
ENGROSSED SUBSTITUTE HOUSE BILL 1510

State of Washington 52nd Legislature 1991 Regular Session

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

Read first time February 26, 1991.

1 AN ACT Relating to guardianship; amending RCW 11.88.010, 11.88.045,
2 11.88.090, 11.88.095, 11.88.120, 11.88.125, 11.88.140, 11.92.040,
3 11.92.043, and 11.92.180; and adding a new section to chapter 11.92
4 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 11.88.010 and 1990 c 122 s 2 are each amended to read
7 as follows:

8 (1) The superior court of each county shall have power to appoint
9 guardians for the persons and/or estates of incapacitated persons, and
10 guardians for the estates of nonresidents of the state who have
11 property in the county needing care and attention.

12 (a) For purposes of this chapter, a person may be deemed
13 incapacitated as to person when the superior court determines the
14 individual has a significant risk of personal harm based upon a

1 demonstrated inability to adequately provide for nutrition, health,
2 housing, or physical safety.

3 (b) For purposes of this chapter, a person may be deemed
4 incapacitated as to the person's estate when the superior court
5 determines the individual is at significant risk of financial harm
6 based upon a demonstrated inability to adequately manage property or
7 financial affairs.

8 (c) A determination of incapacity is a legal not a medical
9 decision, based upon a demonstration of management insufficiencies over
10 time in the area of person or estate. Age, eccentricity, poverty, or
11 medical diagnosis alone shall not be sufficient to justify a finding of
12 incapacity.

13 (d) A person may also be determined incapacitated if he or she is
14 under the age of majority as defined in RCW 26.28.010.

15 (e) For purposes of giving informed consent for health care
16 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any
17 person who is (i) incompetent by reason of mental illness,
18 developmental disability, senility, habitual drunkenness, excessive use
19 of drugs, or other mental incapacity, of either managing his or her
20 property or caring for himself or herself, or both, or (ii)
21 incapacitated as defined in (a), (b), or (d) of this subsection.

22 (f) For purposes of the terms "incompetent," "disabled," or "not
23 legally competent," as those terms are used in the Revised Code of
24 Washington to apply to persons incapacitated under this chapter, those
25 terms shall be interpreted to mean "incapacitated" persons for purposes
26 of this chapter.

27 (2) The superior court for each county shall have power to appoint
28 limited guardians for the persons and estates, or either thereof, of
29 incapacitated persons, who by reason of their incapacity have need for
30 protection and assistance, but who are capable of managing some of

1 their personal and financial affairs. After considering all evidence
2 presented as a result of such investigation, the court shall impose, by
3 order, only such specific limitations and restrictions on an
4 incapacitated person to be placed under a limited guardianship as the
5 court finds necessary for such person's protection and assistance. A
6 person shall not be presumed to be incapacitated nor shall a person
7 lose any legal rights or suffer any legal disabilities as the result of
8 being placed under a limited guardianship, except as to those rights
9 and disabilities specifically set forth in the court order establishing
10 such a limited guardianship. In addition, the court order shall state
11 the period of time for which it shall be applicable.

12 (3) Venue for petitions for guardianship or limited guardianship
13 shall lie in the county wherein the alleged incapacitated person is
14 domiciled, or if such person resides in a facility supported in whole
15 or in part by local, state, or federal funding sources, in either the
16 county where the facility is located, the county of domicile prior to
17 residence in the supported facility, or the county where a parent or
18 spouse of the alleged incapacitated person is domiciled.

19 If the alleged incapacitated person's residency has changed within
20 one year of the filing of the petition, any interested person may move
21 for a change of venue for any proceedings seeking the appointment of a
22 guardian or a limited guardian under this chapter to the county of the
23 alleged incapacitated person's last place of residence of one year or
24 more. The motion shall be granted when it appears to the court that
25 such venue would be in the best interests of the alleged incapacitated
26 person and would promote more complete consideration of all relevant
27 matters.

28 (4) Under RCW 11.94.010, a principal may nominate, by a durable
29 power of attorney, the guardian or limited guardian of his or her
30 estate or person for consideration by the court if guardianship

1 proceedings for the principal's person or estate are thereafter
2 commenced. The court shall make its appointment in accordance with the
3 principal's most recent nomination in a durable power of attorney
4 except for good cause or disqualification.

5 (5) When a court imposes a full guardianship for an incapacitated
6 person, the person shall not be considered incompetent for purposes of
7 rationally exercising the right to vote and shall not lose the right to
8 vote, unless the court specifically finds that the person is not
9 rationally capable of exercising the franchise. Imposition of a
10 limited guardianship for an incapacitated person (~~(may)~~) shall not
11 result in the loss of the right to vote (~~(when in the courts~~
12 ~~discretion,)~~) unless the court determines that the person is
13 incompetent for purposes of rationally exercising the franchise.

14 **Sec. 2.** RCW 11.88.045 and 1990 c 122 s 6 are each amended to read
15 as follows:

16 (1)(a) Alleged incapacitated individuals shall have the right to be
17 represented by counsel at any stage in guardianship proceedings. The
18 court shall provide counsel to represent any alleged incapacitated
19 person at public expense when either: (i) The individual is unable to
20 afford counsel, or (ii) the expense of counsel would result in
21 substantial hardship to the individual, or (iii) the individual does
22 not have practical access to funds with which to pay counsel. If the
23 individual can afford counsel but lacks practical access to funds, the
24 court shall provide counsel and may impose a reimbursement requirement
25 as part of a final order. When, in the opinion of the court, the
26 rights and interests of an alleged or adjudicated incapacitated person
27 cannot otherwise be adequately protected and represented, the court on
28 its own motion shall appoint an attorney at any time to represent such
29 person. Counsel shall be provided as soon as practicable after a

1 petition is filed and long enough before any final hearing to allow
2 adequate time for consultation and preparation. Absent a convincing
3 showing in the record to the contrary, a period of less than three
4 weeks shall be presumed by a reviewing court to be inadequate time for
5 consultation and preparation.

