

HOUSE BILL REPORT

HB 1510

*As Reported By House Committee on:
Judiciary
Appropriations*

Title: An act relating to guardianship.

Brief Description: Changing provisions relating to guardianship.

Sponsor(s): Representatives R. Meyers and Padden.

Brief History:

Reported by House Committee on:
Judiciary, February 22, 1991, DPS;
Appropriations, March 9, 1991, DPS(JUD)-A.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1510 be substituted therefor, and the substitute bill do pass.*
Signed by 18 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: In 1990, the Legislature passed a comprehensive revision of the guardianship statutes.

1. Right to vote. People subject to a full guardianship are presumed incompetent to vote and lose the right to vote unless the court specifically finds that the person is rationally capable of exercising the franchise. A person subject to a limited guardianship can lose the right to vote when in the court's discretion the court determines that the person cannot rationally exercise the franchise.

2. Attorneys' notice of appearance. Attorneys who claim to represent the alleged incapacitated person may enter a notice of appearance to represent the person.

3. Superior court training programs. The superior court in each county must adopt a guardian ad litem training program

by June 1, 1991. An advisory group of agencies must adopt a model program. If the counties fail to adopt a training program by September 1, 1991, then the counties must use the model program developed by the advisory group.

4. Guardian's duties to developmentally disabled, incapacitated persons. The court must determine whether a person is incapacitated due to a developmental disability and whether the incapacity is likely to continue indefinitely. If so, then the person's guardian, rather than file annual verified accounts of the administration, may file an account every 36 months, depending upon the value of the person's estate, and may be relieved of other reporting requirements in the court's discretion.

5. Standby guardians. A person appointed as a guardian must designate a standby guardian and file the designation with the court.

6. Deadlines for filing verified accounting. A court may terminate a guardianship if the guardianship is no longer necessary. No specific provision exists regarding the deadline for filing a verified account of the administration or the type of verified account that must be filed under this circumstance. A separate provision in another chapter on guardianship administration provides for a 30-day filing period.

The guardian must file an annual verified account of the administration within 30 days of the anniversary date of the guardian's appointment.

7. Payment of guardians ad litem and guardians. Current law provides that guardians will not be paid at "public" expense.

8. Services for clients of Department of Social and Health Services. On occasion, some people may not have anyone who is willing or interested in becoming a guardian or guardian ad litem for the person. The Department of Social and Health Services offers a variety of services to people who may need a guardian to help them understand the services the department offers and to help them exercise their appeal rights if the benefits are denied or terminated.

9. Guardian's power to make investments. The court in its discretion may authorize a guardian to make investments for the ward as provided in the trust statutes without specific approval for each investment during one period or during the reporting interval whichever is longer. If the court does not authorize the guardian to make a variety of investments,

the guardian may only invest in unconditional bearing interest state or federal securities.

10. Financial Institution's duties toward the incapacitated person and the guardian. A financial institution may hold assets of the incapacitated person to which the guardian may seek access. Issues may arise regarding the financial institution's right to permit the guardian to have access to the property of the incapacitated person's assets at the institution and the liability of the institution for releasing the assets to the guardian.

Summary of Substitute Bill: Several technical and substantive changes are made to the guardianship provisions adopted in 1990.

1. Right to vote. An incapacitated person under a full or limited guardianship shall not be considered incompetent to vote and will not lose the right to vote unless a court specifically finds that the person is incapable of rationally exercising the franchise. This amendment reverses last year's presumption regarding voting rights.

2. Attorney's petition for appointment as guardian. An attorney who claims to represent the alleged incapacitated person must petition to be appointed as the person's representative.

3. Superior court training programs. The superior courts may, but do not have, to adopt a model training program for guardians. If a court has not adopted a guardianship training program by September 1, 1991, the candidate for inclusion in the registry of guardians must have completed a model training program elsewhere.

4. Guardians' duties to developmentally disabled, incapacitated persons. The special provisions governing guardians of people who are incapacitated due to a developmental disability are stricken. Guardians of the developmentally disabled must comply with the reporting requirements within the time set for other guardians.

5. Standby guardians. Guardians must give the court a notice designating a standby guardian. The notice must provide the standby guardian's name, address, zip code, and telephone number.

6. Deadlines for filing verified accounting. When a guardianship is being terminated under court order, the guardian must file within 30 days of the date of termination a final verified account of the administration, unless the court orders a different deadline for good cause. The

account must contain the same information as required for an intermediate verified account of the estate administration and an intermediate personal care status report.

