

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 799

Short Title: Powers and Duties of Guardians of the Person. (Public)

Sponsors: Representatives Bordsen, Goodwin (Primary Sponsors); Alexander, Brown, Parmon, and Weiss.

Referred to: Judiciary II.

March 15, 2007

A BILL TO BE ENTITLED
AN ACT TO REDEFINE THE POWERS, DUTIES, RIGHTS, AND LIABILITIES OF
GUARDIANS OF THE PERSON OF MINORS AND INCOMPETENT PERSONS
AS RECOMMENDED BY THE HOUSE STUDY COMMITTEE ON STATE
GUARDIANSHIP LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-600(a) reads as rewritten:

"(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. Except as otherwise provided by the court or this section, a guardian appointed under this section has the same duties, powers, rights, and liabilities as a guardian of the person of a minor under G.S. 35A-1241.4, 35A-1241.5, and 35A-1241.6, and the court shall exercise the powers and duties of the clerk of superior court under those sections with respect to guardians appointed under this section. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority."

SECTION 2. G.S. 7B-2001 reads as rewritten:

"§ 7B-2001. **Appointment of guardian.**

1 In any case when no parent, guardian, or custodian appears in a hearing with the
2 juvenile or when the court finds it would be in the best interests of the juvenile, the
3 court may appoint a guardian of the person for the juvenile. The guardian shall operate
4 under the supervision of the court with or without bond and shall file only such reports
5 as the court shall require. Unless the court orders otherwise, the guardian:

- 6 (1) Shall have the care, custody, and control of the juvenile or may
7 arrange a suitable placement for the juvenile.
- 8 (2) May represent the juvenile in legal actions before any court.
- 9 (3) May consent to certain actions on the part of the juvenile in place of
10 the parent or custodian, including (i) marriage, (ii) enlisting in the
11 armed forces, and (iii) enrollment in school.
- 12 (4) May consent to any necessary remedial, psychological, medical, or
13 surgical treatment for the juvenile.

14 Except as otherwise provided by the court or this section, a guardian appointed under
15 this section has the same duties, powers, rights, and liabilities as a guardian of the
16 person of a minor under G.S. 35A-1241.4, 35A-1241.5, and 35A-1241.6, and the court
17 shall exercise the powers and duties of the clerk of superior court under those sections
18 with respect to guardians appointed under this section.

19 The authority of the guardian shall continue until the guardianship is terminated by
20 court order, until the juvenile is emancipated pursuant to Subchapter IV of this Chapter,
21 or until the juvenile reaches the age of majority."

22 **SECTION 3.** G.S. 32A-22(a) reads as rewritten:

23 "(a) If, following the execution of a health care power of attorney, a court of
24 competent jurisdiction appoints a guardian of the person of the principal, or a general
25 guardian with powers over the person of the principal, the health care agent's authority
26 under the health care power of attorney shall cease to be effective terminate upon the
27 appointment and qualification of the guardian. The guardian shall act consistently with
28 G.S. 35A-1201(a)(5)-guardian unless the clerk provides otherwise."

29 **SECTION 4.** G.S. 35A-1202(10) reads as rewritten:

30 "When used in this Subchapter, unless a contrary intent is indicated or the context
31 requires otherwise:

32 ...

- 33 (10) "Guardian of the person" means a guardian appointed ~~solely~~ for the
34 purpose of performing duties relating to the care, custody, and control
35 of a ward.

36"

37 **SECTION 5.** G.S. 35A-1213(b) reads as rewritten:

38 "(b) A nonresident of the State of North Carolina, to be appointed as general
39 guardian, guardian of the person, or guardian of the estate of a North Carolina resident,
40 must indicate in writing his willingness to submit to the jurisdiction of the North
41 Carolina courts in matters relating to the guardianship and must appoint a resident agent
42 to accept service of process for the guardian in all actions or proceedings with respect to
43 the guardianship. Such appointment must be approved by and filed with the clerk, and
44 any agent so appointed must notify the clerk of any change in the agent's address or

1 legal residence. The clerk shall require a nonresident guardian of the estate or a
2 nonresident general guardian to post a bond or other security for the faithful
3 performance of the guardian's duties. The clerk may require a nonresident guardian of
4 the person to post a bond or other security pursuant to G.S. 35A-1230 for the faithful
5 performance of the guardian's duties."

