

2 **SHB 2989** - S COMM AMD

3 By Committee on Human Services & Corrections

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 11.88.020 and 1997 c 312 s 1 are each amended to read
8 as follows:

9 (1) Any suitable person over the age of eighteen years, or any
10 parent under the age of eighteen years or, if the petition is for
11 appointment of a professional guardian, any individual ((~~or~~
12 ~~guardianship service that meets any certification requirements~~
13 ~~established~~)) certified by the administrator for the courts, may, if
14 not otherwise disqualified, be appointed guardian or limited guardian
15 of the person and/or the estate of an incapacitated person. A
16 financial institution subject to the jurisdiction of the department of
17 financial institutions and authorized to exercise trust powers, ((and))
18 a federally chartered financial institution when authorized to do so,
19 or a guardianship service, may act as a guardian of the estate of an
20 incapacitated person ((~~without having to meet the certification~~
21 ~~requirements established by the administrator for the courts~~)), if the
22 financial institution or guardianship service has a certified
23 professional guardian with final decision-making authority on the case.
24 No person is qualified to serve as a guardian who is

25 (a) under eighteen years of age except as otherwise provided
26 herein;

27 (b) of unsound mind;

28 (c) convicted of a felony or of a misdemeanor involving moral
29 turpitude;

30 (d) a nonresident of this state who has not appointed a resident
31 agent to accept service of process in all actions or proceedings with
32 respect to the estate and caused such appointment to be filed with the
33 court;

34 (e) a corporation not authorized to act as a fiduciary, guardian,
35 or limited guardian in the state;

36 (f) a person whom the court finds unsuitable.

1 (2) The administrator for the courts shall, or a board established
2 by the administrator shall, by rule establish certification criteria.
3 Candidates for certification must at a minimum:

4 (a) Be at least age twenty-one;

5 (b) Have a high school diploma;

6 (c) Have a minimum of three years' experience in a related field;

7 (d) Have no felony conviction;

8 (e) Have no misdemeanor or gross misdemeanor conviction of any
9 crime that would disqualify an individual from providing services to
10 children or vulnerable adults as specified in RCW 43.43.830 or
11 43.43.842;

12 (f) Have been subject to no other adverse action, such as a
13 disciplinary board decision or civil adjudication, that prohibits the
14 individual from providing services to children or vulnerable adults;

15 (g) Pass an examination;

16 (h) Have obtained intentional acts coverage; and

17 (i) Pay a fee.

18 (3) The professional guardian certification requirements required
19 under this section shall not apply to a testamentary guardian appointed
20 under RCW 11.88.080. The administrator for the courts shall establish
21 a disciplinary process for professional guardians. Professional
22 guardians shall complete ten units of continuing education relevant to
23 their field of service annually.

24 **Sec. 2.** RCW 11.88.045 and 1996 c 249 s 9 are each amended to read
25 as follows:

26 (1)(a) Alleged incapacitated individuals shall have the right to be
27 represented by willing counsel of their choosing at any stage in
28 guardianship proceedings. The court shall provide counsel to represent
29 any alleged incapacitated person at public expense when either: (i)
30 The individual is unable to afford counsel, or (ii) the expense of
31 counsel would result in substantial hardship to the individual, or
32 (iii) the individual does not have practical access to funds with which
33 to pay counsel. If the individual can afford counsel but lacks
34 practical access to funds, the court shall provide counsel and may
35 impose a reimbursement requirement as part of a final order. When, in
36 the opinion of the court, the rights and interests of an alleged or
37 adjudicated incapacitated person cannot otherwise be adequately
38 protected and represented, the court on its own motion shall appoint an

1 attorney at any time to represent such person. Counsel shall be
2 provided as soon as practicable after a petition is filed and long
3 enough before any final hearing to allow adequate time for consultation
4 and preparation. Absent a convincing showing in the record to the
5 contrary, a period of less than three weeks shall be presumed by a
6 reviewing court to be inadequate time for consultation and preparation.

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

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

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

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

33 (4) In all proceedings for appointment of a guardian or limited
34 guardian, the court must be presented with a written report from a
35 physician licensed to practice under chapter 18.71 or 18.57 RCW or
36 licensed or certified psychologist selected by the guardian ad litem.
37 If the alleged incapacitated person opposes the health care
38 professional selected by the guardian ad litem to prepare the medical
39 report, then the guardian ad litem shall use the health care

1 professional selected by the alleged incapacitated person. The
2 guardian ad litem may also obtain a supplemental examination. The
3 physician or psychologist shall have personally examined and
4 interviewed the alleged incapacitated person within thirty days of
5 preparation of the report to the court and shall have expertise in the
6 type of disorder or incapacity the alleged incapacitated person is
7 believed to have. The report shall contain the following information
8 and shall be set forth in substantially the following format:

9 (a) The name and address of the examining physician or
10 psychologist;

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

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

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

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

19 (f) Current medications;

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

23 (h) Opinions on the specific assistance the alleged incapacitated
24 person needs;

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

28 The court shall not enter an order appointing a guardian or limited
29 guardian until a medical or psychological report meeting the above
30 requirements is filed.

31 The requirement of filing a medical report is waived if the basis
32 of the guardianship is minority.

33 (5) During the pendency of an action to establish a guardianship,
34 a petitioner or any person may move for temporary relief under chapter
35 7.40 RCW, to protect the alleged incapacitated person from abuse,
36 neglect, abandonment, or exploitation, as those terms are defined in
37 RCW 74.34.020, or to address any other emergency needs of the alleged
38 incapacitated person. Any alternative arrangement executed before
39 filing the petition for guardianship shall remain effective unless the

1 court grants the relief requested under chapter 7.40 RCW, or unless,
2 following notice and a hearing at which all parties directly affected
3 by the arrangement are present, the court finds that the alternative
4 arrangement should not remain effective.

5 NEW SECTION. **Sec. 3.** Section 1 of this act takes effect January
6 1, 1999."

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10 On page 1, line 1 of the title, after "litem;" strike the remainder
11 of the title and insert "amending RCW 11.88.020 and 11.88.045; and
12 providing an effective date."

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