

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0198.01 Richard Sweetman x4333

HOUSE BILL 17-1087

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HOUSE SPONSORSHIP

Young,

SENATE SPONSORSHIP

(None),

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING AN OFFICE OF PUBLIC GUARDIANSHIP.

Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

The bill creates the office of public guardianship (office) within the judicial department to provide legal guardianship services to indigent and incapacitated adults who:

- ! Have no responsible family members or friends who are available and appropriate to serve as a guardian; and
- ! Lack adequate resources to compensate a private guardian and pay the costs and fees associated with an appointment proceeding.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

The office is established as a pilot program, to be evaluated and then continued, discontinued, or expanded at the discretion of the general assembly in 2021. On or before January 1, 2021, the director of the office shall submit a report to the judiciary committees of the senate and the house of representatives. The report, at a minimum, must:

- ! Quantify, to the extent possible, Colorado's unmet need for public guardianship services for indigent and incapacitated adults;
- ! Quantify, to the extent possible, the average annual cost of providing guardianship services to indigent and incapacitated adults;
- ! Quantify, to the extent possible, the net cost or benefit, if any, to the state that may result from the provision of guardianship services to each indigent and incapacitated adult in each judicial district of the state;
- ! Assess whether an independent statewide office of public guardianship is preferable and feasible;
- ! Analyze costs and off-setting savings to the state from the delivery of public guardianship services; and
- ! Provide uniform and consistent data elements regarding service delivery in an aggregate format that does not include any personal identifying information of any person.

The bill creates the public guardianship commission (commission) within the judicial department and charges the commission with appointing a director of the office. The director serves at the pleasure of the commission.

The bill creates the office of public guardianship cash fund (fund) in the state treasury. The fund consists of any money that the office receives from gifts, grants, or donations as well as any other money appropriated to the fund by the general assembly.

The office and the fund are repealed, effective June 30, 2021.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 93 to title  
3 13 as follows:

4 **ARTICLE 93**

5 **Office of Public Guardianship**

6 **13-93-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 93 IS  
7 THE "OFFICE OF PUBLIC GUARDIANSHIP ACT".

1           **13-93-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY  
2 FINDS AND DECLARES THAT:

3           (a) DUE TO INCAPACITY, SOME ADULTS IN COLORADO ARE UNABLE  
4 TO MEET ESSENTIAL REQUIREMENTS FOR THEIR HEALTH OR PERSONAL  
5 CARE;

6           (b) PRIVATE GUARDIANSHIP IS NOT AN OPTION FOR SUCH AN ADULT  
7 WHEN:

8           (I) NO RESPONSIBLE FAMILY MEMBERS OR FRIENDS ARE AVAILABLE  
9 AND APPROPRIATE TO SERVE AS A GUARDIAN; AND

10          (II) HE OR SHE LACKS ADEQUATE RESOURCES TO COMPENSATE A  
11 PRIVATE GUARDIAN AND PAY THE COSTS ASSOCIATED WITH AN  
12 APPOINTMENT PROCEEDING;

13          (c) VOLUNTEER AND PUBLIC SERVICE PROGRAMS ARE CURRENTLY  
14 INADEQUATE TO PROVIDE LEGAL GUARDIANSHIP SERVICES TO INDIGENT  
15 AND INCAPACITATED ADULTS IN COLORADO;

16          (d) COLORADO COURTS STRUGGLE TO ADDRESS THE NEEDS OF  
17 INDIGENT AND INCAPACITATED ADULTS WHO LACK THE RESOURCES TO  
18 PROVIDE FOR THEIR OWN GUARDIANSHIP NEEDS; AND

19          (e) WITHOUT A SYSTEM PROVIDING LEGAL GUARDIANSHIP  
20 SERVICES TO INDIGENT AND INCAPACITATED ADULTS, THE COURTS ARE  
21 LEFT WITH FEW OPTIONS FOR ADDRESSING THESE ADULTS' NEEDS.

