

HOUSE BILL REPORT

HB 1130

As Reported by House Committee On:

Judiciary
Appropriations

Title: An act relating to creating an office of public guardianship as an independent agency of the judiciary.

Brief Description: Creating an office of public guardianship as an independent agency of the judiciary.

Sponsors: Representatives Lantz, Rodne, Morrell, Schual-Berke, Goodman, Kenney, Haigh and Moeller.

Brief History:

Committee Activity:

Judiciary: 1/17/07, 1/23/07 [DPS];

Appropriations: 2/6/07, 2/26/07 [DP2S(w/o sub JUDI)].

Brief Summary of Second Substitute Bill

- Creates an Office of Public Guardianship as an independent agency of the judiciary to provide guardianship services to low income individuals who have been determined by a court to need the services of a guardian.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Flannigan, Kirby, Moeller, Pedersen and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Ahern and Ross.

Staff: Edie Adams (786-7180).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Guardianship is a legal process through which a guardian is given the power to make decisions for a person who is determined to be "incapacitated" and therefore unable to take care of himself or herself. A person may be incapacitated if the individual is at a significant risk of financial harm because of an inability to manage his or her property or financial affairs or has a significant risk of personal harm because of an inability to provide for nutrition, health, housing, or physical safety.

The court may establish a guardianship over the person, the person's estate, or both. The court may also establish a limited guardianship for persons who need protection or assistance because of an incapacity, but who are capable of managing some of their affairs. A guardian of an incapacitated person's estate is responsible for managing the person's property and finances. A guardian of the person is responsible for assessing and meeting the person's physical, mental and emotional needs.

Any adult person residing in Washington may serve as a guardian unless the person is of unsound mind, has been convicted of a crime of moral turpitude, or is found unsuitable by the court. Often the court will appoint a family member or close family friend to serve as guardian. If there are no suitable family members or friends who are able or want to serve as the guardian, the court may appoint a professional guardian. Professional guardians must be certified by the Certified Professional Guardian Board (Board) and must meet certain education, experience, and training requirements established by the Board.

The Elder Law Section of the Washington State Bar Association formed a Public Guardianship Task Force (Task Force) to develop recommendations on the issue of residents who need the help of a guardian but are unable to pay for the guardian's services. The Task Force estimated that there are approximately 4,500 people in Washington who are in need of, but lack, guardianship services because they have neither volunteers able to provide those services nor the resources to pay for them. The Task Force recommended that the Legislature establish an Office of Public Guardianship to address this need.

Summary of Substitute Bill:

An Office of Public Guardianship (Office) is created as an independent agency of the judiciary. The Supreme Court appoints the public guardianship administrator to establish and administer a public guardianship program within the Office. Initial implementation is on a pilot basis in at least two geographical areas, including one urban and one rural area.

Client Criteria: The Office may provide public guardianship services to people who are age eighteen or older and whose income does not exceed 200 percent of the federal poverty level or who are receiving long-term care services through the Department of Social and Health Services (DSHS).

The Office must adopt eligibility criteria to enable it to serve people with the greatest need when the Office is unable to provide public guardianship services to all persons determined to need a public guardian. The eligibility criteria may be based on whether there is: (a)

significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect; or (b) imminent danger of loss of public services necessary to live in the least restrictive environment appropriate for the individual.

Public Guardian Requirements: A public guardian must be certified by the Certified Professional Guardian Board and must meet minimum standards of practice adopted by the Office. A public guardian must visit each incapacitated person the guardian is serving at least once a month in order to be eligible for compensation from the Office. In addition, an entity providing professional guardianship services may not be compensated for services if the entity is serving more than 20 incapacitated persons per certified professional guardian.

Public guardianship providers must annually certify that, for each person they serve, they have evaluated whether it is appropriate to limit or terminate the guardian's authority and that the court has been asked for such a modification or termination where it appears warranted.

Additional Requirements: The Office may not petition for the appointment of a public guardian for any person and may not act as public guardian or limited guardian, or in any other representative capacity, for any person.

The Office must develop a monitoring system for the performance of public guardians, including making in-home visits to randomly-selected public guardianship clients, and must adopt a process for receiving, considering, investigating, and responding to complaints.

