than where custody of a minor has been*
 2 *awarded by a court of competent jurisdiction,** (with the consent
 3 of the other parent, if the latter is living and not a mental incompe-
 4 tent) or a guardian of the person of a minor or mental incom-
 5 petent, by a properly executed power of attorney, may delegate to
 6 another person, for a period not exceeding 6 months, any of his
 7 powers regarding care, custody, or property of the minor child or
 8 ward, except his power to consent to marriage or adoption of a
 9 minor ward.

1 8. N. J. S. 3A:6-22 is amended to read as follows:

2 3A:6-22. Before receiving his letters, a testamentary guardian
 3 *of a minor or mental incompetent* shall give bond in accordance
 4 with section 3A:7-1 of this Title, unless he is relieved from doing
 5 so by direction of the will of the parent *or spouse* appointing the
 6 guardian. However, regardless of any such direction, he shall,
 7 with respect to property to which the ward is or shall be entitled
 8 from any source, other than the said parent *or spouse* or other than
 9 any policy of life insurance upon the life of the said parent *or*
 10 *spouse*, give bond in accordance with that section before exercising
 11 any authority or control over such property.

1 9. N. J. S. 3A:6-23 is amended to read as follows:

2 3A:6-23. If a will appointing a testamentary guardian *of the*
 3 *person of a minor or mental incompetent* has been or is to be
 4 probated in the surrogate's ** [for county] ** court of any
 5 county ***or the Superior Court***, the ***[county court of the
 5A county]*** ***Superior Court*** may, in an action brought upon
 6 notice to the guardian named in the will, inquire into the present
 7 custody of the minor *or mental incompetent*, and make such order
 8 touching the testamentary guardianship as may be for the best
 9 interest and welfare of the minor *or mental incompetent*.

1 10. N. J. S. 3A:6-24 is amended to read as follows:

2 3A:6-24. The appointment of a testamentary guardian *of the*
 3 *person of a minor or mental incompetent* [for a child] or his estate
 4 shall be good and effectual against any other person claiming the
 5 guardianship over or custody of the [child] *minor or mental incom-*
 6 *petent* or his estate, as the case may be.

7 [The guardian of the estate of the child shall take into his
 8 custody for the use of the child the profits of the child's real estate
 9 and the custody and management of the personal estate of the
 10 child until the child attains the age of 21, or for any less time, in
 11 accordance with his appointment, and may bring any action in
 12 relation thereto which any other guardian might do. The guardian
 13 of the estate shall also have such powers, including the power to
 14 sell real estate, as may be conferred upon him by the will of the
 15 testator.]

1 11. a. If another person has been appointed guardian of the
 2 estate, all of the ward's estate received by the guardian of the
 3 person in excess of those funds expended to meet current expenses
 4 for support, care and education of the ward must be paid to the
 5 guardian of the estate, and the guardian of the person must account
 6 to the guardian of the estate for funds expended.

7 b. If another person has been appointed guardian of the ward's
 8 estate, the guardian of the ward's person is entitled to receive
 9 reasonable sums for his services and for room and board furnished
 10 to the ward, provided the same has been agreed upon between him
 11 and the guardian of the estate; and provided, further, that the
 12 amounts agreed upon are reasonable under the circumstances. The
 13 guardian of the person may request the guardian of the estate to
 14 expend the ward's estate by payment to third persons or institu-
 15 tions for the ward's care and maintenance.

1 12. A guardian shall report the condition of the ward and the
 2 condition of the ward's estate which has been subject to his
 3 possession or control as ordered by the court in an action brought
 4 by a person interested in the ward's welfare.

1 13. A guardian of the estate of a minor or mental incompetent
2 may expend or distribute so much or all of the income or principal
3 of his ward for the support, maintenance, education, general use
4 and benefit of the ward and his dependents, in the manner, at the
5 time or times and to the extent that the guardian, in an exercise
6 of a reasonable discretion, deems suitable and proper, with or
7 without court order, with or without regard to the duty or ability
8 of any person to support or provide for the ward, and with or
9 without regard to any other funds, income or property which may
10 be available for any such purpose, but in accordance with the fol-
11 lowing principles:

12 a. The guardian is to consider recommendations relating to
13 the appropriate standard of support, education and benefit for the
14 ward made by a parent or guardian of the person, if any. He may
15 not be surcharged for sums paid to persons or organizations
16 actually furnishing support, education or care to the ward pursuant
17 to the recommendations of a parent or guardian of the person
18-19 unless he knows that the parent or such guardian is deriving per-
20 sonal financial benefit therefrom, or unless the recommendations
21 are clearly not in the best interests of the ward.

22 b. The guardian is to expend or distribute sums reasonably
23 necessary for the support, education, care or benefit of the pro-
24 tected person with due regard to (1) the size of the estate, the
25 probable duration of the guardianship and the likelihood that the
26 ward, at some future time, may be fully able to manage his affairs
27 and the estate which has been conserved for him; and (2) the
28 accustomed standard of living of the ward and members of his
29 household.