22          (2) IN ESTABLISHING THE OFFICE OF PUBLIC GUARDIANSHIP, THE  
23 GENERAL ASSEMBLY INTENDS:

24          (a) THAT THE OFFICE WILL:

25          (I) PROVIDE GUARDIANSHIP SERVICES TO INDIGENT AND  
26 INCAPACITATED ADULTS WHO:

27          (A) HAVE NO RESPONSIBLE FAMILY MEMBERS OR FRIENDS WHO

1 ARE AVAILABLE AND APPROPRIATE TO SERVE AS A GUARDIAN; AND

2 (B) LACK ADEQUATE RESOURCES TO COMPENSATE A PRIVATE

3 GUARDIAN AND PAY THE COSTS ASSOCIATED WITH AN APPOINTMENT

4 PROCEEDING; AND

5 (II) GATHER DATA TO HELP THE GENERAL ASSEMBLY DETERMINE

6 THE NEED FOR, AND THE FEASIBILITY OF, A STATEWIDE OFFICE OF PUBLIC

7 GUARDIANSHIP; AND

8 (b) THAT THE OFFICE IS A PILOT PROGRAM, TO BE EVALUATED AND

9 THEN CONTINUED, DISCONTINUED, OR EXPANDED AT THE DISCRETION OF

10 THE GENERAL ASSEMBLY IN 2021.

11 (3) IN CREATING THE OFFICE OF PUBLIC GUARDIANSHIP, IT IS ALSO

12 THE INTENTION OF THE GENERAL ASSEMBLY TO:

13 (a) TREAT LIBERTY AND AUTONOMY AS PARAMOUNT VALUES FOR

14 ALL STATE RESIDENTS;

15 (b) AUTHORIZE PUBLIC GUARDIANSHIP ONLY TO THE EXTENT

16 NECESSARY TO PROVIDE FOR HEALTH OR SAFETY WHEN THE LEGAL

17 CONDITIONS FOR APPOINTMENT OF A GUARDIAN ARE MET;

18 (c) PERMIT INCAPACITATED ADULTS TO PARTICIPATE AS FULLY AS

19 POSSIBLE IN ALL DECISIONS THAT AFFECT THEM;

20 (d) ASSIST INCAPACITATED ADULTS TO REGAIN OR DEVELOP THEIR

21 CAPACITIES TO THE MAXIMUM EXTENT POSSIBLE;

22 (e) PROMOTE THE AVAILABILITY OF GUARDIANSHIP SERVICES FOR

23 ADULTS WHO NEED THEM AND FOR WHOM ADEQUATE SERVICES MAY

24 OTHERWISE BE UNAVAILABLE;

25 (f) MAINTAIN AND NOT ALTER OR EXPAND JUDICIAL AUTHORITY TO

26 DETERMINE THAT ANY ADULT IS INCAPACITATED; AND

27 (g) MAINTAIN AND NOT ALTER OR EXPAND ANY AUTHORITY

1 VESTED IN THE STATE DEPARTMENT OF HUMAN SERVICES AND COUNTY  
2 DEPARTMENTS OF HUMAN OR SOCIAL SERVICES.

3 **13-93-103. Definitions.** (1) EXCEPT AS OTHERWISE INDICATED IN  
4 THIS SECTION, THE DEFINITIONS SET FORTH IN SECTION 15-14-102 APPLY  
5 TO THIS ARTICLE 93.

6 (2) AS USED IN THIS ARTICLE 93, UNLESS THE CONTEXT OTHERWISE  
7 REQUIRES:

8 (a) "COMMISSION" MEANS THE PUBLIC GUARDIANSHIP COMMISSION  
9 CREATED PURSUANT TO SECTION 13-93-104.

10 (b) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE APPOINTED  
11 BY THE COMMISSION PURSUANT TO SECTION 13-93-104.

12 (c) "GUARDIAN" OR "GUARDIAN-DESIGNEE" MEANS AN INDIVIDUAL  
13 EMPLOYED BY THE OFFICE TO PROVIDE GUARDIANSHIP SERVICES ON  
14 BEHALF OF THE OFFICE TO ONE OR MORE ADULTS.

