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HOUSE BILL NO. 1657

Offered January 14, 2009

Prefiled December 15, 2008

A BILL to amend and reenact § 37.2-1007 of the Code of Virginia, relating to appointment of guardian or conservator.

Patron—Marshall, R.G.

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 37.2-1007 of the Code of Virginia is amended and reenacted as follows:**

§ 37.2-1007. Hearing on petition to appoint.

The respondent is entitled to a jury trial, upon request, and may compel the attendance of witnesses, present evidence on his own behalf, and confront and cross-examine witnesses.

The court or, if one is requested, the jury shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The proposed guardian or conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide the court with a recommendation as to living arrangements and a treatment plan for the respondent. The respondent is entitled to be present at the hearing and all other stages of the proceedings. The respondent shall be present if he so requests or if his presence is requested by the guardian ad litem. Whether or not present, the respondent shall be regarded as having denied the allegations in the petition.

In determining the need for a guardian or a conservator and the powers and duties of any needed guardian or conservator, consideration shall be given to the following factors: the limitations of the respondent; the development of the respondent's maximum self-reliance and independence; the availability of less restrictive alternatives, including advance directives and durable powers of attorney; the extent to which it is necessary to protect the respondent from neglect, exploitation, or abuse; the actions needed to be taken by the guardian or conservator; and the suitability of the proposed guardian or conservator.

If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person to be the guardian or the conservator or both, giving due deference to the wishes of the respondent. *If the court determines that a guardian or conservator, or both, is necessary and the court finds that the respondent is married, the respondent's spouse shall be considered for appointment as guardian or conservator, or both, before any other person.*

The court in its order shall make specific findings of fact and conclusions of law in support of each provision of any orders entered.

INTRODUCED

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