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HOUSE BILL 3124

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State of Washington                      60th Legislature                      2008 Regular Session

By Representative Kagi

Read first time 01/22/08. Referred to Committee on Judiciary.

1            AN ACT Relating to persons allowed to testify in guardianship  
2 proceedings; and amending RCW 11.88.045.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 11.88.045 and 2001 c 148 s 1 are each amended to read  
5 as follows:

6            (1)(a) Alleged incapacitated individuals shall have the right to be  
7 represented by willing counsel of their choosing at any stage in  
8 guardianship proceedings. The court shall provide counsel to represent  
9 any alleged incapacitated person at public expense when either: (i)  
10 The individual is unable to afford counsel, or (ii) the expense of  
11 counsel would result in substantial hardship to the individual, or  
12 (iii) the individual does not have practical access to funds with which  
13 to pay counsel. If the individual can afford counsel but lacks  
14 practical access to funds, the court shall provide counsel and may  
15 impose a reimbursement requirement as part of a final order. When, in  
16 the opinion of the court, the rights and interests of an alleged or  
17 adjudicated incapacitated person cannot otherwise be adequately  
18 protected and represented, the court on its own motion shall appoint an  
19 attorney at any time to represent such person. Counsel shall be

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

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

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

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

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

30 (b) Family members of the alleged incapacitated person shall be  
31 allowed to testify and present evidence at any hearing on the petition  
32 to establish guardianship. For the purposes of this subsection (3)(b),  
33 "family members" means the alleged incapacitated person's spouse,  
34 parent, adult child, or other adult with whom the alleged incapacitated  
35 person is residing and has a significant relationship.

36 (4) In all proceedings for appointment of a guardian or limited  
37 guardian, the court must be presented with a written report from a  
38 physician licensed to practice under chapter 18.71 or 18.57 RCW,

1 psychologist licensed under chapter 18.83 RCW, or advanced registered  
2 nurse practitioner licensed under chapter 18.79 RCW, selected by the  
3 guardian ad litem. If the alleged incapacitated person opposes the  
4 health care professional selected by the guardian ad litem to prepare  
5 the medical report, then the guardian ad litem shall use the health  
6 care professional selected by the alleged incapacitated person. The  
7 guardian ad litem may also obtain a supplemental examination. The  
8 physician, psychologist, or advanced registered nurse practitioner  
9 shall have personally examined and interviewed the alleged  
10 incapacitated person within thirty days of preparation of the report to  
11 the court and shall have expertise in the type of disorder or  
12 incapacity the alleged incapacitated person is believed to have. The  
13 report shall contain the following information and shall be set forth  
14 in substantially the following format:

15 (a) The name and address of the examining physician, psychologist,  
16 or advanced registered nurse practitioner;

17 (b) The education and experience of the physician, psychologist, or  
18 advanced registered nurse practitioner pertinent to the case;

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

20 (d) A summary of the relevant medical, functional, neurological, or  
21 mental health history of the alleged incapacitated person as known to  
22 the examining physician, psychologist, or advanced registered nurse  
23 practitioner;

24 (e) The findings of the examining physician, psychologist, or  
25 advanced registered nurse practitioner as to the condition of the  
26 alleged incapacitated person;

27 (f) Current medications;

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

31 (h) Opinions on the specific assistance the alleged incapacitated  
32 person needs;

33 (i) Identification of persons with whom the physician,  
34 psychologist, or advanced registered nurse practitioner has met or  
35 spoken regarding the alleged incapacitated person.

36 The court shall not enter an order appointing a guardian or limited  
37 guardian until a medical or mental status report meeting the above  
38 requirements is filed.

1       The requirement of filing a medical report is waived if the basis  
2 of the guardianship is minority.

3       (5) During the pendency of an action to establish a guardianship,  
4 a petitioner or any person may move for temporary relief under chapter  
5 7.40 RCW, to protect the alleged incapacitated person from abuse,  
6 neglect, abandonment, or exploitation, as those terms are defined in  
7 RCW 74.34.020, or to address any other emergency needs of the alleged  
8 incapacitated person. Any alternative arrangement executed before  
9 filing the petition for guardianship shall remain effective unless the  
10 court grants the relief requested under chapter 7.40 RCW, or unless,  
11 following notice and a hearing at which all parties directly affected  
12 by the arrangement are present, the court finds that the alternative  
13 arrangement should not remain effective.

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