

1 **DISABLED ADULT GUARDIANSHIP AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

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5 **LONG TITLE**

6 **General Description:**

7 This bill provides that, under certain circumstances, counsel is not required for a  
8 disabled adult when the petitioner for guardianship is the disabled adult's parent.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ provides that counsel is not required for the prospective ward under certain
- 12 circumstances.

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 None

17 **Utah Code Sections Affected:**

18 AMENDS:

19 **75-5-303**, as last amended by Laws of Utah 2013, Chapter 364

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21 *Be it enacted by the Legislature of the state of Utah:*

22 Section 1. Section **75-5-303** is amended to read:

23 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**  
24 **person.**

25 (1) The incapacitated person or any person interested in the incapacitated person's  
26 welfare may petition for a finding of incapacity and appointment of a guardian.

27 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of  
28 incapacity. Unless the allegedly incapacitated person has counsel of the person's own choice,  
29 the court shall appoint an attorney to represent the person in the proceeding the cost of which  
30 shall be paid by the person alleged to be incapacitated. If the court determines that the petition  
31 is without merit, the attorney fees and court costs shall be paid by the person filing the petition.  
32 If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated

33 person, regardless of whether the nominee is specified in the moving petition or nominated  
34 during the proceedings, the petitioner shall be entitled to receive from the incapacitated person  
35 reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the  
36 petition.

37 (3) The legal representation of the incapacitated person by an attorney shall terminate  
38 upon the appointment of a guardian, unless:

39 (a) there are separate conservatorship proceedings still pending before the court  
40 subsequent to the appointment of a guardian;

41 (b) there is a timely filed appeal of the appointment of the guardian or the  
42 determination of incapacity; or

43 (c) upon an express finding of good cause, the court orders otherwise.

44 (4) The person alleged to be incapacitated may be examined by a physician appointed  
45 by the court who shall submit a report in writing to the court and may be interviewed by a  
46 visitor sent by the court. The visitor also may interview the person seeking appointment as  
47 guardian, visit the present place of abode of the person alleged to be incapacitated and the place  
48 it is proposed that the person will be detained or reside if the requested appointment is made,  
49 conduct other investigations or observations as directed by the court, and submit a report in  
50 writing to the court.

51 (5) (a) The person alleged to be incapacitated shall be present at the hearing in person  
52 and see or hear all evidence bearing upon the person's condition. If the person seeking the  
53 guardianship requests a waiver of presence of the person alleged to be incapacitated, the court  
54 shall order an investigation by a court visitor, the costs of which shall be paid by the person  
55 seeking the guardianship.

56 (b) The investigation by a court visitor is not required if there is clear and convincing  
57 evidence from a physician that the person alleged to be incapacitated has:

58 (i) fourth stage Alzheimer's Disease;

59 (ii) extended comatosis; or

60 (iii) (A) an intellectual disability; and

61 (B) an intelligence quotient score under 20 to 25.

62 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to  
63 present evidence, to cross-examine witnesses, including the court-appointed physician and the

64 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if  
65 the person alleged to be incapacitated or the person's counsel so requests.

66 (d) Counsel for the person alleged to be incapacitated is not required if:

67 (i) the person is the biological or adopted child of the petitioner;

68 (ii) the person has an intellectual disability and an intelligence quotient score under 50;

69 and

70 (iii) the person has no assets.