

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE DRS35208-LU-94A\* (03/10)

Short Title: Guardianship/Jurisdiction and Portability.

(Public)

Sponsors: Senator Malone.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REVISE THE STATE'S GUARDIANSHIP STATUTES WITH RESPECT TO  
JURISDICTION, VENUE, PROCEDURE, APPEALS, AND PORTABILITY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 35A-1101(1) and (2), (5), (7) through (13), and (15) through (16), respectively, are recodified as G.S. 35A-1202(1a) and (1b), (4a), (10a) and (10b), (11a) through (11e), (13a), and (14a), respectively.

**SECTION 2.** G.S. 35A-1101(3) and (4), (6), (14), and (17) are repealed.

**SECTION 3.** G.S. 35A-1102 through 35A-1106, G.S. 35A-1108 and G.S. 35A-1109, G.S. 35A-1112 and G.S. 35A-1113, G.S. 35A-1115, and G.S. 35A-1120 are repealed.

**SECTION 4.** G.S. 35A-1201 is amended by adding a new subsection to read:

"(c) Nothing in this Chapter shall interfere with the authority of a judge to appoint a guardian ad litem under Rule 17(b) of the North Carolina Rules of Civil Procedure in a civil action or proceeding that does not arise under this Chapter."

**SECTION 5.** G.S. 35A-1202 is amended by adding a new subdivision to read:

"When used in this Subchapter, unless a contrary intent is indicated or the context requires otherwise:

...

(10a) 'Home state' means the state in which a respondent resided or in which a respondent was a patient or resident of an adult care home, nursing home, group home, or similar institution or facility for a period of at least six consecutive months immediately before the commencement of a special proceeding to appoint a guardian for the respondent. A period of temporary absence is part of the period.

...."

**SECTION 6.** Article 4 of Chapter 35A of the General Statutes is amended by adding a new section to read:

**§ 35A-1203.1. Jurisdiction over proceedings to appoint guardians for incompetent persons.**

(a) The clerk of superior court has exclusive, original jurisdiction over proceedings to appoint a guardian for a minor or incompetent person, unless the clerk in the county in which a proceeding to appoint a guardian for an incompetent person is brought has an interest, direct or indirect, in the proceeding. Jurisdiction with respect to the proceeding shall be vested in any



1 superior court judge residing or presiding in the district, and the jurisdiction of the superior  
2 court judge shall extend to all things which the clerk might have done.

3 (b) Except as otherwise provided in Article 12 or Article 12A of this Chapter, the clerk  
4 has jurisdiction to appoint a guardian for an incompetent person only if:

5 (1) This State is the home state of the respondent on the date of the  
6 commencement of the proceeding or was the home state of the respondent  
7 within six months before the commencement of the proceeding; or

8 (2) The respondent is physically present in this State, the respondent has  
9 significant contacts with this State, and there is significant evidence in this  
10 State regarding the respondent's condition, capacity, care, and needs.

11 (c) Except as otherwise provided in Article 12 or Article 12A of this Chapter, the  
12 physical presence of the respondent or the respondent's property in this State is not a sufficient  
13 basis in itself to establish jurisdiction to appoint a guardian for the respondent or the  
14 respondent's estate.

15 (d) The clerk may, on the clerk's own motion or upon motion of a party, decline to  
16 exercise jurisdiction in a proceeding to appoint a guardian for an incompetent person if the  
17 clerk determines that this State is an inconvenient or inappropriate forum or that the clerk's  
18 exercise of jurisdiction is not in the best interest of the respondent.

19 (e) If a guardianship proceeding is pending in another state and a proceeding to appoint  
20 a guardian for an incompetent person is commenced pursuant to this Subchapter, the clerk shall  
21 notify the court in which the other proceeding is pending and, after consultation with the court  
22 in which the other proceeding is pending, assume or decline jurisdiction, whichever is in the  
23 best interest of the respondent.

24 (f) If a general guardian, a guardian of the person, a guardian of the estate, or similar  
25 fiduciary has been appointed for the respondent or the respondent's estate by a court of another  
26 state and that guardianship has not terminated, the clerk may appoint a guardian for the  
27 respondent or the respondent's estate, as the case may be, only as provided by Article 12 or  
28 Article 12A of this Chapter."