6 **SECTION 6.** G.S.35A-1220 is repealed.

7 **SECTION 7.** G.S. 35A-1230 reads as rewritten:

8 "**§ 35A-1230. Bond required before receiving property, required.**

9 (a) Except as otherwise provided by G.S. 35A-1212.1 and G.S. 35A-1225(a), no
10 general guardian or guardian of the estate shall be permitted to receive the ward's
11 property until he has given sufficient surety, approved by the clerk, to account for and
12 apply the same under the direction of the court, provided that if the guardian is a
13 nonresident of this State and the value of the property received exceeds one thousand
14 dollars (\$1,000) the surety shall be a bond under G.S. 35A-1231(a) executed by a duly
15 authorized surety company, or secured by cash in an amount equal to the amount of the
16 bond or by a mortgage executed under Chapter 109 of the General Statutes on real
17 estate located in the county, the value of which, excluding all prior liens and
18 encumbrances, shall be at least one and one-fourth times the amount of the bond; and
19 further provided that the nonresident shall appoint a resident agent to accept service of
20 process in all actions and proceedings with respect to the guardianship. ~~The clerk shall~~
21 ~~not require a guardian of the person who is a resident of North Carolina to post a bond;~~
22 ~~the clerk may require a nonresident guardian of the person to post a bond or other~~
23 ~~security for the faithful performance of the guardian's duties.~~

24 (b) Before issuing letters of appointment or at any time thereafter, the clerk may
25 require a guardian of the person to post and maintain a bond or other security, in an
26 amount the clerk deems appropriate and necessary, for the faithful performance of the
27 guardian's powers and duties."

28 **SECTION 8.** G.S. 35A-1241 is repealed.

29 **SECTION 9.** Article 8 of Chapter 35A of the General Statutes is amended
30 by adding the following new sections to read:

31 "**§ 35A-1241.1. Duties of guardian of the person of an incompetent person.**

32 (a) Except as otherwise provided by the clerk, a guardian of the person of an
33 incompetent person shall exercise the guardian's powers and duties and make decisions
34 regarding the ward's support, care, education, health, and welfare in accordance with
35 this section.

36 (b) A guardian of the person of an incompetent person shall act consistently with
37 G.S. 35A-1201(a)(5), shall exercise the guardian's powers and authority only as
38 necessitated by the ward's limitations, and, to the extent possible, shall encourage the
39 ward to participate in decisions, act on the ward's own behalf, and develop or regain the
40 capacity to manage the ward's personal affairs.

41 (c) A guardian of the person of an incompetent person, in making decisions, shall
42 consider the expressed desires and personal values of the ward to the extent known to
43 the guardian.

1 (d) A guardian of the person of an incompetent person at all times shall act in the
2 ward's best interest and exercise reasonable care, diligence, and prudence.

3 (e) Except as otherwise provided by the clerk, a guardian of the person of an
4 incompetent person shall:

5 (1) Become or remain personally acquainted with the ward and maintain
6 sufficient contact with the ward to know of the ward's capacities,
7 limitations, needs, opportunities, and physical and mental health;

8 (2) Develop, and revise as necessary, a plan to provide for the ward's
9 custody, care, support, maintenance, education, habilitation,
10 rehabilitation, and well-being, consistent with the ward's condition,
11 estate, and needs;

12 (3) Take reasonable care of the ward's clothing, furniture, vehicles, and
13 other personal effects;

14 (4) Request the clerk to appoint a guardian of the estate for the ward if a
15 guardian of the estate has not been appointed and appointment of a
16 guardian of the estate is necessary to protect the ward's property;

17 (5) Expend money of the ward that has been received by the guardian of
18 the person for the ward's current needs for support, care, education,
19 health, and welfare;

20 (6) Conserve any excess money of the ward for the ward's future needs,
21 however, if a guardian of the estate has been appointed for the ward's
22 estate, the guardian of the person shall pay the money to the guardian
23 of the estate, at least quarterly, to be conserved for the ward's future
24 needs;

25 (7) File status reports with the clerk or designated agency as required
26 under G.S. 35A-1242;

27 (8) File accountings with the clerk if required under G.S. 35A-1242;

28 (9) Post and maintain a bond if required under G.S. 35A-1230;

29 (10) Inform the clerk of any change in the ward's custodial dwelling or
30 address;

31 (11) Inform the clerk of any change in the guardian's address;

32 (12) Notify the clerk if the ward's condition has changed so that the ward is
33 capable of exercising rights previously removed; and

34 (13) File a motion pursuant to G.S. 35A-1130 seeking restoration of the
35 ward's competency, if appropriate.

