

1 *Senate* BILL NO. *419*  
 2 INTRODUCED BY *Sen. Don Roberts Murray*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE DEFINITION  
 5 OF AN INCAPACITATED PERSON IN THE MONTANA UNIFORM PROBATE  
 6 CODE; AMENDING SECTION 91A-5-101, R.C.M. 1947."  
 7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 91A-5-101, R.C.M. 1947, is amended  
 10 to read as follows:

11 "91A-5-101. Definitions and use of terms. Unless  
 12 otherwise apparent from the context, in this code:

13 (1) "incapacitated person" means any person who is  
 14 impaired by reason of mental illness, mental deficiency,  
 15 physical illness or disability, advanced age, chronic use of  
 16 drugs, chronic intoxication, or other cause (except  
 17 minority) to the extent that he lacks sufficient  
 18 understanding or capacity to make or communicate responsible  
 19 decisions concerning his person or which cause has so  
 20 impaired the person's judgment that he is incapable of  
 21 realizing and making a rational decision with respect to his  
 22 need for treatment;

23 (2) "protective proceeding" means a proceeding under  
 24 the provisions of section 91A-5-401 to determine that a  
 25 person cannot effectively manage or apoly his estate to

1 necessary ends, either because he lacks the ability or is  
 2 otherwise inconvenienced, or because he is a minor, and to  
 3 secure administration of his estate by a conservator or  
 4 other appropriate relief;

5 (3) "protected person" means a minor or other person  
 6 for whom a conservator has been appointed or other  
 7 protective order has been made;

8 (4) "ward" means a person for whom a guardian has been  
 9 appointed. A "minor ward" is a minor for whom a guardian has  
 10 been appointed solely because of minority."

-End-



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## 1 SENATE BILL NO. 419

2 INTRODUCED BY TOWE, DOVER, ROBERTS, MURRAY

3  
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5 OF AN INCAPACITATED PERSON IN THE MONTANA UNIFORM PROBATE  
6 CODE; AMENDING ~~SECTION~~ SECTIONS 91A-5-101 AND 91A-5-303,  
7 R.C.M. 1947."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:10 Section 1. Section 91A-5-101, R.C.M. 1947, is amended  
11 to read as follows:12 "91A-5-101. Definitions and use of terms. Unless  
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9 (4) "ward" means a person for whom ~~WHOM~~ a guardian has  
10 been appointed. A "minor ward" is a minor for whom a  
11 guardian has been appointed solely because of minority."

12 SECTION 2. SECTION 91A-5-303, R.C.M. 1947, IS AMENDED  
13 TO READ AS FOLLOWS:

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

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

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

17 SECTION 3. THERE IS A NEW R.C.M. SECTION NUMBERED  
 18 91A-5-314 THAT READS AS FOLLOWS:

19 91A-5-314. If a guardian believes his ward should  
 20 receive medical treatment for a mental disorder and the ward  
 21 refuses, the court may, upon petition by the guardian, grant  
 22 an order for evaluation or treatment, provided that no such  
 23 order shall forcibly detain the ward against his will for  
 24 more than 72 hours. The ward is entitled to an appointment  
 25 of counsel and a hearing along with all the other rights

1 guaranteed seriously mentally ill persons under 38-1304.

-End-