

Representative Fred C. Cox proposes the following substitute bill:

DISABLED ADULT GUARDIANSHIP AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred C. Cox

Senate Sponsor: Lyle W. Hillyard

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; and
- ▶ allows the provision to sunset.

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

ENACTS:

63I-2-275, Utah Code Annotated 1953



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

27 Section 1. Section **63I-2-275** is enacted to read:

28 **63I-2-275. Repeal dates -- Title 75.**

29 Subsection [75-5-303](#)(5)(d) is repealed on July 1, 2018.

30 Section 2. Section **75-5-303** is amended to read:

31 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**
32 **person.**

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

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

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

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

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

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

52 (4) The person alleged to be incapacitated may be examined by a physician appointed
53 by the court who shall submit a report in writing to the court and may be interviewed by a
54 visitor sent by the court. The visitor also may interview the person seeking appointment as
55 guardian, visit the present place of abode of the person alleged to be incapacitated and the place
56 it is proposed that the person will be detained or reside if the requested appointment is made,

57 conduct other investigations or observations as directed by the court, and submit a report in
58 writing to the court.

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

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

- 66 (i) fourth stage Alzheimer's Disease;
- 67 (ii) extended comatosis; or
- 68 (iii) (A) an intellectual disability; and
- 69 (B) an intelligence quotient score under 20 to 25.

70 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to
71 present evidence, to cross-examine witnesses, including the court-appointed physician and the
72 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if
73 the person alleged to be incapacitated or the person's counsel so requests.

74 (d) Counsel for the person alleged to be incapacitated, as defined in Subsection
75 75-1-201(22), is not required if:

- 76 (i) the person is the biological or adopted child of the petitioner;
- 77 (ii) the value of the person's entire estate does not exceed \$20,000 as established by an
78 affidavit of the petitioner in accordance with Section 75-3-1201;

79 (iii) the person appears in court with the petitioner;

80 (iv) the person is given the opportunity to communicate, to the extent possible, the
81 person's acceptance of the appointment of petitioner; and

82 (v) the court is satisfied that counsel is not necessary in order to protect the interests of
83 the person.