
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; adding a new section to chapter 11.88 RCW;
4 and adding a new section to chapter 11.92 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 NEW SECTION. Sec. 2. A new section is added to chapter 11.88 RCW
15 to read as follows:

16 The department of social and health services shall petition for the
17 appointment of a guardian or limited guardian of an individual if it
18 appears to the department that the individual: (1) Is entitled to
19 notice of a denial or termination of benefits administered by the
20 department; (2) lacks the mental capacity to understand the notice and
21 exercise any right to appeal the denial or termination; (3) lacks the
22 mental capacity to (a) understand the services the department offers,
23 (b) provide informed consent for medical treatment or services, or (c)
24 participate in planning for those services the department offers which
25 are intended to ameliorate significant risk of personal harm as
26 specified in RCW 11.88.010(1)(a); and (4) has neither a guardian nor a
27 person authorized by a durable power of attorney to receive notice for
28 and act on behalf of him or her.

1 **Sec. 3.** RCW 11.88.045 and 1990 c 122 s 6 are each amended to read
2 as follows:

3 (1)(a) Alleged incapacitated individuals shall have the right to be
4 represented by counsel at any stage in guardianship proceedings. The
5 court shall provide counsel to represent any alleged incapacitated
6 person at public expense when either: (i) The individual is unable to
7 afford counsel, or (ii) the expense of counsel would result in
8 substantial hardship to the individual, or (iii) the individual does
9 not have practical access to funds with which to pay counsel. If the
10 individual can afford counsel but lacks practical access to funds, the
11 court shall provide counsel and may impose a reimbursement requirement
12 as part of a final order. When, in the opinion of the court, the
13 rights and interests of an alleged or adjudicated incapacitated person
14 cannot otherwise be adequately protected and represented, the court on
15 its own motion shall appoint an attorney at any time to represent such
16 person. Counsel shall be provided as soon as practicable after a
17 petition is filed and long enough before any final hearing to allow
18 adequate time for consultation and preparation. Absent a convincing
19 showing in the record to the contrary, a period of less than three
20 weeks shall be presumed by a reviewing court to be inadequate time for
21 consultation and preparation.

22 (b) Counsel for an alleged incapacitated individual shall act as an
23 advocate for the client and shall not substitute counsel's own judgment
24 for that of the client on the subject of what may be in the client's
25 best interests. Counsel's role shall be distinct from that of the
26 guardian ad litem, who is expected to promote the best interest of the
27 alleged incapacitated individual, rather than the alleged incapacitated
28 individual's expressed preferences.

29 (c) If an alleged incapacitated person is represented by counsel
30 and does not communicate with counsel, counsel may ask the court for

1 leave to withdraw for that reason. If satisfied, after affording the
2 alleged incapacitated person an opportunity for a hearing, that the
3 request is justified, the court may grant the request and allow the
4 case to proceed with the alleged incapacitated person unrepresented.

5 (2) During the pendency of any guardianship, any attorney
6 purporting to represent a person alleged or adjudicated to be
7 incapacitated(~~(7)~~) shall ~~((enter a notice of appearance for~~
8 ~~appointment))~~ petition to be appointed to represent the incapacitated
9 or alleged incapacitated person. Fees for representation described in
10 this section shall be subject to approval by the court pursuant to the
11 provisions of RCW 11.92.180.

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

17 (4) In all proceedings for appointment of a guardian or limited
18 guardian, the court must be presented with a written report from a
19 physician licensed to practice under chapter 18.71 RCW or licensed or
20 certified psychologist selected by the guardian ad litem. The
21 physician or psychologist shall have personally examined and
22 interviewed the alleged incapacitated person within thirty days of the
23 report to the court and shall have expertise in the type of disorder or
24 incapacity the alleged incapacitated person is believed to have. The
25 report shall contain the following information and shall be set forth
26 in substantially the following format:

27 (a) The name and address of the examining physician or
28 psychologist;

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

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

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

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

7 (f) Current medications;

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

11 (h) Opinions on the specific assistance the alleged incapacitated
12 person needs;

13 (i) Identification of persons with whom the physician or
14 psychologist has met or spoken regarding the alleged incapacitated
15 person.