6 (b) Counsel for an alleged incapacitated individual shall act as an
7 advocate for the client and shall not substitute counsel's own judgment
8 for that of the client on the subject of what may be in the client's
9 best interests. Counsel's role shall be distinct from that of the
10 guardian ad litem, who is expected to promote the best interest of the
11 alleged incapacitated individual, rather than the alleged incapacitated
12 individual's expressed preferences.

13 (c) If an alleged incapacitated person is represented by counsel
14 and does not communicate with counsel, counsel may ask the court for
15 leave to withdraw for that reason. If satisfied, after affording the
16 alleged incapacitated person an opportunity for a hearing, that the
17 request is justified, the court may grant the request and allow the
18 case to proceed with the alleged incapacitated person unrepresented.

19 (2) During the pendency of any guardianship, any attorney
20 purporting to represent a person alleged or adjudicated to be
21 incapacitated(~~(7)~~) shall ~~((enter a notice of appearance for~~
22 ~~appointment))~~ petition to be appointed to represent the incapacitated
23 or alleged incapacitated person. Fees for representation described in
24 this section shall be subject to approval by the court pursuant to the
25 provisions of RCW 11.92.180.

26 (3) The alleged incapacitated person is further entitled upon
27 request to a jury trial on the issues of his or her alleged incapacity.
28 The standard of proof to be applied in a contested case, whether before
29 a jury or the court, shall be that of clear, cogent, and convincing
30 evidence.

1 (4) In all proceedings for appointment of a guardian or limited
2 guardian, the court must be presented with a written report from a
3 physician licensed to practice under chapter 18.71 RCW or licensed or
4 certified psychologist selected by the guardian ad litem. The
5 physician or psychologist shall have personally examined and
6 interviewed the alleged incapacitated person within thirty days of the
7 report to the court and shall have expertise in the type of disorder or
8 incapacity the alleged incapacitated person is believed to have. The
9 report shall contain the following information and shall be set forth
10 in substantially the following format:

11 (a) The name and address of the examining physician or
12 psychologist;

13 (b) The education and experience of the physician or psychologist
14 pertinent to the case;

15 (c) The dates of examinations of the alleged incapacitated person;

16 (d) A summary of the relevant medical, functional, neurological,
17 psychological, or psychiatric history of the alleged incapacitated
18 person as known to the examining physician or psychologist;

19 (e) The findings of the examining physician or psychologist as to
20 the condition of the alleged incapacitated person;

21 (f) Current medications;

22 (g) The effect of current medications on the alleged incapacitated
23 person's ability to understand or participate in guardianship
24 proceedings;

25 (h) Opinions on the specific assistance the alleged incapacitated
26 person needs;

27 (i) Identification of persons with whom the physician or
28 psychologist has met or spoken regarding the alleged incapacitated
29 person.

1 The court shall not enter an order appointing a guardian or limited
2 guardian until a medical or psychological report meeting the above
3 requirements is filed.

4 **Sec. 3.** RCW 11.88.090 and 1990 c 122 s 8 are each amended to read
5 as follows:

6 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
7 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
8 11.92.180, as now or hereafter amended, shall affect or impair the
9 power of any court to appoint a guardian ad litem to defend the
10 interests of any incapacitated person interested in any suit or matter
11 pending therein, or to commence and prosecute any suit in his behalf.

12 (2) Upon receipt of a petition for appointment of guardian or
13 limited guardian, except as provided herein, the court shall appoint a
14 guardian ad litem to represent the best interests of the alleged
15 incapacitated person, who shall be a person found or known by the court
16 to

17 (a) be free of influence from anyone interested in the result of
18 the proceeding;

19 (b) have the requisite knowledge, training, or expertise to perform
20 the duties required by this section.

21 No guardian ad litem need be appointed when a parent is petitioning
22 for a guardian or a limited guardian to be appointed for his or her
23 minor child and the minority of the child, as defined by RCW 11.92.010,
24 is the sole basis of the petition. The order appointing the guardian
25 ad litem shall recite the duties set forth in subsection (5) of this
26 section. The appointment of a guardian ad litem shall have no effect
27 on the legal competency of the alleged incapacitated person and shall
28 not overcome the presumption of competency or full legal and civil
29 rights of the alleged incapacitated person.

1 (3)(a) The superior court of each county shall develop by September
2 1, 1991, a registry of persons who are willing and qualified to serve
3 as guardians ad litem in guardianship matters. The court shall choose
4 as guardians ad litem only persons whose names appear on the registry,
5 except in extraordinary circumstances.

6 (b) To be eligible for the registry a person shall:

7 (i) Present a written statement of qualifications describing the
8 person's knowledge, training, and experience in each of the following:
9 Needs of impaired elderly people, physical disabilities, mental
10 illness, developmental disabilities, and other areas relevant to the
11 needs of incapacitated persons, legal procedure, and the requirements
12 of (~~chapter[s]~~) chapters 11.88 and 11.92 RCW; and

13 (ii) Complete a training program (~~approved~~) adopted by the court,
14 or, in the absence of a locally adopted program, a candidate for
15 inclusion upon the registry shall have completed a model training
16 program as described in (d) of this subsection.