30 c. The guardian may expend funds of the estate for the support
31 of persons legally dependent on the ward and others who are
32 members of the ward's household who are unable to support them-
33 selves, and who are in need of support.

34 d. Funds expended under this subsection may be paid by the
35 guardian to any person, including the ward, to reimburse for
36 expenditures which the guardian might have made, or in advance
37 for services to be rendered to the ward when it is reasonable to
38 expect that they will be performed and where advance payments
39 are customary or reasonably necessary under the circumstances.

1 14. a. A guardian of the estate of a minor or mentally incom-
2 petent person has all of the powers conferred upon him by law
3 and the terms of this act and all powers conferred by law on
4 trustees.

5 b. The court has, for the benefit of the ward, his dependents and
 6 members of his household, all the powers over his estate and affairs
 7 which he could exercise, if present and not under a disability, except
 8 the power to make a will, and may confer such powers upon a
 9 guardian of his estate. These powers include, but are not limited
 10 to power to convey or release the ward's present and contingent
 11 and expectant interests in real and personal property, including
 12 dower and curtesy and any right of survivorship incident to joint
 13 tenancy or tenancy by the entirety, to exercise or release his powers
 14 as trustee, personal representative, custodian for minors, guardian,
 15 or donee of a power of appointment, to enter into contracts, to
 16 create revocable or irrevocable trusts of property of the estate
 17 which may extend beyond his disability or life, to exercise his
 18 options to purchase securities or other property, to exercise his
 19 rights to elect options and change beneficiaries under insurance
 20 annuity policies and to surrender the policies for their cash value,
 21 to exercise his right to an elective share in the estate of his de-
 22 ceased spouse to the extent permitted by law and to renounce any
 23 interest by testate or intestate succession or by inter vivos transfer.

24 c. The court may exercise, or direct the exercise of, or release
 25 the powers of appointment of which the ward is donee, to renounce
 26 interests, to make gifts in trust or otherwise, or to change bene-
 27 ficiaries under insurance and annuity policies, only if satisfied,
 28 after notice and hearing, that it is in the best interests of the ward.

C. GUARDIANS OF MINORS

1 15. A guardian of the person of a minor has the powers and
 2 responsibilities of a parent who has not been deprived of custody
 3 of his minor and unemancipated child, except that a guardian is
 4 not legally obligated to provide from his own funds for the ward.
 5 In particular, and without qualifying the foregoing, a guardian
 6 has the following powers and duties, except as modified by order
 7 of the court:

8 a. He must take reasonable care of his ward's personal effects
 9 and institute an action for the appointment of a guardian of his
 10 ward's estate if necessary to protect it.

11 b. He may receive periodically money payable for the support
 12 of the ward to the ward's parent, guardian or custodian under the
 13 terms of any statutory benefit or insurance system, or any private
 14 contract, devise, trust, conservatorship or custodianship. Any
 15 sums so received shall be applied to the ward's current needs for
 16 support, care and education in an exercise of a reasonable discre-
 17 tion, with or without court order, with or without regard to the

18 duty or ability of any person to support or provide for the work
 19 and with or without regard to any other funds, income or property
 20 which may be available for any such purpose. He must exercise
 21 due care to conserve any excess funds for the ward's future needs
 22 unless a guardian has been appointed for the estate of the ward,
 23 in which case the excess shall be paid over at least annually to such
 24 guardian. He may institute an action to compel the performance
 25 by any person of a duty to support the ward or to pay sums for
 26 the welfare of the ward.

27 c. He is empowered to facilitate the ward's education, social, or
 28 other activities and to authorize medical or other professional care,
 29 treatment, or advice. He is not liable by reason of this consent for
 30 injury to the ward resulting from the negligence or acts of third
 31 persons unless it would have been illegal for a parent to have
 32 consented. He may consent to the marriage or adoption of his
 33 ward or to his ward's military service.

1 16. A guardian of the estate of an unmarried minor, as to whom
 2 no one has parental rights, has the duties and powers of a guardian
 3 of the person of a minor described in section 15 of this act until
 4 the minor attains the age of 18 or marries, but the parental rights
 5 so conferred on a guardian of an estate do not preclude appoint-
 6 ment of a guardian of the person.

1 17. When a minor who has not been adjudged a mental incom-
 2 petent attains 18 years of age, his guardian, after meeting all prior
 3 claims and expenses of administration, shall pay over and dis-
 4 tribute all funds and properties to the former ward as soon as
 5 possible.

1 18. The authority and responsibility of a guardian of the person
 2 or estate of a minor terminates upon the death, resignation or
 3 removal of the guardian or upon the minor's death, adoption,
 4 marriage or attainment of 18 years of age, but termination does
 5 not affect the guardian's liability for prior acts, nor his obligation
 6 to account for funds and assets of his ward. Resignation of a
 7 guardian does not terminate the guardianship unless it has been
 8 approved by a judgment of the court.

