

FINAL BILL REPORT

ESHB 1510

C 289 L 91
Synopsis As Enacted

Brief Description: Changing provisions relating to guardianship.

By House Committee on Judiciary (originally sponsored by Representatives R. Meyers and Padden).

House Committee on Judiciary
House Committee on Appropriations
Senate Committee on Children & Family Services

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

Right to vote: An incapacitated person subject to a limited guardianship may lose the right to vote when in the court's discretion the court determines that the person cannot rationally exercise the franchise.

Attorneys' notice of appearance: Alleged incapacitated persons have a right to an attorney at all stages of the guardianship proceedings. Attorneys who claim to represent the alleged incapacitated person must enter a notice of appearance to represent the person.

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 professionals with expertise in various disciplines that involve guardianships must adopt a model program. If a court fails to adopt a training program by September 1, 1992, then the court must use the model program. A person must complete the program before the person may be included in a registry of guardians ad litem.

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 on the value of the person's estate. The court may also relieve the guardian of other reporting requirements.

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

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 regarding the type of verified account that must be filed following court ordered termination. A separate provision in another chapter on guardianship administration provides for a 30-day filing period following termination. The separate provision establishes requirements for filing an intermediate verified account of the estate and an intermediate personal care status report.

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

Payment of guardians: Guardians and limited guardians must not be paid at "public" expense.

Guardian's power to make investments: The court may authorize a guardian to make investments for the ward as provided in the trust statutes without specific approval for each investment. The authorization is limited to a one year period or limited to the guardian's 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 interest bearing state or federal securities.

Financial institution's duties toward the incapacitated person and the guardian: A guardian may need or want access to a ward's assets held at a financial institution. Issues may arise regarding the financial institution's authority to permit the guardian to have access to the assets and regarding the institution's liability for releasing the assets to the guardian.

Reports from physicians or psychologists: In all proceedings for appointment of a guardian, the court must receive a report from a physician or psychologist selected by the guardian ad litem.

Notice of guardianship proceedings: Notice that a guardianship proceeding has been commenced must be personally served on the alleged incapacitated person within 15 days after the petition is filed. The petition must be heard within 45 days. The person is also entitled to notice

of a guardian's appointment. A guardian ad litem must file a report to the court within 20 days of appointment.

Summary: Several technical and substantive changes are made to the guardianship law provisions that were adopted in 1990.

Right to vote: An incapacitated person under a limited guardianship will not lose the right to vote unless a court specifically finds that the person is incapable of rationally exercising the franchise.

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

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, 1992, a candidate for inclusion in the registry of guardians must have completed a model training program elsewhere.

Guardians' duties to developmentally disabled, incapacitated persons: The special provisions governing guardians of developmentally disabled people are stricken. Guardians of the developmentally disabled must comply with the reporting requirements established for other guardians.

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.

Deadlines for filing verified accounting: When a court terminates a guardianship, the guardian must file a final verified account of the administration within 30 days of the date of termination, 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 days, instead of 30, days of the anniversary date of the guardian's appointment.

Payment of guardians: Guardians or limited guardians must not be paid at "county or state" expense rather than "public" expense.

Guardian's power to make investments: The one year or interval reporting limitation on the guardian's authority to invest without prior court approval is removed. Once the court authorizes a guardian to invest in a variety of investments, no time limitation restricts the investment authorization.

Financial institution's duties toward the incapacitated person and the guardian: A guardian may obtain access to the ward's assets deposited at a financial institution. The guardian must prepare an affidavit to obtain those assets and must prepare an inventory list. An employee of the financial institution must observe the inventory and file a statement that the inventory appears accurate. The guardian must send 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.

Licensed Physicians: Physicians and psychologists who report to the court must be licensed physicians, osteopaths, or licensed or certified psychologists.

Notice of the guardianship proceeding: Notice of the commencement of a guardianship proceeding must be served on the guardian ad litem as well as on the alleged incapacitated person within five days after the petition is filed. The hearing must be held within 60 days. The guardian ad litem is also entitled to notice of the appointment of a guardian. The guardian must file the report to the court within 45 days of the service of the notice of commencement of the guardianship upon the guardian ad litem rather than within 20 days of the guardian ad litem's appointment.

Technical changes are made.

Votes on Final Passage:

House	96	0	
Senate	44	0	(Senate amended)
House			(House refused to concur)

Conference Committee

Senate	44	0
House	96	0

Effective: July 28, 1991