

**REGINA D. PETERSEN
ADMINISTRATOR OF COURTS
JUDICIAL BRANCH OF THE VIRGIN ISLANDS**

ON

BILL NO. 35-0174

BEFORE THE COMMITTEE ON RULES AND JUDICIARY

THIRTY-FIFTH LEGISLATURE

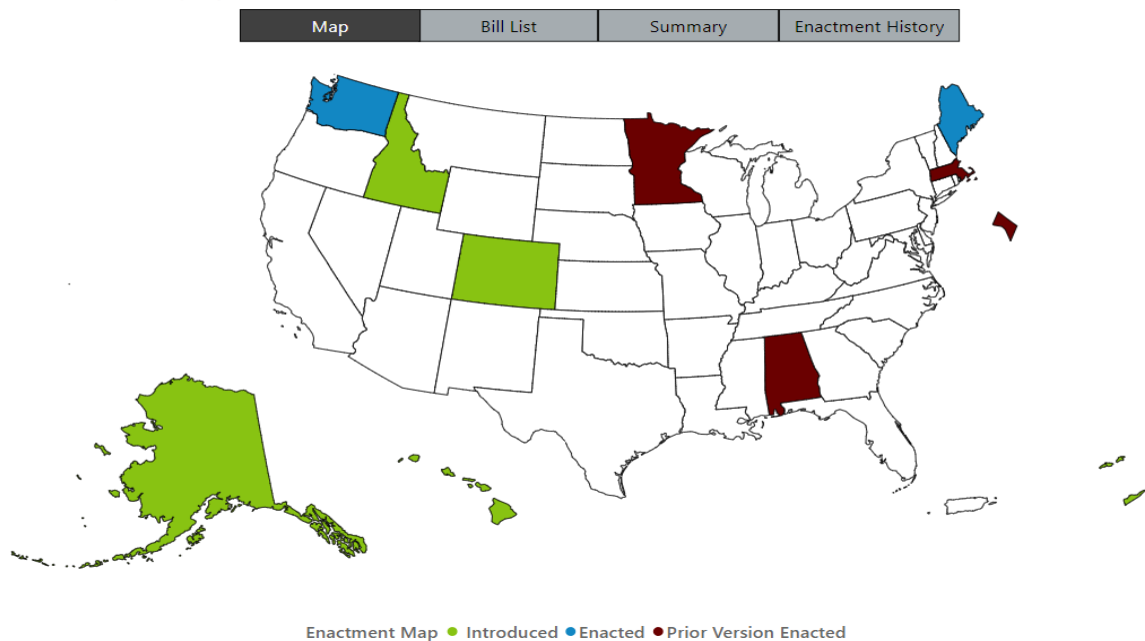
MAY 24, 2024

Good day Chairman Capehart, Members of the Committee on Rules and Judiciary and other Members of the 35th Legislature present, Staff, and the listening public. I am Regina deChabert Petersen, Administrator of Courts, of the Judicial Branch of the Virgin Islands. I would like to take this opportunity to thank the Committee and the Bill Sponsor, Senator Novelle E. Francis Jr. for the opportunity to appear before you and provide a brief statement concerning Bill No. 35-0174.

As the Administrator of Courts responsible for the day-to-day non-judicial operations of the Branch, I will try to limit my comments to any financial or operational impact on our courts. The Judiciary understands that the Uniform Guardianship, Conservatorship, and Other Protective Measures Act (UGCOPA) is the model statute encouraged to be adopted by the Uniform Law Commission. Whereas the original 2007 Adult Guardianship and Protective Proceedings Jurisdiction Act was widely adopted in 49 jurisdictions including the Virgin

Islands which passed Bill 31-0184 in 2017, the repeal of the 2017 guardianship laws and proposed replacement has been adopted by just 2 states, with the legislation also introduced this year in 5 other jurisdictions including the U.S. Virgin Islands as shown in the map below. However, the current bill is not just revision in the Virgin Islands but a repeal and full scale replacement of the existing law.