16 The court shall not enter an order appointing a guardian or limited
17 guardian until a medical or psychological report meeting the above
18 requirements is filed.

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

21 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
22 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
23 11.92.180, as now or hereafter amended, shall affect or impair the
24 power of any court to appoint a guardian ad litem to defend the
25 interests of any incapacitated person interested in any suit or matter
26 pending therein, or to commence and prosecute any suit in his behalf.

27 (2) Upon receipt of a petition for appointment of guardian or
28 limited guardian, except as provided herein, the court shall appoint a
29 guardian ad litem to represent the best interests of the alleged

1 incapacitated person, who shall be a person found or known by the court
2 to

3 (a) be free of influence from anyone interested in the result of
4 the proceeding;

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

7 No guardian ad litem need be appointed when a parent is petitioning
8 for a guardian or a limited guardian to be appointed for his or her
9 minor child and the minority of the child, as defined by RCW 11.92.010,
10 is the sole basis of the petition. The order appointing the guardian
11 ad litem shall recite the duties set forth in subsection (5) of this
12 section. The appointment of a guardian ad litem shall have no effect
13 on the legal competency of the alleged incapacitated person and shall
14 not overcome the presumption of competency or full legal and civil
15 rights of the alleged incapacitated person.

16 (3)(a) The superior court of each county shall develop by September
17 1, 1991, a registry of persons who are willing and qualified to serve
18 as guardians ad litem in guardianship matters. The court shall choose
19 as guardians ad litem only persons whose names appear on the registry,
20 except in extraordinary circumstances.

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

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

28 (ii) Complete a training program (~~approved~~) adopted by the court,
29 or, in the absence of a locally adopted program, a candidate for

1 inclusion upon the registry shall have completed a model training
2 program as described in (d) of this subsection.

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

5 (i) Train otherwise qualified human service professionals in those
6 aspects of legal procedure and the requirements of chapters 11.88 and
7 11.92 RCW with which a guardian ad litem should be familiar;

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

11 (d) The superior court of each county (~~shall~~) may approve a
12 guardian ad litem training program on or before June 1, 1991. The
13 department of social and health services, aging and adult services
14 administration, shall convene an advisory group to develop a model
15 guardian ad litem training program. The advisory group shall consist of
16 representatives from consumer, advocacy, and professional groups
17 knowledgeable in developmental disabilities, neurological impairment,
18 physical disabilities, mental illness, aging, legal, court
19 administration, and other interested parties.

20 (e) Any superior court that has (~~failed to adopt~~) not adopted a
21 guardian ad litem training program by September 1, (~~1992~~) 1991, shall
22 (~~use the~~) require utilization of a model program developed by the
23 advisory group (~~convened by the department of social and health~~
24 services, aging and adult services administration) as described in (d)
25 of this subsection, to assure that candidates applying for registration
26 as a qualified guardian ad litem shall have satisfactorily completed
27 training to attain these essential minimum qualifications to act as
28 guardian ad litem.

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

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

6 (a) To meet and consult with the alleged incapacitated person as
7 soon as practicable following appointment and explain, in language
8 which such person can reasonably be expected to understand, the
9 substance of the petition, the nature of the resultant proceedings, the
10 person's right to contest the petition, the identification of the
11 proposed guardian or limited guardian, the right to a jury trial on the
12 issue of his or her alleged incapacity, the right to independent legal
13 counsel as provided by RCW 11.88.045, and the right to be present in
14 court at the hearing on the petition;

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

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

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

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

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

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

3 (ii) A description of the needs of the incapacitated person for
4 care and treatment, the probable residential requirements of the
5 alleged incapacitated person and the basis upon which these findings
6 were made;

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

11 (iv) A description of the abilities of the alleged incapacitated
12 person and a recommendation as to whether a guardian or limited
13 guardian should be appointed. If appointment of a limited guardian is
14 recommended, the guardian ad litem shall recommend the specific areas
15 of authority the limited guardian should have and the limitations and
16 disabilities to be placed on the incapacitated person;

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

20 (vi) Any expression of approval or disapproval made by the alleged
21 incapacitated person concerning the proposed guardian or limited
22 guardian or guardianship or limited guardianship;