15 (d) "OFFICE" MEANS THE OFFICE OF PUBLIC GUARDIANSHIP  
16 CREATED IN SECTION 13-93-104.

17 (e) "PUBLIC GUARDIANSHIP SERVICES" MEANS THE SERVICES  
18 PROVIDED BY A GUARDIAN APPOINTED UNDER THIS ARTICLE 93 WHO IS  
19 COMPENSATED BY THE OFFICE.

20 **13-93-104. Public guardianship commission created - office of**  
21 **public guardianship created - appointment of director -**  
22 **memorandum of understanding.** (1) THE PUBLIC GUARDIANSHIP  
23 COMMISSION IS HEREBY CREATED WITHIN THE JUDICIAL DEPARTMENT. THE  
24 COMMISSION INCLUDES FIVE MEMBERS, TO BE APPOINTED AS FOLLOWS:

25 (a) ON OR BEFORE NOVEMBER 1, 2017, THE COLORADO SUPREME  
26 COURT SHALL APPOINT THREE MEMBERS, NO MORE THAN ONE OF WHOM IS  
27 FROM THE SAME POLITICAL PARTY. TWO OF THE SUPREME COURT'S

1 APPOINTEES MUST BE ATTORNEYS ADMITTED TO PRACTICE LAW IN THIS  
2 STATE, AND ONE MUST BE A RESIDENT OF COLORADO NOT ADMITTED TO  
3 PRACTICE LAW IN THIS STATE.

4 (b) ON OR BEFORE NOVEMBER 1, 2017, THE GOVERNOR SHALL  
5 APPOINT TWO MEMBERS, NO MORE THAN ONE OF WHOM IS FROM THE SAME  
6 POLITICAL PARTY. ONE OF THE GOVERNOR'S APPOINTEES MUST BE AN  
7 ATTORNEY ADMITTED TO PRACTICE LAW IN THIS STATE, AND ONE MUST BE  
8 A RESIDENT OF COLORADO NOT ADMITTED TO PRACTICE LAW IN THIS  
9 STATE.

10 (c) IN MAKING APPOINTMENTS TO THE COMMISSION, THE SUPREME  
11 COURT AND THE GOVERNOR SHALL CONSIDER PLACE OF RESIDENCE, SEX,  
12 RACE, AND ETHNIC BACKGROUND; AND

13 (d) NO MEMBER OF THE COMMISSION MAY BE A JUDGE,  
14 PROSECUTOR, PUBLIC DEFENDER, OR EMPLOYEE OF A LAW ENFORCEMENT  
15 AGENCY DURING HIS OR HER SERVICE ON THE COMMISSION.

16 (2) ON OR BEFORE JUNE 1, 2018, THE COMMISSION SHALL APPOINT  
17 A DIRECTOR TO ESTABLISH, DEVELOP, AND ADMINISTER THE OFFICE OF  
18 PUBLIC GUARDIANSHIP, WHICH OFFICE IS HEREBY CREATED WITHIN THE  
19 JUDICIAL DEPARTMENT. THE DIRECTOR SERVES AT THE PLEASURE OF THE  
20 COMMISSION.

21 (3) THE OFFICE AND THE JUDICIAL DEPARTMENT SHALL OPERATE  
22 PURSUANT TO A MEMORANDUM OF UNDERSTANDING BETWEEN THE TWO  
23 ENTITIES. THE MEMORANDUM OF UNDERSTANDING MUST CONTAIN, AT A  
24 MINIMUM:

25 (a) A REQUIREMENT THAT THE OFFICE HAS ITS OWN PERSONNEL  
26 RULES;

27 (b) A REQUIREMENT THAT THE DIRECTOR HAS INDEPENDENT

1 HIRING AND TERMINATION AUTHORITY OVER OFFICE EMPLOYEES;

2 (c) A REQUIREMENT THAT THE OFFICE MUST FOLLOW JUDICIAL  
3 FISCAL RULES; AND

4 (d) ANY OTHER PROVISIONS REGARDING ADMINISTRATIVE SUPPORT  
5 THAT WILL HELP MAINTAIN THE INDEPENDENCE OF THE OFFICE.

