

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**HOUSE BILL 1123**

Short Title: Guardianship Amendments. (Public)

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Sponsors: Representatives Farmer-Butterfield; Jones, Hackney, and Rapp.

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Referred to: Judiciary II.

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April 10, 2003

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO EXPRESSLY PROVIDE FOR LIMITED GUARDIANSHIPS FOR  
3 INCOMPETENT PERSONS AND TO CLARIFY THE DUTY OF A GUARDIAN  
4 AD LITEM APPOINTED TO REPRESENT A PERSON IN AN  
5 INCOMPETENCY ADJUDICATION.

6 The General Assembly of North Carolina enacts:

7           **SECTION 1.** G.S. 35A-1212(a) reads as rewritten:

8       "(a) The clerk shall make such inquiry and receive such evidence as the clerk  
9 deems necessary to determine:

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

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

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

14       If the clerk determines that the nature and extent of the ward's capacity justifies  
15 ordering a limited guardianship, the clerk may do so."

16           **SECTION 2.** G.S. 35A-1215(b) reads as rewritten:

17       "~~The~~ If the clerk orders a limited guardianship as authorized by G.S.  
18 35A-1212(a), the clerk may order that the ward retain certain legal rights and privileges  
19 to which he was entitled before he was adjudged incompetent; provided, any such order  
20 shall include findings as to the nature and extent of the ward's incompetence as it relates  
21 to the ward's need for a guardian or guardians."

22           **SECTION 3.** G.S. 35A-1107 reads as rewritten:

23 **"§ 35A-1107. Right to counsel or guardian ad litem.**

24       The respondent is entitled to be represented by counsel of his own choice or by an  
25 appointed guardian ad litem. A guardian ad litem appointed pursuant to this section  
26 shall represent the expressed interests of the respondent unless the respondent is unable  
27 to express those interests, in which case the guardian ad litem shall make inquiry into  
28 the best interests of the respondent. Upon filing of the petition, an attorney shall be  
29 appointed as guardian ad litem to represent the respondent unless the respondent retains

1 his own counsel, in which event the guardian ad litem may be discharged. Appointment  
2 and discharge of an appointed guardian ad litem shall be in accordance with rules  
3 adopted by the Office of Indigent Defense Services."

4 **SECTION 4.** This act is effective when it becomes law.