1 19. N. J. S. 3A:6-17 is amended to read as follows:

2 3A:6-17. In the [matter of the] appointment of guardians [,
 3 general, special, limited or testamentary, as to] *for* minors [or
 4 orphans], the surrogate's court of the county in which the minor
 5 [or orphan] may reside or if he is a nonresident, then the county
 6 in which he may have real or personal estate, shall, have and
 7 exercise the same powers as the superior court.

1 20. N. J. S. 3A:6-18 is amended to read as follows:

2 3A:6-18. Subject to the provisions of section 3A:6-19 of this
3 Title, either parent~~],~~ whether over or under the age of 21 years,~~]~~
4 may, by his will, appoint a guardian of the person and a guardian
5 of the estate, or a guardian of the person and estate, of any of his
6 children, including children en ventre sa mere, who are under the
7 age of ~~21~~ 18 years and unmarried at his death.

1 21. N. J. S. 3A:6-20 is amended to read as follows:

2 3A:6-20. If no guardian has been appointed pursuant to sections
3 3A:6-18, and 3A:6-19 of this Title, or if the surviving parent was
4 so appointed, the surviving parent~~],~~ whether over or under the
5 age of 21 years,~~]~~ may, by his will, appoint a guardian of the person
6 and a guardian of the estate, or a guardian of the person and estate,
7 of any of his children including children en ventre sa mere, who are
8 under the age of ~~21~~ 18 years and unmarried at his death.

1 22. N. J. S. 3A:6-25 is amended to read as follows:

2 3A:6-25. ~~]~~The Superior Court may appoint a special guardian
3 for real and personal property within this State, of any nonresi-
4 dent minor~~]~~ *Where a nonresident minor has property within this*
5 *State, the Superior Court may appoint a guardian of the said minor*
6 *to administer such property.* The surrogate's court shall have con-
7 current authority to appoint *such* a ~~special~~ guardian for any
8 such property within the county.

9 The court to which ~~a special~~ *said* guardian is accountable shall,
10 with respect to such property, have the same authority and control
11 over him which it would have over a ~~general~~ guardian *of the*
12 *estate* of a resident minor. In any case not provided for by statute,
13 it shall take such action in the matter as it shall deem most for the
14 advantage of the minor.

1 23. N. J. S. 3A:6-28 is amended to read as follows:

2 3A:6-28. ~~]~~In an action for the appointment of a guardian for an
3 orphan under the age of 14 years the surrogate's court of the
4 county wherein the orphan resides or, if he is a nonresident,
5 wherein his real or personal estate may be, or the Superior Court,
6 upon inquiry into the circumstances of the case, may admit the
7 mother, if she will accept, and if not, or if there be no such mother,
8 then the next of kin or some of them, if they or any of them will
9 accept the same and, if none of them will accept the same, then
10 such other proper person as will accept the same, to the guardian-
11 ship of the orphan until he attains the age of 14 years and chooses,
12 in an action for that purpose, another guardian for himself or
13 until, upon good cause shown, the superior court or county court
14 substitutes another guardian.

15 Until such time the bond of the guardian so admitted shall remain
16 in full force.】

17 *In an action for the appointment of a guardian of the person,*
18 *guardian of the estate, or a guardian of the person and estate of a*
19 *minor, the surrogate's court of the county wherein he resides or,*
20 *if he is a nonresident, wherein his real or personal estate may be,*
21 *or the Superior Court, upon inquiry into the circumstances, may*
22 *appoint the parents or either of them or the survivor of them as*
23 *the guardian of the person, guardian of the estate or guardian of*
24 *the person and estate of the minor. If neither of said parents or*
25 *the survivor of them will accept such guardianship, then the*
26 ****【next of kin】*** ***heirs***, or some of them, may be appointed*
27 *as such guardian. If none of said ***【next of kin】*** ***heirs****
28 *will accept such guardianship, then some other proper person shall*
29 *be appointed as the guardian of the person, guardian of the estate*
30 *or as guardian of the person and estate of said minor. This section*
31 *shall not be construed to restrict the power of the court to appoint*
32 *a substitute guardian on the application of the minor or otherwise.*

1 24. N. J. S. 3A:6-29 is amended to read as follows:

2 3A:6-29. When it shall be made to appear, to the satisfaction of
3 the Superior Court, or surrogate's court, that the ***【next of
4 kin】*** ***heirs*** of 【an orphan under the age of 14 years and】
5 a *minor* residing in this 【state】 *State*, do not reside within this
6 State, the court may take such action in respect to the appointment
7 of a guardian 【or guardians for the orphan】 *of the person, guardian*
8 *of the estate or as guardian of the person and estate for the minor*
9 as shall be to his advantage.

1 25. N. J. S. 3A:6-33 is amended to read as follows:

2 3A:6-33. If a resident of this State has or shall abscond or
3 absent himself therefrom for a period of 2 years, leaving a child
4 under the age of 【21】 *18* without sufficient provision for mainte-
5 nance and education, the surrogate's court of the county wherein
6 the child resides, or the Superior Court, may appoint a guardian
7 for his person or estate or both. The court to which the guardian
8 is accountable may revoke the appointment when it shall appear
9 proper.

