

**Keven J. Stratton** proposes the following substitute bill:

**Guardianship Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

House Sponsor:

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**LONG TITLE**

**General Description:**

This bill addresses a guardianship for an individual with a severe intellectual disability.

**Highlighted Provisions:**

This bill:

- defines terms for guardianship;
- clarifies court jurisdiction for guardianships;
- enacts a guardianship proceeding for an individual with a severe intellectual disability;
- addresses the applicability of a guardianship proceeding for an individual with a severe intellectual disability;
- enacts certain rights for an individual with a severe intellectual disability for which a full guardianship is imposed;
- provides the requirements for a guardianship proceeding for an individual with a severe intellectual disability, including the requirements for the petition, venue, and in-person hearings;
- addresses the appointment of:
  - an attorney for a respondent in a guardianship proceeding for an individual with a severe intellectual disability;
  - a physician, psychologist, physician assistant, or court visitor to examine the respondent; and
  - an emergency or temporary guardian while guardianship proceedings are pending;
- provides that a court may appoint a guardian for a respondent if the court makes certain findings;
- provides that the court shall prefer a full guardianship for an individual with a severe intellectual disability;
- requires the court to include certain provisions in an order of appointment;

- 29       ▶ provides who may be a guardian for an individual with a severe intellectual disability;
- 30       ▶ addresses the duties, powers, and rights of a guardian for an individual with a severe
- 31 intellectual disability in a full guardianship;
- 32       ▶ addresses the removal or resignation of a guardian for an individual with a severe
- 33 intellectual disability;
- 34       ▶ addresses the termination of a guardianship for an individual with a severe intellectual
- 35 disability; and
- 36       ▶ makes technical and conforming changes.

37 **Money Appropriated in this Bill:**

38       None

39 **Other Special Clauses:**

40       None

41 **Utah Code Sections Affected:**

42 AMENDS:

43       **75-5-311**, as last amended by Laws of Utah 2023, Chapter 330

44       **75-5-317**, as enacted by Laws of Utah 2018, Chapter 294

45 ENACTS:

46       **75-5-101.1**, Utah Code Annotated 1953

47       **75-5-601**, Utah Code Annotated 1953

48       **75-5-602**, Utah Code Annotated 1953

49       **75-5-603**, Utah Code Annotated 1953

50       **75-5-604**, Utah Code Annotated 1953

51       **75-5-605**, Utah Code Annotated 1953

52       **75-5-606**, Utah Code Annotated 1953

53       **75-5-607**, Utah Code Annotated 1953

54       **75-5-608**, Utah Code Annotated 1953

55       **75-5-609**, Utah Code Annotated 1953

56       **75-5-610**, Utah Code Annotated 1953

57       **75-5-611**, Utah Code Annotated 1953

58       **75-5-612**, Utah Code Annotated 1953

59       **75-5-613**, Utah Code Annotated 1953

60 RENUMBERS AND AMENDS:

61       **75-5-101.5**, (Renumbered from 75-5-101, as enacted by Laws of Utah 1975, Chapter

62       150)

63 REPEALS:

64 **75-5-308**, as enacted by Laws of Utah 1975, Chapter 150

65

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

67 Section 1. Section **75-5-101.1** is enacted to read:

68 **75-5-101.1 . Definitions for chapter.**

69 As used in this chapter:

70 (1) "Adult" means an individual who is 18 years old or older.

71 (2) "Court visitor" means an individual who is trained in law, nursing, or social work and is  
72 an officer, employee, or special appointee of the court with no personal interest in the  
73 proceedings.

74 (3) "Full guardianship" means a guardianship that grants a guardian all the powers available  
75 to the guardian under the law with respect to an individual who is incapacitated,  
76 including all the powers, duties, and rights that a parent has with respect to the parent's  
77 unemancipated minor child.

78 (4) "Incapacitated" means the same as that term is defined in Section 75-1-201.

79 (5) "Joint legal decision-making" means two individuals, regardless of whether the  
80 individuals are married, sharing legal decision-making and each individual's rights or  
81 responsibilities are not being superior to the other individual's rights, except with respect  
82 to specified decisions set forth by the court or the individuals in an order of appointment.

83 (6) "Legal decision-making" means the legal right and responsibility to make all legal  
84 decisions for an individual who is incapacitated, including decisions regarding  
85 education, health care, religious training, and personal care decisions.

86 (7) "Letters of guardianship" means a legal document that establishes a guardian's authority  
87 to make decisions for an individual.

88 (8) "Limited guardianship" means, except as provided in Section 75-5-316, a guardianship  
89 that grants the guardian less than all powers available to the guardian under the law or  
90 otherwise restricts the powers of the guardian.

91 (9) "Order of appointment" means an order from a court:

92 (a) appointing a guardian for an individual who is incapacitated; and

93 (b) describing the powers, duties, and responsibilities of the guardian.

94 (10) "Specialized care professional" means an individual who is certified as a National  
95 Certified Guardian or National Master Guardian by the Center for Guardianship  
96 Certification or similar organization.

97 (11) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole  
98 proprietorship, or other type of business organization that is owned, operated by, or  
99 employs a specialized care professional.