23 (vii) Identification of persons with significant interest in the
24 welfare of the alleged incapacitated person who should be advised of
25 their right to request special notice of proceedings pursuant to RCW
26 11.92.150; and

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

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

9 (f) To advise the court of the need for appointment of counsel for
10 the alleged incapacitated person within five days after the meeting
11 described in (a) of this subsection unless (i) counsel has appeared,
12 (ii) the alleged incapacitated person affirmatively communicated a wish
13 not to be represented by counsel after being advised of the right to
14 representation and of the conditions under which court-provided counsel
15 may be available, or (iii) the alleged incapacitated person was unable
16 to communicate at all on the subject, and the guardian ad litem is
17 satisfied that the alleged incapacitated person does not affirmatively
18 desire to be represented by counsel.

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

26 (7) The court appointed guardian ad litem shall have the authority,
27 in the event that the alleged incapacitated person is in need of
28 emergency life-saving medical services, and is unable to consent to
29 such medical services due to incapacity pending the hearing on the

1 petition to give consent for such emergency life-saving medical
2 services on behalf of the alleged incapacitated person.

3 (8) The guardian ad litem shall receive a fee determined by the
4 court. The fee shall be charged to the alleged incapacitated person
5 unless the court finds that such payment would result in substantial
6 hardship upon such person, in which case the county shall be
7 responsible for such costs: PROVIDED, That if no guardian or limited
8 guardian is appointed the court may charge such fee to the petitioner
9 or the alleged incapacitated person, or divide the fee, as it deems
10 just; and if the petition is found to be frivolous or not brought in
11 good faith, the guardian ad litem fee shall be charged to the
12 petitioner. The court shall not be required to provide for the payment
13 of a fee to any salaried employee of a public agency.

14 (9) Upon the presentation of the guardian ad litem report and the
15 entry of an order either dismissing the petition for appointment of
16 guardian or limited guardian or appointing a guardian or limited
17 guardian, the guardian ad litem shall be dismissed and shall have no
18 further duties or obligations unless otherwise ordered by the court.
19 If the court orders the guardian ad litem to perform further duties or
20 obligations, they shall not be performed at county expense.

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

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

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

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

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

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

5 (d) Whether the guardian ad litem shall continue acting as guardian
6 ad litem;

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

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

11 (g) Names and addresses of those persons described in RCW
12 (~~((11.92.090(5)(d)))~~) 11.88.090(5)(d), if any, whom the court believes
13 should receive copies of further pleadings filed by the guardian with
14 respect to the guardianship.

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

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

25 (~~((5) If a court determines that the person is incapacitated and
26 that a guardian or limited guardian should be appointed, the court
27 shall determine whether the incapacity is a result of a developmental
28 disability as defined by RCW 71A.10.020, and if so, determine whether
29 the incapacity due to the developmental disability can be expected to
30 continue indefinitely.))~~)

1 **Sec. 6.** RCW 11.88.120 and 1990 c 122 s 14 are each amended to read
2 as follows:

3 (1) At any time after establishment of a guardianship or
4 appointment of a guardian, the court may, upon the death of the
5 guardian or limited guardian, or, for other good reason, modify or
6 terminate the guardianship or replace the guardian or limited guardian.

7 (2) Any person, including an incapacitated person, may apply to the
8 court for an order to modify or terminate a guardianship or to replace
9 a guardian or limited guardian. If applicants are represented by
10 counsel, counsel shall move for an order to show cause why the relief
11 requested should not be granted. If applicants are not represented by
12 counsel, they may move for an order to show cause, or they may deliver
13 a written request to the clerk of the court.

14 (3) By the next judicial day after receipt of an unrepresented
15 person's request to modify or terminate a guardianship order, or to
16 replace a guardian or limited guardian, the clerk shall (~~present~~)
17 deliver the request to the court. The court may (a) direct the clerk to
18 schedule a hearing, (b) appoint a guardian ad litem to investigate the
19 issues raised by the application or to take any emergency action the
20 court deems necessary to protect the incapacitated person until a
21 hearing can be held, or (c) deny the application without scheduling a
22 hearing, if it appears based on documents in the court file that the
23 application is frivolous. Any denial of an application without a
24 hearing shall be in writing with the reasons for the denial explained.
25 A copy of the order shall be mailed by the clerk to the applicant, to
26 the guardian, and to any other person entitled to receive notice of
27 proceedings in the matter. Unless within thirty days after receiving
28 the request from the clerk the court directs otherwise, the clerk shall
29 schedule a hearing on the request and mail notice to the guardian, the

1 incapacitated person, the applicant, all counsel of record, and any
2 other person entitled to receive notice of proceedings in the matter.

