

CHAPTER 319

COURTS

HOUSE BILL 17-1087

BY REPRESENTATIVE(S) Young, Exum, Ginal, Herod, Lee, Lontine, Melton, Pettersen, Salazar, Singer, Coleman, Kennedy, Kraft-Tharp, Duran;
also SENATOR(S) Lundberg, Aguilar, Court, Gardner, Kefalas, Merrifield, Moreno, Tate, Grantham.

AN ACT**CONCERNING AN OFFICE OF PUBLIC GUARDIANSHIP.**

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

SECTION 1. In Colorado Revised Statutes, **add** article 94 to title 13 as follows:

ARTICLE 94
Office of Public Guardianship

13-94-101. Short title. THE SHORT TITLE OF THIS ARTICLE 94 IS THE "OFFICE OF PUBLIC GUARDIANSHIP ACT".

13-94-102. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

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

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

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

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

(c) VOLUNTEER AND PUBLIC SERVICE PROGRAMS ARE CURRENTLY INADEQUATE TO PROVIDE LEGAL GUARDIANSHIP SERVICES TO INDIGENT AND INCAPACITATED

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ADULTS IN COLORADO;

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

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

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

(a) THAT THE OFFICE WILL:

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

(A) HAVE NO RESPONSIBLE FAMILY MEMBERS OR FRIENDS WHO ARE AVAILABLE AND APPROPRIATE TO SERVE AS A GUARDIAN;

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

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

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

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

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

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

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

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

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

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

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

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

13-94-103. Definitions. (1) EXCEPT AS OTHERWISE INDICATED IN THIS SECTION, THE DEFINITIONS SET FORTH IN SECTION 15-14-102 APPLY TO THIS ARTICLE 94.

(2) AS USED IN THIS ARTICLE 94, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMMISSION" MEANS THE PUBLIC GUARDIANSHIP COMMISSION CREATED PURSUANT TO SECTION 13-94-104.

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

(c) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE APPOINTED BY THE COMMISSION PURSUANT TO SECTION 13-94-104.

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

(e) "OFFICE" MEANS THE OFFICE OF PUBLIC GUARDIANSHIP CREATED IN SECTION 13-94-104.

(f) "PUBLIC GUARDIANSHIP SERVICES" MEANS THE SERVICES PROVIDED BY A GUARDIAN APPOINTED UNDER THIS ARTICLE 94 WHO IS COMPENSATED BY THE OFFICE.

13-94-104. Public guardianship commission created - office of public guardianship created - appointment of director - memorandum of understanding. (1) THE PUBLIC GUARDIANSHIP COMMISSION IS HEREBY CREATED WITHIN THE JUDICIAL DEPARTMENT. THE COMMISSION INCLUDES FIVE MEMBERS, TO BE APPOINTED AS FOLLOWS:

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

(b) ON OR BEFORE NOVEMBER 1, 2017, THE GOVERNOR SHALL APPOINT TWO MEMBERS. ONE OF THE GOVERNOR'S APPOINTEES MUST BE AN ATTORNEY ADMITTED

TO PRACTICE LAW IN THIS STATE, AND ONE MUST BE A RESIDENT OF COLORADO NOT ADMITTED TO PRACTICE LAW IN THIS STATE.

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

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

(2) EACH MEMBER OF THE COMMISSION SERVES AT THE PLEASURE OF HIS OR HER APPOINTING AUTHORITY, EXCEPT THAT EACH MEMBER'S TERM OF SERVICE CONCLUDES WITH THE REPEAL OF THIS ARTICLE 94 PURSUANT TO SECTION 13-94-111.

(3) NOT MORE THAN ONE MONTH AFTER RECEIVING AT LEAST ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS IN GIFTS, GRANTS, AND DONATIONS TO THE OFFICE OF PUBLIC GUARDIANSHIP CASH FUND CREATED IN SECTION 13-94-108, THE COMMISSION SHALL APPOINT A DIRECTOR TO ESTABLISH, DEVELOP, AND ADMINISTER THE OFFICE OF PUBLIC GUARDIANSHIP, WHICH OFFICE IS HEREBY CREATED WITHIN THE JUDICIAL DEPARTMENT. THE DIRECTOR SERVES AT THE PLEASURE OF THE COMMISSION.