The guardian must file a written verified account of the administration annually within 90, instead of 30, days of the anniversary date of the guardian's appointment.

7. Payment of guardians. Guardians or limited guardians must not be paid at county or state expense.

8. Department of Social and Health Services' duties. The Department of Social and Health Services must petition for the appointment of a guardian or a limited guardian if the department believes that the person (a) is entitled to notice of a denial or a termination of benefits, (b) lacks the capacity to understand the notice and exercise any right to appeal the termination or denial, (c) lacks the capacity to understand the services the department offers, to provide informed consent to medical treatment or participation in planning for those services the department offers, and (d) the person does not have a guardian or a person authorized to act on behalf of the person through a durable power of attorney.

9. Guardian's power to make investments. The one year or interval reporting limitation upon the authority of the guardian to make investments for the incapacitated person without prior court approval is removed. The court in its discretion may authorize a guardian to invest on behalf of the person without further court order approving the investments.

10. Financial institution's duties toward the incapacitated person and the guardian. A guardian may obtain access to the incapacitated person's assets deposited at a financial institution but must prepare an affidavit to obtain those assets and must prepare an inventory of the assets. An employee of the financial institution must observe the inventory and file a statement that the inventory appears accurate. The guardian must forward a copy of the affidavit and the inventory list to the court. A financial institution may charge the guardian a fee for the inventory and the statement. A financial institution is not subject to liability for relying upon the guardian's affidavit and for delivering the assets to the guardian.

Technical changes are made.

Substitute Bill Compared to Original Bill: The following provisions were added: (1) The Department of Social and Health Services' duties to petition for guardians is

expanded to anyone who the department thinks lacks the mental capacity to understand the services the department offers, to participate in planning for certain services, or to provide informed consent for medical treatment. (2) The restrictions on a guardian's authority to seek court approval of investment decisions annually or periodically is removed. (3) The court for good cause may set a different deadline, instead of 30 days, for filing a verified accounting following termination. (4) The state will not be required to pay for the guardians ad litem or guardians. (5) A procedure is established for guardians to obtain access to and inventory a ward's assets at a financial institution. A financial institution will not be liable for allowing the guardian access to the ward's assets if the financial institution complies with the procedure.

Fiscal Note: Requested February 13, 1991 for original bill and February 25, 1991 for substitute bill.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Technical and substantive changes improve last year's comprehensive act. The guardian's power to invest should be expanded. The Department of Social and Health Services should identify people who need guardians.

Testimony Against: The provisions governing the Department of Social and Health Services are unclear and could have a large fiscal impact.

Witnesses: Ralph Munro, Secretary of State (Pro); Tom O'Brien and Karen Thompson, Washington State Bar Association (pro); Miriam Kasperson, private attorney (pro); and Kathy Leitch, Department of Social and Health Services (con regarding the Department of Social and Health Services' responsibilities).

**HOUSE COMMITTEE ON
APPROPRIATIONS**

Majority Report: *The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass.* Signed by 29 members: Representatives Locke, Chair; Inslee, Vice Chair; Spanel, Vice Chair; Silver, Ranking Minority Member; Morton, Assistant Ranking Minority Member; Appelwick; Belcher; Bowman; Braddock; Brekke; Dorn; Ebersole; Ferguson; Fuhrman; Hine; Lisk; May; McLean; Mielke; Nealey; Peery; Pruitt; Rust; H. Sommers; Sprenkle; Valle; Vance; Wang; and Wineberry.

Staff: John Woolley (786-7154).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Judiciary: The section referring to the petitioning by the Department of Social and Health Services for the appointment of a guardian is removed.

Fiscal Note: Available.

Effective Date of Substitute Bill as Amended: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill is required since it addresses the needs of the most vulnerable parts of our society. The department's concerns with its costs are over-stated. The bill is a needed step to ensure that services are provided to those who need them.

Testimony Against: The bill is not funded in the governor's budget and cannot be supported. In addition, the amount of work it would place on the department is such that its costs would be great. The bill needs to be amended to include osteopaths.

Witnesses: George Mirrloe, Foundation for the Handicapped; Jim Hardman, Foundation for the Handicapped; Peter Greenfield, Seattle-King County BAR; Jeff Larson, WOMA; and Bernice Moorehead, DSHS.