36 (f) Unless the guardian determines that doing so is contrary to the ward's best
37 interest, a guardian of the person of an incompetent person shall exercise the guardian's
38 powers consistently with any of the following documents that were validly executed by
39 the ward, while competent, and were not validly revoked by the ward, while competent:

40 (i) a health care power of attorney pursuant to Article 3 of Chapter 32A of the General
41 Statutes or any comparable law of this State or another state; (ii) an advance health care
42 directive that is valid under the laws of the state in which it was executed; (iii) an
43 advance instruction for mental health treatment under Part 2 of Article 3 of Chapter
44 122C of the General Statutes or any comparable law of this State or another state; (iv) a

1 declaration of a desire for a natural death pursuant to Article 23 of Chapter 90 of the
2 General Statutes or any comparable law of this State or another state; or (v) a
3 declaration of an anatomical gift under Part 3 of Article 16 of Chapter 130A of the
4 General Statutes or any comparable law of this State or another state.

5 (g) A guardian of the person is not legally obligated to provide for the ward's care
6 or support from the guardian's own funds solely by virtue of the guardian-ward
7 relationship.

8 **"§ 35A-1241.2. Powers of guardian of the person of an incompetent person.**

9 (a) Except as otherwise provided by the clerk, a guardian of the person of an
10 incompetent person may:

11 (1) If a guardian of the estate of the ward has not been appointed or
12 refuses to act, apply for and receive money payable to or on behalf of
13 the ward under the terms of any statutory system of benefits or
14 insurance or any private contract, devise, trust, conservatorship, or
15 custodianship;

16 (2) If otherwise consistent with the terms of any order by a court of
17 competent jurisdiction relating to custody of the ward, take custody of
18 the ward and establish the ward's place of custodial dwelling;

19 (3) If a guardian of the estate of the ward has not been appointed or
20 refuses to act, sell or dispose of the ward's clothing, jewelry, furniture,
21 vehicles, and personal effects;

22 (4) If a guardian of the estate of the ward has not been appointed or
23 refuses to act, take such action, including bringing legal proceedings
24 on behalf of the ward, as may be reasonable, appropriate, and
25 necessary to protect the ward's personal rights, personal property, or
26 residence;

27 (5) If a guardian of the estate of the ward has not been appointed or
28 refuses to act, commence an administrative or judicial proceeding or
29 take other appropriate action to compel a person to support the ward or
30 pay money for the benefit of the ward;

31 (6) Consent, or withhold consent, to medical, psychological, legal,
32 professional, or other care, treatment, or service for the ward;

33 (7) Delegate, through execution of a valid power of attorney and for a
34 period not to exceed six months, to another person with legal capacity
35 any of the guardian's powers regarding the ward's care, custody, or
36 property;

37 (8) If reasonable under all of the circumstances, delegate to the ward
38 certain responsibilities for decisions affecting the ward's well-being;
39 and

40 (9) Exercise any other power conferred by law on a guardian of the person
41 of an incompetent person.

42 (b) In exercising powers under subsection (a)(2) of this section, a guardian of the
43 person may establish or move the ward's place of dwelling outside this State only upon
44 express authorization of the clerk.

1 (c) In exercising powers under subsection (a)(2) of this section, a guardian of the
2 person may place the ward in a residential treatment facility that is not a group home,
3 adult care home, nursing home, or other community-based residential treatment facility
4 only upon express authorization of the clerk.

5 (d) Notwithstanding subsection (a)(6) of this section, a guardian of the person of
6 an incompetent person may not consent to the ward's sterilization unless the guardian
7 obtains an order from the clerk in accordance with G.S. 35A-1245.

8 (e) Notwithstanding termination of the guardianship due to the ward's death, a
9 guardian of the person may make final burial and funeral arrangements for a deceased
10 ward if the ward's body remains unclaimed for five days.