29 **SECTION 7.** G.S. 35A-1204 reads as rewritten:

30 **"§ 35A-1204. Venue.**

31 (a) Venue for the appointment of a guardian for an incompetent person is in the county  
32 in which the person was adjudicated to be incompetent unless the clerk in that county has  
33 transferred the matter to a different county, in which case venue is in the county to which the  
34 matter has been transferred. respondent resides on the date the proceeding is commenced or in  
35 any county in which the respondent resided within six months before the date the proceeding is  
36 commenced. If the respondent's residence cannot be determined or the respondent does not  
37 reside in this State and has not resided in this State within six months before the date the  
38 proceeding is commenced, venue shall be in the county where the respondent is present on the  
39 date the proceeding is commenced. If proceedings involving the same respondent are brought  
40 in more than one county in which venue is proper, venue shall be in the county in which  
41 proceedings were commenced first.

42 (b) Venue for the appointment of a guardian for a minor is in the county in which the  
43 minor resides or is domiciled.

44 (c) Venue for the appointment of an ancillary guardian for a nonresident of the State of  
45 North Carolina who is a minor or who has been adjudicated incompetent in another state, and  
46 who has a guardian of the estate or general guardian in the state of his residence, is in any  
47 county in which is located real estate in which the nonresident ward has an ownership or other  
48 interest, or if the nonresident ward has no such interest in real estate, any county in which the  
49 nonresident owns or has an interest in personal property.

50 (d) Upon motion of a party, the clerk in the county in which a proceeding to appoint a  
51 guardian for an incompetent person was commenced shall transfer the proceeding to a county

1 in which venue is proper if the county in which the proceeding was commenced is not a proper  
2 venue for the proceeding.

3 (e) The clerk may, on the clerk's own motion or upon motion of a party, transfer venue  
4 of a proceeding to appoint a guardian for an incompetent person to another county if the  
5 convenience of the parties or witnesses and the ends of justice are promoted by the transfer and  
6 the clerk determines that no hardship or prejudice to the respondent will result from the change  
7 of venue."

8 **SECTION 8.** G.S. 35A-1205 reads as rewritten:

9 **"§ 35A-1205. Transfer to different county.**

10 At any time ~~before or~~ after appointing a guardian for a minor or incompetent person the  
11 clerk may, on a motion filed in the cause or on the court's own motion, for good cause order  
12 that the matter be transferred to a different county. The transferring clerk shall enter a written  
13 order directing the transfer under such conditions as the clerk specifies. The clerk in the  
14 transferring county shall inform the clerk of the transferee county that the proceeding is being  
15 transferred and transfer all original papers, documents, and orders from the guardianship ~~and~~  
16 ~~the incompetency proceeding, if any proceeding~~ to the clerk of the transferee county, along  
17 with the order directing the transfer. The clerk in the transferee county shall docket and file the  
18 papers in the estates division as a basis for jurisdiction in all subsequent proceedings. The clerk  
19 in the transferring county shall close ~~his the~~ file with a copy of the transfer order and any order  
20 ~~adjudicating incompetence or appointing a guardian."~~

21 **SECTION 9.** G.S. 35A-1210 reads as rewritten:

22 **"§ 35A-1210. Application-Petition before clerk.**

23 Any ~~individual, corporation, or disinterested public agent may file an application for the~~  
24 ~~appointment of a guardian for an incompetent person by filing the same person, including any~~  
25 ~~State or local human services agency through its authorized representative, may commence a~~  
26 ~~special proceeding seeking the appointment of a guardian for an incompetent person by filing a~~  
27 ~~petition with the clerk. The application may be joined with or filed subsequent to a petition for~~  
28 ~~the adjudication of incompetence under Subchapter I of this Chapter. The application-petition~~  
29 ~~shall be verified and set forth, to the extent known and to the extent such information is not~~  
30 ~~already a matter of record in the case; known, the following:~~

