



Disability Rights Education & Defense Fund



February 27, 2025

## Utah House of Representatives

### Re: Senate Bill 199, Guardianship Amendments

Dear Representatives:

The undersigned disability and civil rights organizations write to express our grave concerns about S.B. 199, “Guardianship Amendments” and urge the House to vote no on this expansive and harmful bill.

We recognize that many family members seek guardianship of loved ones with intellectual and developmental disabilities (I/DD) with the best of intentions, and only out of a desire to support and protect their disabled family member. However, **guardianship is a major intervention that should not be entered into lightly.** Guardianship strips a person of their civil liberties, autonomy, and legal personhood – often permanently. As the Honorable George Harmond, Utah Seventh Judicial District, wrote in 2009, guardianships “remove[] from a person a large part of what it means to be an adult: the ability to make decisions for oneself.”<sup>1</sup>

Existing **Utah law recognizes the gravity of guardianship.** In 2009, Judge Harmond concluded that, in Utah, “[w]e terminate this fundamental and basic right with all the procedural rigor of processing a

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<sup>1</sup> Ad hoc Comm. on Probate Law and Procedure, *Final Rep. to the Judiciary Council*, 3 (Feb. 23, 2009), <https://legacy.utcourts.gov/committees/adhocprobate/Guardian.Conservator.Report.pdf>.

traffic ticket.”<sup>2</sup> Since then, however, Utah has made important changes to its guardianship system to impose important due process protections. Utahns now generally have a right to an attorney in guardianship proceedings to protect against unnecessarily losing their rights through guardianship. As described below, Utah law now requires courts to prioritize limited guardianships where possible, and to impose tailored, rather than plenary, restrictions on the person’s rights. It recognizes that, even under guardianships, certain rights should only be curtailed in specific circumstances, and that guardians should consider the wishes and preferences of a person.

**S.B. 199 eviscerates this recently-strengthened system of due process, autonomy, and dignity protections.** It singles out an ill-defined subset of people for a fast-track, “ultra-guardianship.” People in these ultra-guardianship proceedings are excluded from essential due process protections in guardianship proceedings and discriminated against because of their alleged type of disability. And once in an ultra-guardianship, disabled people are subjected to expansive, unchecked power, allowing guardians to impose a breathtaking range of invasive personal choices on the disabled person.

Some of the most troubling elements of S.B. 199 include:

Extremely broad and irrefutable definition of “severe intellectual disability”

Upon receipt by the court of a signed letter from any Utah physician or psychologist indicating that a person has a “severe intellectual disability,” that person loses their standard right to counsel and enters into fast-tracked proceedings. There is no requirement that the physician or psychologist has met or treated the disabled person, and there is no requirement for a second opinion.

S.B. 199 includes no definition of “severe intellectual disability” except for a circular one that is linked merely to a provider saying a person has a severe intellectual disability. It is a virtual certainty that people with a wide variety of disabilities, including people who have communication and speech disabilities, will be labeled with “severe intellectual disability” as a matter of course based on stigma, bias, and stereotypes.

There is no clear way to challenge a letter stating that a person has “severe intellectual disability.”

Removal of right to counsel for people identified as having “severe intellectual disability”

The right to counsel in guardianship proceedings is a cornerstone of due process of law. National experts agree on the importance of counsel in guardianship proceedings. The National Guardianship Association supports “protect[ion of] key legal rights of persons subject to guardianship ... including the right to receive independent legal counsel;”<sup>3</sup> The Fourth National Guardianship Summit Recommendations, adopted in 2021, found that “[s]tates and courts must ensure that all judicial proceedings which may impact any of an adult’s rights to legal capacity provide meaningful due process, which includes ... [a r]ight to a qualified and compensated lawyer ... appointed by the court

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<sup>2</sup> *Id.*

<sup>3</sup> Nat’l Guardianship Assoc., *NGA Resolution In Support of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act*, (Jan. 18, 2018), <https://www.guardianship.org/wp-content/uploads/2018/01/UGCOPAA-Resolution-1-23-18.pdf>.

should the adult not have a lawyer of their own choosing;”<sup>4</sup> The Bill of Rights for Adults Who Have a Guardian, endorsed by the American Bar Association, the National Guardianship Network, and numerous other organizations, enshrines “the right to a lawyer who advocates for the outcome [they] want.”<sup>5</sup>

Today, virtually all Utahns subject to guardianship proceedings are entitled to a lawyer to represent them. *See* Utah Prob. Code § 75-5-303(5)(d) (2024).

