



John E. Barnes, Jr.

State Representative 12th House District of Ohio

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Dear Fellow Citizens:

Almost everyone in our community, state, and nation has been affected by the consequences of addiction to opioids and its companion fentanyl, which is devastating families and communities with irreparable harm. We are unrelenting in doing as much as we can to ensure local, state, and federal efforts will help with treatment and assistance to try to eradicate this epidemic, which is challenging our society. However, in many instances this is not enough.

My office has worked to assemble some very detailed information to address specific questions about what we call tough love actions because it is very tough and challenging for families to make decisions regarding their loved ones, who are dealing with this addiction. I am providing this information in response to numerous inquiries my office has received, and to be proactive on this issue by providing this important information to community leaders. **It is important to note, this is not intended to replace legal advice**, but it is information explaining the current laws of the state of Ohio on this important issue. I hope you will share this information with your community, churches, and organizations as it is important for our community to stay advised on current state law for tough love actions, which sometimes have to be taken when all other efforts and avenues for voluntary addiction treatment have been exhausted.

Options Beyond Treatment for Opioid Addiction

Content Summary

Under Ohio guardianship law, a probate court may appoint a guardian for an incompetent person on the motion of the court or upon application of any interested party, including the parent of a drug-addicted adult child. By definition, an incompetent includes a person who is mentally impaired, as a result of chronic substance abuse, and is unable to care for himself or herself. The court may appoint a nonrelative as the guardian of an incompetent, including a drug-addicted adult. Although the courts have broad appointment powers, they generally grant appointments to next of kin or those with family ties to the incompetent person. A parent of a minor child who is addicted to drugs has the right and responsibility to care for the child.

Below is detailed information on Ohio guardianship law and parental rights regarding addicted adult children and addicted minor children, and this information includes the Ohio Revised Code sections and court cases for your reference.

Parent as guardian of an adult child addicted to drugs

Ohio law neither specifically requires nor prohibits the appointment of a parent as guardian of the parent's adult child who is addicted to drugs. In 1990, the Ohio Court of Appeals, 11th District, found in *In re Guardianship of Terzano* that the law does not include a preference for the appointment of guardians, that the courts have broad discretion in making appointments, and that they are not required to appoint a relative of the person.

However, as noted in *Terzano*, the courts "generally select the next of kin or those with familial ties or someone acceptable to such persons on the theory that they will be the most concerned with the ward's welfare," but may appoint a stranger as guardian if it is in the best interest of the person for whom a guardianship is sought.

In re Guardianship of Terzano, 11th Dist. Lake No. 90L14050, 1990 Ohio App. LEXIS 5398 (December 7, 1990)

Guardians for incompetents including drug addicts

The law requires a probate court to appoint a guardian of a person who is an "incompetent" if the court finds the appointment is necessary and if the person for whom a guardian is to be appointed is a resident of the county or has a legal settlement in the county. The court has jurisdiction to appoint a guardian for an adult if (1) Ohio is the person's home state, (2) the person has a significant connection to Ohio and the probate court is the appropriate forum, (3) the exercise of jurisdiction does not violate the Ohio or U.S. Constitutions, or (4) the court has special jurisdiction due to an emergency (O.R.C. 2111.02(A), 2112.21, and 2112.22). Under the law, a person who is addicted to drugs is considered "incompetent" if the person is "so mentally impaired . . . as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide (O.R.C. 2111.01(D)(1)).

Procedure for guardianship appointments

The court may appoint a guardian on its own motion or on application by any interested party. An interested party includes a person nominated in a durable power of attorney or someone the person nominated to serve as guardian in a proceeding to appoint a guardian for the person. The nomination must be in writing and must be signed and witnessed. In a guardianship proceeding, the person for whom a guardianship is being sought must have the opportunity to have the assistance of an attorney (O.R.C. 2111.02(A) and 2111.121(A)).

A person may apply for appointment as a guardian of a person who is an alleged incompetent by filing an application with the probate court that contains the following information:

- A statement of information about the estate of the ward (the person for whom the guardianship is sought);
- A statement whether the applicant has ever been charged with or convicted of any crime involving theft, physical violence, or sexual, alcohol, or substance abuse, and if so, the date and place of each charge and conviction;
- A statement whether the applicant is applying for a limited guardianship, and if so, a description of the limited powers requested and whether the guardianship is to be for a definite or indefinite period;
- The name, age, and residence of the person for whom the guardianship is sought;
- Facts upon which the application is based;
- The name, degree of kinship, age, and address of the next of kin of the alleged incompetent (O.R.C. 2111.03).