17 (c) The superior court of each county shall approve training
18 programs designed to:

19 (i) Train otherwise qualified human service professionals in those
20 aspects of legal procedure and the requirements of chapters 11.88 and
21 11.92 RCW with which a guardian ad litem should be familiar;

22 (ii) Train otherwise qualified legal professionals in those aspects
23 of medicine, social welfare, and social service delivery systems with
24 which a guardian ad litem should be familiar.

25 (d) The superior court of each county (~~shall~~) may approve a
26 guardian ad litem training program on or before June 1, 1991. The
27 department of social and health services, aging and adult services
28 administration, shall convene an advisory group to develop a model
29 guardian ad litem training program. The advisory group shall consist of
30 representatives from consumer, advocacy, and professional groups

1 knowledgeable in developmental disabilities, neurological impairment,
2 physical disabilities, mental illness, aging, legal, court
3 administration, and other interested parties.

4 (e) Any superior court that has ~~((failed to adopt))~~ not adopted a
5 guardian ad litem training program by September 1, ~~((1992))~~ 1991, shall
6 ~~((use the))~~ require utilization of a model program developed by the
7 advisory group ~~((convened by the department of social and health~~
8 ~~services, aging and adult services administration))~~ as described in (d)
9 of this subsection, to assure that candidates applying for registration
10 as a qualified guardian ad litem shall have satisfactorily completed
11 training to attain these essential minimum qualifications to act as
12 guardian ad litem.

13 (4) The guardian ad litem's written statement of qualifications
14 required by RCW 11.88.090(3)(b)(i) shall be made part of the record in
15 each matter in which the person is appointed guardian ad litem.

16 (5) The guardian ad litem appointed pursuant to this section shall
17 have the following duties:

18 (a) To meet and consult with the alleged incapacitated person as
19 soon as practicable following appointment and explain, in language
20 which such person can reasonably be expected to understand, the
21 substance of the petition, the nature of the resultant proceedings, the
22 person's right to contest the petition, the identification of the
23 proposed guardian or limited guardian, the right to a jury trial on the
24 issue of his or her alleged incapacity, the right to independent legal
25 counsel as provided by RCW 11.88.045, and the right to be present in
26 court at the hearing on the petition;

27 (b) To obtain a written report according to RCW 11.88.045; and such
28 other written or oral reports from other qualified professionals as are
29 necessary to permit the guardian ad litem to complete the report
30 required by this section;

1 (c) To meet with the person whose appointment is sought as guardian
2 or limited guardian and ascertain:

3 (i) The proposed guardian's knowledge of the duties, requirements,
4 and limitations of a guardian; and

5 (ii) The steps the proposed guardian intends to take or has taken
6 to identify and meet the needs of the alleged incapacitated person; ~~¶~~
7 To consult as necessary to complete the investigation and report
8 required by this section with those known relatives, friends, or other
9 persons the guardian ad litem determines have had a significant,
10 continuing interest in the welfare of the alleged incapacitated person;

11 (e) To provide the court with a written report which shall include
12 the following:

13 (i) A description of the nature, cause, and degree of incapacity,
14 and the basis upon which this judgment was made;

15 (ii) A description of the needs of the incapacitated person for
16 care and treatment, the probable residential requirements of the
17 alleged incapacitated person and the basis upon which these findings
18 were made;

19 (iii) An evaluation of the appropriateness of the guardian or
20 limited guardian whose appointment is sought and a description of the
21 steps the proposed guardian has taken or intends to take to identify
22 and meet current and emerging needs of the incapacitated person;

23 (iv) A description of the abilities of the alleged incapacitated
24 person and a recommendation as to whether a guardian or limited
25 guardian should be appointed. If appointment of a limited guardian is
26 recommended, the guardian ad litem shall recommend the specific areas
27 of authority the limited guardian should have and the limitations and
28 disabilities to be placed on the incapacitated person;

1 (v) An evaluation of the person's mental ability to rationally
2 exercise the right to vote and the basis upon which the evaluation is
3 made;

4 (vi) Any expression of approval or disapproval made by the alleged
5 incapacitated person concerning the proposed guardian or limited
6 guardian or guardianship or limited guardianship;

7 (vii) Identification of persons with significant interest in the
8 welfare of the alleged incapacitated person who should be advised of
9 their right to request special notice of proceedings pursuant to RCW
10 11.92.150; and

11 (viii) Unless independent counsel has appeared for the alleged
12 incapacitated person, an explanation of how the alleged incapacitated
13 person responded to the advice of the right to jury trial, to
14 independent counsel and to be present at the hearing on the petition.

15 Within twenty days after appointment of the guardian ad litem, and
16 at least ten days before the hearing on the petition, unless an
17 extension or reduction of time has been granted by the court for good
18 cause, the guardian ad litem shall file its report and send a copy to
19 the alleged incapacitated person and his or her spouse, all children
20 not residing with a notified person, those persons described in (d) of
21 this subsection, and persons who have filed a request for special
22 notice pursuant to RCW 11.92.150;

23 (f) To advise the court of the need for appointment of counsel for
24 the alleged incapacitated person within five days after the meeting
25 described in (a) of this subsection unless (i) counsel has appeared,
26 (ii) the alleged incapacitated person affirmatively communicated a wish
27 not to be represented by counsel after being advised of the right to
28 representation and of the conditions under which court-provided counsel
29 may be available, or (iii) the alleged incapacitated person was unable
30 to communicate at all on the subject, and the guardian ad litem is

1 satisfied that the alleged incapacitated person does not affirmatively
2 desire to be represented by counsel.

