

HOUSE BILL REPORT

SSB 5320

As Reported by House Committee On: Judiciary

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: Senate Committee on Judiciary (originally sponsored by Senators Franklin, McCaslin, Kline, Stevens, Prentice, Parlette, Regala, Hargrove, Rasmussen, Murray, Jacobsen, Hewitt, Keiser and Roach).

Brief History:

Committee Activity:

Judiciary: 3/28/07 [DP].

Brief Summary of 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: Do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Edie Adams (786-7180).

Background:

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

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.

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 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 18 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.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is an outgrowth of a study conducted by the Bar Association which found that there are over 4,000 individuals who are in need of the services of a guardian but who can't afford to pay for a guardian. If these people do not receive the services they need, they could end up in institutional care and being cycled through the system unnecessarily.

The bill will provide an appropriate remedy for those individuals who need these services but currently don't have access to them. It will also result in public funds being spent wisely instead of being spent on the most costly kind of care. It is a real tragedy when people end up in institutional care when that isn't needed. The bill can save the state money at the same time that it prevents human suffering.

There are safeguards in the bill that help protect individual rights. The bill creates a pilot and requires a study and report back to the Legislature so there will be accountability.

(Opposed) Guardianship deprives people of their liberty and may do more harm than good. People under guardianship lose their basic human rights. There are many other ways to help the poor that would provide more benefit than this bill.

The bill creates an empty office with no public guardian. The bill specifically says that the Office cannot serve as the guardian for a person. Instead, the Office will contract for guardianship services from existing professional guardianship firms, which are profit-making businesses. The professional guardianship firms that have behaved so badly as documented in investigative reports should not be given a new batch of clients.

Instead you should establish a real Office of Public Guardianship that is staffed by civil servants who don't have a pecuniary interest in accumulating billable hours.

The bill should not be passed until there has been more time for public comment and until the Legislature has adequately addressed the reported misconduct and abuses of the guardianship system by professional guardians.

Persons Testifying: (In support) Senator Franklin, prime sponsor; and Peter Greenfield, Washington State Bar Association, and Advisory Council on Aging and Disability Services for King County.

(Opposed) Michael Brunson.

Persons Signed In To Testify But Not Testifying: None.