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

7 (5) The court may order persons who have been removed as guardians
8 to deliver any property or records belonging to the incapacitated
9 person in accordance with the court's order. Similarly, when guardians
10 have died or been removed and property or records of an incapacitated
11 person are being held by any other person, the court may order that
12 person to deliver it in accordance with the court's order.
13 Disobedience of an order to deliver shall be punishable as contempt of
14 court.

15 **Sec. 7.** RCW 11.88.125 and 1990 c 122 s 15 are each amended to read
16 as follows:

17 (1) The person appointed by the court as either guardian or limited
18 guardian of the person and/or estate of an incapacitated person, shall
19 file in writing with the court, a (~~designated~~) notice designating a
20 standby limited guardian or guardian to serve as limited guardian or
21 guardian at the death or legal incapacity of the court-appointed
22 guardian or limited guardian. The notice shall state the name,
23 address, zip code, and telephone number of the designated standby or
24 limited guardian. Notice of the guardian's designation of the standby
25 guardian shall be given to the standby guardian, the incapacitated
26 person and his or her spouse and adult children, any facility in which
27 the incapacitated person resides, and any person entitled to special
28 notice under RCW 11.92.150 or any person entitled to receive pleadings
29 pursuant to RCW 11.88.095(2)(g). Such standby guardian or limited

1 guardian shall have all the powers, duties, and obligations of the
2 regularly appointed guardian or limited guardian and in addition shall,
3 within a period of thirty days from the death or adjudication of
4 incapacity of the regularly appointed guardian or limited guardian,
5 file with the superior court in the county in which the guardianship or
6 limited guardianship is then being administered, a petition for
7 appointment of a substitute guardian or limited guardian. Upon the
8 court's appointment of a new, substitute guardian or limited guardian,
9 the standby guardian or limited guardian shall make an accounting and
10 report to be approved by the court, and upon approval of the court, the
11 standby guardian or limited guardian shall be released from all duties
12 and obligations arising from or out of the guardianship or limited
13 guardianship.

14 (2) Letters of guardianship shall be issued to the standby guardian
15 or limited guardian upon filing an oath and posting a bond as required
16 by RCW 11.88.100 as now or hereafter amended. The oath may be filed
17 prior to the appointed guardian or limited guardian's death. Notice of
18 such appointment shall be provided to the standby guardian, the
19 incapacitated person, and any facility in which the incapacitated
20 person resides. The provisions of RCW 11.88.100 through 11.88.110 as
21 now or hereafter amended shall apply to standby guardians and limited
22 guardians.

23 (3) In addition to the powers of a standby limited guardian or
24 guardian as noted in subsection (1) of this section, the standby
25 limited guardian or guardian shall have the authority to provide
26 timely, informed consent to necessary medical procedures, as authorized
27 in RCW 11.92.040 as now or hereafter amended, if the guardian or
28 limited guardian cannot be located within four hours after the need for
29 such consent arises.

1 **Sec. 8.** RCW 11.88.140 and 1990 c 122 s 17 are each amended to read
2 as follows:

3 (1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited
4 guardianship is terminated:

5 (a) Upon the attainment of full and legal age, as defined in RCW
6 26.28.010 as now or hereafter amended, of any person defined as an
7 incapacitated person pursuant to RCW 11.88.010 as now or hereafter
8 amended solely by reason of youth, RCW 26.28.020 to the contrary
9 notwithstanding, subject to subsection (2) of this section;

10 (b) By an adjudication of capacity or an adjudication of
11 termination of incapacity;

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

13 (d) By expiration of the term of limited guardianship specified in
14 the order appointing the limited guardian, unless prior to such
15 expiration a petition has been filed and served, as provided in RCW
16 11.88.040 as now or hereafter amended, seeking an extension of such
17 term.