3 (6) If the petition is brought by an interested person or entity
4 requesting the appointment of some other qualified person or entity and
5 a prospective guardian or limited guardian cannot be found, the court
6 shall order the guardian ad litem to investigate the availability of a
7 possible guardian or limited guardian and to include the findings in a
8 report to the court pursuant to RCW 11.88.090(5)(e) as now or hereafter
9 amended.

10 (7) The court appointed guardian ad litem shall have the authority,
11 in the event that the alleged incapacitated person is in need of
12 emergency life-saving medical services, and is unable to consent to
13 such medical services due to incapacity pending the hearing on the
14 petition to give consent for such emergency life-saving medical
15 services on behalf of the alleged incapacitated person.

16 (8) The guardian ad litem shall receive a fee determined by the
17 court. The fee shall be charged to the alleged incapacitated person
18 unless the court finds that such payment would result in substantial
19 hardship upon such person, in which case the county shall be
20 responsible for such costs: PROVIDED, That if no guardian or limited
21 guardian is appointed the court may charge such fee to the petitioner
22 or the alleged incapacitated person, or divide the fee, as it deems
23 just; and if the petition is found to be frivolous or not brought in
24 good faith, the guardian ad litem fee shall be charged to the
25 petitioner. The court shall not be required to provide for the payment
26 of a fee to any salaried employee of a public agency.

27 (9) Upon the presentation of the guardian ad litem report and the
28 entry of an order either dismissing the petition for appointment of
29 guardian or limited guardian or appointing a guardian or limited
30 guardian, the guardian ad litem shall be dismissed and shall have no

1 further duties or obligations unless otherwise ordered by the court.
2 If the court orders the guardian ad litem to perform further duties or
3 obligations, they shall not be performed at county expense.

4 **Sec. 4.** RCW 11.88.095 and 1990 c 122 s 9 are each amended to read
5 as follows:

6 (1) In determining the disposition of a petition for guardianship,
7 the court's order shall be based upon findings as to the capacities,
8 condition, and needs of the alleged incapacitated person, and shall not
9 be based solely upon agreements made by the parties.

10 (2) Every order appointing a full or limited guardian of the person
11 or estate shall include:

12 (a) Findings as to the capacities, condition, and needs of the
13 alleged incapacitated person;

14 (b) The amount of the bond, if any, or a bond review period;

15 (c) When the next report of the guardian is due;

16 (d) Whether the guardian ad litem shall continue acting as guardian
17 ad litem;

18 (e) Whether a review hearing shall be required upon the filing of
19 the inventory;

20 (f) The authority of the guardian, if any, for investment and
21 expenditure of the ward's estate; and

22 (g) Names and addresses of those persons described in RCW
23 (~~11.92.090(5)(d)~~) 11.88.090(5)(d), if any, whom the court believes
24 should receive copies of further pleadings filed by the guardian with
25 respect to the guardianship.

26 (3) If the court determines that a limited guardian should be
27 appointed, the order shall specifically set forth the limits by either
28 stating exceptions to the otherwise full authority of the guardian or
29 by stating the specific authority of the guardian.

1 (4) In determining the disposition of a petition for appointment of
2 a guardian or limited guardian of the estate only, the court shall
3 consider whether the alleged incapacitated person is capable of giving
4 informed medical consent or of making other personal decisions and, if
5 not, whether a guardian or limited guardian of the person of the
6 alleged incapacitated person should be appointed for that purpose.

7 ~~((5) If a court determines that the person is incapacitated and
8 that a guardian or limited guardian should be appointed, the court
9 shall determine whether the incapacity is a result of a developmental
10 disability as defined by RCW 71A.10.020, and if so, determine whether
11 the incapacity due to the developmental disability can be expected to
12 continue indefinitely.))~~

13 **Sec. 5.** RCW 11.88.120 and 1990 c 122 s 14 are each amended to read
14 as follows:

15 (1) At any time after establishment of a guardianship or
16 appointment of a guardian, the court may, upon the death of the
17 guardian or limited guardian, or, for other good reason, modify or
18 terminate the guardianship or replace the guardian or limited guardian.

19 (2) Any person, including an incapacitated person, may apply to the
20 court for an order to modify or terminate a guardianship or to replace
21 a guardian or limited guardian. If applicants are represented by
22 counsel, counsel shall move for an order to show cause why the relief
23 requested should not be granted. If applicants are not represented by
24 counsel, they may move for an order to show cause, or they may deliver
25 a written request to the clerk of the court.

26 (3) By the next judicial day after receipt of an unrepresented
27 person's request to modify or terminate a guardianship order, or to
28 replace a guardian or limited guardian, the clerk shall ~~((present))~~
29 deliver the request to the court. The court may (a) direct the clerk to

1 schedule a hearing, (b) appoint a guardian ad litem to investigate the
2 issues raised by the application or to take any emergency action the
3 court deems necessary to protect the incapacitated person until a
4 hearing can be held, or (c) deny the application without scheduling a
5 hearing, if it appears based on documents in the court file that the
6 application is frivolous. Any denial of an application without a
7 hearing shall be in writing with the reasons for the denial explained.
8 A copy of the order shall be mailed by the clerk to the applicant, to
9 the guardian, and to any other person entitled to receive notice of
10 proceedings in the matter. Unless within thirty days after receiving
11 the request from the clerk the court directs otherwise, the clerk shall
12 schedule a hearing on the request and mail notice to the guardian, the
13 incapacitated person, the applicant, all counsel of record, and any
14 other person entitled to receive notice of proceedings in the matter.

