

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0198.01 Richard Sweetman x4333

HOUSE BILL 17-1087

HOUSE SPONSORSHIP

Young,

SENATE SPONSORSHIP

Lundberg,

House Committees

Judiciary
Appropriations

Senate Committees

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.*

HOUSE
Amended 2nd Reading
March 31, 2017

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; ■

2 (B) LACK ADEQUATE RESOURCES TO COMPENSATE A PRIVATE
3 GUARDIAN AND PAY THE COSTS ASSOCIATED WITH AN APPOINTMENT
4 PROCEEDING; AND

5 (C) ARE NOT SUBJECT TO A PETITION FOR APPOINTMENT OF
6 GUARDIAN FILED BY A COUNTY ADULT PROTECTIVE SERVICES UNIT OR
7 OTHERWISE AUTHORIZED BY SECTION 26-3.1-104; AND

8 (II) GATHER DATA TO HELP THE GENERAL ASSEMBLY DETERMINE
9 THE NEED FOR, AND THE FEASIBILITY OF, A STATEWIDE OFFICE OF PUBLIC
10 GUARDIANSHIP; AND

11 (b) THAT THE OFFICE IS A PILOT PROGRAM, TO BE EVALUATED AND
12 THEN CONTINUED, DISCONTINUED, OR EXPANDED AT THE DISCRETION OF
13 THE GENERAL ASSEMBLY IN 2021.

14 (3) IN CREATING THE OFFICE OF PUBLIC GUARDIANSHIP, IT IS ALSO
15 THE INTENTION OF THE GENERAL ASSEMBLY TO:

16 (a) TREAT LIBERTY AND AUTONOMY AS PARAMOUNT VALUES FOR
17 ALL STATE RESIDENTS;

18 (b) AUTHORIZE PUBLIC GUARDIANSHIP ONLY TO THE EXTENT
19 NECESSARY TO PROVIDE FOR HEALTH OR SAFETY WHEN THE LEGAL
20 CONDITIONS FOR APPOINTMENT OF A GUARDIAN ARE MET;

21 (c) PERMIT INCAPACITATED ADULTS TO PARTICIPATE AS FULLY AS
22 POSSIBLE IN ALL DECISIONS THAT AFFECT THEM;

23 (d) ASSIST INCAPACITATED ADULTS TO REGAIN OR DEVELOP THEIR
24 CAPACITIES TO THE MAXIMUM EXTENT POSSIBLE;

25 (e) PROMOTE THE AVAILABILITY OF GUARDIANSHIP SERVICES FOR
26 ADULTS WHO NEED THEM AND FOR WHOM ADEQUATE SERVICES MAY
27 OTHERWISE BE UNAVAILABLE;

1 (f) MAINTAIN AND NOT ALTER OR EXPAND JUDICIAL AUTHORITY TO
2 DETERMINE THAT ANY ADULT IS INCAPACITATED; AND

3 (g) MAINTAIN AND NOT ALTER OR EXPAND ANY AUTHORITY
4 VESTED IN THE STATE DEPARTMENT OF HUMAN SERVICES AND COUNTY
5 DEPARTMENTS OF HUMAN OR SOCIAL SERVICES.

6 **13-93-103. Definitions.** (1) EXCEPT AS OTHERWISE INDICATED IN
7 THIS SECTION, THE DEFINITIONS SET FORTH IN SECTION 15-14-102 APPLY
8 TO THIS ARTICLE 93.

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

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

13 (b) "DIRECT CARE PROVIDER" MEANS A HEALTH CARE FACILITY, AS
14 DEFINED IN SECTION 15-14-505 (5), OR A HEALTH CARE PROVIDER, AS
15 DEFINED IN SECTION 15-14-505 (6).

16 (c) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE APPOINTED
17 BY THE COMMISSION PURSUANT TO SECTION 13-93-104.

18 (d) "GUARDIAN" OR "GUARDIAN-DESIGNEE" MEANS AN INDIVIDUAL
19 EMPLOYED BY THE OFFICE TO PROVIDE GUARDIANSHIP SERVICES ON
20 BEHALF OF THE OFFICE TO ONE OR MORE ADULTS.