18 (2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF
19 COMPLETION. A guardianship for the benefit of a minor may be
20 terminated upon the minor's attainment of legal age, as defined in RCW
21 26.28.010 as now or hereafter amended, by the guardian filing a
22 declaration that states:

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

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

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

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

30 (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or

1 accountants; and that the guardian believes the fees are reasonable and
2 does not intend to obtain court approval of the amount of the fees or
3 to submit a guardianship accounting to the court for approval. Subject
4 to the requirement of notice as provided in this section, unless the
5 minor petitions the court either for an order requiring the guardian to
6 obtain court approval of the amount of fees paid or to be paid to the
7 guardian, lawyers, or accountants, or for an order requiring an
8 accounting, or both, within thirty days from the filing of the
9 declaration of completion of guardianship, the guardian shall be
10 automatically discharged without further order of the court. The
11 guardian's powers will cease thirty days after filing the declaration
12 of completion of guardianship. The declaration of completion of
13 guardianship shall, at the time, be the equivalent of an entry of a
14 decree terminating the guardianship, distributing the assets, and
15 discharging the guardian for all legal intents and purposes.

16 Within five days of the date of filing the declaration of
17 completion of guardianship, the guardian or the guardian's lawyer shall
18 mail a copy of the declaration of completion to the minor together with
19 a notice that shall be substantially as follows:

20 CAPTION OF CASE NOTICE OF FILING A DECLARATION OF
21 COMPLETION OF GUARDIANSHIP

22 NOTICE IS GIVEN that the attached Declaration of Completion of
23 Guardianship was filed by the undersigned in the above-entitled court
24 on the day of, 19..; unless you file a petition
25 in the above-entitled court requesting the court to review the
26 reasonableness of the fees, or for an accounting, or both, and serve a
27 copy of the petition on the guardian or the guardian's lawyer, within
28 thirty days after the filing date, the amount of fees paid or to be

1 paid will be deemed reasonable, the acts of the guardian will be deemed
2 approved, the guardian will be automatically discharged without further
3 order of the court and the Declaration of Completion of Guardianship
4 will be final and deemed the equivalent of an order terminating the
5 guardianship, discharging the guardian and decreeing the distribution
6 of the guardianship assets.

7 If you file and serve a petition within the period specified, the
8 undersigned will request the court to fix a time and place for the
9 hearing of your petition, and you will be notified of the time and
10 place of the hearing, by mail, or by personal service, not less than
11 ten days before the hearing on the petition.

12 DATED this day of, 19...
13
14 Guardian

15 If the minor, after reaching legal age, waives in writing the
16 notice required by this section, the guardian will be automatically
17 discharged without further order of the court and the declaration of
18 completion of guardianship will be effective as an order terminating
19 the guardianship without an accounting upon filing the declaration. If
20 the guardian has been required to furnish a bond, and a declaration of
21 completion of guardianship is filed according to this section, any bond
22 furnished by the guardian shall be automatically discharged upon the
23 discharge of the guardian.

24 (3) TERMINATION ON COURT ORDER. A guardianship or limited
25 guardianship may be terminated by court order after such notice as the
26 court may require if the guardianship or limited guardianship is no
27 longer necessary.

1 The guardian or limited guardian shall, within thirty days of the
2 date of termination, unless the court orders a different deadline for
3 good cause, prepare and file with the court a final verified account of
4 administration. The final verified account of administration shall
5 contain the same information as required for (a) an intermediate
6 verified account of administration of the estate under RCW 11.92.040(2)
7 and (b) an intermediate personal care status report under RCW
8 11.92.043(2).

9 (4) EFFECT OF TERMINATION. When a guardianship or limited
10 guardianship terminates other than by the death of the incapacitated
11 person, the powers of the guardian or limited guardian cease, except
12 that a guardian or limited guardian of the estate may make
13 disbursements for claims that are or may be allowed by the court, for
14 liabilities already properly incurred for the estate or for the
15 incapacitated person, and for expenses of administration. When a
16 guardianship or limited guardianship terminates by death of the
17 incapacitated person, the guardian or limited guardian of the estate
18 may proceed under RCW 11.88.150 as now or hereafter amended, but the
19 rights of all creditors against the incapacitated person's estate shall
20 be determined by the law of decedents' estates.