- 31 (1) The name, age, address, and county of residence of the ~~ward or~~ respondent;
- 32 (2) The name, address, and county of residence of the ~~applicant, his~~ petitioner,  
33 the petitioner's relationship if any to the ~~respondent or ward, and~~  
34 ~~his~~ respondent, and the petitioner's interest in the proceeding;
- 35 (3) The name, address, and county of residence of the respondent's next of kin  
36 and other persons known to have an interest in the proceeding;
- 37 (3a) Facts regarding the appointment of a guardian or conservator for the  
38 respondent or the respondent's estate in another state and the commencement  
39 of proceedings to appoint a guardian or conservator for the respondent or the  
40 respondent's estate in this State or in another state;
- 41 (3b) A statement of the facts tending to show that the respondent is incompetent  
42 and the reason why appointment of a guardian is sought;
- 43 (4) A general statement of the ~~ward's or~~ respondent's assets and liabilities with  
44 an estimate of the value of any property, including any income and  
45 receivables to which ~~he the~~ respondent is entitled; and
- 46 (5) Whether the ~~applicant-petitioner~~ seeks the appointment of a guardian of the  
47 person, a guardian of the estate, or a general guardian, and whom the  
48 ~~applicant-petitioner~~ recommends or seeks to have appointed as such the  
49 guardian or guardians."

50 **SECTION 10.** Article 5 of Chapter 35A of the General Statutes is amended by  
51 adding a new section to read:

1 **"§ 35A-1210.1. Application before clerk.**

2 If a petition under G.S. 35A-1210 has been filed and the proceeding has not been dismissed  
3 or an order appointing a guardian has not been entered, any person, including any State or local  
4 human services agency through its authorized representative, other than the petitioner who is  
5 interested in the respondent's welfare, may file an application seeking appointment as the  
6 respondent's guardian by filing an application with the clerk. The application shall be verified  
7 and set forth, to the extent known and to the extent the information is not already a matter of  
8 record in the case, the following:

- 9 (1) The name, address, and county of residence of the applicant, the applicant's  
10 relationship if any to the respondent, and the applicant's interest in the  
11 proceeding;  
12 (2) The name, address, and county of residence of the respondent's next of kin  
13 and other persons known to have an interest in the proceeding;  
14 (3) Facts regarding the appointment of a guardian or conservator for the  
15 respondent or the respondent's estate in another state and the commencement  
16 of proceedings to appoint a guardian or conservator for the respondent or the  
17 respondent's estate in this State or in another state;  
18 (4) A general statement of the ward's or respondent's assets and liabilities with  
19 an estimate of the value of any property, including any income and  
20 receivables to which the respondent is entitled; and  
21 (5) Whether the applicant seeks the appointment of a guardian of the person, a  
22 guardian of the estate, or a general guardian, and whom the applicant  
23 recommends or seeks to have appointed as the guardian or guardians."

24 **SECTION 11.** G.S. 35A-1211 reads as rewritten:

25 **"§ 35A-1211. Service of petition, application, motions, and notices.**

26 (a) ~~Application~~ Within five days after filing the petition, the clerk shall issue a written  
27 notice of the date, time, and place for a hearing on the petition. The hearing shall be held not  
28 less than 10 days or more than 30 days after the respondent has been served with notice and the  
29 petition unless the clerk extends the time for good cause, for preparation of a multidisciplinary  
30 evaluation, or for the completion of a mediation. Copies of the petition for appointment of a  
31 guardian and ~~related motions and notices~~initial notice of hearing shall be personally served on  
32 the respondent, respondent's counsel or guardian ad litem, other parties of record, and such  
33 other persons as the clerk shall direct. ~~respondent. A sheriff who serves the notice and petition~~  
34 shall serve the notice and petition without demanding any fees in advance.