6 **13-93-105. Office of public guardianship - duties - report.**

7 (1) THE DIRECTOR SHALL ESTABLISH, DEVELOP, AND ADMINISTER THE  
8 OFFICE TO SERVE INDIGENT AND INCAPACITATED ADULTS IN NEED OF  
9 GUARDIANSHIP IN THE SECOND, SEVENTH, AND SIXTEENTH JUDICIAL  
10 DISTRICTS. ON AND AFTER OCTOBER 31, 2018, THE DIRECTOR SHALL  
11 ADMINISTER THE OFFICE IN ACCORDANCE WITH THE MEMORANDUM OF  
12 UNDERSTANDING DESCRIBED IN SECTION 13-93-104 (3).

13 (2) IN ADDITION TO CARRYING OUT ANY DUTIES ASSIGNED BY THE  
14 COMMISSION, THE DIRECTOR SHALL ENSURE THAT THE OFFICE PROVIDES,  
15 AT A MINIMUM, THE FOLLOWING SERVICES TO THE DESIGNATED JUDICIAL  
16 DISTRICTS:

17 (a) A REVIEW OF REFERRALS TO THE OFFICE;

18 (b) ADOPTION OF ELIGIBILITY CRITERIA AND PRIORITIZATION TO  
19 ENABLE THE OFFICE TO SERVE INDIVIDUALS WITH THE GREATEST NEEDS  
20 WHEN THE NUMBER OF CASES IN WHICH SERVICES HAVE BEEN REQUESTED  
21 EXCEEDS THE NUMBER OF CASES IN WHICH PUBLIC GUARDIANSHIP  
22 SERVICES CAN BE PROVIDED;

23 (c) APPOINTMENT AND POST-APPOINTMENT PUBLIC GUARDIANSHIP  
24 SERVICES OF A GUARDIAN-DESIGNEE FOR EACH INDIGENT AND  
25 INCAPACITATED ADULT IN NEED OF PUBLIC GUARDIANSHIP;

26 (d) SUPPORT FOR MODIFICATION OR TERMINATION OF PUBLIC  
27 GUARDIANSHIP SERVICES;

1 (e) RECRUITMENT, TRAINING, AND OVERSIGHT OF  
2 GUARDIAN-DESIGNEES;

3 (f) DEVELOPMENT OF A PROCESS FOR RECEIPT AND CONSIDERATION  
4 OF, AND RESPONSE TO, COMPLAINTS AGAINST THE OFFICE, TO INCLUDE  
5 INVESTIGATION IN CASES IN WHICH INVESTIGATION APPEARS WARRANTED  
6 IN THE JUDGMENT OF THE DIRECTOR;

7 (g) IMPLEMENTATION AND MAINTENANCE OF A PUBLIC  
8 GUARDIANSHIP DATA MANAGEMENT SYSTEM;

9 (h) OFFICE MANAGEMENT, FINANCIAL PLANNING, AND BUDGETING  
10 FOR THE OFFICE TO ENSURE COMPLIANCE WITH THIS ARTICLE 93;

11 (i) IDENTIFICATION AND ESTABLISHMENT OF RELATIONSHIPS WITH  
12 STAKEHOLDER AGENCIES, NONPROFIT ORGANIZATIONS, COMPANIES,  
13 INDIVIDUAL CARE MANAGERS, AND DIRECT-CARE PROVIDERS TO PROVIDE  
14 SERVICES WITHIN THE FINANCIAL CONSTRAINTS ESTABLISHED FOR THE  
15 OFFICE;

16 (j) IDENTIFICATION AND ESTABLISHMENT OF RELATIONSHIPS WITH  
17 LOCAL, STATE, AND FEDERAL GOVERNMENTAL AGENCIES SO THAT  
18 GUARDIANS AND GUARDIAN-DESIGNEES MAY APPLY FOR PUBLIC BENEFITS  
19 ON BEHALF OF WARDS TO OBTAIN FUNDING AND SERVICE SUPPORT, IF  
20 NEEDED; AND

21 (k) PUBLIC EDUCATION AND OUTREACH REGARDING THE ROLE OF  
22 THE OFFICE AND GUARDIAN-DESIGNEES.