D. GUARDIANS OF MENTAL INCOMPETENTS

1 26. a. A guardian of the person of a mentally incompetent
2 person has the same powers, rights and duties respecting his ward
3 that a parent has respecting his unemancipated minor child. In
4 particular, and without qualifying the foregoing, he has the follow-
5 ing powers and duties, except as modified by order of the court:

6 b. To the extent that it is consistent with the terms of any
7 order by a court of competent jurisdiction relating to detention or
8 commitment of the ward, he is entitled to custody of the person
9 of his ward and may establish the ward's place of abode within or
10 without this State.

11 c. If entitled to custody of his ward he shall make provision for
12 the care, comfort and maintenance of his ward and, whenever
13 appropriate, arrange for his training and education. Whether or
14 not he has custodial rights over the ward's person, he shall take
15 reasonable care of his ward's clothing, furniture, vehicles and other
16 personal effects and institute an action for the appointment of a
17 guardian of the ward's estate, if necessary to protect it.

18 d. He may give any consents or approvals that may be neces-
19 sary to enable the ward to receive medical or other professional
20 care, counsel, treatment or service.

21 e. He may institute an action to compel the performance by
22 any person of a duty to support the ward or to pay sums for the
23 welfare of the ward.

24 f. He may receive money, payable from any source for the
25 support of the ward and tangible personal property deliverable to
26 the ward. Any sums so received shall be applied to the ward's
27 current needs for support, care and education in an exercise of a
28 reasonable discretion, with or without court order, with or without
29 regard to the duty or ability of any person to support or provide
30 for the ward and with or without regard to any other funds,
31 income or property which may be available for any such purpose.
32 But he may not use funds from his ward's estate for room and
33 board which he, his spouse, parent, or child have furnished the
34 ward unless agreed upon by a guardian of the ward's estate under
35 section 11 b., or unless a charge for the service is approved by
36 order of the court made upon notice to at least one of the next of
37 kin of the incompetent ward, if notice is possible. He must exercise
38 care to conserve any excess for the ward's needs.

1 27. If the estate is ample to provide for the purposes implicit in
2 the distributions authorized by this act, a guardian for the estate
3 of a mental incompetent may apply to the court for authority to
4 make gifts to charity and other objects as the ward might have
5 been expected to make.

1 28. Upon an adjudication that the ward has returned to compe-
2 tency, the guardian, after the allowance of his final account, shall
3 pay over and distribute all funds and properties of the former
4 ward.

1 29. If a ward dies, the guardian shall deliver to the appropriate
2 court for safekeeping any will of the deceased person which may
3 have come into his possession, inform the executor or a beneficiary
4 named therein that he has done so, and retain the estate for delivery
5 to a duly appointed personal representative of the decedent or
6 other persons entitled thereto. If after 40 days from the death
7 of the ward no other person has been appointed personal repre-
8 sentative and no action for an appointment is pending in the
9 Superior Court or surrogate's or County Court of the county where
10 the ward resided at his death, the guardian may institute such an
11 action or may institute an action applying to the Superior Court
12 or such County Court for authority to exercise the powers and
13 duties of a personal representative so that he may proceed to
14 administer and distribute the decedent's estate without additional
15 or further appointment. Upon application for an order granting
16 the powers of a personal representative to a guardian, after notice
17 to all persons interested in the ward's estate either as heirs or
18 devisees and including any person nominated executor in any will
19 of which the applicant is aware, the court may order the conferral
20 of such powers, upon determining that there is no objection, and
21 may enter judgment that the guardian has all of the powers and
22 duties of a personal representative. The making and entry of a
23 judgment under this section shall have the effect of an order of
24 appointment of a personal representative, except that the estate in
25 the name of the guardian, after administration, may be distributed
26 to persons entitled to the decedent's estate under his will or the
27 laws of intestacy without prior retransfer to the guardian as per-
28 sonal representative.

1 30. In investing the estate, and in selecting assets of the estate
2 for distribution under this act, in utilizing powers of revocation or
3 withdrawal available for the support of the ward, and other powers
4 exercisable by the guardian or a court, the guardian or the court
5 should take into account any known estate plan of the ward, includ-
6 ing his will, any revocable trust of which he is settlor, and any
7 contract, transfer or joint ownership arrangement with provisions
8 for payment or transfer of benefits or interests at his death to
9 another or others which he may have originated. The guardian
10 may examine the will of the ward.

1 31. The authority and responsibility of a guardian of the person
2 or estate of a mental incompetent terminates upon the death,
3 resignation or removal of the guardian or upon the death of the
4 mental incompetent, but termination does not affect the guardian's

5 liability for prior acts, nor his obligation to account for funds and
6 assets of his ward. Resignation of a guardian does not terminate
7 the guardianship unless it has been approved by a judgment of the
8 court.