2017 | Guardianship, Conservatorship, and Other Protective Arrangements Act
Probate, Trusts, & Estates | Elder Law | Family Law



Based on the current rate of adoption, there is not a lot of information on the pros and cons on implementation or any substantial best practice data. Accordingly, my comments will be limited to potential cost implications for Judicial Branch operations as opposed to process as follows:

1. The current bill's adoption will result in substantial increases in costs associated with court-appointed counsel and other judicial resources for mandatory hearings. The Uniform Adult Guardianship and

Protective Proceeding Jurisdiction Act adopted by the Territory in 2017 pursuant to Act 7958 had just 3 instances of mandated appointment of counsel, generally directed to be paid from the respondent's estate. However, it is also important to note, that in most instances there is not a substantial estate to cover reasonable fees. By comparison, Bill 35-0174 proposes to adopt the Uniform Guardianship Conservatorship and Other Protected Arrangements Act and has 12 mandates for the court to appoint counsel, 2 of which require court appointed to counsel for parents of a minor, and 2 which stipulate that the appointment of counsel for an adult respondent should be made regardless of ability to pay. Section 204 of UGCOPA covers both the right to retain counsel and the right to have an attorney appointed by the court. However, subsection (e) in the uniform law was placed in brackets as optional recognizing that jurisdictions need to weigh the benefit of representation to protect parent's fundamental rights and interests in parenting their children against fiscal constraints. The 2017 enactment of the 1997 Uniform Law pursuant to Bill 31-0184 Act No. 7958, allowed much more judicial discretion for determinations on the need for court appointed legal representation for parties in guardianship matters. That discretion should not be removed from judges.

2. Section 305 of the (UGCOPA) provides 3 options for Appointment and Role of Attorney for Adults, 2 of which I will refer to here:

Alternative A

(a) The court shall appoint an attorney to represent the respondent in a proceeding for appointment of a guardian for an adult if:

- (1) the respondent requests an appointment;
- (2) the [visitor] recommends an appointment; or
- (3) the court determines the respondent needs representation, and

Alternative B

(a) Unless the respondent in proceedings for appointment of a guardian for an adult is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent's ability to pay.

It is unclear why Alternative B was selected in §5-406, and unlike the election for minors under §5-204, this section places a mandate on the courts to appoint counsel without regard to indigency. Such mandates are challenging both from a funding and attorney resource standpoint as we currently have just 9 attorneys on our voluntary panels for Juvenile and Guardian Ad Litem cases territory wide. I must also note however, that in reviewing the legislative comments to the UGCOPA, it is stated that if a jurisdiction opts for Alternative B, as in the current bill, then it should not include the provision from section 304 d(1) of the Act requiring a [visitor] to recommend whether an attorney should be appointed to represent the respondent. This provision is however included at §5-504 (e)(1) and may be an indication that the bill in its current form, may require further review for consistency.

3. The mere fact that UGCOPA provides options in adoption is a clear indication that there is not or should not be a one-size fits all approach when it comes to uniform laws. We should carefully survey the legal landscape to determine the right fit for the Territory, based on size, available resources and available service arrays. To do otherwise could unduly burden the system with requirements and mandates that may or may not be necessary.

4. The Act itself with legislative comments is 258 pages long. One would have to understand all aspects of what is covered in the Act and even in my position as Administrator, I cannot say that I do without further study. The resulting Bill No. 35-0174 is 142 pages with no legislative notes on why some of the alternatives were chosen over others. I submit to this body that the UGCOPA came from careful study and evaluation mostly as the result of the work of a task force(s) with comprehensive knowledge through membership, dedicated time and resources, expertise and experience in subject matter practice and passionate leadership to guide the process to concise, beneficial and tangible recommendations for meaningful change.

I think more time is needed for thorough evaluation and informed decision making prior to adoption. Thank you for the opportunity to provide this brief statement on Bill No. 35-0174.