

SENATE BILL NO. 2332

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2332 with my recommendations for reconsideration.

Senate Bill No. 2332 would prohibit the withdrawal of a complaint for adjudication of incapacity and appointment of a guardian absent a showing that the alleged incapacitated person ("AIP") who is the subject of the complaint is either deceased or has capacity. The bill also would allow a complaint for guardianship of a minor who is expected to need a guardian at age 18 to be filed up to six months before the minor's 18th birthday; an order of guardianship entered before then would not take effect until the minor turns 18.

To obtain guardianship of an AIP under current law, an applicant must demonstrate that the AIP cannot manage themselves or their own affairs and that guardianship is the least restrictive means of keeping the AIP from harm. The law does not currently provide a precise framework to address circumstances under which the applicant no longer wants to serve as guardian, and therefore seeks to withdraw the matter, but there is sufficient evidence before the court demonstrating that the AIP is at risk of harm.

I applaud the sponsors of this bill for their commitment to protecting some of our most vulnerable New Jerseyans. While well-intended, I am concerned that the provisions in the bill prohibiting withdrawal of a complaint absent a showing of capacity can act to shift the burden to the AIP to demonstrate capacity. In so doing, the bill may unintentionally create potential friction with the implicit State constitutional right to self-determination, as articulated by the New Jersey Supreme Court in In re M.R., 135 N.J. 155 (1994). For this reason, I am recommending amendments creating an alternative mechanism to govern the withdrawal of complaints that would protect the right of AIPs to self-determination while

recognizing that our courts are in the best position to protect such individuals from harm through the guardianship process.

Specifically, my revisions would codify in statute the right to self-determination throughout the pendency of any guardianship matter and require the courts to appoint counsel for AIPs, and in the court's discretion, a guardian ad litem. My recommended changes also permit courts, in cases where an applicant seeks to withdraw a complaint for guardianship, to instead allow the applicant to withdraw as a party and to continue the matter for an adjudication as to capacity and appointment of a guardian, provided there is good cause shown and it is in the best interest of the AIP. Notice must be provided to the AIP, all interested parties named in the complaint, and appropriate State agencies, including the Department of Children and Families and Department of Human Services, as applicable. If the AIP contests the proceeding, then there must be a substitution of the applicant, or the matter will be dismissed without prejudice. I believe this procedure strikes an appropriate balance between preserving the right to self-determination and acknowledging the role of New Jersey's courts in providing for the safety of AIPs and safeguarding their best interests.

Therefore, I herewith return Senate Bill No. 2332 and recommend that it be amended as follows:

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| <u>Page 4, Section 1, Line 15:</u> | After "appearance." insert "If the alleged incapacitated person is not represented by counsel, the court shall appoint counsel for the alleged incapacitated person. The court in its discretion may also appoint a guardian ad litem for the alleged incapacitated person in accordance with the Rules of Court." |
| <u>Page 4, Section 1, Lines 46-48:</u> | Delete in their entirety |
| <u>Page 5, Section 1, Lines 1-3:</u> | Delete in their entirety |
| <u>Page 5, Section 1, Line 4:</u> | Delete "(3)" and insert "(2)" |
| <u>Page 5, Section 1, Line 9:</u> | After "18." insert "(3) Except where a pendente lite temporary guardian has been appointed to |

act for an alleged incapacitated person for the limited services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person as provided in subsection c. of this section, the alleged incapacitated person shall retain the right of self-determination during the pendency of the action.

(4) In the event that the applicant seeks to withdraw the complaint, the court in its discretion may instead allow the withdrawal of the applicant as a party and the continuation of the adjudication of incapacity and appointment of a guardian for good cause shown and upon a finding that it is in the best interest of the alleged incapacitated person to continue the adjudication of incapacity proceeding. Notice shall be provided to the alleged incapacitated person, to all interested parties named in the complaint, and to the Department of Children and Families, the Department of Human Services, or any other appropriate State agency. If the alleged incapacitated person contests the proceeding and there is no substitution of applicant filed within 90 days, the matter shall be dismissed without prejudice."

Respectfully,

/s/ Philip D. Murphy

Governor

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Attest:

/s/ Kate E. McDonnell

Chief Counsel to the Governor