



April 9, 2025

TO: Colorado Senate Judiciary Committee Members

RE: Position on **SB 134**, Relating to the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

On behalf of the National Coalition for a Civil Right to Counsel (NCCRC), we write to provide input on SB 134, the “Uniform Guardianship, Conservatorship, and Other Protective Arrangements” (UGCOPA) Act with respect to its right counsel (RTC) provisions. In short, while we support the establishment of a right to counsel for children in child guardianship proceedings, we urge the Committee to amend SB 134 to guarantee such a right for parents as well. Furthermore, for both child and adult guardianship proceedings, we urge the Committee to eliminate the requirement that the child or adult subject to guardianship request counsel in order for their right to appointed counsel to attach.

Founded in 2003, the NCCRC is a coalition of over 600 participants and partners from 45 states, including Colorado. We seek to advance the recognition of a RTC in civil cases involving fundamental interests and basic human needs. Much of our work has been around RTC in matters involving child custody, and we have supported UGCOPA enactment in a number of other states, as well as assisted RTC-related litigation in child guardianship cases in Massachusetts and California. We have also done work in the adult guardianship sphere: in 2013 we assisted successful litigation in Ohio to extend the right to counsel to proceedings to terminate an adult guardianship, while in 2024, we co-authored an amicus brief in a Missouri appellate case that held denying a woman subject to a guardianship the counsel of her choice was a due process violation.

In both child and adult guardianship cases, liberty interests of the foremost importance are in peril. Child guardianship proceedings can result in a significant deprivation of custody, one that is extremely difficult to undo. The stakes for both children and parents are high. So much is at stake, in fact, that the highest courts of some states have found a constitutionally based RTC for parents in child guardianship matters.¹ The same is true for children as well, whose existing parental relationship is endangered. In addition, child guardianship cases are highly complex, requiring counsel for both parents and children to ensure accurate outcomes.

Similarly, guardianship of an adult is such a drastic measure that commentators often refer to it as being akin to a “civil death”:

The oft-stated purpose of guardianship is to protect people who are seen to be at risk of harm. But that protection comes at a cost. A plenary guardianship strips the person under

¹ See e.g., *Guardianship of V.V.*, 24 N.E.3d 1022 (Mass. 2015) (observing that the parental rights at stake in a guardianship proceeding are “no less compelling” than in a termination case because the guardian’s rights completely displace those of the parent).

guardianship of their fundamental rights and decision-making authority over various and broad aspects of their lives. Guardianship can leave individuals with limited rights, often effectively resulting in their “civil death.”²

We commend SB 134’s effort to make improvements to Colorado’s guardianship code. In doing so, however, there are some crucial modifications to SB 134 that are needed, in order to fulfill the legislature’s goal of protecting the liberty interests, safety, and well-being of individuals and families in guardianship matters.

First, with respect to guardianship of children, even though Colorado law expressly provides that parents may object to the appointment of a guardian,³ and even though the grounds for guardianship suggest high potential for contested legal issues,⁴ both existing Colorado law and SB 134 fail to guarantee counsel for parents that would enable them to object effectively.⁵ Given the significance of the interests at stake, the complexity of the issues under consideration, and the need for an accurate outcome, we urge the Committee to amend SB 134 so as to adopt [UGCOPA Section 204\(e\)](#), which would provide objecting parents with a right to appointed counsel.

Second, while we fully support SB 134’s alteration of existing Colorado law to make appointment of counsel for children in child guardianships mandatory instead of discretionary, the conditions for mandatory appointment are problematic. Specifically, SB 134 requires appointment of counsel for children only if (i) the minor is 12 years of age or older and requests counsel; (ii) the guardian ad litem recommends counsel; or (iii) the court determines that the minor needs representation. Similarly, for adults subject to adult guardianship proceedings, both existing Colorado law and SB 134 require appointed counsel only if the adult understands the proceedings sufficiently to make an affirmative request for appointed counsel (unless the visitor recommends appointment or “[t]he court determines that the respondent needs representation”). This is true of adult guardianship/conservatorship *establishment* matters⁶ as well as *terminations*.⁷ Expecting a child or adult subject to guardianship to sufficiently understand the proceeding so as to make an affirmative request for an attorney is likely to drastically reduce representation rates. Many will not grasp the stakes, or how an attorney would make a difference in the proceedings. And recent research suggests that a lack of representation may result in the granting of guardianships that are unnecessarily broad in scope or even unwarranted entirely. This was certainly true in the State of Maine, which adopted language identical to that proposed by SB 134.

² Jim Berchtold, [Issue Brief: Addressing Bias in the Guardianship Process](#), Justice in Agine (Feb. 29, 2024) (internal footnote omitted).

³ Compare current Colo. Rev. Stat. § 15-14-203(1) (“the other parent, or a person other than a parent or guardian having care of custody of the minor may prevent or terminate the appointment at any time by filing a written objection...”) with proposed Colo. Rev. Stat. § 15-14.7-203(2) (notice of the guardianship hearing must inform the individual of their right to object).

⁴ Compare current Colo. Rev. Stat. Ann. § 15-14-204(2) (permitting the court to appoint a guardian not only in situations where the parent consents or parental rights have already been terminated, but in situations where the court finds that “[t]he parents are unwilling or unable to exercise their parental rights”) with proposed Section Colo. Rev. Stat. Ann. § 15-14.7-201(1) (court may appoint a guardian if “[t]here is clear and convincing evidence that no parent of the minor is willing or able to exercise the powers the court is granting the guardian.”).

⁵ Current law is entirely silent as to parents, while SB 134 merely states that a parent “may *retain* an attorney” to represent them. See proposed Colo. Rev. Stat. § 15-14.7-204(4) (emphasis added).

⁶ Colo. Rev. Stat. §§ 15-14-305(2) (as to guardianships) and 15-14-406(2) (as to conservatorships).

⁷ See Colo. Stat. §§ 15-14-318(3) and 15-14-431(4) (indicating that in terminations, the court shall “follow the same procedures to safeguard the rights of the protected person that apply to a petition [for guardianship or conservatorship]”).

In Maine, where appointment of counsel in adult guardianships similarly requires a request from the adult, a [report about representation of adults](#) reveals that 78% of respondents were unrepresented. The unrepresented rate rose to an astounding 90% in cases regarding adults with developmental disabilities. And the presence of an attorney made an enormous difference on case outcomes:

In 2021, for example, when the Respondent had an attorney, the rate of appointment of a full guardianship dropped 20 percentage points, from 76% to only 56%. When the Respondent had an attorney, 33% of cases resulted in no guardianship at all, compared with 21% when there was no attorney. And, when guardianships were ordered, the rate at which they were full guardianships went from almost 96% down to 84% when there was an attorney. These drastic differences are comparable to 2019 and 2020.

In addition to the apparently high rate of erroneous outcomes that occur absent representation, adults subject to guardianship and protective proceedings are often at high risk of abuse and exploitation. Without the benefit of a confidential attorney-client relationship, the individual may not have anyone to whom they feel safe disclosing the true nature of their relationship with the petitioner. Guardianship of an adult is a drastic measure and an area ripe for misconduct, requiring the utmost procedural protection.

We appreciate that the Colorado legislature is taking a close look at its guardianship code in order to protect the rights of particularly vulnerable adults and families. We would be happy to answer questions about the above recommendation. Thank you for your attention to this matter.

Sincerely,



John Pollock
Coordinator, NCCRC

A. Vern Insalaco, J.D.
Legal Research & Legislative Coordinator