21 (e) "OFFICE" MEANS THE OFFICE OF PUBLIC GUARDIANSHIP
22 CREATED IN SECTION 13-93-104.

23 (f) "PUBLIC GUARDIANSHIP SERVICES" MEANS THE SERVICES
24 PROVIDED BY A GUARDIAN APPOINTED UNDER THIS ARTICLE 93 WHO IS
25 COMPENSATED BY THE OFFICE.

26 **13-93-104. Public guardianship commission created - office of**
27 **public guardianship created - appointment of director -**

1 **memorandum of understanding.** (1) THE PUBLIC GUARDIANSHIP
2 COMMISSION IS HEREBY CREATED WITHIN THE JUDICIAL DEPARTMENT. THE
3 COMMISSION INCLUDES FIVE MEMBERS, TO BE APPOINTED AS FOLLOWS:

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

10 (b) ON OR BEFORE NOVEMBER 1, 2017, THE GOVERNOR SHALL
11 APPOINT TWO MEMBERS. ONE OF THE GOVERNOR'S APPOINTEES MUST BE
12 AN ATTORNEY ADMITTED TO PRACTICE LAW IN THIS STATE, AND ONE MUST
13 BE A RESIDENT OF COLORADO NOT ADMITTED TO PRACTICE LAW IN THIS
14 STATE.

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

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

21 (2) EACH MEMBER OF THE COMMISSION SERVES AT THE PLEASURE
22 OF HIS OR HER APPOINTING AUTHORITY, EXCEPT THAT EACH MEMBER'S
23 TERM OF SERVICE CONCLUDES WITH THE REPEAL OF THIS ARTICLE 93
24 PURSUANT TO SECTION 13-93-111.

25 (3) NOT MORE THAN ONE MONTH AFTER RECEIVING AT LEAST ONE
26 MILLION SEVEN HUNDRED THOUSAND DOLLARS IN GIFTS, GRANTS, AND
27 DONATIONS TO THE OFFICE OF PUBLIC GUARDIANSHIP CASH FUND CREATED

1 IN SECTION 13-93-108, THE COMMISSION SHALL APPOINT A DIRECTOR TO
2 ESTABLISH, DEVELOP, AND ADMINISTER THE OFFICE OF PUBLIC
3 GUARDIANSHIP, WHICH OFFICE IS HEREBY CREATED WITHIN THE JUDICIAL
4 DEPARTMENT. THE DIRECTOR SERVES AT THE PLEASURE OF THE
5 COMMISSION.

6 (4) THE OFFICE AND THE JUDICIAL DEPARTMENT SHALL OPERATE
7 PURSUANT TO A MEMORANDUM OF UNDERSTANDING BETWEEN THE TWO
8 ENTITIES. THE MEMORANDUM OF UNDERSTANDING MUST CONTAIN, AT A
9 MINIMUM:

10 (a) A REQUIREMENT THAT THE OFFICE HAS ITS OWN PERSONNEL
11 RULES;

12 (b) A REQUIREMENT THAT THE DIRECTOR HAS INDEPENDENT
13 HIRING AND TERMINATION AUTHORITY OVER OFFICE EMPLOYEES;

14 (c) A REQUIREMENT THAT THE OFFICE MUST FOLLOW JUDICIAL
15 FISCAL RULES; AND

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

18 **13-93-105. Office of public guardianship - duties - report.**

19 (1) THE DIRECTOR SHALL ESTABLISH, DEVELOP, AND ADMINISTER THE
20 OFFICE TO SERVE INDIGENT AND INCAPACITATED ADULTS IN NEED OF
21 GUARDIANSHIP IN THE SECOND, SEVENTH, AND SIXTEENTH JUDICIAL
22 DISTRICTS AND SHALL COORDINATE ITS EFFORTS WITH COUNTY
23 DEPARTMENTS OF HUMAN SERVICES AND COUNTY DEPARTMENTS OF
24 SOCIAL SERVICES WITHIN THOSE DISTRICTS. NOT MORE THAN FIVE MONTHS
25 AFTER RECEIVING AT LEAST ONE MILLION SEVEN HUNDRED THOUSAND
26 DOLLARS IN GIFTS, GRANTS, AND DONATIONS TO THE OFFICE OF PUBLIC
27 GUARDIANSHIP CASH FUND CREATED IN SECTION 13-93-108, THE DIRECTOR