1 32. ***¶a. The parent of a mental incompetent may by will appoint
2 a guardian of the person or a guardian of the estate, or of both
3 the person and estate, of the mental incompetent. A testamentary
4 appointment by a parent becomes effective when, after having
5 given prior written notice of his intention to do so to mental incom-
6 petent and to the person having his care or to his nearest adult
7 relative, and no application for a trial of the issue of mental in-
8 competency having been made as provided in section 33 hereof,
9 the person appointed testamentary guardian applies to the court
10 and obtains a judgment confirming his appointment under the will;
11 provided, however, that both parents of the mental incompetent
12 are dead or the surviving parent has been judged a mental
13 incompetent.

14 b. The spouse of a married mental incompetent may by will
15 appoint a guardian of the person, guardian of the estate, or of
16 both the person and estate, of the mental incompetent. A testa-
17 mentary appointment by a spouse becomes effective when, after
18 having given prior written notice of his intention to do so to the
19 mental incompetent and to the person having his care or to his
20 nearest relative, and no application for a trial of the issue of mental
21 incompetency having been made as provided in section 33 hereof,
22 the person appointed testamentary guardian applies to the court
23 and obtains a judgment confirming his appointment under the
24 will.*** ****The parents of an unmarried mental incompetent or
25 the spouse of a mental incompetent may by will appoint a testa-
26 mentary guardian of the person, or a guardian of the estate, or of
27 both the person and estate of the mental incompetent. Before the
28 appointment of a testamentary guardian becomes effective, the
29 person designated as the testamentary guardian shall apply to the
30 court in a summary manner, upon such notice to the mental incom-
31 petent, any guardian who may have been appointed for him, to the
32 person or institution having his care and to his heirs as the court
33 may direct, for a judgment confirming his appointment under the
34 will.****

1 33. ***¶Where a parent or spouse of an alleged mental incompe-
2 tent appoints a testamentary guardian as provided in section 32
3 hereof, and the alleged mental incompetent has not been adjudicated
4 as such, the alleged mental incompetent or someone in his behalf
5 may apply for a trial of the issue of mental incompetency in

6 accordance with N. J. S. 3A:6-35 and the Rules of the Supreme
 7 Court.*** **If the person for whom a testamentary guardian
 8 has been appointed under the the will of a parent or spouse has
 9 not been adjudicated as a mental incompetent in accordance with
 10 N. J. S. 3A:6-35 and the Rules Governing the Courts of New Jersey,
 11 the person named as the testamentary guardian may apply to the
 12 court in the manner provided in section 32 for a judgment designat-
 13 ing that person as the temporary guardian of the person or of the
 14 estate, or of both the person and estate of the alleged mental incom-
 15 petent until the issue of mental incompetency has been determined.
 16 Upon the determination of the issue of mental incompetency, the
 17 court shall either enter a judgment confirming the appointment of
 18 the testamentary guardian or vacating the appointment of the
 19 temporary guardian.***

1 ***34. Where an appointment of a testamentary guardian is made
 2 by a parent under section 32 and the other parent survives the
 3 appointing parent, the appointment shall be effective only when the
 4 surviving parent, at or before the issuance of letters, consents to
 5 the appointment in writing and signs and acknowledges the consent
 6 in the presence of two witnesses present at the same time who
 7 subscribe their names as witnesses thereto in his presence, unless
 8 the surviving parent has been adjudged a mental incompetent.***

1 ***[34.]*** **35.*** N. J. S. 3A:6-36 is amended to read as
 1A follows:

2 3A:6-36. The ***[County] County Court of the county in which a mental
 3 incompetent may reside or, if he is a nonresident, in which his real
 4 or personal estate may be, or the[*** Superior Court may deter-
 5 mine ***[his]*** **the*** mental incompetency ***of an alleged
 5A mental incompetent*** and appoint a guardian for [him] his per-
 6 son, guardian for his estate or a guardian for his person and estate.

7 In any case where a guardian is to be appointed, letters of
 8 guardianship shall be granted to the spouse, if the spouse was
 9 living with the incompetent as man and wife at the time the in-
 10 competency arose, or to the next of kin, or if none of them will
 11 accept the letters or it is proven to the court that no appointment
 12 from among them will be to the best interest of the incompetent or
 13 his estate, then to such other proper person as will accept the same.

14 [Any such guardian shall provide for the care and safekeeping
 15 of the mental incompetent, shall take possession of his real and
 16 personal property and see to it that no waste or destruction of his
 17 real property is done or permitted and shall apply his personal
 18 property and the rents and profits of his real property so as
 19 properly to support the mental incompetent. The real property

20 shall in nowise be aliened except pursuant to the law of this State.]

1 ***[35.]*** ***36.*** N. J. S. 3A:6-43 is amended to read as
1A follows:

2 3A:6-43. The ***[County Court which determined a person to be
3 a mental incompetent, or the]*** Superior Court***[.]*** may
4 adjudicate that the mental incompetent has returned to competency
5 and restore to him his estate if the court is satisfied that he has
6 recovered his sound reason and is fit to govern himself and manage
7 his affairs, or, in the case of a mental incompetent determined to be
8 such by reason of [habitual drunkenness] *chronic alcoholism*, that
9 he has reformed and become habitually sober and has continued so
10 for 1 year next preceding the commencement of the action, *and in the*
11 *case of a mental incompetent determined to be such by reason of*
12 *chronic use of drugs that he has reformed and has not been a*
13 *chronic user of drugs for 1 year next preceding the commencement*
14 *of the action.*

E. REPEALERS

1 ***[36.]*** ***37.*** N. J. S. 3A:6-21, 3A:6-27, 3A:6-37,
2 3A:6-41, 3A:6-42, ***[3A:6-43,]*** 3A:9-6, 3A:20-1 through
3 3A:20-4, 3A:22-1 and 3A:22-3 are hereby repealed.