11 **"§ 35A-1241.3. Rights and liability of guardian of the person of an incompetent**
12 **person.**

13 (a) A guardian of the person of an incompetent person is entitled to reasonable
14 compensation from the ward's estate for services as guardian and to reimbursement
15 from the ward's estate for the guardian's expenditures for room, board, clothing, and
16 care provided to the ward, if approved by order of the clerk. If a guardian of the estate
17 for the ward, other than the guardian of the person or one who is affiliated with the
18 guardian of the person, has been appointed, reasonable compensation and
19 reimbursement to the guardian of the person may be approved and paid by the guardian
20 of the estate without order of the clerk.

21 (b) A guardian of the person is not liable to a third person for acts of the ward
22 solely by reason of the guardian-ward relationship.

23 (c) A guardian of the person who acts within the scope of the guardian's authority
24 and exercises reasonable care in choosing a third person to provide medical or other
25 care, treatment, or service for the ward is not liable for injury to the ward resulting from
26 the wrongful conduct of the third party.

27 (d) A guardian of the person who consents, or withholds consent, to medical
28 treatment or surgery for a ward is not liable to the ward or the ward's estate if the
29 guardian's actions were within the scope of the guardian's authority, taken in good faith,
30 and not negligent.

31 **"§ 35A-1241.4. Duties of guardian of the person of a minor.**

32 (a) Except as otherwise provided by the clerk or this section, a guardian of the
33 person of a minor has the duties and responsibilities of a parent regarding the ward's
34 support, care, education, health, and welfare.

35 (b) A guardian of the person of a minor shall act at all times in the minor's best
36 interest and exercise reasonable care, diligence, and prudence.

37 (c) A guardian of the person of a minor shall:

38 (1) Become or remain personally acquainted with the minor ward and
39 maintain sufficient contact with the ward to know of the ward's
40 capacities, limitations, needs, opportunities, and physical and mental
41 health;

42 (2) Take reasonable care of the ward's personal effects;

- 1 (3) Request the clerk to appoint a guardian of the estate for the ward if a
2 guardian of the estate has not been appointed and appointment of a
3 guardian of the estate is necessary to protect the ward's property;
4 (4) Expend money of the ward that has been received by the guardian of
5 the person for the ward's current needs for support, care, education,
6 health, and welfare;
7 (5) Conserve any excess money of the ward for the ward's future needs,
8 however, if a guardian of the estate has been appointed for the ward's
9 estate, the guardian of the person shall pay the money to the guardian
10 of the estate, at least quarterly, to be conserved for the ward's future
11 needs;
12 (6) File status reports with the clerk or designated agency if required under
13 G.S. 35A-1242.1;
14 (7) File accountings with the clerk if required under G.S. 35A-1242.1;
15 (8) Post and maintain a bond if required under G.S. 35A-1230;
16 (9) File a proceeding under this Chapter seeking a determination of the
17 minor ward's incompetence and appointment of a general guardian,
18 guardian of the person, or guardian of the estate for the ward if the
19 minor ward is an 'incompetent child' as defined by G.S. 35A-1101(8);
20 (10) Inform the clerk of any change in the ward's custodial dwelling or
21 address; and
22 (11) Inform the clerk of any change in the guardian's address.

23 (d) Notwithstanding subsection (a) of this section, a guardian of the person of a
24 minor is not legally obligated to provide for the ward's care or support from the
25 guardian's own funds solely by virtue of the guardian-ward relationship and is not liable
26 for paying child support for the minor solely by virtue of the guardian-ward
27 relationship.

28 **"§ 35A-1241.5. Powers of guardian of the person of a minor.**

29 (a) Except as otherwise provided by the clerk, a guardian of the person of a
30 minor has the powers of a parent regarding the ward's support, care, education, health,
31 and welfare.

32 (b) Except as otherwise provided by the clerk, a guardian of the person of a
33 minor may:

- 34 (1) If a guardian of the estate of the ward has not been appointed or
35 refuses to act, apply for and receive money payable to or on behalf of
36 the ward under the terms of any statutory system of benefits or
37 insurance or any private contract, devise, trust, conservatorship, or
38 custodianship;
39 (2) If otherwise consistent with the terms of any order by a court of
40 competent jurisdiction relating to custody of the ward, take custody of
41 the ward and establish the ward's place of custodial dwelling;
42 (3) If a guardian of the estate of the ward has not been appointed or
43 refuses to act, take such action, including bringing legal proceedings
44 on behalf of the ward, as may be reasonable, appropriate, and