100 Section 2. Section **75-5-101.5**, which is renumbered from Section 75-5-101 is renumbered  
101 and amended to read:

102 **[75-5-101] 75-5-101.5 . Jurisdiction of subject matter -- Consolidation of**  
103 **proceedings.**

104 (1) [The] A court has jurisdiction over protective proceedings and guardianship proceedings  
105 in accordance with Chapter 5b, Uniform and Adult Guardianship and Protective  
106 Proceedings Jurisdiction Act, and Title 78A, Judiciary and Judicial Administration.

107 (2) When both guardianship and protective proceedings as to the same person are  
108 commenced or pending in the same court, the proceedings may be consolidated.

109 Section 3. Section **75-5-311** is amended to read:

110 **75-5-311 . Who may be guardian -- Priorities.**

111 [~~(1) As used in this section:~~]

112 [~~(a) "Specialized care professional" means a person who is certified as a National~~  
113 ~~Certified Guardian or National Master Guardian by the Center for Guardianship~~  
114 ~~Certification or similar organization.]~~

115 [~~(b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole~~  
116 ~~proprietorship, or other type of business organization that is owned, operated by, or~~  
117 ~~employs a specialized care professional.]~~

118 [~~(2)~~] (1)(a) The court shall appoint a guardian in accordance with the incapacitated  
119 person's most recent nomination, unless that person is disqualified or the court finds  
120 other good cause why the person should not serve as guardian.

121 (b) That nomination shall have been made prior to the person's incapacity, shall be in  
122 writing and shall be signed by the person making the nomination.

123 (c) The nomination shall be in substantially the following form:

124 **Nomination of Guardian by an Adult**

125 I, (Name), being of sound mind and not acting under duress, fraud, or other undue  
126 influence, do hereby nominate (Name, current residence, and relationship, if any, of the  
127 nominee) to serve as my guardian in the event that after the date of this instrument I become  
128 incapacitated.

129 Executed at \_\_\_\_\_ (city, state)

130 on this \_\_\_\_\_ day of \_\_\_\_\_

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(Signature)

- ~~[(3)]~~ (2) Except as provided in Subsection ~~[(2)]~~ (1), persons who are not disqualified have priority for appointment as guardian in the following order:
- (a) a person who has been nominated by the incapacitated person, by any means other than that described in Subsection ~~[(2)]~~ (1), if the incapacitated person was 14 years old or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;
  - (b) the spouse of the incapacitated person;
  - (c) an adult child of the incapacitated person;
  - (d) a parent of the incapacitated person, including a person nominated by will, written instrument, or other writing signed by a deceased parent;
  - (e) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;
  - (f) a person nominated by the person who is caring for him or paying benefits to him;
  - (g) a specialized care professional, so long as the specialized care professional does not:
    - (i) profit financially or otherwise from or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or
    - (ii) otherwise have a conflict of interest in providing those services;
  - (h) any competent person or suitable institution; or
  - (i) the Office of Public Guardian under Title 26B, Chapter 6, Part 3, Office of Public Guardian.

Section 4. Section **75-5-317** is amended to read:

**75-5-317 . Guardianship proceedings for minor becoming an incapacitated adult.**

- (1) As used in this section:
- ~~[(a) "Incapacitated" means the same as that term is defined in Section 75-1-201.]~~
  - ~~[(b) "Joint legal decision-making" means parents or two individuals, regardless of whether they are married, sharing legal decision-making and no individual's rights or responsibilities being superior except with respect to specified decisions set forth by the court or the individuals in a final judgment or order.]~~
  - ~~[(c) "Legal decision-making" means the legal right and responsibility to make all nonemergency legal decisions for a minor including those regarding education, health care, religious training, and personal care decisions.]~~

- 165       ~~[(d) "Minor" means the same as that term is defined in Section 75-1-201.]~~
- 166       ~~[(e)]~~ (a) "Physician" means an individual:
- 167           (i) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
- 168           (ii) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
- 169               Practice Act.
- 170       ~~[(f)]~~ (b) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist
- 171           Licensing Act, to engage in the practice of psychology as defined in Section
- 172           58-61-102.
- 173       ~~[(g)]~~ (c) "Sole legal decision-making" means one parent or one individual having the
- 174           legal right and responsibility to make major decisions for the minor child.
- 175 (2)(a) Notwithstanding the other provisions of this part, a person who may be a guardian
- 176       of an incapacitated person under Section 75-5-301 may initiate guardianship
- 177       proceedings pursuant to this Subsection (2) for a minor who is at least 17 years, six
- 178       months ~~[of age]~~ old and who is alleged to be incapacitated and request that a
- 179       guardianship order take effect immediately on the day the minor turns 18 years ~~[of~~
- 180       ~~age]~~ old.
- 181       (b)(i) The petitioner shall provide with the petition a written report of an evaluation
- 182           of the minor by a physician or psychologist that meets the requirements of
- 183           Subsection (2)(c).
- 184           (ii) If the evaluation is conducted within six months after the date the petition is filed
- 185               with the court, the petitioner may ask in the petition that the court accept this
- 186               report in lieu of ordering any additional evaluation and the court may grant the
- 187               request.
- 188       (c) A written report filed pursuant to this section by a physician or psychologist acting
- 189       within that person's scope of practice shall include the following information:
- 190           (i) a specific description of the physical, psychiatric, or psychological diagnosis of
- 191               the person;
- 192           (ii) a comprehensive assessment listing any functional impairments of the alleged
- 193               incapacitated person and an explanation of how and to what extent these
- 194               functional impairments may prevent that person from receiving or evaluating
- 195               information in making decisions or in communicating informed decisions, with or
- 196               without assistance, regarding that person;
- 197           (iii) an analysis of the tasks of daily living the alleged incapacitated person is capable
- 198               of performing independently or with assistance;