1 ***[37.]*** ***38.*** This act shall take effect 90 days after its
2 enactment.

10 competency arose, or to the next of kin, or if none of them will
 11 accept the letters or it is proven to the court that no appointment
 12 from among them will be to the best interest of the incompetent or
 13 his estate, then to such other proper person as will accept the same.

14 [Any such guardian shall provide for the care and safekeeping
 15 of the mental incompetent, shall take possession of his real and
 16 personal property and see to it that no waste or destruction of his
 17 real property is done or permitted and shall apply his personal
 18 property and the rents and profits of his real property so as
 19 properly to support the mental incompetent. The real property
 20 shall in nowise be aliened except pursuant to the law of this State.]

1 35. N. J. S. 3A:6-43 is amended to read as follows:

2 3A:6-43. The County Court which determined a person to be
 3 a mental incompetent, or the Superior Court, may adjudicate that
 4 the mental incompetent has returned to competency and restore to
 5 him his estate if the court is satisfied that he has recovered his
 6 sound reason and is fit to govern himself and manage his affairs,
 7 or, in the case of a mental incompetent determined to be such by
 8 reason of [habitual drunkenness] *chronic alcoholism*, that he has
 9 reformed and become habitually sober and has continued so for 1
 10 year next preceding the commencement of the action, *and in the*
 11 *case of a mental incompetent determined to be such by reason of*
 12 *chronic use of drugs that he has reformed and has not been a*
 13 *chronic user of drugs for 1 year next preceding the commencement*
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E. REPEALERS

1 36. N. J. S. 3A:6-21, 3A:6-27, 3A:6-37, 3A:6-41, 3A:6-42,
 2 3A:6-43, 3A:9-6, 3A:20-1 through 3A:20-4, 3A:22-1 and 3A:22-3
 3 are hereby repealed.

1 37. This act shall take effect 90 days after its enactment.

STATEMENT

This is one of a series of bills adapted from the Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association, and prepared by the Division of Law Revision of the Legislative Services Agency.

The definition of the term "mental incompetent" is expanded by the bill to mean a person who lacks "sufficient capacity to govern himself and manage his affairs and make and communicate responsible decisions concerning his person or estate."

1979

Generally, the guardian of the person of a minor or mental incompetent is given the same powers and responsibilities of a parent without the duty to furnish financial support.

As provided in the bill, the appointment of a guardian of the estate of a minor or mental incompetent vests in him title as trustee to all of his ward's property.

A guardian of the estate of a minor or mental incompetent has all of the powers and duties conferred upon him by the bill and by law on trustees. The effect of the bill is to change existing law relating to the duties and powers of a guardian pertaining to the support, care and education of the ward and those dependent upon him for support. A guardian is authorized to exercise those duties and responsibilities with or without court order, but they must be performed in the exercise of responsible discretion. The authority conferred upon a guardian by the bill overcomes the deficiencies which exist under present law requiring a guardian to apply to a court of competent jurisdiction for authority to act.

The bill changes the existing law to provide that a judgment, made upon notice and hearing, allowing an intermediate account of a guardian shall have the same effect as a judgment allowing an intermediate account of any other fiduciary. Under the existing law, the intermediate account of a guardian is not conclusive.

A parent or a guardian of a ward's person, may, by a properly executed power of attorney, delegate any of his powers to any other person for a period not exceeding 6 months. This permits a temporary delegation of powers in those cases where the parent or guardian would be unavailable to take necessary action regarding the ward's welfare.

As provided in the bill, the resignation of a guardian does not terminate a guardianship unless it has been approved by a court judgment.

The bill also permits a court to limit any of the powers conferred upon a guardian or it may relieve him of any limitations.

This bill also changes the existing statutory law relating to the appointment of a testamentary guardian by a minor parent of the person or estate of any of his minor unmarried children. Under existing law a minor parent is permitted to appoint a testamentary guardian. The change is required so as to conform the provisions of this bill with the provisions of a companion bill to be introduced simultaneously herewith entitled "An act concerning decedents' estates, etc." which provides that only a person competent to make a will may appoint a testamentary guardian.

The bill further provides that upon the death of a ward the guardian shall deliver any will of the decedent in his possession for safekeeping to the appropriate court and inform the appropriate parties that he has done so. If no appointment of a personal representative is made as provided in the will, the guardian may institute any action for authority to exercise the powers and duties of a personal representative in order to administer and distribute the estate.