15 (4) In a hearing on an application to modify or terminate a
16 guardianship, or to replace a guardian or limited guardian, the court
17 may grant such relief as it deems just and in the best interest of the
18 incapacitated person.

19 (5) The court may order persons who have been removed as guardians
20 to deliver any property or records belonging to the incapacitated
21 person in accordance with the court's order. Similarly, when guardians
22 have died or been removed and property or records of an incapacitated
23 person are being held by any other person, the court may order that
24 person to deliver it in accordance with the court's order.
25 Disobedience of an order to deliver shall be punishable as contempt of
26 court.

27 **Sec. 6.** RCW 11.88.125 and 1990 c 122 s 15 are each amended to read
28 as follows:

1 (1) The person appointed by the court as either guardian or limited
2 guardian of the person and/or estate of an incapacitated person, shall
3 file in writing with the court, a (~~designated~~) notice designating a
4 standby limited guardian or guardian to serve as limited guardian or
5 guardian at the death or legal incapacity of the court-appointed
6 guardian or limited guardian. The notice shall state the name,
7 address, zip code, and telephone number of the designated standby or
8 limited guardian. Notice of the guardian's designation of the standby
9 guardian shall be given to the standby guardian, the incapacitated
10 person and his or her spouse and adult children, any facility in which
11 the incapacitated person resides, and any person entitled to special
12 notice under RCW 11.92.150 or any person entitled to receive pleadings
13 pursuant to RCW 11.88.095(2)(g). Such standby guardian or limited
14 guardian shall have all the powers, duties, and obligations of the
15 regularly appointed guardian or limited guardian and in addition shall,
16 within a period of thirty days from the death or adjudication of
17 incapacity of the regularly appointed guardian or limited guardian,
18 file with the superior court in the county in which the guardianship or
19 limited guardianship is then being administered, a petition for
20 appointment of a substitute guardian or limited guardian. Upon the
21 court's appointment of a new, substitute guardian or limited guardian,
22 the standby guardian or limited guardian shall make an accounting and
23 report to be approved by the court, and upon approval of the court, the
24 standby guardian or limited guardian shall be released from all duties
25 and obligations arising from or out of the guardianship or limited
26 guardianship.

27 (2) Letters of guardianship shall be issued to the standby guardian
28 or limited guardian upon filing an oath and posting a bond as required
29 by RCW 11.88.100 as now or hereafter amended. The oath may be filed
30 prior to the appointed guardian or limited guardian's death. Notice of

1 such appointment shall be provided to the standby guardian, the
2 incapacitated person, and any facility in which the incapacitated
3 person resides. The provisions of RCW 11.88.100 through 11.88.110 as
4 now or hereafter amended shall apply to standby guardians and limited
5 guardians.

6 (3) In addition to the powers of a standby limited guardian or
7 guardian as noted in subsection (1) of this section, the standby
8 limited guardian or guardian shall have the authority to provide
9 timely, informed consent to necessary medical procedures, as authorized
10 in RCW 11.92.040 as now or hereafter amended, if the guardian or
11 limited guardian cannot be located within four hours after the need for
12 such consent arises.

13 **Sec. 7.** RCW 11.88.140 and 1990 c 122 s 17 are each amended to read
14 as follows:

15 (1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited
16 guardianship is terminated:

17 (a) Upon the attainment of full and legal age, as defined in RCW
18 26.28.010 as now or hereafter amended, of any person defined as an
19 incapacitated person pursuant to RCW 11.88.010 as now or hereafter
20 amended solely by reason of youth, RCW 26.28.020 to the contrary
21 notwithstanding, subject to subsection (2) of this section;

22 (b) By an adjudication of capacity or an adjudication of
23 termination of incapacity;

24 (c) By the death of the incapacitated person;

25 (d) By expiration of the term of limited guardianship specified in
26 the order appointing the limited guardian, unless prior to such
27 expiration a petition has been filed and served, as provided in RCW
28 11.88.040 as now or hereafter amended, seeking an extension of such
29 term.

1 (2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF
2 COMPLETION. A guardianship for the benefit of a minor may be
3 terminated upon the minor's attainment of legal age, as defined in RCW
4 26.28.010 as now or hereafter amended, by the guardian filing a
5 declaration that states:

6 (a) The date the minor attained legal age;

7 (b) That the guardian has paid all of the minor's funds in the
8 guardian's possession to the minor, who has signed a receipt for the
9 funds, and that the receipt has been filed with the court;

10 (c) That the guardian has completed the administration of the
11 minor's estate and the guardianship is ready to be closed; and

12 (d) The amount of fees paid or to be paid to each of the following:

13 (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or
14 accountants; and that the guardian believes the fees are reasonable and
15 does not intend to obtain court approval of the amount of the fees or
16 to submit a guardianship accounting to the court for approval. Subject
17 to the requirement of notice as provided in this section, unless the
18 minor petitions the court either for an order requiring the guardian to
19 obtain court approval of the amount of fees paid or to be paid to the
20 guardian, lawyers, or accountants, or for an order requiring an
21 accounting, or both, within thirty days from the filing of the
22 declaration of completion of guardianship, the guardian shall be
23 automatically discharged without further order of the court. The
24 guardian's powers will cease thirty days after filing the declaration
25 of completion of guardianship. The declaration of completion of
26 guardianship shall, at the time, be the equivalent of an entry of a
27 decree terminating the guardianship, distributing the assets, and
28 discharging the guardian for all legal intents and purposes.