1 necessary to protect the ward's personal rights, personal property, or
2 residence;

3 (4) If a guardian of the estate of the ward has not been appointed or
4 refuses to act, commence an administrative or judicial proceeding or
5 take other appropriate action to compel a person to support the ward or
6 to pay money for the benefit of the ward;

7 (5) Consent, or withhold consent, to medical, psychological, legal,
8 professional, or other care, treatment, or service for the ward;

9 (6) Delegate, through execution of a valid power of attorney and for a
10 period not to exceed six months, to another person with legal capacity
11 any of the guardian's powers regarding the ward's care, custody, or
12 property;

13 (7) If reasonable under all of the circumstances, delegate to the ward
14 certain responsibilities for decisions affecting the ward's well-being; or

15 (8) Exercise any other power conferred by law on a guardian of the person
16 of a minor.

17 (c) In exercising powers under subsection (a)(2) of this section, a guardian of the
18 person may establish or move the ward's place of dwelling outside this State only upon
19 express authorization of the clerk.

20 (d) Notwithstanding termination of the guardianship due to the ward's death, a
21 guardian of the person may make final burial and funeral arrangements for a deceased
22 ward if the ward's body remains unclaimed for five days.

23 **"§ 35A-1241.6. Rights and liability of guardian of the person of a minor.**

24 (a) A guardian of the person of a minor is entitled to reasonable compensation
25 from the ward's estate for services as guardian and to reimbursement for room, board,
26 and clothing provided by the guardian to the ward, if approved by the clerk. If a
27 guardian of the estate of a minor, other than the guardian or a person who is affiliated
28 with the guardian, has been appointed, reasonable compensation and reimbursement to
29 the guardian may be approved and paid by the guardian of the estate without order of
30 the clerk.

31 (b) A guardian of the person is not liable to a third person for acts of the ward
32 solely by reason of the guardian-ward relationship except to the extent that a parent is
33 liable under the circumstances.

34 (c) A guardian of the person who acts within the scope of the guardian's authority
35 and exercises reasonable care in choosing a third person to provide medical or other
36 care, treatment, or service for the ward is not liable for injury to the ward resulting from
37 the wrongful conduct of the third party.

38 (d) A guardian of the person who consents, or withholds consent, to medical
39 treatment or surgery for a ward is not liable to the ward or the ward's estate if the
40 guardian's actions were within the scope of the guardian's authority, taken in good faith,
41 and not negligent."

42 **SECTION 10.** G.S. 35A-1242 reads as rewritten:

43 **"§ 35A-1242. Status reports for incompetent wards, reports and accountings by**
44 **guardians of the person of incompetent persons.**

1 ~~(a) Any corporation or disinterested public agent that is guardian of the person~~
2 ~~for an incompetent person, within six months after being appointed, shall file an initial~~
3 ~~status report with the designated agency, if there is one, or with the clerk. Such guardian~~
4 ~~shall file a second status report with the designated agency or the clerk one year after~~
5 ~~being appointed, and subsequent reports annually thereafter. The clerk may order any~~
6 ~~other guardian of the person to file status reports. If a guardian required by this section~~
7 ~~to file a status report is employed by the designated agency, the guardian shall file any~~
8 ~~required status report with both the designated agency and the clerk. Within six months~~
9 ~~after appointment and annually thereafter, a guardian of the person of an incompetent~~
10 ~~person shall file a status report with the clerk, and with a designated agency if ordered~~
11 ~~by the clerk, regarding the ward's condition, care, and needs. This requirement applies~~
12 ~~only to: (i) a disinterested public agent or corporation that has been appointed as a~~
13 ~~guardian of the person of an incompetent person; or (ii) a guardian of the person of an~~
14 ~~incompetent person who has been ordered by the clerk, at the time of appointment or~~
15 ~~thereafter, to submit status reports pursuant to this section.~~

16 (a1) Except as otherwise provided by the clerk, a status report shall state or
17 contain the following:

- 18 (1) The current mental, physical, and social condition of the ward;
- 19 (2) The living arrangements for all addresses of the ward during the
20 reporting period;
- 21 (3) The medical, educational, vocational, and other services provided to
22 the ward and the guardian's opinion as to the adequacy of the ward's
23 care;
- 24 (4) A summary of the guardian's visits with the ward and activities on the
25 ward's behalf and the extent to which the ward has participated in
26 decision-making;
- 27 (5) If the ward is institutionalized, whether the guardian considers the
28 current plan for care, treatment, or habilitation to be in the ward's best
29 interest;
- 30 (6) Additional reports and information specified in G.S. 35A-1202(14);
- 31 (7) Plans for future care; and
- 32 (8) A recommendation as to the need for continued guardianship and any
33 recommended changes in the scope of the guardianship.