35 (b) ~~When the application for appointment of a guardian is joined with a petition for~~  
36 ~~adjudication of incompetence, the application shall be served with and in the same manner as~~  
37 ~~the petition for adjudication of incompetence. When the application is filed subsequent to the~~  
38 ~~petition for adjudication of incompetence, the applicant shall serve the application as provided~~  
39 ~~by G.S. 1A-1, Rule 5, Rules of Civil Procedure, unless the clerk directs otherwise.~~ Within five  
40 days after filing the petition, the petitioner shall mail or cause to be mailed, by first-class mail,  
41 copies of the notice and petition to the respondent's next of kin alleged in the petition and any  
42 other persons the clerk may designate, unless the person has accepted notice. Proof of the  
43 mailing or acceptance shall be by affidavit or certificate of acceptance of notice filed with the  
44 clerk.

45 (c) The clerk shall mail, by first-class mail, copies of subsequent notices to the next of  
46 kin alleged in the petition and to other persons the clerk deems appropriate.

47 (d) Applications for appointment of a guardian and other motions and notices shall be  
48 served on the respondent's counsel, the respondent's guardian ad litem, other parties of record,  
49 and other persons as directed by the clerk."

50 **SECTION 12.** Article 5 of Chapter 35A of the General Statutes is amended by  
51 adding a new section to read:

1 **"§ 35A-1211.1. Rules of procedure and evidence.**

2 Except as otherwise provided by this Article, the Rules of Civil Procedure under Chapter  
3 1A of the General Statutes and the Rules of Evidence under Chapter 8C of the General Statutes  
4 shall apply in proceedings to appoint a guardian for an incompetent person."

5 **SECTION 13.** G.S. 35A-1107 is recodified as G.S. 35A-1211.2.

6 **SECTION 14.** G.S. 35A-1211.2(b) reads as rewritten:

7 "(b) An attorney appointed as a guardian ad litem under this section shall represent the  
8 respondent until the petition is dismissed or until a guardian is ~~appointed under Subchapter II of~~  
9 ~~this Chapter appointed.~~ After being appointed, the guardian ad litem shall personally visit the  
10 respondent as soon as possible and shall make every reasonable effort to determine the  
11 respondent's wishes regarding the incompetency proceeding and any proposed guardianship.  
12 The guardian ad litem shall present to the clerk the respondent's express wishes at all relevant  
13 stages of the proceedings. The guardian ad litem also may make recommendations to the clerk  
14 concerning the respondent's best interests if those interests differ from the respondent's express  
15 wishes. In appropriate cases, the guardian ad litem shall consider the possibility of a limited  
16 guardianship and shall make recommendations to the clerk concerning the rights, powers, and  
17 privileges that the respondent should retain under a limited guardianship."

18 **SECTION 15.** G.S. 35A-1114 is recodified as G.S. 35A-1211.3.

19 **SECTION 16.** G.S. 35A-1111 is recodified as G.S. 35A-1211.4.

20 **SECTION 17.** G.S. 35A-1211.4(b) reads as rewritten:

21 "(b) If a multidisciplinary evaluation is ordered, the clerk shall name a designated  
22 agency and order it to prepare, cause to be prepared, or assemble a current multidisciplinary  
23 evaluation of the respondent. The agency shall file the evaluation with the clerk not later than  
24 30 days after the agency receives the clerk's order. ~~The multidisciplinary evaluation shall be~~  
25 ~~filed in the proceeding for adjudication of incompetence, in the proceeding for appointment of~~  
26 ~~a guardian under Subchapter II of this Chapter, or both.~~ Unless otherwise ordered by the clerk,  
27 the agency shall send copies of the evaluation to the petitioner and the respondent's counsel or  
28 and guardian ad litem for the respondent not later than 30 days after the agency receives the  
29 clerk's order. The evaluation shall be kept under such conditions as directed by the clerk and its  
30 contents revealed only as directed by the clerk. The evaluation shall not be a public record and  
31 shall not be released except by order of the clerk."

32 **SECTION 18.** G.S. 35A-1211.4(e) is repealed.

33 **SECTION 19.** G.S. 35A-1110 is recodified as G.S. 35A-1211.5.

