

**DISABLED ADULT GUARDIANSHIP AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Fred C. Cox**

Senate Sponsor: Lyle W. Hillyard

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

► provides that counsel is not required for the prospective ward under certain circumstances.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

(1) The incapacitated person or any person interested in the incapacitated person's



28 welfare may petition for a finding of incapacity and appointment of a guardian.

29           (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of  
30 incapacity. Unless the allegedly incapacitated person has counsel of the person's own choice,  
31 the court shall appoint an attorney to represent the person in the proceeding the cost of which  
32 shall be paid by the person alleged to be incapacitated. If the court determines that the petition  
33 is without merit, the attorney fees and court costs shall be paid by the person filing the petition.  
34 If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated  
35 person, regardless of whether the nominee is specified in the moving petition or nominated  
36 during the proceedings, the petitioner shall be entitled to receive from the incapacitated person  
37 reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the  
38 petition.

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

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

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

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

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

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

58           (b) The investigation by a court visitor is not required if there is clear and convincing

59 evidence from a physician that the person alleged to be incapacitated has:

60 (i) fourth stage Alzheimer's Disease;

61 (ii) extended comatosis; or

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

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

64 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to

65 present evidence, to cross-examine witnesses, including the court-appointed physician and the

66 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if

67 the person alleged to be incapacitated or the person's counsel so requests.

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

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

70 (ii) the person has an intellectual disability;

71 (iii) the person has minimal assets; and

72 (iv) the person appears in court with the petitioner and the court is satisfied that

73 counsel is unnecessary.

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**Legislative Review Note**

**Office of Legislative Research and General Counsel**