

## **SB 202: Guardianship & Conservatorship**

### *Uniform Laws & Montana Laws*

Prepared for the Children, Families, Health, and Human Services Interim Committee  
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This paper provides information about the Uniform Law Commission (ULC) and its activity related to guardianship and conservatorship, as well as the history behind Montana's guardianship and conservatorship laws and the ULC's influence on those laws.

### **UNIFORM LAWS**

The ULC, established in 1892, is a nonprofit unincorporated association comprised of over 300 uniform law commissioners who are attorneys and who are appointed by each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The sole purpose of the ULC is to review state laws, to determine which areas should be uniform among the states, and to research, draft, and promote the enactment of uniform state laws. A uniform law drafted by the ULC is not in effect until a state adopts it.<sup>1</sup> The ULC solicits proposals for new study and drafting projects twice a year.<sup>2</sup> Each proposal is investigated and, if approved by the Executive Committee, is assigned to a drafting committee of commissioners who meet throughout the year. Drafts must be considered at no less than two ULC annual meetings by all commissioners sitting as a Committee of the Whole. Once approved by the Committee of the Whole, the drafts must be approved by a majority of the states present, but by no less than 20 states, in order to be adopted as a uniform law.<sup>3</sup>

The ULC first took up guardianship and conservatorship in 1969 with the approval of the Uniform Probate Code. The ULC has since drafted three uniform guardianship and conservatorship acts: in 1982, in 1997, and, most recently, in 2017. In 2007, the ULC completed the Adult Guardianship and Protective Proceedings Jurisdiction Act, which provides a mechanism for multistate jurisdictional disputes and was adopted by most states, including

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<sup>1</sup> Uniform Law Commission, "About Us," <http://www.uniformlaws.org/aboutulc/overview>.

<sup>2</sup> Uniform Law Commission, "New Project Proposals," <http://www.uniformlaws.org/projects/overview/newprojectproposal>.

<sup>3</sup> Uniform Law Commission, "How Does an Act Receive Final ULC Approval?," <https://www.uniformlaws.org/aboutulc/faq#How%20does%20an%20act%20receive%20final%20approval?>

Montana.<sup>4</sup> The 1982 uniform act expanded the Uniform Probate Code to include the concept of limited guardianship, which was due, in part, to the fact that some states, including Montana, had already begun enacting the concept after it was recommended by the American Bar Association Commission on the Mentally Disabled. The 1997 uniform act, which was adopted by six states, built on the 1982 uniform act, "providing that guardianship and conservatorship should be viewed as a last resort, that limited guardianships or conservatorships should be used whenever possible, and that the guardian or conservator should consult with the ward or protected person, to the extent feasible, when making decisions."<sup>5</sup> The 2017 Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, which was the basis for SB 202 during the 2019 Montana legislative session, was drafted to incorporate recommendations from the Third National Guardianship Summit, which focused on postappointment guardianship issues. Updates in the 2017 uniform act include but are not limited to:

- revising terminology to incorporate a person-first philosophy, i.e., changing references to "ward" and "incapacitated person" to "adult subject to guardianship" and incorporating person-centered planning and decision-making standards;
- enhancing guidance for guardians and conservators and enhancing requirements for court monitoring; and
- creating new petition procedures and providing for arrangements other than guardianships or conservatorships.<sup>6</sup>

## **MONTANA GUARDIANSHIP & CONSERVATORSHIP LAWS**

The foundation of Montana's guardianship and conservatorship laws was established by legislation enacted in 1974 as part of the adoption of the Uniform Probate Code. Comments to the Uniform Probate Code noted that "the Article contains many provisions designed to minimize or avoid the necessity of guardianship and protective proceedings, as well as provisions designed to simplify and minimize arrangements which become necessary for care of persons or their property." Many of Montana's guardianship and conservatorship laws have remained unchanged since their original enactment. Subsequent substantial revisions and enactments are noted below:

- 1981: Enacted the concept of limited guardianship, specifying that guardianship may be used only as necessary and to the extent required by the person's limitations.<sup>7</sup>

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<sup>4</sup> Uniform Law Commission, "Adult Guardianship and Protective Proceedings Jurisdiction Act," <https://www.uniformlaws.org/committees/community-home?CommunityKey=0f25ccb8-43ce-4df5-a856-e6585698197a>.

<sup>5</sup> Uniform Law Commission Prefatory Note to Uniform Guardianship and Protective Proceedings Act (1997), pages 1-2.

<sup>6</sup> Uniform Law Commission Prefatory Note to Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (2017), pages 1-2.

<sup>7</sup> Ch. 344, Laws of 1981.

- 1983: Enacted the requirement that guardians and conservators file an annual accounting.<sup>8</sup>
- 1985: Provided that when a petition for conservatorship is filed alleging a mental illness or mental deficiency, district courts are allowed to direct that the person be examined by a physician or other professional person.<sup>9</sup> Also allowed the public administrator or a conservator corporation to be appointed conservator of certain persons.<sup>10</sup>
- 1989: Amended provisions pertaining to testamentary appointment of a guardian, removal or resignation of a guardian or termination of a guardianship, and accounting by conservators as the result of an amendment proposed in 1987 by the Joint Editorial Board of the national Uniform Probate Code. The amendments met a recommendation of the American Bar Association Commission on the Mentally Disabled.<sup>11</sup>
- 2007: Provided that a temporary conservator may be appointed for up to 6 months.<sup>12</sup>
- 2013: Enacted a process for obtaining a court order authorizing or requiring a conservator to take certain actions, including benefiting the protected person or the person's estate, minimizing taxes or administrative expenses, or providing gifts.<sup>13</sup>

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<sup>8</sup> Ch. 401, Laws of 1983.

<sup>9</sup> Ch. 208, Laws of 1985.

<sup>10</sup> Ch. 362, Laws of 1985.

<sup>11</sup> Ch. 585, Law of 1989; It appears that some of this language also appeared in the ULC Uniform Guardianship and Protective Proceedings Act of 1982.

<sup>12</sup> Ch. 42, Laws of 2007.

<sup>13</sup> Ch. 264, Laws of 2013.