21 **Sec. 9.** RCW 11.92.040 and 1990 c 122 s 20 are each amended to read
22 as follows:

23 It shall be the duty of the guardian or limited guardian of an
24 estate:

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

1 (2) To file annually, within (~~thirty~~) ninety days after the
2 anniversary date of the guardian's or limited guardian's appointment,
3 and also within thirty days after termination of the appointment,
4 unless the court for good cause orders a different deadline to file
5 following termination, a written verified account of the
6 administration, which account shall contain at least the following
7 information:

8 (a) Identification of property of the guardianship estate as of the
9 date of the last account or, in the case of the initial account, as of
10 the date of inventory;

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

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

15 (d) Any adjustments to the guardianship estate required to
16 establish its present fair market value, including gains or losses on
17 sale or other disposition and any mortgages, deeds of trust or other
18 encumbrances against the guardianship estate; and

19 (e) Identification of all property held in the guardianship estate
20 as of the date of account, the assessed value of any real property and
21 the guardian's estimate of the present fair market values of other
22 property (including the basis on which such estimate is made), and the
23 total net fair market value of the guardianship estate. In addition,
24 immediately following such statement of present fair market value, the
25 account shall set forth a statement of current amount of the guardian's
26 bond and any other court-ordered protection for the security of the
27 guardianship assets(~~(-)~~);

28 (3) The court in its discretion may allow reports at intervals of
29 up to thirty-six months for estates with assets (exclusive of real
30 property) having a value of not more than twice the homestead

1 exemption. Notwithstanding contrary provisions of this section, the
2 guardian or limited guardian of an estate need not file an annual
3 report with the court if the funds of the guardianship are held for the
4 benefit of a minor in a blocked account unless the guardian requests a
5 withdrawal from such account, in which case the guardian shall provide
6 a written verified account of the administration of the guardianship
7 estate along with the guardian's petition for the withdrawal. The
8 guardian or limited guardian shall report any substantial change in
9 income or assets of the guardianship estate within thirty days of the
10 occurrence of the change. A hearing shall be scheduled for court
11 review and determination of provision for increased bond or other
12 provision in accordance with RCW 11.88.100;

13 ~~((3) If the court has made a finding as provided in RCW
14 11.88.095(5), that the person is incapacitated as a result of a
15 developmental disability that is expected to continue indefinitely and
16 the incapacitated person's estate has a value, exclusive of real
17 property, of not more than twice the homestead exemption, the court, in
18 its discretion, may allow reports at intervals up to thirty six months
19 and may modify or waive certain reporting requirements in subsection
20 (2) of this section that the court considers unduly burdensome or
21 inapplicable. The court may not waive the requirement that the
22 guardian or limited guardian report any substantial change in the
23 incapacitated person's income or assets;))~~

24 (4) To protect and preserve the guardianship estate, to apply it as
25 provided in this chapter, to account for it faithfully, to perform all
26 of the duties required by law, and at the termination of the
27 guardianship or limited guardianship, to deliver the assets of the
28 incapacitated person to the persons entitled thereto. Except as
29 provided to the contrary herein, the court may authorize a guardian or
30 limited guardian to do anything that a trustee can do under the

1 provisions of RCW 11.98.070 for a period not exceeding one year from
2 the date of the order or for a period corresponding to the interval in
3 which the guardian's or limited guardian's report is required to be
4 filed by the court pursuant to subsection (2) of this section,
5 whichever period is longer;

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

9 (a) No investments shall be made without prior order of the court
10 in any property other than unconditional interest bearing obligations
11 of this state or of the United States and in obligations the interest
12 and principal of which are unconditionally guaranteed by the United
13 States, and in share accounts or deposits which are insured by an
14 agency of the United States government. Such prior order of the court
15 may authorize specific investments, or, in the discretion of the court,
16 may authorize the guardian or limited guardian (~~during a period not~~
17 ~~exceeding one year following the date of the order or for a period~~
18 ~~corresponding to the interval in which the guardian's or limited~~
19 ~~guardian's report is required to be filed by the court pursuant to~~
20 ~~subsection (2) of this section, whichever period is longer,~~) to invest
21 and reinvest as provided in chapter 11.100 RCW without further order of
22 the court;