34 **SECTION 20.** G.S. 35A-1211.5 reads as rewritten:

35 **"§ 35A-1211.5. Right to jury.**

36 The respondent has a right, upon request by ~~him, his counsel, or his~~ the respondent, the  
37 respondent's counsel, or the respondent's guardian ad litem, to trial by jury. ~~jury on the issue of~~  
38 incompetency. Failure to request a trial by jury shall constitute a waiver of the right. The clerk  
39 may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil  
40 Procedure, by entering an order for trial by jury on ~~his~~ the clerk's own motion. The jury shall be  
41 composed of 12 persons chosen from the county's jury list in accordance with the provisions of  
42 Chapter 9 of the General Statutes."

43 **SECTION 21.** G.S. 35A-1212 reads as rewritten:

44 **"§ 35A-1212. Hearing before clerk on appointment of guardian.**

45 (a) ~~The clerk shall make such inquiry and receive such evidence as the clerk deems~~  
46 ~~necessary to determine:~~

47 (1) ~~The nature and extent of the needed guardianship;~~

48 (2) ~~The assets, liabilities, and needs of the ward; and~~

49 (3) ~~Who, in the clerk's discretion, can most suitably serve as the guardian or~~  
50 ~~guardians.~~

1 If the clerk determines that the nature and extent of the ward's capacity justifies ordering a  
2 limited guardianship, the clerk may do so. Except as otherwise provided, the hearing on the  
3 petition shall be at the date, time, and place set forth in the final notice of hearing. If a  
4 multidisciplinary evaluation or mediation is ordered after a notice of hearing has been issued,  
5 the clerk may extend the time for hearing and issue a notice to the parties that the hearing has  
6 been continued. The notice shall state the reason the hearing has been continued and the date,  
7 time, and place of the new hearing. The new hearing shall not be less than 10 days or more than  
8 30 days after the respondent has been served with notice.

9 (a1) The hearing shall be open to the public unless the respondent or the respondent's  
10 counsel or guardian ad litem requests otherwise, in which event the clerk shall exclude all  
11 persons other than those directly involved in or testifying at the hearing.

12 (a2) The petitioner and the respondent are entitled to present testimony and documentary  
13 evidence, subpoena witnesses and the production of documents, and examine and  
14 cross-examine witnesses.

15 (a3) The clerk may not enter an order appointing a guardian for an incompetent person  
16 unless the clerk or jury finds, by clear, cogent, and convincing evidence, that the respondent is  
17 incompetent.

18 (b) If a current multidisciplinary evaluation is not available and the clerk determines  
19 that one is necessary, the clerk, on ~~his~~ the clerk's own motion or the motion of any party, may  
20 order that ~~such an a multidisciplinary evaluation be performed pursuant to G.S. 35A-1111. The~~  
21 ~~provisions of that section shall apply to such an order for a multidisciplinary evaluation~~  
22 ~~following an adjudication of incompetence performed.~~

23 (c) The clerk may require a report prepared by a designated agency to evaluate the  
24 suitability of a prospective guardian, to include a recommendation as to an appropriate party or  
25 parties to serve as guardian, or both, based on the nature and extent of the needed guardianship  
26 and the ward's assets, liabilities, and needs.

27 (d) If a designated agency has not been ~~named pursuant to G.S. 35A-1111,~~ named, the  
28 clerk may, at any time ~~he~~ the clerk finds that the best interest of the ward would be served  
29 thereby, name a designated agency.

30 (e) If the respondent is adjudicated incompetent and the clerk determines that a  
31 guardian should be appointed, the clerk shall enter an order appointing a guardian or guardians  
32 pursuant to the provisions of this Article. If the clerk determines that the nature and extent of  
33 the ward's capacity justifies ordering a limited guardianship, the clerk shall order a limited  
34 guardianship."

35 **SECTION 22.** Article 5 of Chapter 35A of the General Statutes is amended by  
36 adding a new section to read:

37 "**§ 35A-1215.1. Appeal from clerk's order.**

38 (a) Appeal from the clerk's order shall be to the superior court pursuant to  
39 G.S. 1-301.1(c) through (e).

40 (b) An appeal shall not stay the appointment of a guardian unless the stay is ordered by  
41 the superior court or the Court of Appeals."