Public Guardianship Advisory Committee: A Public Guardianship Advisory Committee (Advisory Committee) is created to review the activities of the Office, review the performance of the public guardianship administrator, and make recommendations on issues relating to the provision of public guardianship services. The Advisory Committee consists of 18 members who serve three-year terms, except for initial members who serve for varying terms specified in the act.

Data Collection, Reports, and Studies: The Office is required to issue an annual report of its activities, track and report cost savings to the Legislature and Governor every two years, and contract with the Institute for Public Policy for a study to analyze costs and off-setting savings to the state from the public guardianship program. The Office is also required to collect and analyze various data and issue reports on alternatives to guardianship services and training needs for public guardians.

Substitute Bill Compared to Original Bill:

The original bill's provision regarding the development of client criteria included as a factor that the person is "in imminent danger of" abuse, neglect, or exploitation and the substitute bill changed this to "at substantial risk of harm from" abuse, neglect, or exploitation.

The original bill did not include the provision stating that the Office's complaint process must include investigation where the administrator determines investigation is appropriate.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Many people as they age don't need the services of a guardian because they have family and resources to help them. But for those persons who are alone and have no resources, the lack of a guardian can be devastating. There can be abuse, exploitation, or failure to get proper nutrition or needed medical care. Although guardians are not needed in most cases, a guardian can be an invaluable resource for some individuals. A guardian can increase the likelihood that a person can live in his or her home for an extended period of time and under better conditions.

Providing public guardianship services may actually save the state significant amounts of money. A study of a Virginia public guardianship program found that the state saved \$12,000 per individual served. These cost savings can result from a number of areas, such as avoiding expensive nursing home care or emergency medical treatment. In addition, there is a real cost in human terms to being shoveled off to a nursing home before it is time.

There is a real need to create the Office of Public Guardianship. This bill takes a good step towards meeting the needs of residents who currently can't afford to pay for guardianship services. The bill contains safeguards that include: limiting the number of individuals a guardian can serve; minimum standards of practice; and oversight by the Office of Public Guardianship.

The Office should not be simply a conduit for public funds. There should be real oversight and real monitoring, and this bill provides both. The experiences of other states makes it clear that this can't just be a conduit for money. You have to make sure the program works, and to do that the program needs to be adequately funded.

One concern with the bill is that it seems to set up a system of two classes of guardians public guardians under the Office's rules and standards and private guardians under the rules of the Certified Professional Guardian Board. In addition, some of the limitations on who can be a public guardian may result in excluding current professional guardians who have extensive expertise in serving these needs.

(Concerns) The eligibility criteria should be expanded to include persons who are on a waiting list to receive long-term care services to make sure those services aren't premature. The Office should not be duplicating the training that is already provided by the Certified Professional Guardianship Board and the complaint process needs to adequately address complaints in a timely fashion. One big question with the bill still remains: what happens to persons who are receiving public guardianship services and then the money to provide those services goes away?

Persons Testifying: (In support) Leesa Camerota, Certified Professional Guardian; Don Moreland, Chair, Seattle King County Disability Council; Peter Greenfield, Washington State Bar Association, Advisory Council on Aging and Disabilities Services; David Lord, Washington Protection and Advocacy System; Lauren Moughon, American Association of Retired People, Washington; Kathy Leitch, Department of Social and Health Services, Aging and Disability Services Administration; and Louise Ryan, Long Term Care Ombudsman.

(Concerns) Loren Freeman, father of a young adult with disabilities; and Julie Peterson, Washington Association of Housing and Services for the Aging.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 23 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist and P. Sullivan.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Dunn, Hinkle, Kretz, McDonald and Walsh.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill would provide needed guardianship services to vulnerable people who are cognitively impaired, poor and alone. The evidence from other states is enough to justify a pilot coupled with a study to see what the results are. The Legislature would be in control of the costs related to public guardianship in this legislation.

(Opposed) None.

Persons Testifying: Peter Greenfield, Washington State Bar Association and Advisory Council on Aging and Disability Services.

Persons Signed In To Testify But Not Testifying: None.