Prior to the appointment of a guardian, the court must conduct a hearing and provide at least seven days' prior notice of the hearing to the adult incompetent and to the next of kin residing in the state. The proposed guardian must appear at the hearing, and must, if appointed, swear under oath that he or she has made and will continue to make diligent efforts to file a true inventory of the alleged incompetent's assets and will faithfully and completely fulfill the duties of guardian (O.R.C. 2111.02 (C) and 2111.04 (A)(2)).

During the hearing, proof of the person's incompetence must be by clear and convincing evidence. The hearing must be recorded upon request of the parties to the case. At the hearing, the court may consider evidence of a less restrictive alternative to guardianship. The hearing must afford the alleged incompetent specific rights. Those include:

- The right to be represented by independent counsel of the alleged incompetent's choice;

- The right to have a friend or family member of the alleged incompetent's choice present;
- The right to have evidence of an independent expert evaluation introduced;
- If the alleged incompetent is indigent, the right, upon request, to have counsel and an expert evaluator appointed at court expense and if the guardianship appointment is appealed, the right to have counsel appointed and transcripts for appeal prepared at court expense (R.C. 2111.02 (C)).

The law also specifies that someone nominated to be a guardian of an incompetent adult child, pursuant to a durable power of attorney or the adult child's written nomination, must have preference in appointment over a person applying to be guardian if:

1. The nominated person is competent, suitable, and willing to accept it;
2. The incompetent adult child does not have a spouse or adult child; and
3. The incompetent adult child does not already have a guardian prior to the guardianship hearing finding incompetency (O.R.C. 2111.02 (D)(2)).

Nonrelative guardian for an adult addicted to drugs

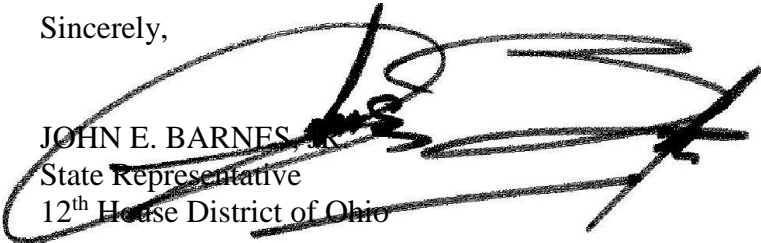
The guardianship process as described above permits any interested party to seek guardianship of an incompetent adult. An interested party may be a person nominated in a durable power of attorney, someone who the person has nominated in writing to serve as guardian under a guardianship proceeding, or someone else who has filed a guardianship application. Thus, a nonrelative may submit an application to the court to be appointed the guardian for an adult addicted to drugs.

Parental rights and responsibilities for a minor child addicted to drugs

A parent has the right and responsibility for the care, custody, and control of the parent's minor child (*In re Murray*, 52 Ohio St.3d 155 (1990)); (O.R.C. 3103.03). In fact, "[t]he norm in our society is for a parent to strive to see that his children are reasonably well nourished, housed, and clothed and reasonably protected from harm, and provided with necessary health care" (*State v. Sammons*, 50 Ohio St.2d 460, 463 (1979)). Failure of a parent to meet these requirements could lead to criminal prosecution or a juvenile adjudication that the child is abused, neglected, or dependent (O.R.C. 2151.03, 2151.031, 2151.04, 2151.28, and 2919.22). Because of the nature of parental rights and responsibilities and the consequences of failing to live up to them, it would seem clear that parents have the right and duty to provide care for their child who is addicted to drugs.

I hope you find this information helpful as we come together to work together to do everything we can in order to serve the common needs of humanity for a better more prosperous tomorrow. If you have any questions, please do not hesitate to contact my office at 614-466-1408.

Sincerely,



JOHN E. BARNES
State Representative
12th House District of Ohio

This is a follow-up to the tough love guide originally released by our office in January of 2017.