S.B. 199 eliminates that right for most of the vast swath of people who are subjected to it. It singles out a subtype of disabled people who face already extraordinary stigma and bias and removes one of the key legal protections against civil death. S.B. 199 sets the stage for unnecessary and overbroad stripping of Utahns’ civil rights and legal personhood, without due process of law.

#### Establishment of “ultra-guardianships” that strip more rights with fewer protections

Guardianships should be tailored and limited to only those areas in which a court has found an individual lacks capacity, even with supports.<sup>6</sup> If a person has capacity, for example, to choose where they live or what church to attend, the State should not strip the person of that right.

Utahns today also enjoy the right to a tailored, limited guardianship wherever possible. Utah courts “*shall* prefer a limited guardianship and *may only* grant a full guardianship if no other alternative exists.” *Id.* § 75-5-304(2)(a)(i) (emphasis added). Indeed, if a court grants full guardianship, the court *must* “make a specific finding that nothing less than a full guardianship is adequate.” *Id.* § 75-5-304(2)(a)(ii) (emphasis added).

Utah also recognizes the importance and sensitivity of the right to spend time with family and loved ones. It requires that courts make specific findings before prohibiting an adult from communicating with or seeing family members. *Id.* § 75-5-312.5(2). Courts must consider the preferences of the adult under guardianship and must only prohibit association where it is the least restrictive means to protect the person under guardianship. *Id.* § 75-5-312.5(8)(c).

But S.B. 199 reverses these presumptions for the vast swath of people subject to it, granting guardians extraordinarily far-ranging power as a matter of course. S.B. 199:

- Creates a preference for a *full* guardianship that strips a person of *all* of their rights. S.B. 199 S1, 2025 General Session, § 75-5-609(2)(b) (2025).
- Automatically grants guardians unchecked and unlimited power to restrict association with any relatives or acquaintances. The guardian may cut a person off from family or friends without

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<sup>4</sup> Fourth Nat’l Guardianship Summit: Maximizing Autonomy and Ensuring Accountability, Recommendation 1.2 (May 2021), [https://law.syracuse.edu/wp-content/uploads/Fourth\\_National\\_Guardianship\\_Summit\\_-\\_Adopted\\_Recommendations\\_May\\_2021.pdf](https://law.syracuse.edu/wp-content/uploads/Fourth_National_Guardianship_Summit_-_Adopted_Recommendations_May_2021.pdf).

<sup>5</sup> American Bar Assoc., Resolution, 2 (Aug. 2023),

<https://www.americanbar.org/content/dam/aba/directories/policy/annual-2023/506-annual-2023.pdf>.

<sup>6</sup> *See* Fourth Nat’l Guardianship Summit, *supra* note 4, at 5 (Recommendation 3.2) (“States should eliminate plenary guardianship, allowing people to retain the maximum of rights, and if guardianship is imposed, require tailored guardianship orders in all cases”).

any reasoning. Such decisions need not be reported to the court, and they are not reviewable. *Id.* §75-5-611(7)(b).

- Automatically grants guardians expansive rights, including the right to restrict the disabled person’s access to alcohol, tobacco, pornography, and any “legal substance or activity that would be harmful to the health and wellbeing of the individual” – a term so expansive and vague as to plausibly allow for unilaterally prohibiting: sugary foods, television, internet access, red meat, horseback riding, or traveling in cars. Such restrictions need not be explained or reported to the court. The disabled person has no opportunity to challenge such decisions. *Id.* § 75-5-611(7)(c).

The expansive power granted to guardians under S.B. 199 will strip disabled people of their civil rights and liberties unnecessarily. Moreover, this system will make disabled people *less* safe, and *more* isolated. While many people become guardians out of a wish to protect a loved one, research indicates that promoting self-determination protects people with disabilities from abuse and neglect.<sup>7</sup> And for those people whose guardians are acting out of malice or abuse, S.B. 199 will keep them in the shadows and far less protected.

We urge you to vote no on S.B. 199.

American Civil Liberties Union, Disability Rights Program

American Civil Liberties Union of Utah

Autistic Self-Advocacy Network

Bazelon Center for Mental Health Law

Center for Public Representation

Communication FIRST

Disability Law Center

Disability Rights Education and Defense Fund

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<sup>7</sup> See Kathryn M. Burke, Karrie A. Shogren, Andrea Parente, Abdulaziz Alsaed, Austin M. Myers, & Shawn Aleong, *Self-Determination Research: Current and Future Directions*, 14 BEHAV SCI (BASEL) 613, (2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11274213/#B38-behavsci-14-00613>.