- 199 (iv) a list of the medications the alleged incapacitated person is receiving, the dosage  
 200 of the medications, and a description of the effects each medication has on the  
 201 person's behavior to the best of the declarant's knowledge;
- 202 (v) a prognosis for improvement in the alleged incapacitated person's condition and a  
 203 recommendation for the most appropriate rehabilitation plan or care plan; and
- 204 (vi) other information the physician or psychologist considers appropriate.
- 205 (3)(a) Notwithstanding the priorities in Section 75-5-311, if the petition for appointment  
 206 of a guardian for the incapacitated person is filed pursuant to Subsection (2) or within  
 207 two years after the day the incapacitated person turns 18 years [~~of age~~] old, unless the  
 208 court finds the appointment to be contrary to the incapacitated person's best interest:
- 209 (i) the court shall appoint as the incapacitated person's guardian any person who, by  
 210 court order, had sole legal decision-making of the incapacitated person when the  
 211 incapacitated person attained 17 years, six months [~~of age~~] old; or
- 212 (ii) if two individuals had joint legal decision-making of the incapacitated person  
 213 when the incapacitated person attained 17 years, six months [~~of age~~] old, the court  
 214 shall appoint both individuals as the incapacitated person's coguardians.
- 215 (b) If under Subsection (3)(a) the court finds the appointment of an individual described  
 216 in Subsection (3)(a) is contrary to the incapacitated person's best interest or if the  
 217 individual is unwilling to be appointed or serve as a guardian, the court may apply  
 218 the priorities in Section 75-5-311 in appointing a guardian.

- 219 (4)(a) The court may appoint more than one person as the incapacitated person's  
 220 coguardians if the appointment is required by Subsection (3) or the court finds that  
 221 the appointment is in the incapacitated person's best interest.
- 222 (b) If the court appoints coguardians, the coguardians shall share legal decision-making  
 223 for the incapacitated person and neither coguardian's rights or responsibilities are  
 224 superior except as otherwise ordered by the court.

225 Section 5. Section **75-5-601** is enacted to read:

226 **Part 6. Guardian of Individual with a Severe Intellectual Disability**

227 **75-5-601 . Definitions for part.**

228 As used in this part:

- 229 (1)(a) "Individual with a severe intellectual disability" means an adult who:
- 230 (i) has lifelong functional limitations to the extent that the adult is incapacitated; and
- 231 (ii) has received a diagnosis from a physician or psychologist of a severe intellectual  
 232 disability that has existed since the adult was a minor.

- 233 (b) "Individual with a severe intellectual disability" does not include an adult who had  
234 capacity at one time or may regain capacity.
- 235 (2) "Petitioner" means the person who brings a petition for guardianship under this part.
- 236 (3) "Physician" means an individual:
- 237 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or  
238 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical  
239 Practice Act.
- 240 (4) "Psychologist" means an individual licensed under Title 58, Chapter 61, Psychologist  
241 Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.
- 242 (5) "Remotely" means a participant will appear by video conference or other electronic  
243 means approved by the court.
- 244 (6) "Respondent" means the adult who is alleged to be an individual with a severe  
245 intellectual disability.

246 Section 6. Section **75-5-602** is enacted to read:

247 **75-5-602 . Applicability of this part.**

- 248 (1) This part only applies to a guardianship for an adult for whom there is a signed letter or  
249 report from a physician or psychologist that indicates that the adult is an individual with  
250 a severe intellectual disability.
- 251 (2) Except as provided in Subsection (4) or another provision of this part, the provisions of  
252 Part 3, Guardians of Incapacitated Persons, do not apply to the guardianship of an adult  
253 described in Subsection (1).
- 254 (3) This part does not apply to a guardianship for an adult if the court finds that the adult is  
255 not an individual with a severe intellectual disability.
- 256 (4) Part 3, Guardians of Incapacitated Persons, applies to a guardianship for an adult who is  
257 not an individual with a severe intellectual disability.

258 Section 7. Section **75-5-603** is enacted to read:

259 **75-5-603 . Rights of an individual with a severe intellectual disability.**

- 260 (1) An adult, who is allegedly incapacitated and for whom there is a signed letter or report  
261 from a physician or psychologist that indicates that the adult is an individual with a  
262 severe intellectual disability, has the right to:
- 263 (a) except as provided in Section 75-5-606, be represented by counsel before a  
264 guardianship is imposed and have counsel represent the adult during the guardianship  
265 proceeding;
- 266 (b) receive a copy of all documents filed in a guardianship proceeding;



