

HOUSE BILL ANALYSIS

HB 2989

Title: An act relating to guardians and guardians ad litem.

Brief Description: Augmenting provisions regarding guardians and guardians ad litem.

Sponsors: Representatives Mitchell, Tokuda, Sheahan, Costa and Veloria.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Edie Adams (786-7180).

Background: A court may appoint a guardian over the estate or over the person of an incapacitated person. A person is incapacitated as to that person's estate if the individual is at a significant risk of financial harm because of an inability to manage his or her property or financial affairs. A person is incapacitated "as to person" if the individual has a significant risk of personal harm because of an inability to provide for nutrition, health, housing, or physical safety.

In 1992, the Legislature passed ESHB 1771 relating to certification for professional guardians. This legislation required the Office of the Administrator for the Courts (OAC) to study and make recommendations on the standards and criteria for implementing a system of professional guardian certification. As part of this study, the Legislature asked the OAC to also consider the following issues: (1) whether persons other than an alleged incapacitated person should be given standing to request a jury trial; (2) whether a guardian ad litem (GAL) may continue to serve at public expense after the appointment of a guardian; and (3) whether the court should have authority to limit fees for attorneys, guardians, and GALs.

The guardianship statutes provide that a GAL may be ordered to perform duties after the appointment of a guardian, but not at county expense.

A GAL receives a fee as determined by the court. The fee is charged to the alleged incapacitated person unless this would result in extreme hardship to that person, in which case the county is responsible for the fee. However, if no guardian is appointed, the court may require the petitioner or the alleged incapacitated person to pay the fee, or divide the fee as the court deems just. If the petition is found to be frivolous or not brought in good faith, the court must charge the GAL fee to the petitioner. There are no specific provisions concerning attorneys' fees.

The OAC submitted the final report of the Guardian Certification Study Committee in December 1997. The report makes the following recommendations: (1) only the alleged incapacitated person or that person's attorney should be able to request a jury trial; (2) judicial officers should have discretion to appoint guardians ad litem to serve at public expense following the appointment of a guardian in the case; and (3) statutes should be amended to clearly authorize the court to limit fees of attorneys and guardians ad litem (statutes already give clear authority for courts to limit the fees of a guardian).

Summary of Bill: The recommendations of the Guardian Certification Study Committee relating to standing to request a jury trial, ability to appoint guardians ad litem (GALs) after a guardian has been appointed, and limiting fees for attorneys and GALs are adopted.

A jury trial in a case alleging a person's incapacity may only be requested by the alleged incapacitated person or that person's attorney.

When the court orders a GAL to perform additional duties or obligations after the appointment of a guardian or a dismissal of the case, the GAL may serve at public expense with prior approval of the court.

The fee received by a GAL must be just and reasonable as determined by the court. When determining whether the GAL's fee is just and reasonable and when determining the proper party to pay the fee, the court may consider whether the person or estate of the ward was benefitted by the proceedings and any other factors the court considers relevant.

If a court appoints a full or limited guardian for a person, the court must consider whether the court-appointed attorney for the person shall continue acting as the person's attorney and the scope of the representation. An attorney representing a person in a guardianship case and an attorney who provides services to a person who is the subject of a guardianship may be paid just and reasonable attorneys' fees. If reasonable attorneys' fees are requested from the estate of the ward, the court may make a finding whether the attorneys' fees are just and reasonable and properly payable from the ward's estate and whether the fees should be charged to any other party. The court may consider whether the person or estate of the ward was benefitted by the proceedings and any other factors the court considers relevant when determining whether the fees are just and reasonable.

The Legislature finds that, as recommended by the Guardian Certification Study Committee (GCSC), further study is needed of the issue of whether the amount of guardianship fees and compensation for administrative costs shall not exceed the amount allowed by the Department of Social and Health Services. The GCSC shall

reassemble to study this issue and deliver its recommendations to the Legislature by December 1, 1998.

Fiscal Note: Requested February 2, 1998.

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

Office of Program Research