The bill will permit a surviving parent or spouse to appoint a testamentary guardian of the person of a mental incompetent or of his estate, or both. The right of a parent or spouse to appoint a testamentary guardian for a mental incompetent does not exist under present law. The right to apply for a trial of the issue of mental incompetency in accordance with N. J. S. 3A:6-35 and the Rules of the Supreme Court is reserved to the alleged mental incompetent.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 8
with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1978

This is one of a series of bills adapted from the Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association, and prepared by the Division of Law Revision of the Legislative Services Agency.

The definition of the term "mental incompetent" is expanded by the bill to mean a person who lacks "sufficient capacity to govern himself and manage his affairs and make and communicate responsible decisions concerning his person or estate."

Generally, the guardian of the person of a minor or mental incompetent is given the same powers and responsibilities of a parent without the duty to furnish financial support.

As provided in the bill, the appointment of a guardian of the estate of a minor or mental incompetent vests in him title as trustee to all of his ward's property.

A guardian of the estate of a minor or mental incompetent has all of the powers and duties conferred upon him by the bill and by law on trustees. The effect of the bill is to change existing law relating to the duties and powers of a guardian pertaining to the support, care and education of the ward and those dependent upon him for support. A guardian is authorized to exercise those duties and responsibilities with or without court order, but they must be performed in the exercise of responsible discretion. The authority conferred upon a guardian by the bill overcomes the deficiencies which exist under present law requiring a guardian to apply to a court of competent jurisdiction for authority to act.

The bill changes the existing law to provide that a judgment, made upon notice and hearing, allowing an intermediate account of a guardian shall have the same effect as a judgment allowing an

intermediate account of any other fiduciary. Under the existing law, the intermediate account of a guardian is not conclusive.

A parent or a guardian of a ward's person, may, by a properly executed power of attorney, delegate any of his powers to any other person for a period not exceeding 6 months. This permits a temporary delegation of powers in those cases where the parent or guardian would be unavailable to take necessary action regarding the ward's welfare.

As provided in the bill, the resignation of a guardian does not terminate a guardianship unless it has been approved by a court judgment.

The bill also permits a court to limit any of the powers conferred upon a guardian or it may relieve him of any limitations.

This bill also changes the existing statutory law relating to the appointment of a testamentary guardian by a minor parent of the person or estate of any of his minor unmarried children. Under existing law a minor parent is permitted to appoint a testamentary guardian. The change is required so as to conform the provisions of this bill with the provisions of a companion bill to be introduced simultaneously herewith entitled "An act concerning decedents' estates, etc." which provides that only a person competent to make a will may appoint a testamentary guardian.

The bill further provides that upon the death of a ward the guardian shall deliver any will of the decedent in his possession for safekeeping to the appropriate court and inform the appropriate parties that he has done so. If no appointment of a personal representative is made as provided in the will, the guardian may institute any action for authority to exercise the powers and duties of a personal representative in order to administer and distribute the estate.

The bill will permit a surviving parent or spouse to appoint a testamentary guardian of the person of a mental incompetent or of his estate, or both. The right of a parent or spouse to appoint a testamentary guardian for a mental incompetent does not exist under present law. The right to apply for a trial of the issue of mental incompetency in accordance with N. J. S. 3A:6-35 and the Rules of the Supreme Court is reserved to the alleged mental incompetent.

The committee amendment is designed to clarify the language, and takes into account circumstances where the custody of a minor has been awarded by a court of competent jurisdiction.

SENATE JUDICIARY COMMITTEE

STATEMENT TO
ASSEMBLY, No. 8

STATE OF NEW JERSEY

DATED: JUNE 25, 1979

This is one of a series of bills adapted from the Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association, and prepared by the Division of Law Revision of the Legislative Services Agency.

Generally, the guardian of the person of a minor or mental incompetent is given the same powers and responsibilities of a parent without the duty to furnish financial support.

As provided in the bill, the appointment of a guardian of the estate of a minor or mental incompetent vests in him title as trustee to all of his ward's property.

A guardian of the estate of a minor or mental incompetent has all of the powers and duties conferred upon him by the bill and by law on trustees. The effect of the bill is to change existing law relating to the duties and powers of a guardian pertaining to the support, care and education of the ward and those dependent upon him for support. A guardian is authorized to exercise those duties and responsibilities with or without court order, but they must be performed in the exercise of responsible discretion. The authority conferred upon a guardian by the bill overcomes the deficiencies which exist under present law requiring a guardian to apply to a court of competent jurisdiction for authority to act.

The bill changes the existing law to provide that a judgment, made upon notice and hearing, allowing an intermediate account of a guardian shall have the same effect as a judgment allowing an intermediate account of any other fiduciary. Under the existing law, the intermediate account of a guardian is not conclusive.

A parent or a guardian of a ward's person, may, by a properly executed power of attorney, delegate any of his powers to any other person for a period not exceeding 6 months. This permits a temporary delegation of powers in those cases where the parent or guardian would be unavailable to take necessary action regarding the ward's welfare.

As provided in the bill, the resignation of a guardian does not terminate a guardianship unless it has been approved by a court judgment.

The bill also permits a court to limit any of the powers conferred upon a guardian or it may relieve him of any limitations.