42 **SECTION 23.** G.S. 35A-1116 is recodified as G.S. 35A-1215.2.

43 **SECTION 24.** G.S. 35A-1215.2(b) reads as rewritten:

44 "(b) The cost of a multidisciplinary evaluation order ~~pursuant to G.S. 35A-1111~~ shall be  
45 assessed as follows:

46 (1) If the respondent is adjudicated incompetent and is not indigent, the cost  
47 shall be assessed against the respondent;

48 (2) If the respondent is adjudicated incompetent and is indigent, the cost shall be  
49 borne by the Department of Health and Human Services;

- 1 (3) If the respondent is not adjudicated incompetent, the cost may be taxed  
2 against either party, apportioned among the parties, or borne by the  
3 Department of Health and Human Services, in the discretion of the court."

4 **SECTION 25.** Article 12 of Chapter 35A of the General Statutes is amended by  
5 adding a new section to read:

6 "**§ 35A-1282. Payment of debt and delivery of property to foreign guardian or**  
7 **conservator without local proceeding.**

8 A person who is indebted to or has the possession of tangible or intangible property of an  
9 incompetent person or minor for whom a general guardian, guardian of the person, guardian of  
10 the estate, or similar court-appointed fiduciary has been appointed under the law of another  
11 state may pay the debt or deliver the property to the foreign guardian upon presentation of the  
12 letters or order of appointment and an affidavit made by or on behalf of the foreign guardian,  
13 conservator, or fiduciary stating that a guardianship proceeding is not pending in this State and  
14 that the foreign guardian, conservator, or fiduciary is entitled to payment or to receive delivery.  
15 Payment or delivery in accordance with this section discharges the debtor or possessor, absent  
16 bad faith, knowledge of a guardianship proceeding pending in this State, or any other reason  
17 the transfer is unlawful or improper."

18 **SECTION 26.** Chapter 35A of the General Statutes is amended by adding a new  
19 Article to read:

20 "Article 12A.

21 "Guardianship Portability.

22 "**§ 35A-1289.1. Authority of foreign guardians.**

23 A general guardian, guardian of the person, guardian of the estate, or similar  
24 court-appointed fiduciary appointed in another state may take any action or exercise any power  
25 within this State if the guardian's action is valid under the law of the state in which the guardian  
26 was appointed and the ward is not a resident of this State.

27 "**§ 35A-1289.2. Issuance of guardianship letters to foreign guardians.**

28 (a) The clerk in the county in which a ward resides may appoint a person as the  
29 guardian of the person of a ward if:

- 30 (1) That person has been appointed and is serving as the ward's general guardian  
31 or guardian of the person under the laws of another state;  
32 (2) The foreign guardian applies for letters of appointment;  
33 (3) The foreign guardian files with the clerk an authenticated copy of the letters  
34 of appointment or order under which the guardian is authorized to act under  
35 the laws of the other state; and  
36 (4) The ward resides in this State.

37 (b) Upon filing an application for letters of appointment under this section, the foreign  
38 guardian shall serve notice of the application on the ward and on any other persons the clerk  
39 designates.

40 (c) The clerk shall grant the application and issue letters of appointment pursuant to  
41 G.S. 35A-1206 without a hearing unless the ward or an interested person files an objection with  
42 the clerk within 14 days after service of notice of the application or the clerk determines that  
43 issuing letters of appointment to the foreign guardian without a hearing is not in the ward's best  
44 interest.

45 (d) If the ward or an interested person files a timely objection or the clerk determines  
46 that issuing letters of appointment to the foreign guardian is not in the ward's best interest, the  
47 clerk shall deny the application and the foreign guardian or any interested person may file a  
48 petition seeking appointment of a guardian pursuant to Subchapter II of this Chapter.

49 (e) The duties, powers, rights, liabilities, and responsibilities of a guardian appointed  
50 pursuant to this section shall be the same as those of a guardian appointed pursuant to  
51 Subchapter II of this Chapter.

1 (f) If the clerk appoints a guardian pursuant to this section, the clerk shall provide  
2 notice of appointment to the court that appointed the foreign guardian.