1 SHALL ADMINISTER THE OFFICE IN ACCORDANCE WITH THE MEMORANDUM
2 OF UNDERSTANDING DESCRIBED IN SECTION 13-93-104 (4).

3 (2) IN ADDITION TO CARRYING OUT ANY DUTIES ASSIGNED BY THE
4 COMMISSION, THE DIRECTOR SHALL ENSURE THAT THE OFFICE PROVIDES,
5 AT A MINIMUM, THE FOLLOWING SERVICES TO THE DESIGNATED JUDICIAL
6 DISTRICTS:

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

8 (b) ADOPTION OF ELIGIBILITY CRITERIA AND PRIORITIZATION TO
9 ENABLE THE OFFICE TO SERVE INDIVIDUALS WITH THE GREATEST NEEDS
10 WHEN THE NUMBER OF CASES IN WHICH SERVICES HAVE BEEN REQUESTED
11 EXCEEDS THE NUMBER OF CASES IN WHICH PUBLIC GUARDIANSHIP
12 SERVICES CAN BE PROVIDED;

13 (c) APPOINTMENT AND POST-APPOINTMENT PUBLIC GUARDIANSHIP
14 SERVICES OF A GUARDIAN-DESIGNEE FOR EACH INDIGENT AND
15 INCAPACITATED ADULT IN NEED OF PUBLIC GUARDIANSHIP;

16 (d) SUPPORT FOR MODIFICATION OR TERMINATION OF PUBLIC
17 GUARDIANSHIP SERVICES;

18 (e) RECRUITMENT, TRAINING, AND OVERSIGHT OF
19 GUARDIAN-DESIGNEES;

20 (f) DEVELOPMENT OF A PROCESS FOR RECEIPT AND CONSIDERATION
21 OF, AND RESPONSE TO, COMPLAINTS AGAINST THE OFFICE, TO INCLUDE
22 INVESTIGATION IN CASES IN WHICH INVESTIGATION APPEARS WARRANTED
23 IN THE JUDGMENT OF THE DIRECTOR;

24 (g) IMPLEMENTATION AND MAINTENANCE OF A PUBLIC
25 GUARDIANSHIP DATA MANAGEMENT SYSTEM;

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

1 (i) IDENTIFICATION AND ESTABLISHMENT OF RELATIONSHIPS WITH
2 STAKEHOLDER AGENCIES, NONPROFIT ORGANIZATIONS, COMPANIES,
3 INDIVIDUAL CARE MANAGERS, AND DIRECT-CARE PROVIDERS TO PROVIDE
4 SERVICES WITHIN THE FINANCIAL CONSTRAINTS ESTABLISHED FOR THE
5 OFFICE;

6 (j) IDENTIFICATION AND ESTABLISHMENT OF RELATIONSHIPS WITH
7 LOCAL, STATE, AND FEDERAL GOVERNMENTAL AGENCIES SO THAT
8 GUARDIANS AND GUARDIAN-DESIGNEES MAY APPLY FOR PUBLIC BENEFITS
9 ON BEHALF OF WARDS TO OBTAIN FUNDING AND SERVICE SUPPORT, IF
10 NEEDED; AND

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

13 (3) THE DIRECTOR SHALL ADOPT PROFESSIONAL STANDARDS OF
14 PRACTICE AND A CODE OF ETHICS FOR GUARDIANS AND
15 GUARDIAN-DESIGNEES, INCLUDING A POLICY CONCERNING CONFLICTS OF
16 INTEREST.