34 (b) Each status report shall be filed under the guardian's oath or affirmation that
35 the report is complete and accurate ~~so far as he is informed and can determine to the~~
36 best of the guardian's information and belief after reasonable inquiry.

37 (b1) The clerk may appoint a designated agency to review a report, interview the
38 ward or guardian, and make any other investigation the clerk deems appropriate.

39 (c) A clerk or designated agency that receives a status report shall not make the
40 status report available to anyone other than the guardian, the ward, the court, or State or
41 local human resource agencies providing services to the ward.

42 (d) Unless otherwise provided by order of the clerk, a guardian of the person who
43 receives money or property on behalf of a ward, disposes of a ward's property, or

1 expends a ward's funds for the ward's care shall file with the clerk an initial inventory
2 and annual accounts pursuant to Article 10 of this Chapter.

3 (e) The clerk shall establish a system for monitoring guardianships in which a
4 guardian of the person has been appointed, including the filing and review of status
5 reports and accounts."

6 **SECTION 11.** Article 8 of Chapter 35A of the General Statutes is amended
7 by adding a new section to read:

8 **"§ 35A-1242.1. Status reports and accountings by guardians of the persons of**
9 **minors.**

10 (a) At the time of appointment or any time thereafter, the clerk may order a
11 guardian of the person of a minor to submit status reports to the clerk and, if ordered by
12 the clerk, to a designated agency regarding the ward's condition, care, and needs.

13 (b) A guardian of the person of a minor ordered to submit status reports under
14 this section shall submit the status reports within six months of the order requiring
15 submission of status reports and annually thereafter.

16 (c) Except as otherwise provided by the clerk, a status report shall state or
17 contain the following:

18 (1) The current mental, physical, and social condition of the ward;

19 (2) The living arrangements for all addresses of the ward during the
20 reporting period;

21 (3) The medical, educational, vocational, and other services provided to
22 the ward and the guardian's opinion as to the adequacy of the ward's
23 care;

24 (4) A summary of the guardian's visits with the ward and activities on the
25 ward's behalf and the extent to which the ward has participated in
26 decision-making;

27 (5) If the ward is institutionalized, whether the guardian considers the
28 current plan for care, treatment, or habilitation to be in the ward's best
29 interest;

30 (6) Additional reports and information specified in G.S. 35A-1202(14);

31 (7) Plans for future care; and

32 (8) A recommendation as to any recommended changes in the scope of the
33 guardianship.

34 (d) Each status report shall be filed under the guardian's oath or affirmation that
35 the report is complete and accurate to the best of the guardian's information and belief
36 after reasonable inquiry.

37 (e) The clerk may appoint a designated agency to review a report, interview the
38 ward or guardian, and make any other investigation the clerk deems appropriate.

39 (f) A clerk or designated agency that receives a status report shall not make the
40 status report available to anyone other than the guardian, the ward, the court, or State or
41 local health and human service agencies providing services to the ward.

42 (g) Unless otherwise provided by order by the clerk, a guardian or the person
43 who received money or property on behalf of a ward or expends a ward's funds for the

1 ward's care shall file with the clerk an initial inventory and annual accounts pursuant to
2 Article 10 of this Chapter.

3 (h) The clerk shall establish a system for monitoring guardianships in which a
4 guardian of the person has been appointed, including the filing and review of status
5 reports and accountings."

6 **SECTION 12.** G.S. 35A-1245 reads as written:

7 "**§ 35A-1245. Procedure to permit the sterilization of a ~~mentally ill or a mentally~~**
8 **~~retarded ward~~an incompetent person in the case of medical necessity.**

9 (a) A guardian of the person of an incompetent person shall not consent to ~~the a~~
10 medical procedure that would result in sterilization of a ~~mentally ill or mentally~~
11 ~~retarded~~the ward unless an order from the clerk has been obtained in accordance with
12 this section.