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

26 (6) To apply to the court no later than the filing of the inventory
27 for an order authorizing disbursements on behalf of the incapacitated
28 person: PROVIDED, HOWEVER, That the guardian or limited guardian of
29 the estate, or the person, department, bureau, agency, or charitable
30 organization having the care and custody of an incapacitated person,

1 may apply to the court for an order directing the guardian or limited
2 guardian of the estate to pay to the person, department, bureau,
3 agency, or charitable organization having the care and custody of an
4 incapacitated person, or if the guardian or limited guardian of the
5 estate has the care and custody of the incapacitated person, directing
6 the guardian or limited guardian of the estate to apply an amount
7 weekly, monthly, quarterly, semi-annually, or annually, as the court
8 may direct, to be expended in the care, maintenance, and education of
9 the incapacitated person and of his or her dependents. In proper
10 cases, the court may order payment of amounts directly to the
11 incapacitated person for his or her maintenance or incidental expenses.
12 The amounts authorized under this section may be decreased or increased
13 from time to time by direction of the court. If payments are made to
14 another under an order of the court, the guardian or limited guardian
15 of the estate is not bound to see to the application thereof.

16 **Sec. 10.** RCW 11.92.043 and 1990 c 122 s 21 are each amended to
17 read as follows:

18 It shall be the duty of the guardian or limited guardian of the
19 person:

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

26 (2) To file annually or, where a guardian of the estate has been
27 appointed, at the time an account is required to be filed under RCW
28 11.92.040, a report on the status of the incapacitated person, which
29 shall include:

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

3 (b) The services or programs which the incapacitated person
4 receives;

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

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

7 (e) Changes in the functional abilities of the incapacitated
8 person;

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

10 (g) Any recommended changes in the scope of the authority of the
11 guardian;

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

14 (~~(If the court has made a finding as provided in RCW 11.88.095(5),
15 that the person is incapacitated as a result of a developmental
16 disability that is expected to continue indefinitely, the court in its
17 discretion, may allow reports at intervals up to thirty-six months and
18 may modify or waive certain reporting requirements in this subsection,
19 that the court considers inapplicable or unduly burdensome. The court
20 may not waive the requirement that the guardian or limited guardian
21 report any substantial change in the incapacitated person's
22 condition.))~~)

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

26 (4) Consistent with the powers granted by the court, to care for
27 and maintain the incapacitated person in the setting least restrictive
28 to the incapacitated person's freedom and appropriate to the
29 incapacitated person's personal care needs, assert the incapacitated
30 person's rights and best interests, and if the incapacitated person is

1 a minor or where otherwise appropriate, to see that the incapacitated
2 person receives appropriate training and education and that the
3 incapacitated person has the opportunity to learn a trade, occupation,
4 or profession.

5 (5) Consistent with RCW 7.70.065, to provide timely, informed
6 consent for health care of the incapacitated person, except in the case
7 of a limited guardian where such power is not expressly provided for in
8 the order of appointment or subsequent modifying order as provided in
9 RCW 11.88.125 as now or hereafter amended, the standby guardian or
10 standby limited guardian may provide timely, informed consent to
11 necessary medical procedures if the guardian or limited guardian cannot
12 be located within four hours after the need for such consent arises.
13 No guardian, limited guardian, or standby guardian may involuntarily
14 commit for mental health treatment, observation, or evaluation an
15 alleged incapacitated person who is unable or unwilling to give
16 informed consent to such commitment unless the procedures for
17 involuntary commitment set forth in chapter 71.05 or 72.23 RCW are
18 followed. Nothing in this section shall be construed to allow a
19 guardian, limited guardian, or standby guardian to consent to:

- 20 (a) Therapy or other procedure which induces convulsion;
21 (b) Surgery solely for the purpose of psychosurgery;
22 (c) Other psychiatric or mental health procedures that restrict
23 physical freedom of movement, or the rights set forth in RCW 71.05.370.