- 267 (c) have a relative, physician, psychologist, physician assistant, or any interested person  
 268 speak about or raise any issue of concern on behalf of the adult during the  
 269 guardianship proceeding;
- 270 (d) receive information about guardianships from the court; and  
 271 be treated with respect and dignity.
- 272 (2) Except as otherwise provided by this part, if a court orders a full guardianship for an  
 273 adult and enters an order of appointment that specifies that the adult is an individual  
 274 with a severe intellectual disability, the adult has the right to:
- 275 (a) have a relative, physician, psychologist, physician assistant, or any interested person  
 276 speak about or raise any issue of concern on behalf of the adult in any court hearing  
 277 about the guardianship;
- 278 (b) receive a copy of all documents filed in court regarding the guardianship;
- 279 (c) receive information about guardianships from the court;
- 280 (d) ask questions and express concerns or complaints about a guardian and the actions of  
 281 a guardian to the court;
- 282 (e) to the extent practicable, receive timely, effective, and appropriate health care and  
 283 medical treatment that does not violate the adult's rights;
- 284 (f) have all services provided by a guardian at a reasonable rate of compensation;
- 285 (g) have a court review any request for payment by a guardian to avoid excessive or  
 286 unnecessary fees or duplicative billing; and
- 287 (h) receive prudent financial management of the adult's property, including  
 288 Supplemental Security Income and Supplemental Security Disability Insurance.
- 289 (3) If the court enters an order for a limited guardianship for an adult or fails to specify in  
 290 the order of appointment as to whether the adult is an individual with a severe  
 291 intellectual disability, the adult has the rights of an incapacitated person described in  
 292 Section 75-5-301.5.

293 Section 8. Section **75-5-604** is enacted to read:

294 **75-5-604 . Petition for guardianship of an individual with a severe intellectual**  
 295 **disability -- Venue -- Proceedings.**

- 296 (1) A person interested in an adult's welfare may petition a court for a finding that:
- 297 (a) the adult is an individual with a severe intellectual disability; and  
 298 (b) the appointment of a guardian is necessary or desirable as a means of providing  
 299 continuing care to the adult.
- 300 (2) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a petitioner shall bring

- 301 a petition described in Subsection (1) in the county where:
- 302 (a) the respondent resides or is present; or
- 303 (b) if the respondent is admitted to an institution by an order of a court, the court is
- 304 located.
- 305 (3)(a) Upon the filing of a petition under Subsection (1), the court shall set a date for a
- 306 hearing on the issue of whether the respondent is an individual with a severe
- 307 intellectual disability.
- 308 (b) The court shall, while preserving the due process rights of the respondent, conduct
- 309 the hearing remotely in accordance with Utah Rules of Civil Procedure, Rule 87,
- 310 unless the court finds good cause under Utah Rules of Civil Procedure, Rule 87, to
- 311 not conduct the hearing remotely.
- 312 (4) Except as provided in Section 75-5-606, the respondent is entitled to be represented by
- 313 counsel, present evidence, and cross-examine witnesses, including a physician,
- 314 psychologist, physician assistant, or court visitor appointed under Section 75-5-607.
- 315 (5) The court shall determine the issue of whether the respondent is an individual with a
- 316 severe intellectual disability at a closed hearing, without a jury, if the respondent or the
- 317 respondent's counsel requests so.
- 318 (6) The respondent shall:
- 319 (a) be present at any hearing on the petition; or
- 320 (b) hear all evidence bearing upon the respondent's condition.
- 321 (7) If the petitioner requests a waiver of the presence of the respondent, the court shall order
- 322 an investigation by a court visitor in accordance with Section 75-5-607.
- 323 Section 9. Section **75-5-605** is enacted to read:
- 324 **75-5-605 . Notices for guardianship proceedings.**
- 325 (1) Upon a petition for the appointment or removal of a guardian for an adult who is an
- 326 individual with a severe intellectual disability, or is alleged to be an individual with a
- 327 severe intellectual disability, other than the appointment of an emergency guardian or
- 328 temporary suspension of a guardian, the petitioner shall give notice of the petition to:
- 329 (a) the adult and the adult's parents;
- 330 (b) any person who is serving as guardian or conservator or who has care and custody of
- 331 the adult;
- 332 (c) if the petitioner is unable to notify the adult's parents under Subsection (1)(a), at least
- 333 one of the closest adult relatives of the individual if any can be found; and
- 334 (d) Adult Protective Services if Adult Protective Services has received a referral under

335 Title 26B, Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult,  
 336 concerning the welfare of the adult or concerning the guardian or conservator or  
 337 proposed guardian or conservator.

338 (2) A notice described in Subsection (1) shall:

339 (a) be in plain language and large type and in a form with final approval of the Judicial  
 340 Council;

341 (b) indicate the time and place of the hearing, the possible adverse consequences to the  
 342 adult described in Subsection (1) who is receiving notice of rights, a list of rights,  
 343 including the adult's own or a court appointed counsel, and a copy of the petition;

344 (c) be served personally on:

345 (i) the adult described in Subsection (1); and

346 (ii) the adult's parents if the adult's parents can be found within the state; and

347 (d) be served in accordance with Section 75-1-401 on:

348 (i) the adult's parents if the adult's parents cannot be found within the state; and

349 (ii) any other person that is required to be served notice under Subsection (1).

350 Section 10. Section **75-5-606** is enacted to read:

351 **75-5-606 . Appointment of counsel.**

352 (1)(a) Except as provided in Subsection (2), the court shall appoint an attorney to  
 353 represent a respondent on a petition for guardianship unless the respondent has  
 354 counsel of the respondent's own choice.

355 (b) The respondent shall pay the costs of an attorney appointed under Subsection (1)(a)  
 356 unless the respondent or the respondent's parents are indigent.