3 **"§ 35A-1289.3. Transfer of guardianship to another state.**

4 Upon application by a guardian or an interested person, the clerk shall terminate a  
5 guardianship pursuant to G.S. 35A-1295 and discharge the guardian pursuant to G.S. 35A-1266  
6 if the clerk determines that: (i) the ward no longer resides in this State; (ii) a court of another  
7 state has entered an order appointing a guardian or conservator for the ward or the ward's  
8 property; (iii) the interests of the ward are adequately protected; and (iv) there is no longer a  
9 need for continued guardianship in this State."

10 **SECTION 27.** G.S. 35A-1295(a)(2) reads as rewritten:

11 "(a) Every guardianship shall be terminated and all powers and duties of the guardian  
12 provided in Article 9 of this Chapter shall cease when the ward:

13 ...

14 (2) Is adjudicated to be restored to ~~competency pursuant to the provisions of~~  
15 ~~G.S. 35A-1130, competency,~~ or

16 ...."

17 **SECTION 28.** G.S. 35A-1130 is recodified as G.S. 35A-1296.

18 **SECTION 29.** G.S. 35A-1296 reads as rewritten:

19 **"§ 35A-1296. Proceedings before clerk. Restoration to competency.**

20 (a) The guardian, ward, or any other interested person may petition for restoration of  
21 the ward to competency by filing a motion in the ~~cause of the incompetency proceeding with~~  
22 ~~the clerk who is exercising jurisdiction therein.~~ cause. The motion shall be verified and shall set  
23 forth facts tending to show that the ward is competent.

24 (b) Upon receipt of the motion, the clerk shall set a date, time, and place for a hearing,  
25 which shall be not less than 10 days or more than 30 days from service of the motion and notice  
26 of hearing on the ward and the guardian, or on the one of them who is not the petitioner, unless  
27 the clerk for good cause directs otherwise. The petitioner shall cause notice and a copy of the  
28 motion to be served on the guardian and ward (but not on one who is the petitioner) and any  
29 other parties to the ~~incompetency~~ proceeding. Service shall be in accordance with provisions of  
30 G.S. 1A-1, Rule 4, Rules of Civil Procedure.

31 (c) At the hearing on the motion, the ward shall be entitled to be represented by counsel  
32 or guardian ad litem, and a guardian ad litem shall be appointed in accordance with rules  
33 adopted by the Office of Indigent Defense Services if the ward is indigent and not represented  
34 by counsel. Upon motion of any party or the clerk's own motion, the clerk may order a  
35 multidisciplinary ~~evaluation~~ evaluation as defined in G.S. 35A-1202(13). The ward has a right,  
36 upon request by ~~him, his counsel, or his~~ the ward or the ward's counsel or guardian ad litem to  
37 trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk  
38 may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil  
39 Procedure, by entering an order for trial by jury on ~~his~~ the clerk's own motion. ~~Provided, if~~  
40 ~~there is a jury in a proceeding for restoration to competency, it shall be a jury of six persons~~  
41 ~~selected in accordance with the provisions of Chapter 9 of the General Statutes.~~

42 (d) If the clerk or jury finds by a preponderance of the evidence that the ward is  
43 competent, the clerk shall enter an order adjudicating that the ward is restored to competency.  
44 Upon ~~such~~ the adjudication, the ward is authorized to manage ~~his~~ the ward's affairs, make  
45 contracts, control and sell ~~his~~ the ward's property, both real and personal, and exercise all rights  
46 as if ~~he~~ the ward had never been adjudicated incompetent.

47 (e) The filing and approval of final accounts from the guardian and the discharge of the  
48 guardian shall be as provided in Subchapter II of this Chapter.

49 (f) If the clerk or jury fails to find that the ward should be restored to competency, the  
50 clerk shall enter an order denying the petition. The ward may appeal from the clerk's order to  
51 the superior court ~~for trial de novo~~ pursuant to G.S. 1-301.3(c) through (e)."



1           **SECTION 30.** This act becomes effective October 1, 2010, and applies to  
2 proceedings or motions filed or pending on or after that date.