

1 *Senate* BILL NO. *396*
 2 INTRODUCED BY *Fernando Murray Edick*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
 5 91A-5-303, R.C.M. 1947, TO PROVIDE FOR DISCRETIONARY RATHER
 6 THAN MANDATORY APPOINTMENT OF COUNSEL IN A PROCEEDING TO
 7 DETERMINE INCAPACITY AND THE NEED TO APPOINT A GUARDIAN FOR
 8 A PERSON ALLEGED TO BE INCAPACITATED."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 91A-5-303, R.C.M. 1947, is amended
 12 to read as follows:

13 "91A-5-303. Procedure for court appointment of a
 14 guardian of an incapacitated person. (1) The incapacitated
 15 person or any person interested in his welfare may petition
 16 for a finding of incapacity and appointment of a guardian.

17 (2) Upon the filing of a petition, the court shall set
 18 a date for hearing on the issues of incapacity, ~~and--unless~~
 19 ~~the~~ the allegedly incapacitated person ~~has~~ may have counsel
 20 of his own choice, ~~it shall or the court may~~ appoint an
 21 appropriate official or attorney to represent him in the
 22 proceeding, who shall have the powers and duties of a
 23 guardian ad litem. The person alleged to be incapacitated
 24 shall be examined by a physician appointed by the court who
 25 shall submit his report in writing to the court and be

1 interviewed by a visitor sent by the court. The visitor also
 2 shall interview the person seeking appointment as guardian,
 3 and visit the present place of abode of the person alleged
 4 to be incapacitated and the place it is proposed that he
 5 will be detained or reside if the requested appointment is
 6 made and submit his report in writing to the court. The
 7 person alleged to be incapacitated is entitled to be present
 8 at the hearing in person, and to see or hear all evidence
 9 bearing upon his condition. He is entitled to be present by
 10 counsel, to present evidence, to cross-examine witnesses,
 11 including the court-appointed physician and the visitor, and
 12 to trial by jury. The issue may be determined at a closed
 13 hearing without a jury if the person alleged to be
 14 incapacitated or his counsel so requests."

-End-

INTRODUCED BILL

SB396

Approved by Committee
on Judiciary

1 SENATE BILL NO. 396

2 INTRODUCED BY TURNAGE, MURRAY, ROBERTS

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-End-

SECOND READING

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REFERENCE BILL