

do? It says this. When a guardianship petition is filed for someone that is deemed to be incapacitated and a person is incapacitated if they effectively by virtue of mental or physical infirmity are not able to understand... they lack sufficient understanding in effect to handle their affairs, when that petition is filed, then the court must appoint an attorney to represent the interests of the incapacitated person. That is a significant change. Today the court only...it's only discretionary as to whether or not an attorney will be appointed to represent the ward. The amendments make it very clear that the court must appoint a lawyer to represent the ward, the alleged ward. Then the court will conduct a hearing on the issue of incapacitation and if the attorney for the ward concludes that it is not in the ward's best interest to be at that hearing under the amendments the attorney can certify that to the court and the ward does not have to be present at the hearing. That situation can easily arise when the ward is comotose and that would clearly be incapacitated but the ward is comotose, staying at a hospital or a convalescence center or a long-term care center and just can't be present at the hearing. Under those circumstances the attorney can certify that it is not in the best interest of the ward to be at the hearing and the hearing can continue. At the hearing, if the court finds by clear and convincing evidence, which again is a change from the existing standard with respect to incapacitation, that the individual is incapacitated, then the court has authority to establish the guardianship for the ward. And when the court establishes that guardianship they can establish it as a full guardianship giving the guardian, in effect, every power to deal with the ward's affairs or it can limit the guardianship. It can say, "Look, we have had to conclude from the evidence before us presented by the attorney and by the ward himself and by others, that the ward is competent in certain areas." The ward could choose where the ward wants to live. The ward can manage a certain portion of the ward's estate and right on down the line. Under those circumstances the court can limit the nature of the guardianship. That is included in the amendments. The original bill said that the court starts out with limiting the guardianship at the outset and only expands those limitations to a full guardianship if it concludes that the incapacitated person requires a full guardianship. The amendments take it the other way. It says that we start out with the full guardianship but if a showing is made that the ward is basically not capable of...is capable of conducting affairs in certain areas, then a limitation can be applied. The amendments permit the court along the way to appoint a visitor. A visitor would be somebody, probably not an attorney, who would go out and gather evidence and present that evidence as necessary