29 Within five days of the date of filing the declaration of
30 completion of guardianship, the guardian or the guardian's lawyer shall

1 If the minor, after reaching legal age, waives in writing the
2 notice required by this section, the guardian will be automatically
3 discharged without further order of the court and the declaration of
4 completion of guardianship will be effective as an order terminating
5 the guardianship without an accounting upon filing the declaration. If
6 the guardian has been required to furnish a bond, and a declaration of
7 completion of guardianship is filed according to this section, any bond
8 furnished by the guardian shall be automatically discharged upon the
9 discharge of the guardian.

10 (3) TERMINATION ON COURT ORDER. A guardianship or limited
11 guardianship may be terminated by court order after such notice as the
12 court may require if the guardianship or limited guardianship is no
13 longer necessary.

14 The guardian or limited guardian shall, within thirty days of the
15 date of termination, unless the court orders a different deadline for
16 good cause, prepare and file with the court a final verified account of
17 administration. The final verified account of administration shall
18 contain the same information as required for (a) an intermediate
19 verified account of administration of the estate under RCW 11.92.040(2)
20 and (b) an intermediate personal care status report under RCW
21 11.92.043(2).

22 (4) EFFECT OF TERMINATION. When a guardianship or limited
23 guardianship terminates other than by the death of the incapacitated
24 person, the powers of the guardian or limited guardian cease, except
25 that a guardian or limited guardian of the estate may make
26 disbursements for claims that are or may be allowed by the court, for
27 liabilities already properly incurred for the estate or for the
28 incapacitated person, and for expenses of administration. When a
29 guardianship or limited guardianship terminates by death of the
30 incapacitated person, the guardian or limited guardian of the estate

1 may proceed under RCW 11.88.150 as now or hereafter amended, but the
2 rights of all creditors against the incapacitated person's estate shall
3 be determined by the law of decedents' estates.

4 **Sec. 8.** RCW 11.92.040 and 1990 c 122 s 20 are each amended to read
5 as follows:

6 It shall be the duty of the guardian or limited guardian of an
7 estate:

8 (1) To file within three months after the guardian's appointment a
9 verified inventory of all the property of the incapacitated person
10 which comes into the guardian's possession or knowledge, including a
11 statement of all encumbrances, liens, and other secured charges on any
12 item;

13 (2) To file annually, within (~~thirty~~) ninety days after the
14 anniversary date of the guardian's or limited guardian's appointment,
15 and also within thirty days after termination of the appointment,
16 unless the court for good cause orders a different deadline to file
17 following termination, a written verified account of the
18 administration, which account shall contain at least the following
19 information:

20 (a) Identification of property of the guardianship estate as of the
21 date of the last account or, in the case of the initial account, as of
22 the date of inventory;

23 (b) Identification of all additional property received into the
24 guardianship, including income by source;

25 (c) Identification of all expenditures made during the account
26 period by major categories;

27 (d) Any adjustments to the guardianship estate required to
28 establish its present fair market value, including gains or losses on

1 sale or other disposition and any mortgages, deeds of trust or other
2 encumbrances against the guardianship estate; and

3 (e) Identification of all property held in the guardianship estate
4 as of the date of account, the assessed value of any real property and
5 the guardian's estimate of the present fair market values of other
6 property (including the basis on which such estimate is made), and the
7 total net fair market value of the guardianship estate. In addition,
8 immediately following such statement of present fair market value, the
9 account shall set forth a statement of current amount of the guardian's
10 bond and any other court-ordered protection for the security of the
11 guardianship assets(~~(-)~~);

12 (3) The court in its discretion may allow reports at intervals of
13 up to thirty-six months for estates with assets (exclusive of real
14 property) having a value of not more than twice the homestead
15 exemption. Notwithstanding contrary provisions of this section, the
16 guardian or limited guardian of an estate need not file an annual
17 report with the court if the funds of the guardianship are held for the
18 benefit of a minor in a blocked account unless the guardian requests a
19 withdrawal from such account, in which case the guardian shall provide
20 a written verified account of the administration of the guardianship
21 estate along with the guardian's petition for the withdrawal. The
22 guardian or limited guardian shall report any substantial change in
23 income or assets of the guardianship estate within thirty days of the
24 occurrence of the change. A hearing shall be scheduled for court
25 review and determination of provision for increased bond or other
26 provision in accordance with RCW 11.88.100;

27 ~~((3) If the court has made a finding as provided in RCW~~
28 ~~11.88.095(5), that the person is incapacitated as a result of a~~
29 ~~developmental disability that is expected to continue indefinitely and~~
30 ~~the incapacitated person's estate has a value, exclusive of real~~

1 ~~property, of not more than twice the homestead exemption, the court, in~~
2 ~~its discretion, may allow reports at intervals up to thirty six months~~
3 ~~and may modify or waive certain reporting requirements in subsection~~
4 ~~(2) of this section that the court considers unduly burdensome or~~
5 ~~inapplicable. The court may not waive the requirement that the~~
6 ~~guardian or limited guardian report any substantial change in the~~
7 ~~incapacitated person's income or assets;))~~

8 (4) To protect and preserve the guardianship estate, to apply it as
9 provided in this chapter, to account for it faithfully, to perform all
10 of the duties required by law, and at the termination of the
11 guardianship or limited guardianship, to deliver the assets of the
12 incapacitated person to the persons entitled thereto. Except as
13 provided to the contrary herein, the court may authorize a guardian or
14 limited guardian to do anything that a trustee can do under the
15 provisions of RCW 11.98.070 for a period not exceeding one year from
16 the date of the order or for a period corresponding to the interval in
17 which the guardian's or limited guardian's report is required to be
18 filed by the court pursuant to subsection (2) of this section,
19 whichever period is longer;