357 (2) Counsel for a respondent is not required under Subsection (1) if:

358 (a) the respondent is the child, grandchild, or sibling of the petitioner;

359 (b) the value of the respondent's entire estate does not exceed \$2,000 as established by  
 360 an affidavit from the petitioner;

361 (c) the respondent appears in court with the petitioner in-person or remotely;

362 (d) the respondent is given the opportunity to communicate, to the extent possible, the  
 363 respondent's acceptance of the appointment of a guardian; and

364 (e) the court is satisfied that counsel is not necessary in order to protect the interests of  
 365 the respondent.

366 (3) If the court determines that a petition brought under this part is without merit, the  
 367 petitioner shall pay any attorney fees and court costs.

368 (4) The legal representation of the respondent by an attorney shall terminate upon the

369 appointment of a guardian, unless:

370 (a) there are separate conservatorship proceedings still pending before the court

371 subsequent to the appointment of a guardian;

372 (b) there is a timely filed appeal of the appointment of the guardian or the determination

373 that the respondent is an individual with a severe intellectual disability; or

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

375 Section 11. Section **75-5-607** is enacted to read:

376 **75-5-607 . Appointment of physician, psychologist, physician assistant, or court**

377 **visitor.**

378 (1)(a) The court may appoint a physician, a psychologist, or a physician assistant to

379 examine the respondent.

380 (b) If the court appoints a physician, a psychologist, or a physician assistant under

381 Subsection (1)(a), the physician, psychologist, or physician assistant shall submit a

382 report in writing to the court.

383 (2) The court may appoint a court visitor to:

384 (a) interview the individual seeking appointment as guardian of the respondent;

385 (b) visit the present place of abode of the respondent and the place proposed where the

386 respondent will be detained or reside if a guardian is appointed; or

387 (c) conduct other investigations or observations as directed by the court.

388 Section 12. Section **75-5-608** is enacted to read:

389 **75-5-608 . Emergency or temporary guardian.**

390 (1)(a) If a respondent does not have a guardian and an emergency exists, the court may,

391 without notice, appoint an emergency guardian for the respondent for a specified

392 period not to exceed 30 days pending notice and a hearing.

393 (b) The court may, without notice, appoint an emergency guardian for an individual with

394 a severe intellectual disability for a specified period not to exceed 30 days pending

395 notice and a hearing if:

396 (i) an appointed guardian for the individual is not effectively performing the

397 guardian's duties; and

398 (ii) the court further finds that the welfare of the respondent or individual requires

399 immediate action.

400 (c) Upon request by an interested person after the appointment of an emergency

401 guardian under Subsection (1)(a) or (b), the court shall hold a hearing within 14 days

402 in accordance with Section 75-5-604.

- 403 (2) If the court finds good cause after notice and hearing under Sections 75-5-604 and  
404 75-5-605, the court may:
- 405 (a) appoint a temporary guardian;  
406 (b) convert an emergency guardian to a temporary guardian if an emergency guardian  
407 has been appointed under Subsection (1); or  
408 (c) appoint a different person as temporary guardian to replace an emergency guardian  
409 appointed under Subsection (1).
- 410 (3) Unless the respondent or individual with a severe intellectual disability has already  
411 obtained or been appointed counsel or an attorney is not required as described in Section  
412 75-5-606, the court shall appoint an attorney to represent the respondent or individual.
- 413 (4) Until a full hearing and further order of the court, the temporary guardian:
- 414 (a) shall be charged with the care and custody of the respondent or individual with a  
415 severe intellectual disability; and  
416 (b) may not permit the respondent or individual with a severe intellectual disability to be  
417 removed from the state.
- 418 (5) The authority of any permanent guardian previously appointed by the court is suspended  
419 so long as a temporary guardian has authority.
- 420 (6) A temporary guardian may be removed at any time, and shall obey all orders and make  
421 any reports required by the court.
- 422 (7) A temporary guardian has all of the powers and duties of a permanent guardian as set  
423 forth in Section 75-5-611.

424 Section 13. Section **75-5-609** is enacted to read:

425 **75-5-609 . Findings by court -- Appointment of guardian -- Acceptance of**  
426 **appointment.**

- 427 (1) The court may appoint a guardian for a respondent if the court finds:
- 428 (a) the respondent is an individual with a severe intellectual disability; and  
429 (b) the appointment of a guardian is necessary or desirable as a means of providing  
430 continuing care to the respondent.
- 431 (2) If the court appoints a guardian as described in Subsection (1), the court shall:
- 432 (a) appoint a guardian for the respondent in accordance with Section 75-5-610;  
433 (b) prefer a full guardianship for the respondent; and  
434 (c) specify in the order of appointment that:
- 435 (i) the respondent is an individual with a severe intellectual disability; and  
436 (ii) the respondent does not have capacity to execute or consent to any contract or