This bill also changes the existing statutory law relating to the appointment of a testamentary guardian by a minor parent of the person or estate of any of his minor unmarried children. Under existing law a minor parent is permitted to appoint a testamentary guardian. The change is required so as to conform the provisions of this bill with the provisions of a companion bill to be introduced simultaneously herewith entitled "An act concerning decedents' estates, etc." which provides that only a person competent to make a will may appoint a testamentary guardian.

The bill further provides that upon the death of a ward the guardian shall deliver any will of the decedent in his possession for safekeeping to the appropriate court and inform the appropriate parties that he has done so. If no appointment of a personal representative is made as provided in the will, the guardian may institute any action for authority to exercise the powers and duties of a personal representative in order to administer and distribute the estate.

The bill will permit a surviving parent or spouse to appoint a testamentary guardian of the person of a mental incompetent or of his estate, or both. The right of a parent or spouse to appoint a testamentary guardian for a mental incompetent does not exist under present law. The right to apply for a trial of the issue of mental incompetency in accordance with N. J. S. 3A:6-35 and the Rules of the Supreme Court amendment, the appointment of a testamentary guardian would not become effective until after a hearing on the issue of competency if the person had not yet been judicially determined to be an incompetent.

By committee amendment, the definition of "mental incompetent" was changed to mean "a person who is impaired by reason of mental illness or mental deficiency to the extent that he lacks sufficient capacity to govern himself and manage his affairs and make and communicate responsible decisions concerning his person or his estate." The committee made this amendment because they felt the original definition in the bill contained phrases which had become scientifically outmoded, and also duplicative language.

The committee also amended Assembly Bill No. 8 to establish that when the appointment of a testamentary guardian is made by a parent and the other parent survives, the surviving parent must consent to such appointment in writing unless the surviving parent has himself been adjudged incompetent.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 28, 1980

KATHRYN FORSYTH

Governor Brendan Byrne today signed eleven bills, all sponsored by Assemblyman Albert Burstein (D-Bergen), which constitute the final portion of New Jersey's probate reform package.

"The signing of these last eleven bills marks the culmination of a seven year effort to update New Jersey's probate law, making it one of the most modern and enlightened codes in the nation," said Byrne.

The first part of the probate reform program, also sponsored by Assemblyman Burstein, was enacted in 1977. The final step will be the reorganization of Title 3A, which contains the probate law, to make any necessary technical and minor substantive changes. This process should be completed by the end of the year.

Byrne said that in preparing the probate reform package, his staff and the legislature worked closely with the Committee of Real Property, Probate and Trust Law of the New Jersey State Bar Association.

He commended the efforts of Assemblyman Burstein, attorneys Alfred C. Clapp, Richard F. Lert and Harrison Durand of the New Jersey State Bar Association, and Maurice Gold of Legislative Services, "as well as the many other people whose talents contributed to this major revision of the New Jersey probate law."

These are the bills the Governor signed today:

A-18, which helps prevent the disinheritance of a husband or wife by allowing the surviving spouse to elect to take one-third of the deceased person's augmented estate.

Under prior law, New Jersey was one of the few states that allowed husbands and wives to disinherit each other.

An augmented estate is defined in the bill as being the deceased person's estate, minus administration and funeral costs, plus various kinds of property transfers made by the decedent and other types of interests.

The independent wealth of the surviving husband or wife is credited against the elective share, as is any property the surviving spouse received from the deceased person. Only the balance, if any, may be collected from the elective share.

A-8, which revises the New Jersey law governing the appointments, duties, rights and obligations of guardians for minors or mental incompetents.

The bill modernizes the definition of a mental incompetent to mean a person impaired by mental illness or mental deficiency or by a physical illness or disability, chronic use of drugs, chronic alcoholism or other cause "to the extent that he lacks sufficient capacity to govern himself or manage his affairs."

The bill sets forth rules and guidelines governing the powers and duties of the guardian of a minor or of a minor's estate and the powers of the courts in such cases.

A-6, which permits a sum of up to \$5,000 per year from an estate to be paid to or on behalf of a minor beneficiary without the necessity of formally appointing a guardian of the estate in certain cases.

The money, which can be paid to the parent, legal guardian of the minor, adult who has custody of the child and with whom he resides, or a financial institution, must be applied to the "support and educational needs of the minor."

Any excess in a given year must be preserved for the future support of the child, and any balance remaining must be delivered to the minor when he reaches the age of 18.

A-19, which clarifies the law governing disclaimers of testamentary and intestate transfers.

Clarification of the law was particularly important because of the federal gift tax consequences a beneficiary may face if he makes a disclaimer deemed untimely under the law.

A-20, which abolishes the ancient rights of dower and curtesy. Dower is the right of a surviving wife to possession for the rest of her life of one half the real estate owned in her husband's name. Curtesy is the corresponding right for surviving husbands.

A-21, which permits the court to authorize, direct or ratify transactions regarding the estate of a minor or mental incompetent in situations where the continuing services of a legal guardian are unnecessary.