

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 798 (First Edition)

SHORT TITLE: Guardianship/Incompetency.

SPONSOR(S): Representatives Bordsen and Goodwin

<b>FISCAL IMPACT</b>					
	<b>Yes ( )</b>	<b>No (X)</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>
<b>REVENUES:</b>					
<b>EXPENDITURES:</b>					
<b>DHHS</b>		<b>No Fiscal Impact</b>			
<b>Judicial</b>		<b>No impact anticipated on clerk or other Court workload.</b>			
<b>POSITIONS (cumulative):</b>	<b>None.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Health and Human Services; Judicial Department.				
<b>EFFECTIVE DATE:</b>	October 1, 2008.				

**BILL SUMMARY:** H.B. 798 makes the following changes to Chapter 35A (Incompetency and Guardianship):

- Directs the Revisor of Statutes to replace terms in Chapter 35A (incompetency and guardianship), wherever they occur, as follows: 1) incompetent with incapacitated; 2) incompetency with incapacity; 3) competency with legal capacity; and, 4) competent with not capacitated, unless the terms are otherwise amended by the act.
- Makes substantive changes in G.S. 35A-1101, eliminating a list of terms from the definitions section, eliminating and replacing others, and defining the replacement terms.
- Amends G.S. 35A-1111, requiring a professional evaluation (was, multidisciplinary evaluation) to assist in determining the nature and extent of a respondent’s incapacity (was, disability) or in developing an appropriate guardianship plan.

- Directs that the clerk order a professional evaluation upon request of the respondent, respondent's counsel, or guardian ad litem, and permits the clerk to order a professional evaluation for the purpose of being evaluated. Specifies the content of the evaluation.
- Amends G.S. 35A-1108 and G.S. 35A-1116 to make conforming changes.
- Amends G.S. 35A-1112, requiring that if the clerk is the finder of fact, the clerk must (was, may) include findings on the nature and extent of the ward's incapacity in the order.
- Amends G.S. 35A-1120 by providing that a guardian may (was, shall) be appointed for person judged to be incapacitated.
- Amends G.S. 35A-1210 to provide content guidelines for an application before the clerk for a plenary guardianship or a limited guardianship.
- Amends G.S. 35A-1212 to require that the clerk make inquiry and receive evidence to determine if the ward's needs may be met by means other than appointment of a guardian.
- Amends G.S. 35A-1215 by providing that the clerk may not appoint a guardian unless the clerk finds that the ward's needs cannot be met by other means. Directs that the clerk grant to a guardian only the powers necessitated by the ward's limitations and make appointive or other orders that encourage the development of the ward's maximum self-reliance and independence.
- Makes conforming and technical changes to G.S. 35A-1130(c) and G.S. 35A-1202.
- Makes other conforming and technical changes. Effective October 1, 2008, and applies to filings on or after that date.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Health and Human Services**

The proposed legislation amends G.S. 35A-1111, changing the multidisciplinary evaluation to a professional evaluation which assists in determining the nature and extent of a respondent's incapacity. The mandate that the Department of Health and Human Services pay for evaluations when the individual is indigent exists in current law. According to the Department of Health and Human Services, a multidisciplinary evaluation is the same as a professional evaluation so the proposed legislation has no fiscal impact. The Department of Health and Human Services has indicated that the funding for these evaluations is inadequate and the limited funding may affect whether clerks choose order evaluations for indigent respondents.

### **Judicial Department**

Despite the numerous proposed changes to Chapter 35A, including various terminology and procedural changes related to the clerk's ordering of "professional evaluations," the Administrative Office of the Courts does not anticipate this legislation will cause increases in clerk or other Court workload. Accordingly, Fiscal Research does not expect H.B. 798 to have a fiscal impact for the Courts.

**SOURCES OF DATA:** Department of Health and Human Services; Judicial Department.

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** May 24, 2007



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