23 (3) THE DIRECTOR SHALL ADOPT PROFESSIONAL STANDARDS OF  
24 PRACTICE AND A CODE OF ETHICS FOR GUARDIANS AND  
25 GUARDIAN-DESIGNEES.

26 (4) ON OR BEFORE JANUARY 1, 2021, THE DIRECTOR SHALL SUBMIT  
27 TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF



1 REPRESENTATIVES, OR TO ANY SUCCESSOR COMMITTEES, A REPORT  
2 CONCERNING THE ACTIVITIES OF THE OFFICE. THE REPORT, AT A MINIMUM,  
3 MUST:

4 (a) QUANTIFY, TO THE EXTENT POSSIBLE, COLORADO'S UNMET  
5 NEED FOR PUBLIC GUARDIANSHIP SERVICES FOR INDIGENT AND  
6 INCAPACITATED ADULTS;

7 (b) QUANTIFY, TO THE EXTENT POSSIBLE, THE AVERAGE ANNUAL  
8 COST OF PROVIDING GUARDIANSHIP SERVICES TO INDIGENT AND  
9 INCAPACITATED ADULTS;

10 (c) QUANTIFY, TO THE EXTENT POSSIBLE, THE NET COST OR  
11 BENEFIT, IF ANY, TO THE STATE THAT MAY RESULT FROM THE PROVISION  
12 OF GUARDIANSHIP SERVICES TO EACH INDIGENT AND INCAPACITATED  
13 ADULT IN EACH JUDICIAL DISTRICT OF THE STATE;

14 (d) IDENTIFY ANY NOTABLE EFFICIENCIES AND OBSTACLES THAT  
15 THE OFFICE INCURRED IN PROVIDING PUBLIC GUARDIANSHIP SERVICES  
16 PURSUANT TO THIS ARTICLE 93;

17 (e) ASSESS WHETHER AN INDEPENDENT STATEWIDE OFFICE OF  
18 PUBLIC GUARDIANSHIP IS PREFERABLE AND FEASIBLE;

19 (f) ANALYZE COSTS AND OFF-SETTING SAVINGS TO THE STATE  
20 FROM THE DELIVERY OF PUBLIC GUARDIANSHIP SERVICES; AND

21 (g) PROVIDE UNIFORM AND CONSISTENT DATA ELEMENTS  
22 REGARDING SERVICE DELIVERY IN AN AGGREGATE FORMAT THAT DOES  
23 NOT INCLUDE ANY PERSONAL IDENTIFYING INFORMATION OF ANY ADULT.

24 (5) IN ADDITION TO PERFORMING THE DUTIES DESCRIBED IN THIS  
25 SECTION, THE DIRECTOR, IN CONSULTATION WITH THE COMMISSION, SHALL  
26 DEVELOP A STRATEGY FOR THE DISCONTINUATION OF THE OFFICE IN THE  
27 EVENT THAT THE GENERAL ASSEMBLY DECLINES TO CONTINUE OR EXPAND

1 THE OFFICE AFTER 2021. THE STRATEGY MUST INCLUDE CONSIDERATION  
2 OF HOW TO MEET THE GUARDIANSHIP NEEDS OF ADULTS WHO WILL NO  
3 LONGER BE ABLE TO RECEIVE GUARDIANSHIP SERVICES FROM THE OFFICE.

