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HOUSE BILL NO. 961

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 37.1-134.9 of the Code of Virginia, relating to guardianship and conservatorship for individuals with mental retardation.

Patron—Barlow

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 37.1-134.9 of the Code of Virginia is amended and reenacted as follows:**

§ 37.1-134.9. Appointment of guardian ad litem; exception.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent, *except as provided in subsection D*. The guardian ad litem shall be paid such fee as is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include: (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 37.1-134.12 and 37.1-134.13, and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel should be appointed for the respondent, pursuant to § 37.1-134.12, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a report pursuant to subsection C; and (v) personally appearing at all court proceedings and conferences.

C. In the report required by subsection B (iv), the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether or not a guardian or conservator is needed; (iii) the extent of the duties and powers of the guardian or conservator, e.g., personal supervision, financial management, medical consent only; (iv) the propriety and suitability of the person selected as guardian or conservator, after consideration of geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the conservator's bond; if any; and (vi) consideration of proper residential placement of the respondent.

D. *The court may elect not to appoint a guardian ad litem to represent the interests of the respondent only when all of the following conditions exist:*

1. *The respondent is 18 years of age or older and has a diagnosis of mental retardation.*

2. *The respondent is the "child of the petitioner" as that term is defined in § 37.1-134.17.*

3. *The petitioner has been the person primarily responsible for the care of the respondent for at least five years immediately preceding the filing of a petition pursuant to § 37.1-134.8.*

4. *The petitioner provides the court with an independent evaluation report of the respondent pursuant to § 37.1-134.11 performed by a licensed professional skilled in the diagnosis, care and treatment of individuals with mental retardation. In addition to the requirements set forth in § 37.1-134.11, the report shall document, to the best information and belief of its signatory, whether the respondent is an incapacitated person who needs a guardian, a conservator, or both.*

5. *The respondent has not notified the court verbally or in writing that he desires the appointment of a guardian ad litem. If at any time subsequent to the filing of a petition pursuant to § 37.1-134.8 the respondent notifies the court verbally or in writing that he desires the appointment of a guardian ad litem, the court shall appoint a guardian ad litem immediately.*

INTRODUCED

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