20 (5) To invest and reinvest the property of the incapacitated person
21 in accordance with the rules applicable to investment of trust estates
22 by trustees as provided in chapter 11.100 RCW, except that:

23 (a) No investments shall be made without prior order of the court
24 in any property other than unconditional interest bearing obligations
25 of this state or of the United States and in obligations the interest
26 and principal of which are unconditionally guaranteed by the United
27 States, and in share accounts or deposits which are insured by an
28 agency of the United States government. Such prior order of the court
29 may authorize specific investments, or, in the discretion of the court,
30 may authorize the guardian or limited guardian ((during a period not

1 ~~exceeding one year following the date of the order or for a period~~
2 ~~corresponding to the interval in which the guardian's or limited~~
3 ~~guardian's report is required to be filed by the court pursuant to~~
4 ~~subsection (2) of this section, whichever period is longer,)) to invest~~
5 and reinvest as provided in chapter 11.100 RCW without further order of
6 the court;

7 (b) If it is for the best interests of the incapacitated person
8 that a specific property be used by the incapacitated person rather
9 than sold and the proceeds invested, the court may so order;

10 (6) To apply to the court no later than the filing of the inventory
11 for an order authorizing disbursements on behalf of the incapacitated
12 person: PROVIDED, HOWEVER, That the guardian or limited guardian of
13 the estate, or the person, department, bureau, agency, or charitable
14 organization having the care and custody of an incapacitated person,
15 may apply to the court for an order directing the guardian or limited
16 guardian of the estate to pay to the person, department, bureau,
17 agency, or charitable organization having the care and custody of an
18 incapacitated person, or if the guardian or limited guardian of the
19 estate has the care and custody of the incapacitated person, directing
20 the guardian or limited guardian of the estate to apply an amount
21 weekly, monthly, quarterly, semi-annually, or annually, as the court
22 may direct, to be expended in the care, maintenance, and education of
23 the incapacitated person and of his or her dependents. In proper
24 cases, the court may order payment of amounts directly to the
25 incapacitated person for his or her maintenance or incidental expenses.
26 The amounts authorized under this section may be decreased or increased
27 from time to time by direction of the court. If payments are made to
28 another under an order of the court, the guardian or limited guardian
29 of the estate is not bound to see to the application thereof.

1 **Sec. 9.** RCW 11.92.043 and 1990 c 122 s 21 are each amended to read
2 as follows:

3 It shall be the duty of the guardian or limited guardian of the
4 person:

5 (1) To file within three months after appointment a personal care
6 plan for the incapacitated person which shall include (a) an assessment
7 of the incapacitated person's physical, mental, and emotional needs and
8 of such person's ability to perform or assist in activities of daily
9 living, and (b) the guardian's specific plan for meeting the identified
10 and emerging personal care needs of the incapacitated person.

11 (2) To file annually or, where a guardian of the estate has been
12 appointed, at the time an account is required to be filed under RCW
13 11.92.040, a report on the status of the incapacitated person, which
14 shall include:

15 (a) The address and name of the incapacitated person and all
16 residential changes during the period;

17 (b) The services or programs which the incapacitated person
18 receives;

19 (c) The medical status of the incapacitated person;

20 (d) The mental status of the incapacitated person;

21 (e) Changes in the functional abilities of the incapacitated
22 person;

23 (f) Activities of the guardian for the period;

24 (g) Any recommended changes in the scope of the authority of the
25 guardian;

26 (h) The identity of any professionals who have assisted the
27 incapacitated person during the period.

28 ~~((If the court has made a finding as provided in RCW 11.88.095(5),~~
29 ~~that the person is incapacitated as a result of a developmental~~
30 ~~disability that is expected to continue indefinitely, the court in its~~

1 ~~discretion, may allow reports at intervals up to thirty six months and~~
2 ~~may modify or waive certain reporting requirements in this subsection,~~
3 ~~that the court considers inapplicable or unduly burdensome. The court~~
4 ~~may not waive the requirement that the guardian or limited guardian~~
5 ~~report any substantial change in the incapacitated person's~~
6 ~~condition.))~~

7 (3) To report to the court within thirty days any substantial
8 change in the incapacitated person's condition, or any changes in
9 residence of the incapacitated person.

10 (4) Consistent with the powers granted by the court, to care for
11 and maintain the incapacitated person in the setting least restrictive
12 to the incapacitated person's freedom and appropriate to the
13 incapacitated person's personal care needs, assert the incapacitated
14 person's rights and best interests, and if the incapacitated person is
15 a minor or where otherwise appropriate, to see that the incapacitated
16 person receives appropriate training and education and that the
17 incapacitated person has the opportunity to learn a trade, occupation,
18 or profession.

