

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 480

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H.P. 354

House of Representatives, February 16, 2021

**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**

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Received by the Clerk of the House on February 11, 2021. Referred to the Committee on  
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative CARDONE of Bangor.

1 **Be it enacted by the People of the State of Maine as follows:**

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 B, §14, is repealed and the following enacted in its place:

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

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 B, §14, is repealed and the following enacted in its place:

14 **1. Presumption; appointment of attorney required.** There is a presumption that  
15 every respondent and adult subject to conservatorship is entitled to legal representation. In  
16 any proceeding on a petition under section 5-402, the court shall appoint an attorney for an  
17 unrepresented respondent or adult subject to conservatorship. This presumption may be  
18 rebutted if the court finds by clear and convincing evidence that the respondent or adult  
19 subject to conservatorship knowingly and voluntarily refuses such representation and does  
20 not wish to contest any aspect of the proceeding or to seek any limitation on the  
21 conservator's powers.

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

24 **1. Presumption; appointment of attorney required.** There is a presumption that  
25 every respondent and adult subject to a protective arrangement is entitled to legal  
26 representation. In a proceeding under this Part, the court shall appoint an attorney for an  
27 unrepresented respondent or adult subject to a protective arrangement. This presumption  
28 may be rebutted if the court finds by clear and convincing evidence that the respondent or  
29 adult subject to a protective arrangement knowingly and voluntarily refuses such  
30 representation and does not wish to contest any aspect of the proceeding or to seek any  
31 limitation to the protective arrangement.

32 **SUMMARY**

33 This bill establishes a presumption that every adult in a guardianship, conservatorship  
34 or other protective arrangement proceeding is entitled to legal representation when not  
35 already represented and requires the court to appoint an attorney, except that the  
36 presumption may be rebutted if the court finds by clear and convincing evidence that the  
37 adult knowingly and voluntarily refuses such representation and does not wish to contest  
38 any aspect of the proceeding or powers of the guardian or conservator or limitation to the  
39 protective arrangement.