17 (4) ON OR BEFORE JANUARY 1, 2021, THE DIRECTOR SHALL SUBMIT
18 TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF
19 REPRESENTATIVES, OR TO ANY SUCCESSOR COMMITTEES, A REPORT
20 CONCERNING THE ACTIVITIES OF THE OFFICE. THE REPORT, AT A MINIMUM,
21 MUST:

22 (a) QUANTIFY, TO THE EXTENT POSSIBLE, COLORADO'S UNMET
23 NEED FOR PUBLIC GUARDIANSHIP SERVICES FOR INDIGENT AND
24 INCAPACITATED ADULTS;

25 (b) QUANTIFY, TO THE EXTENT POSSIBLE, THE AVERAGE ANNUAL
26 COST OF PROVIDING GUARDIANSHIP SERVICES TO INDIGENT AND
27 INCAPACITATED ADULTS;

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

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

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

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

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

15 (5) IN ADDITION TO PERFORMING THE DUTIES DESCRIBED IN THIS
16 SECTION, THE DIRECTOR, IN CONSULTATION WITH THE COMMISSION, SHALL
17 DEVELOP A STRATEGY FOR THE DISCONTINUATION OF THE OFFICE IN THE
18 EVENT THAT THE GENERAL ASSEMBLY DECLINES TO CONTINUE OR EXPAND
19 THE OFFICE AFTER 2021. THE STRATEGY MUST INCLUDE CONSIDERATION
20 OF HOW TO MEET THE GUARDIANSHIP NEEDS OF ADULTS WHO WILL NO
21 LONGER BE ABLE TO RECEIVE GUARDIANSHIP SERVICES FROM THE OFFICE.

22 **13-93-106. Waiver of court costs and filing fees.** THE COURT
23 SHALL WAIVE COURT COSTS AND FILING FEES IN ANY PROCEEDING IN
24 WHICH AN INDIGENT AND INCAPACITATED ADULT IS RECEIVING PUBLIC
25 GUARDIANSHIP SERVICES FROM THE OFFICE.

26 **13-93-107. Director shall develop rules.** (1) THE DIRECTOR
27 SHALL DEVELOP RULES TO IMPLEMENT THIS ARTICLE 93. THE RULES, AT A

1 MINIMUM, MUST INCLUDE POLICIES CONCERNING:

2 (a) CONFLICTS OF INTEREST FOR GUARDIANS AND
3 GUARDIAN-DESIGNEES EMPLOYED PURSUANT TO THIS ARTICLE 93; AND

4 (b) THE SOLICITATION AND ACCEPTANCE OF GIFTS, GRANTS, AND
5 DONATIONS PURSUANT TO SECTION 13-93-108 (3).

6 **13-93-108. Office of public guardianship cash fund - created.**

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

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

21 (3) THE OFFICE MAY SEEK AND ACCEPT GIFTS, GRANTS, OR
22 DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS
23 ARTICLE 93; EXCEPT THAT THE OFFICE MAY NOT ACCEPT A GIFT, GRANT, OR
24 DONATION THAT IS SUBJECT TO CONDITIONS THAT ARE INCONSISTENT WITH
25 THIS ARTICLE 93 OR ANY OTHER LAW OF THE STATE. THE OFFICE SHALL
26 TRANSMIT ALL PRIVATE AND PUBLIC MONEY RECEIVED THROUGH GIFTS,
27 GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT

1 THE SAME TO THE FUND.

2 **13-93-109. No entitlement created.** PUBLIC GUARDIANSHIP
3 SERVICES ARE DEPENDENT UPON THE AVAILABILITY OF FUNDING, AND
4 NOTHING IN THIS ARTICLE 93 CREATES AN ENTITLEMENT.

5 **13-93-110. Immunity.** AS AN AGENCY OF THE JUDICIAL
6 DEPARTMENT, THE OFFICE IS A PUBLIC ENTITY, AS DEFINED IN SECTION
7 24-10-103 (5), FOR THE PURPOSES OF THE "COLORADO GOVERNMENTAL
8 IMMUNITY ACT", ARTICLE 10 OF TITLE 24.

9 **13-93-111. Repeal.** THIS ARTICLE 93 IS REPEALED, EFFECTIVE
10 JUNE 30, 2021. PRIOR TO SUCH REPEAL, THE GENERAL ASSEMBLY, AFTER
11 REVIEWING THE REPORT SUBMITTED BY THE DIRECTOR PURSUANT TO
12 SECTION 13-93-105 (4), SHALL CONSIDER WHETHER TO ENACT
13 LEGISLATION TO CONTINUE, DISCONTINUE, OR EXPAND THE OFFICE.

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