- 437                    written agreement.
- 438    (3)(a) If the court orders a limited guardianship for a respondent:
- 439                    (i) the respondent is entitled to the rights described in Section 75-5-301.5 for an
- 440                    incapacitated person; and
- 441                    (ii) the court shall state the limitations of the guardianship and the rights to which the
- 442                    respondent is entitled in the order of appointment.
- 443    (4) If the court grants a guardian with the power to make or assist with health care decisions
- 444                    for a respondent, the court shall include in the order of appointment the name of any
- 445                    interested person whom the guardian must notify of any significant health care or
- 446                    treatment received by the individual.
- 447    (5)(a) By accepting an appointment, a guardian submits personally to the jurisdiction of
- 448                    the court in any proceeding relating to the guardianship that may be instituted by any
- 449                    interested person or any person interested in the welfare of the respondent.
- 450                    (b) Notice of any proceeding shall be delivered to the guardian or mailed to the guardian
- 451                    by ordinary mail at the guardian's address as listed in the court records and to the
- 452                    guardian's address as known to the petitioner at the time of the appointment.
- 453    (6) If the court orders a limited guardianship for an individual with a severe intellectual
- 454                    disability, the guardian has the same duties, powers, and rights described in Section
- 455                    75-5-312 for a guardian of an incapacitated person.
- 456    (7) If the court orders a full guardianship for an individual with a severe intellectual
- 457                    disability, the guardian has the duties, powers and rights described in Section 75-5-611.
- 458                    Section 14. Section **75-5-610** is enacted to read:
- 459                    **75-5-610 . Who may be a guardian -- Coguardians.**
- 460    (1) Unless the court finds there is good cause that the person should not serve as guardian,
- 461                    the court shall appoint a guardian for an individual with a severe intellectual disability in
- 462                    the following order of priority:
- 463                    (a) a parent of the individual with a severe intellectual disability;
- 464                    (b) an adult sibling of the individual with a severe intellectual disability;
- 465                    (c) a grandparent of the individual with a severe intellectual disability;
- 466                    (d) an adult relative of the individual with a severe intellectual disability if the individual
- 467                    has resided with the relative for more than 180 days before the day on which the
- 468                    petition was filed;
- 469                    (e) one of the closest adult relatives of the individual if any can be found;
- 470                    (f) a specialized care professional, so long as the specialized care professional does not:

- 471           (i) profit financially or otherwise from or receive compensation for acting in that  
472           capacity, except for the direct costs of providing guardianship or conservatorship  
473           services; or  
474           (ii) otherwise have a conflict of interest in providing those services;  
475           (g) a competent person or suitable institution; or  
476           (h) the Office of Public Guardian described in Title 26B, Chapter 6, Part 3, Office of  
477           Public Guardian.

478 (2) The court may appoint more than one person as guardian for the individual with a  
479       severe intellectual disability.

480 (3) If the court appoints coguardians for an individual with a severe intellectual disability:

481       (a) the coguardians shall share legal decision-making for the individual with a severe  
482       intellectual disability; and

483       (b) each coguardian's rights and responsibilities are not superior to the other  
484       coguardian's rights and responsibilities unless the court designates that a coguardian's  
485       rights and responsibilities are superior.

486       Section 15. Section **75-5-611** is enacted to read:

487       **75-5-611 . Duties, powers, and rights of a guardian for an individual with a**  
488       **severe intellectual disability in a full guardianship.**

489 (1) This section only applies to a guardian who is appointed by a court for an individual  
490       with a severe intellectual disability in a full guardianship.

491 (2)(a) A guardian shall diligently and in good faith carry out the specific duties, powers,  
492       and rights that the guardian is granted under this section and in the order of  
493       appointment entered under Section 75-5-609.

494       (b) A guardian is not liable to a third person for acts of the individual with a severe  
495       intellectual disability solely by reason of the guardian having the same powers,  
496       rights, and duties as a parent with respect to the parent's unemancipated minor child.

497 (3)(a) In carrying out duties, powers, and rights that a guardian is granted, the guardian  
498       shall encourage the individual with a severe intellectual disability, to the extent  
499       practicable, to participate in decisions, exercise self-determination, act on the  
500       individual's own behalf, and develop the skills to manage the individual's personal  
501       affairs.

502       (b) To the extent known, a guardian shall consider the expressed desires, preferences,  
503       and personal values of the individual with a severe intellectual disability when  
504       making decisions about the individual.

- 505 (4) A guardian is entitled to custody of the individual with a severe intellectual disability to  
506 the extent that the custody is consistent with the terms of any order by a court relating to  
507 the detention and commitment of the individual.
- 508 (5) If a guardian has custody of the individual with a severe intellectual disability under  
509 Subsection (4), the guardian:
- 510 (a) may establish the individual's place of residence within, or outside of, this state; and  
511 (b) shall provide for the care, comfort, and maintenance of the individual and arrange for  
512 the individual's training and education whenever appropriate.
- 513 (6) Without regard to the custodial rights of the individual with a severe intellectual  
514 disability, a guardian shall take reasonable care of the individual's clothing, furniture,  
515 vehicles, and other personal effects and commence protective proceedings if other  
516 property of the individual is in need of protection.
- 517 (7) A guardian of the individual with a severe intellectual disability may:
- 518 (a) give the consent or approval that may be necessary to enable the individual to receive  
519 medical or other professional care, counsel, treatment, or service;
- 520 (b) restrict or prohibit the individual's association with relatives and acquaintances if the  
521 guardian deems that the association is harmful to the individual; and
- 522 (c) restrict the individual from taking or consuming:
- 523 (i) a drug, as defined in Section 58-17b-102, that has not been prescribed to the  
524 individual;
- 525 (ii) a tobacco product, an electronic cigarette product, or a nicotine product, as those  
526 terms are defined in Section 76-10-101;
- 527 (iii) alcohol;
- 528 (iv) pornography; or
- 529 (v) a legal substance or activity that would be harmful to the health and wellbeing of  
530 the individual.
- 531 (8)(a) A guardian of the individual with a severe intellectual disability shall:
- 532 (i) notify any interested person named in the order of appointment under Subsection  
533 75-5-609(4) of any significant health care or treatment received by the individual;
- 534 (ii) immediately notify persons who request notification and are not restricted in  
535 associating with the individual of:
- 536 (A) the individual's admission to a hospital for three or more days or to a hospice  
537 program;
- 538 (B) the individual's death; or