19 (5) Consistent with RCW 7.70.065, to provide timely, informed
20 consent for health care of the incapacitated person, except in the case
21 of a limited guardian where such power is not expressly provided for in
22 the order of appointment or subsequent modifying order as provided in
23 RCW 11.88.125 as now or hereafter amended, the standby guardian or
24 standby limited guardian may provide timely, informed consent to
25 necessary medical procedures if the guardian or limited guardian cannot
26 be located within four hours after the need for such consent arises.
27 No guardian, limited guardian, or standby guardian may involuntarily
28 commit for mental health treatment, observation, or evaluation an
29 alleged incapacitated person who is unable or unwilling to give
30 informed consent to such commitment unless the procedures for

1 involuntary commitment set forth in chapter 71.05 or 72.23 RCW are
2 followed. Nothing in this section shall be construed to allow a
3 guardian, limited guardian, or standby guardian to consent to:

4 (a) Therapy or other procedure which induces convulsion;

5 (b) Surgery solely for the purpose of psychosurgery;

6 (c) Other psychiatric or mental health procedures that restrict
7 physical freedom of movement, or the rights set forth in RCW 71.05.370.

8 A guardian, limited guardian, or standby guardian who believes
9 these procedures are necessary for the proper care and maintenance of
10 the incapacitated person shall petition the court for an order unless
11 the court has previously approved the procedure within the past thirty
12 days. The court may order the procedure only after an attorney is
13 appointed in accordance with RCW 11.88.045 if no attorney has
14 previously appeared, notice is given, and a hearing is held in
15 accordance with RCW 11.88.040.

16 **Sec. 10.** RCW 11.92.180 and 1990 c 122 s 36 are each amended to
17 read as follows:

18 A guardian or limited guardian shall be allowed such compensation
19 for his or her services as guardian or limited guardian as the court
20 shall deem just and reasonable. Guardians and limited guardians shall
21 not be compensated at ((public)) county or state expense. Additional
22 compensation may be allowed for other administrative costs, including
23 services of an attorney and for other services not provided by the
24 guardian or limited guardian. Where a guardian or limited guardian is
25 an attorney, the guardian or limited guardian shall separately account
26 for time for which compensation is requested for services as a guardian
27 or limited guardian as contrasted to time for which compensation for
28 legal services provided to the guardianship is requested. In all
29 cases, compensation of the guardian or limited guardian and his or her

1 expenses including attorney's fees shall be fixed by the court and may
2 be allowed at any annual or final accounting; but at any time during
3 the administration of the estate, the guardian or limited guardian or
4 his or her attorney may apply to the court for an allowance upon the
5 compensation or necessary expenses of the guardian or limited guardian
6 and for attorney's fees for services already performed. If the court
7 finds that the guardian or limited guardian has failed to discharge his
8 or her duties as such in any respect, it may deny the guardian any
9 compensation whatsoever or may reduce the compensation which would
10 otherwise be allowed.

11 NEW SECTION. **Sec. 11.** A new section is added to chapter 11.92 RCW
12 to read as follows:

13 (1) All financial institutions as defined in RCW 30.22.040(12), all
14 insurance companies holding a certificate of authority under chapter
15 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer
16 of securities under the definitions of RCW 21.20.005 (hereafter
17 individually and collectively referenced as "institution") shall
18 provide the guardian access and control over the asset(s) described in
19 (a)(vii) of this subsection, including but not limited to delivery of
20 the asset to the guardian, upon receipt of the following:

21 (a) An affidavit containing as an attachment a true and correct
22 copy of the guardian's letters of guardianship and stating:

23 (i) That as of the date of the affidavit, the affiant is a duly
24 appointed guardian with authority over assets held by the institution
25 but owned or subject to withdrawal or delivery to a client or depositor
26 of the institution;

27 (ii) The cause number of the guardianship;

28 (iii) The name of the incapacitated person and the name of the
29 client or depositor (which names shall be the same);

- 1 (iv) The account or the safety deposit box number or numbers;
- 2 (v) The address of the client or depositor;
- 3 (vi) The name and address of the affiant-guardian being provided
- 4 assets or access to assets;
- 5 (vii) A description of and the value of the asset or assets, or,
- 6 where the value cannot be readily ascertained, a reasonable estimate
- 7 thereof, and a statement that the guardian receives delivery or control
- 8 of each asset solely in its capacity as guardian;
- 9 (viii) The date the guardian assumed control over the assets; and
- 10 (ix) That a true and correct copy of the letters of guardianship
- 11 duly issued by a court to the guardian is attached to the affidavit;
- 12 and
- 13 (b) An envelope, with postage prepaid, addressed to the clerk of
- 14 the court issuing the letters of guardianship.

15 The affidavit shall be sent in the envelope by the institution to the

16 clerk of the court together with a statement signed by an agent of the

17 institution that the description of the asset set forth in the

18 affidavit appears to be accurate, and confirming in the case of cash

19 assets, the value of the asset.

20 (2) Any guardian provided with access to a safe deposit box

21 pursuant to subsection (1) of this section shall make an inventory of

22 the contents of the box and attach this inventory to the affidavit

23 before the affidavit is sent to the clerk of the court and before the

24 contents of the box are released to the guardian. Any inventory shall

25 be prepared in the presence of an employee of the institution and the

26 statement of the institution required under subsection (1) of this

27 section shall include a statement executed by the employee that the

28 inventory appears to be accurate. The institution may require payment

29 by the guardian of any fees or charges then due in connection with the

30 asset or account and of a reasonable fee for witnessing preparation of

1 the inventory and preparing the statement required by this subsection
2 or subsection (1) of this section.

3 (3) Any institution to which an affidavit complying with subsection
4 (1) of this section is submitted may rely on the affidavit without
5 inquiry and shall not be subject to any liability of any nature
6 whatsoever to any person whatsoever, including but not limited to the
7 institution's client or depositor or any other person with an ownership
8 or other interest in or right to the asset, for the reliance or for
9 providing the guardian access and control over the asset, including but
10 not limited to delivery of the asset to the guardian.