4 **13-93-106. Waiver of court costs and filing fees.** THE COURT  
5 SHALL WAIVE COURT COSTS AND FILING FEES IN ANY PROCEEDING IN  
6 WHICH AN INDIGENT AND INCAPACITATED ADULT IS RECEIVING PUBLIC  
7 GUARDIANSHIP SERVICES FROM THE OFFICE.

8 **13-93-107. Director may develop rules.** THE DIRECTOR MAY  
9 DEVELOP RULES TO IMPLEMENT THIS ARTICLE 93.

10 **13-93-108. Office of public guardianship cash fund - created.**

11 (1) THE OFFICE OF PUBLIC GUARDIANSHIP CASH FUND, REFERRED TO IN  
12 THIS SECTION AS THE "FUND", IS CREATED IN THE STATE TREASURY. THE  
13 FUND CONSISTS OF ANY MONEY THAT THE OFFICE RECEIVES FROM GIFTS,  
14 GRANTS, OR DONATIONS, AS WELL AS ANY OTHER MONEY APPROPRIATED  
15 TO THE FUND BY THE GENERAL ASSEMBLY.

16 (2) THE MONEY IN THE FUND IS ANNUALLY APPROPRIATED TO THE  
17 JUDICIAL DEPARTMENT TO PAY THE EXPENSES OF THE OFFICE. ALL  
18 INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF  
19 MONEY IN THE FUND IS CREDITED TO THE FUND. ANY UNEXPENDED AND  
20 UNENCUMBERED MONEY REMAINING IN THE FUND AT THE END OF A FISCAL  
21 YEAR MUST REMAIN IN THE FUND AND NOT BE CREDITED OR TRANSFERRED  
22 TO THE GENERAL FUND OR ANY OTHER FUND; EXCEPT THAT ANY MONEY  
23 REMAINING IN THE FUND ON JUNE 30, 2021, SHALL BE TRANSFERRED TO  
24 THE GENERAL FUND.

25 (3) THE OFFICE MAY SEEK AND ACCEPT GIFTS, GRANTS, OR  
26 DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS  
27 ARTICLE 93; EXCEPT THAT THE OFFICE MAY NOT ACCEPT A GIFT, GRANT, OR

1 DONATION THAT IS SUBJECT TO CONDITIONS THAT ARE INCONSISTENT WITH  
2 THIS ARTICLE 93 OR ANY OTHER LAW OF THE STATE. THE OFFICE SHALL  
3 TRANSMIT ALL PRIVATE AND PUBLIC MONEY RECEIVED THROUGH GIFTS,  
4 GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT  
5 THE SAME TO THE FUND.

6 **13-93-109. No entitlement created.** PUBLIC GUARDIANSHIP  
7 SERVICES ARE DEPENDENT UPON THE AVAILABILITY OF FUNDING, AND  
8 NOTHING IN THIS ARTICLE 93 CREATES AN ENTITLEMENT.

9 **13-93-110. Immunity.** AS AN AGENCY OF THE JUDICIAL  
10 DEPARTMENT, THE OFFICE IS A PUBLIC ENTITY, AS DEFINED IN SECTION  
11 24-10-103 (5), FOR THE PURPOSES OF THE "COLORADO GOVERNMENTAL  
12 IMMUNITY ACT", ARTICLE 10 OF TITLE 24.

13 **13-93-111. Repeal.** THIS ARTICLE 93 IS REPEALED, EFFECTIVE  
14 JUNE 30, 2021. PRIOR TO SUCH REPEAL, THE GENERAL ASSEMBLY, AFTER  
15 REVIEWING THE REPORT SUBMITTED BY THE DIRECTOR PURSUANT TO  
16 SECTION 13-93-105 (4), SHALL CONSIDER WHETHER TO ENACT  
17 LEGISLATION TO CONTINUE, DISCONTINUE, OR EXPAND THE OFFICE.

18 **SECTION 2. Safety clause.** The general assembly hereby finds,  
19 determines, and declares that this act is necessary for the immediate  
20 preservation of the public peace, health, and safety.