- 539           (C) the arrangements for the disposition of the individual's remains;  
540           (iii) immediately notify all interested persons if the guardian reasonably believes that  
541           the individual's death is likely to occur within the next 10 days, based on:  
542           (A) the guardian's own observations; or  
543           (B) information from the individual's physician or other medical care providers;  
544           and  
545           (iv) provide the court with a current address of an individual if the guardian moves  
546           the individual.
- 547           (b) For purposes of this Subsection (8), an interested person is a person required to  
548           receive notice in guardianship proceedings as described in Section 75-5-605.
- 549           (9) If a conservator has not been appointed for the estate of the individual with a severe  
550           intellectual disability, a guardian may:
- 551           (a) institute proceedings to compel any person under a duty to support the individual or  
552           to pay sums for the welfare of the individual to perform that duty;
- 553           (b) receive money and tangible property deliverable to the individual and apply the  
554           money and property for support, care, and education of the individual, except that:
- 555           (i) the guardian may not use funds from the individual's estate for room and board  
556           that the guardian or the guardian's family member or relative has furnished unless  
557           a charge for the service is approved by order of the court made upon notice to at  
558           least one adult relative in the nearest degree of kinship to the individual in which  
559           there is an adult; and
- 560           (ii) the guardian shall manage the individual's money and property in a prudential  
561           manner to ensure that the individual qualifies for disability benefits.
- 562           (10)(a) If a conservator has not been appointed for the estate of the individual with a  
563           severe intellectual disability, and except as provided in Subsection (13)(b), a guardian  
564           shall:
- 565           (i) send a report with a full account to the court on an annual basis if the individual's  
566           estate is in excess of \$50,000 excluding the residence, if any, owned by the  
567           individual; or
- 568           (ii) fill out an informal annual report and mail the report to the court if the  
569           individual's estate is less than \$50,000 excluding the residence, if any, owned by  
570           the individual.
- 571           (b) An accounting report under Subsection (10)(a) shall include a statement regarding:
- 572           (i) all assets at the beginning and end of the reporting year;

- 573           (ii) any income received during the year;  
574           (iii) any disbursements for the support of the individual with a severe intellectual  
575                 disability;  
576           (iv) any investments or trusts that are held for the individual's benefit;  
577           (v) any expenditures or fees charged to the individual's estate; and  
578           (vi) any other expenses incurred by the individual's estate.
- 579       (c) The court may require additional information in an accounting report under  
580           Subsection (10)(a).
- 581       (d) The Judicial Council shall approve forms for the accounting reports described in  
582           Subsection (10)(a).
- 583       (e) An annual accounting report under Subsection (10)(a) shall be examined and  
584           approved by the court.
- 585       (f) If the income of the individual with a severe intellectual disability is limited to a  
586           federal or state program requiring an annual accounting report, a copy of that report  
587           may be submitted to the court in lieu of the required annual accounting report under  
588           Subsection (10)(a).
- 589       (g)(i) A corporate fiduciary is not required to petition the court, but shall submit the  
590           corporate fiduciary's internal report annually to the court.
- 591           (ii) The report under Subsection (10)(g)(i) shall be examined and approved by the  
592                 court.
- 593       (h) If a fee is paid for an accounting of the estate of the individual with a severe  
594           intellectual disability, a fee may not be charged for an accounting of the individual's  
595           status under Subsection (13).
- 596       (11) If a conservator has been appointed for the estate of the individual with a severe  
597           intellectual disability, a guardian shall:
- 598           (a) control the custody and care of the individual and is entitled to receive reasonable  
599                 sums for services and for room and board furnished to the individual as agreed upon  
600                 between the guardian and the conservator if the amounts agreed upon are reasonable  
601                 under the circumstances;
- 602           (b) pay all of the individual's estate received by the guardian in excess of those funds  
603                 expended to meet current expenses for support, care, and education of the individual  
604                 to the conservator for management of the individual's estate as provided in this  
605                 chapter; and
- 606           (c) account to the conservator for funds expended to meet current expenses for support,

607 care, and education of the individual.

608 (12) If a conservator has been appointed for the estate of the individual with a severe  
609 intellectual disability, a guardian may request the conservator to expend the individual's  
610 estate by payment to third persons or institutions for the individual's care and  
611 maintenance.

612 (13)(a) Except as provided in Subsection (13)(b), the guardian shall provide an annual  
613 accounting of the individual's status, including a report of the physical and mental  
614 condition of the individual, the individual's estate that has been subject to the  
615 guardian's possession, and the individual's place of residence and others living in the  
616 same household, to the court in the petition or the annual report as required under  
617 Subsection (10).

618 (b) The guardian is not required to provide an annual report or accounting described in  
619 Subsection (10)(a) or (13)(a) if the guardian is the parent, grandparent, or sibling of  
620 the individual with a severe intellectual disability.

