

# MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (H-821) (LD 531 2020)

Date: 8/6/2020



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Date: (Filing No. H- )

**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 388, L.D. 531, “An Act To Provide Counsel for a Person Who Is the Subject of an Adult Guardianship, Conservatorship or Other Protective Arrangement Proceeding”

Amend the bill by striking out the title and substituting the following:

**'An Act To Establish a Presumption of Entitlement to Counsel for a Person Who Is the Subject of an Adult Guardianship, Conservatorship or Other Protective Arrangement Proceeding'**

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'Sec. 1. 18-C MRSA §5-305, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is repealed and the following enacted in its place:

**1. Presumption; appointment of attorney required.** There is a presumption that every respondent and adult subject to guardianship is entitled to legal representation. In any proceeding on a petition under section 5-302, the court shall appoint an attorney for an unrepresented respondent or adult subject to guardianship. This presumption may be rebutted if the court finds by clear and convincing evidence that the respondent or adult subject to guardianship knowingly and voluntarily refuses such representation and does not wish to contest any aspect of the proceeding or to seek any limitation on the guardian's powers.

**Sec. 2. 18-C MRSA §5-406, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is repealed and the following enacted in its place:

**1. Presumption; appointment of attorney required.** There is a presumption that every respondent and adult subject to conservatorship is entitled to legal representation. In any proceeding on a petition under section 5-402, the court shall appoint an attorney for an unrepresented respondent or adult subject to conservatorship. This presumption may be rebutted if the court finds by clear and convincing evidence that the respondent or adult subject to conservatorship knowingly and voluntarily refuses such representation and does

**COMMITTEE AMENDMENT**

1 not wish to contest any aspect of the proceeding or to seek any limitation on the  
2 conservator's powers.

3 **Sec. 3. 18-C MRSA §5-507, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2 and  
4 affected by PL 2019, c. 417, Pt. B, §14, is repealed and the following enacted in its place:

5 **1. Presumption; appointment of attorney required.** There is a presumption that  
6 every respondent and adult subject to a protective arrangement is entitled to legal  
7 representation. In a proceeding under this Part, the court shall appoint an attorney for an  
8 unrepresented respondent or adult subject to a protective arrangement. This presumption  
9 may be rebutted if the court finds by clear and convincing evidence that the respondent or  
10 adult subject to a protective arrangement knowingly and voluntarily refuses such  
11 representation and does not wish to contest any aspect of the proceeding or to seek any  
12 limitation to the protective arrangement.'

13 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
14 number to read consecutively.

15 **SUMMARY**

16 This amendment is the majority report of the Joint Standing Committee on Judiciary.

17 This amendment replaces the bill. The bill requires a probate court to appoint an  
18 attorney in all adult guardianship, conservatorship and other protective proceedings if the  
19 adult is not already represented by an attorney.

20 This amendment establishes a presumption that every adult in a guardianship,  
21 conservatorship or other protective proceeding is entitled to legal representation when not  
22 already represented and requires the court to appoint an attorney, except that the  
23 presumption may be rebutted if the court finds by clear and convincing evidence that the  
24 adult knowingly and voluntarily refuses such representation and does not wish to contest  
25 any aspect of the proceeding or powers of the guardian or conservator or limitation to the  
26 protective arrangement.



# 129th MAINE LEGISLATURE

**LD 531**

**LR 286(02)**

**An Act To Provide Counsel for a Person Who Is the Subject of an Adult Guardianship,  
Conservatorship or Other Protective Arrangement Proceeding**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Judiciary**

**Fiscal Note Required: No**

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## **Fiscal Note**

No fiscal impact