13 (b) If a ~~mentally ill or mentally retarded~~an incompetent ward needs to undergo a
14 medical procedure that would result in sterilization, the ward's guardian shall petition
15 the clerk for an order to permit the guardian to consent to the procedure. The petition
16 shall contain the following:

17 (1) A sworn statement from a physician licensed in this State who has
18 examined the ward that the proposed procedure is medically necessary
19 and not for the sole purpose of sterilization or for the purpose of
20 hygiene or convenience.

21 (2) The name and address of the physician who will perform the
22 procedure.

23 (3) A sworn statement from a psychiatrist or psychologist licensed in this
24 State who has examined the ward as to whether the ~~mentally ill or~~
25 ~~mentally retarded~~ ward is able to comprehend the nature of the
26 proposed procedure and its consequences and provide an informed
27 consent to the procedure.

28 (4) If the ward is able to comprehend the nature of the proposed procedure
29 and its consequences, the sworn consent of the ward to the procedure.

30 (c) A copy of the petition shall be served on the ward personally. If the ward is
31 unable to comprehend the nature of the proposed procedure and its consequences and is
32 unable to provide an informed consent, the clerk shall appoint an attorney to represent
33 the ward in accordance with rules adopted by the Office of Indigent Defense Services.

34 (d) Should the ward or the ward's attorney request a hearing, a hearing shall be
35 held. Otherwise, the clerk may enter an order without the appearance of witnesses. If a
36 hearing is held, the guardian and the ward may present evidence.

37 (e) If the clerk finds the following, the clerk shall enter an order permitting the
38 guardian to consent to the proposed procedure:

39 (1) The ward is capable of comprehending the procedure and its
40 consequences and has consented to the procedure, or the ward is
41 unable to comprehend the procedure and its consequences.

42 (2) The procedure is medically necessary and is not solely for the purpose
43 of sterilization or for hygiene or convenience.

1 (f) The guardian or the ward, the ward's attorney, or any other interested party
2 may appeal the clerk's order to the superior court in accordance with G.S. 1-301.2(e)."

3 **SECTION 13.** Article 8 of Chapter 35A of the General Statutes is amended
4 by adding a new section to read:

5 **"§ 35A-1246. Orders regarding custody of incompetent person.**

6 (a) If a guardian of the person of an incompetent person has the power to take
7 custody of the ward pursuant to G.S. 35A-1241.2(a)(2), but has been unable, despite
8 reasonable efforts, to take or retain physical custody of the ward, the clerk, upon motion
9 by the guardian and finding that the ward is at imminent risk of serious harm or may
10 leave the State, may issue an order directing any law enforcement officer to take
11 physical custody of the ward and deliver the ward to the guardian. An order issued
12 under this subsection is enforceable throughout this State. If the clerk finds that a less
13 intrusive remedy is not effective, the order may authorize law enforcement officers to
14 enter private property to take physical custody of the ward. If required by exigent
15 circumstances, the order may authorize law enforcement officers to make a forcible
16 entry at any hour.

17 (b) If a guardian of the person of an incompetent person has the power to take
18 custody of the ward pursuant to G.S. 35A-1241.2(a)(2) and a person, other than the
19 ward, has interfered with the guardian's custody or placement of the ward, the clerk,
20 upon motion by the guardian, notice to the person who has allegedly interfered with the
21 guardian's custody of the ward, and hearing, may issue an order enjoining that person
22 from interfering with the guardian's custody or placement of the ward. An order issued
23 under this subsection is enforceable through civil or criminal contempt pursuant to
24 Chapter 5A of the General Statutes."

25 **SECTION 14.** G.S. 122C-73(e) reads as rewritten:

26 "(e) If, following the execution of an advance instruction for mental health
27 treatment, a court of competent jurisdiction appoints a guardian of the person of the
28 principal, or a general guardian with powers over the person of the principal, the
29 guardian ~~shall follow the advance instruction consistent with G.S. 35A-1201(a)(5).~~ shall,
30 as required by G.S. 35A-1241.1(d), exercise the guardian's powers consistently with the
31 advance instruction for mental health treatment unless the guardian determines that
32 doing so is contrary to the ward's best interest."

33 **SECTION 15.** This act becomes effective October 1, 2008, and applies to
34 appointments, services, acts, or omissions on or after that date.