24 A guardian, limited guardian, or standby guardian who believes
25 these procedures are necessary for the proper care and maintenance of
26 the incapacitated person shall petition the court for an order unless
27 the court has previously approved the procedure within the past thirty
28 days. The court may order the procedure only after an attorney is
29 appointed in accordance with RCW 11.88.045 if no attorney has

1 previously appeared, notice is given, and a hearing is held in
2 accordance with RCW 11.88.040.

3 **Sec. 11.** RCW 11.92.180 and 1990 c 122 s 36 are each amended to
4 read as follows:

5 A guardian or limited guardian shall be allowed such compensation
6 for his or her services as guardian or limited guardian as the court
7 shall deem just and reasonable. Guardians and limited guardians shall
8 not be compensated at ((public)) county or state expense. Additional
9 compensation may be allowed for other administrative costs, including
10 services of an attorney and for other services not provided by the
11 guardian or limited guardian. Where a guardian or limited guardian is
12 an attorney, the guardian or limited guardian shall separately account
13 for time for which compensation is requested for services as a guardian
14 or limited guardian as contrasted to time for which compensation for
15 legal services provided to the guardianship is requested. In all
16 cases, compensation of the guardian or limited guardian and his or her
17 expenses including attorney's fees shall be fixed by the court and may
18 be allowed at any annual or final accounting; but at any time during
19 the administration of the estate, the guardian or limited guardian or
20 his or her attorney may apply to the court for an allowance upon the
21 compensation or necessary expenses of the guardian or limited guardian
22 and for attorney's fees for services already performed. If the court
23 finds that the guardian or limited guardian has failed to discharge his
24 or her duties as such in any respect, it may deny the guardian any
25 compensation whatsoever or may reduce the compensation which would
26 otherwise be allowed.

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

1 (1) All financial institutions as defined in RCW 30.22.040(12), all
2 insurance companies holding a certificate of authority under chapter
3 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer
4 of securities under the definitions of RCW 21.20.005 (hereafter
5 individually and collectively referenced as "institution") shall
6 provide the guardian access and control over the asset(s) described in
7 (a)(vii) of this subsection, including but not limited to delivery of
8 the asset to the guardian, upon receipt of the following:

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

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

15 (ii) The cause number of the guardianship;

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

18 (iv) The account or the safety deposit box number or numbers;

19 (v) The address of the client or depositor;

20 (vi) The name and address of the affiant-guardian being provided
21 assets or access to assets;

22 (vii) A description of and the value of the asset or assets, or,
23 where the value cannot be readily ascertained, a reasonable estimate
24 thereof, and a statement that the guardian receives delivery or control
25 of each asset solely in its capacity as guardian;

26 (viii) The date the guardian assumed control over the assets; and

27 (ix) That a true and correct copy of the letters of guardianship
28 duly issued by a court to the guardian is attached to the affidavit;
29 and

1 (b) An envelope, with postage prepaid, addressed to the clerk of
2 the court issuing the letters of guardianship.
3 The affidavit shall be sent in the envelope by the institution to the
4 clerk of the court together with a statement signed by an agent of the
5 institution that the description of the asset set forth in the
6 affidavit appears to be accurate, and confirming in the case of cash
7 assets, the value of the asset.

8 (2) Any guardian provided with access to a safe deposit box
9 pursuant to subsection (1) of this section shall make an inventory of
10 the contents of the box and attach this inventory to the affidavit
11 before the affidavit is sent to the clerk of the court and before the
12 contents of the box are released to the guardian. Any inventory shall
13 be prepared in the presence of an employee of the institution and the
14 statement of the institution required under subsection (1) of this
15 section shall include a statement executed by the employee that the
16 inventory appears to be accurate. The institution may require payment
17 by the guardian of any fees or charges then due in connection with the
18 asset or account and of a reasonable fee for witnessing preparation of
19 the inventory and preparing the statement required by this subsection
20 or subsection (1) of this section.

21 (3) Any institution to which an affidavit complying with subsection
22 (1) of this section is submitted may rely on the affidavit without
23 inquiry and shall not be subject to any liability of any nature
24 whatsoever to any person whatsoever, including but not limited to the
25 institution's client or depositor or any other person with an ownership
26 or other interest in or right to the asset, for the reliance or for
27 providing the guardian access and control over the asset, including but
28 not limited to delivery of the asset to the guardian.