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

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

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

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

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

13-94-105. Office of public guardianship - duties - report. (1) THE DIRECTOR SHALL ESTABLISH, DEVELOP, AND ADMINISTER THE OFFICE TO SERVE INDIGENT AND INCAPACITATED ADULTS IN NEED OF GUARDIANSHIP IN THE SECOND, SEVENTH, AND SIXTEENTH JUDICIAL DISTRICTS AND SHALL COORDINATE ITS EFFORTS WITH COUNTY DEPARTMENTS OF HUMAN SERVICES AND COUNTY DEPARTMENTS OF SOCIAL SERVICES WITHIN THOSE DISTRICTS. NOT MORE THAN FIVE MONTHS AFTER RECEIVING AT LEAST ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS IN GIFTS, GRANTS, AND DONATIONS TO THE OFFICE OF PUBLIC GUARDIANSHIP CASH FUND CREATED IN SECTION 13-94-108, THE DIRECTOR SHALL ADMINISTER THE OFFICE IN ACCORDANCE WITH THE MEMORANDUM OF UNDERSTANDING DESCRIBED IN SECTION 13-94-104(4).

(2) IN ADDITION TO CARRYING OUT ANY DUTIES ASSIGNED BY THE COMMISSION, THE DIRECTOR SHALL ENSURE THAT THE OFFICE PROVIDES, AT A MINIMUM, THE

FOLLOWING SERVICES TO THE DESIGNATED JUDICIAL DISTRICTS:

- (a) A REVIEW OF REFERRALS TO THE OFFICE;
 - (b) ADOPTION OF ELIGIBILITY CRITERIA AND PRIORITIZATION TO ENABLE THE OFFICE TO SERVE INDIVIDUALS WITH THE GREATEST NEEDS WHEN THE NUMBER OF CASES IN WHICH SERVICES HAVE BEEN REQUESTED EXCEEDS THE NUMBER OF CASES IN WHICH PUBLIC GUARDIANSHIP SERVICES CAN BE PROVIDED;
 - (c) APPOINTMENT AND POST-APPOINTMENT PUBLIC GUARDIANSHIP SERVICES OF A GUARDIAN-DESIGNEE FOR EACH INDIGENT AND INCAPACITATED ADULT IN NEED OF PUBLIC GUARDIANSHIP;
 - (d) SUPPORT FOR MODIFICATION OR TERMINATION OF PUBLIC GUARDIANSHIP SERVICES;
 - (e) RECRUITMENT, TRAINING, AND OVERSIGHT OF GUARDIAN-DESIGNEES;
 - (f) DEVELOPMENT OF A PROCESS FOR RECEIPT AND CONSIDERATION OF, AND RESPONSE TO, COMPLAINTS AGAINST THE OFFICE, TO INCLUDE INVESTIGATION IN CASES IN WHICH INVESTIGATION APPEARS WARRANTED IN THE JUDGMENT OF THE DIRECTOR;
 - (g) IMPLEMENTATION AND MAINTENANCE OF A PUBLIC GUARDIANSHIP DATA MANAGEMENT SYSTEM;
 - (h) OFFICE MANAGEMENT, FINANCIAL PLANNING, AND BUDGETING FOR THE OFFICE TO ENSURE COMPLIANCE WITH THIS ARTICLE 94;
 - (i) IDENTIFICATION AND ESTABLISHMENT OF RELATIONSHIPS WITH STAKEHOLDER AGENCIES, NONPROFIT ORGANIZATIONS, COMPANIES, INDIVIDUAL CARE MANAGERS, AND DIRECT-CARE PROVIDERS TO PROVIDE SERVICES WITHIN THE FINANCIAL CONSTRAINTS ESTABLISHED FOR THE OFFICE;
 - (j) IDENTIFICATION AND ESTABLISHMENT OF RELATIONSHIPS WITH LOCAL, STATE, AND FEDERAL GOVERNMENTAL AGENCIES SO THAT GUARDIANS AND GUARDIAN-DESIGNEES MAY APPLY FOR PUBLIC BENEFITS ON BEHALF OF WARDS TO OBTAIN FUNDING AND SERVICE SUPPORT, IF NEEDED; AND
 - (k) PUBLIC EDUCATION AND OUTREACH REGARDING THE ROLE OF THE OFFICE AND GUARDIAN-DESIGNEES.
- (3) THE DIRECTOR SHALL ADOPT PROFESSIONAL STANDARDS OF PRACTICE AND A CODE OF ETHICS FOR GUARDIANS AND GUARDIAN-DESIGNEES, INCLUDING A POLICY CONCERNING CONFLICTS OF INTEREST.
- (4) ON OR BEFORE JANUARY 1, 2021, THE DIRECTOR SHALL SUBMIT TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR TO ANY SUCCESSOR COMMITTEES, A REPORT CONCERNING THE ACTIVITIES OF THE OFFICE. THE REPORT, AT A MINIMUM, MUST:

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

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

(c) 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;

(d) IDENTIFY ANY NOTABLE EFFICIENCIES AND OBSTACLES THAT THE OFFICE INCURRED IN PROVIDING PUBLIC GUARDIANSHIP SERVICES PURSUANT TO THIS ARTICLE 94;

(e) ASSESS WHETHER AN INDEPENDENT STATEWIDE OFFICE OF PUBLIC GUARDIANSHIP OR A NONPROFIT AGENCY IS PREFERABLE AND FEASIBLE;

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

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

(h) ASSESS FUNDING MODELS AND VIABLE FUNDING SOURCES FOR AN INDEPENDENT OFFICE OF PUBLIC GUARDIANSHIP OR A NONPROFIT AGENCY, INCLUDING THE POSSIBILITY OF FUNDING WITH A STATEWIDE INCREASE IN PROBATE COURT FILING FEES.

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

13-94-106. Waiver of court costs and filing fees. THE COURT SHALL WAIVE COURT COSTS AND FILING FEES IN ANY PROCEEDING IN WHICH AN INDIGENT AND INCAPACITATED ADULT IS RECEIVING PUBLIC GUARDIANSHIP SERVICES FROM THE OFFICE.

13-94-107. Director shall develop rules. (1) THE DIRECTOR SHALL DEVELOP RULES TO IMPLEMENT THIS ARTICLE 94. THE RULES, AT A MINIMUM, MUST INCLUDE POLICIES CONCERNING:

(a) CONFLICTS OF INTEREST FOR GUARDIANS AND GUARDIAN-DESIGNEES EMPLOYED PURSUANT TO THIS ARTICLE 94; AND

(b) THE SOLICITATION AND ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS

PURSUANT TO SECTION 13-94-108 (3).

13-94-108. Office of public guardianship cash fund - created. (1) THE OFFICE OF PUBLIC GUARDIANSHIP CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS CREATED 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.

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

(3) THE OFFICE MAY SEEK AND ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS ARTICLE 94; EXCEPT THAT THE OFFICE MAY NOT ACCEPT A GIFT, GRANT, OR DONATION THAT IS SUBJECT TO CONDITIONS THAT ARE INCONSISTENT WITH THIS ARTICLE 94 OR ANY OTHER LAW OF THE STATE. THE OFFICE SHALL TRANSMIT ALL PRIVATE AND PUBLIC MONEY RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

13-94-109. No entitlement created. PUBLIC GUARDIANSHIP SERVICES ARE DEPENDENT UPON THE AVAILABILITY OF FUNDING, AND NOTHING IN THIS ARTICLE 94 CREATES AN ENTITLEMENT.

13-94-110. Immunity. AS AN AGENCY OF THE JUDICIAL DEPARTMENT, THE OFFICE IS A PUBLIC ENTITY, AS DEFINED IN SECTION 24-10-103 (5), FOR THE PURPOSES OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24.

13-94-111. Repeal. THIS ARTICLE 94 IS REPEALED, EFFECTIVE JUNE 30, 2021. PRIOR TO SUCH REPEAL, THE GENERAL ASSEMBLY, AFTER REVIEWING THE REPORT SUBMITTED BY THE DIRECTOR PURSUANT TO SECTION 13-94-105 (4), SHALL CONSIDER WHETHER TO ENACT LEGISLATION TO CONTINUE, DISCONTINUE, OR EXPAND THE OFFICE.

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

Approved: June 5, 2017