621 (14)(a) The court may impose a penalty in an amount not to exceed \$5,000 if a guardian:

622 (i) makes a substantial misstatement on filings of annual reports;

623 (ii) is guilty of gross impropriety in handling the property of the individual with a  
624 severe intellectual disability; or

625 (iii) willfully fails to file the report required by this section after receiving written  
626 notice from the court of the failure to file and after a grace period of two months  
627 has elapsed.

628 (b) The court may order restitution of funds misappropriated from the estate of the  
629 individual with a severe intellectual disability.

630 (c) A penalty under this Subsection (14) shall be paid by the guardian and may not be  
631 paid by the individual or the individual's estate.

632 (15) A person who refuses to accept the authority of a guardian with authority over  
633 financial decisions to transact business with the assets of the individual with a severe  
634 intellectual disability after receiving a certified copy of letters of guardianship is liable  
635 for costs, expenses, attorney fees, and damages if the court determines that the person  
636 did not act in good faith in refusing to accept the authority of the guardian.

637 Section 16. Section **75-5-612** is enacted to read:

638 **75-5-612 . Removal or resignation of a guardian.**

639 (1) On a petition of resignation from a guardian of an individual with a severe intellectual  
640 disability, the court may:

- 641 (a) accept the guardian's resignation; or  
 642 (b) make any other order that is appropriate.
- 643 (2) On a petition of removal of a guardian from the individual with a severe intellectual  
 644 disability or any person interested in the individual's welfare, the court may remove a  
 645 guardian if:
- 646 (a) the guardian obtained the appointment by fraud, deceit, or gross misrepresentation;  
 647 (b) the guardian fails to perform the guardian's duties or responsibilities described in:  
 648 (i) Section 75-5-611 if the individual is in full guardianship; or  
 649 (ii) Section 75-5-312 if the individual is in a limited guardianship;
- 650 (c) the guardian is unable to perform the guardian's duties or responsibilities due to  
 651 incapacity or illness;
- 652 (d) the guardian fails to use reasonable care and diligence in the management of the  
 653 individual's estate;
- 654 (e) the individual is in a limited guardianship, the guardian is not permitted to restrict the  
 655 individual's association, and the guardian is found by the court to have filed a petition  
 656 frivolously or in bad faith under Section 75-5-312.5;
- 657 (f) the guardian's interests have become adverse to the faithful performance of the  
 658 guardian's duties and there is a risk that the guardian will fail to faithfully perform the  
 659 guardian's duties; or
- 660 (g) removal of the guardian would be in the best interest of the individual.
- 661 (3) If the court removes a guardian under Subsection (2), the court may:
- 662 (a) appoint a successor guardian; or  
 663 (b) make any other order that is appropriate.
- 664 (4) On a petition of resignation or removal of a guardian, the court shall follow the same  
 665 procedures to safeguard the rights of the individual with a severe intellectual disability  
 666 on a petition for appointment of a guardian under Sections 75-5-603, 75-5-604, 75-5-606,  
 667 and 75-5-607.
- 668 (5) The court is not required to appoint an attorney to represent the individual with a severe  
 669 intellectual disability upon the removal or resignation of the individual's guardian if the  
 670 case is uncontested and the individual's incapacity is not at issue.
- 671 Section 17. Section **75-5-613** is enacted to read:
- 672 **75-5-613 . Termination of guardianship for an individual with a severe**  
 673 **intellectual disability.**
- 674 (1)(a) An individual with a severe intellectual disability, or any person interested in the

- 675 individual's welfare, may petition for an order:
- 676 (i) that the individual is not an individual with a severe intellectual disability; and
- 677 (ii) for removal or resignation of the guardian in accordance with Section 75-5-612.
- 678 (b) The court may specify a minimum period of time, not exceeding one year, during
- 679 which no petition for the termination of a guardianship for an individual with a
- 680 severe intellectual disability can be filed without leave from the court.
- 681 (c) A request for the order described in this Subsection (1) may be made by informal
- 682 letter to the court.
- 683 (d) Any person who knowingly interferes with a request described in Subsection (1)(a)
- 684 may be sanctioned by the court.
- 685 (2) Notwithstanding Subsection (1), the authority and responsibility of a guardian for an
- 686 individual with a severe intellectual disability terminates upon:
- 687 (a) the death of the guardian or the individual;
- 688 (b) the determination that the guardian is incapacitated; or
- 689 (c) the removal or resignation of the guardian in accordance with Section 75-5-612.
- 690 (3) Resignation of a guardian does not terminate the guardianship until the resignation has
- 691 been approved by the court.
- 692 (4) Termination of a guardian does not affect the guardian's liability for the guardian's prior
- 693 acts or the guardian's obligation to account for funds and assets of the individual with a
- 694 severe intellectual disability.
- 695 (5) On a petition to order that an individual is no longer an individual with a severe
- 696 intellectual disability, the court shall follow the same procedures to safeguard the rights
- 697 of the individual with a severe intellectual disability on a petition for appointment of a
- 698 guardian under Sections 75-5-603, 75-5-604, 75-5-606, and 75-5-607.

699 **Section 18. Repealer.**

700 This bill repeals:

701 Section **75-5-308, Visitor in guardianship proceeding.**

702 Section 19. **Effective Date.**

703 This bill takes effect on May 7, 2025.