

# HOUSE BILL REPORT

## ESSB 5740

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**As Passed House - Amended:**  
April 5, 2011

**Title:** An act relating to preventing predatory guardianships of incapacitated adults.

**Brief Description:** Preventing predatory guardianships of incapacitated adults.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Kastama, Chase and Roach).

**Brief History:**

**Committee Activity:**

Judiciary: 3/16/11, 3/24/11 [DPA].

**Floor Activity:**

Passed House - Amended: 4/5/11, 96-0.

**Brief Summary of Engrossed Substitute Bill**  
**(As Amended by House)**

- Requires a guardian ad litem to disclose relationships and circumstances that cause an appearance of a conflict of interest in a guardianship proceeding.
- Modifies the requirements for sending a notice of a hearing on a petition for guardianship.
- Requires a guardian of a person's estate to send quarterly accounts of the administration of the estate to persons receiving special notice of proceedings.
- Requires the court to remove and replace a guardian if the court finds that he or she intentionally falsified documents.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

**Staff:** Kelly Pfundheller (786-7289).

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*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.*

## **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 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 or limited guardianship over the person, the person's estate, or both. A guardian of an incapacitated person's estate is responsible for managing the person's property and finances. Such person is responsible for assessing and meeting of the incapacitated 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. 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.

### *Guardians Ad Litem in Guardianship Proceedings.*

A guardian or limited guardian has a different role than a guardian ad litem (GAL). A GAL is a person appointed in a guardianship proceeding to represent the best interests of an alleged incapacitated person (AIP) and to investigate and report to the court on relevant matters. A GAL position is temporary and expires when the case is completed or dismissed. When a court appoints a GAL in a guardianship proceeding, the GAL must file with the court and serve each party with a statement that includes, among other required information, whether he or she has an apparent conflict of interest.

### *Notice of a Petition for a Guardianship Appointment.*

Any person may petition the court to appoint a guardian or limited guardian of an incapacitated person. Notice of a hearing on a petition must be served personally no less than 10 days prior to a hearing on the petition upon the AIP, if over the age of 14, and the GAL. Notice must be also be served personally or by registered mail to: the AIP, if under the age of 14; a parent of the minor AIP; and any other person who has been appointed as guardian or limited guardian or the person with whom the AIP resides.

### *Accounting Requirements for Guardianship of an Estate.*

A guardian or limited guardian of an estate must file annual written verified accounts of the administration of the estate, which must include the following information:

- identification of property of the guardianship estate as of the date of the last account;
- identification of all additional property received into the guardianships, including income by source;
- identification of all expenditures made during the account period by major categories;
- any adjustments to the guardianship estate required to establish its present fair market value; and
- identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market value of other property, and the total net fair market value of the guardianship estate.

The court may allow reports at intervals of up to 36 months for estates with assets having a value of not more than twice the homestead exemption, exclusive of real property. A guardian of a minor does not have to file an annual report if the funds are held in a blocked account unless the guardian requests a withdrawal from the account.

*Removing a Guardian or Limited Guardian.*

At any time after the establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian. Any person may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian.

**Summary of Amended Bill:**

The bill makes changes to guardianship laws relating to GALs, notices of hearings on petitions, accounting of guardianship estates, and removal of guardians. A requirement regarding distribution of information on guardianships is also created.

*Guardians Ad Litem in Guardianship Proceedings.*

An appointed GAL must disclose in writing to the court and to persons receiving special notice of the proceedings any relationship or other circumstance from the previous 10 years that would cause the appearance of a conflict of interest in the GAL's recommendation of the appointment of a particular person to act as a guardian or limited guardian.

*Notice of a Petition for a Guardianship Appointment.*

The deadline to achieve notice of a hearing on a petition is extended to 15 days prior to the hearing with respect to service upon all parties. The notice sent to the AIP, if under the age of 14, a parent of the minor AIP, and any other person who has been appointed as guardian or limited guardian or the person with whom the AIP resides must include the name of the person who the GAL recommends to be appointed as a guardian. The notice must also include a copy of the petition and the statement of the legal rights of the AIP that could be restricted or transferred to a guardian unless the party receiving notice was served with the petition for guardianship.

*Accounting Requirements for Guardianship of an Estate.*

The guardian or limited guardian of an incapacitated person's estate with a total net fair market value equal to or more than \$200,000 is required to send quarterly accounts of the administration of the estate to the persons receiving special notice of proceedings. A person receiving special notice of proceedings may file and send a request opting not to receive quarterly accounts. Also, the court may waive the requirement to send quarterly accounts.

*Removing a Guardian or Limited Guardian.*

The court must remove a guardian or limited guardian and appoint a successor if the court finds that the guardian or limited guardian filed with the court or sent to the parties documents that he or she intentionally falsified.

*Distribution of Information on Guardianships.*

The Administrative Office of the Courts (AOC) and the Long-Term Care Ombudsman must publish on a website information regarding professional and lay guardians, including descriptions of the following:

- the different types of guardianships available;
- the duties and responsibilities of guardians and limited guardians;
- the court approval process for a guardian or limited guardian to receive reimbursement for expenses and other costs from an incapacitated person's estate; and
- the certified professional guardian board and office of public guardianship.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Professional guardians sometimes abuse their position with respect to incapacitated persons and their estates. Professional guardians have been known to isolate a person from their family, charge unnecessary fees and expenses to the estate, and, in effect, drain the person's life savings. When the family of an incapacitated person attempts to remove the professional guardian, the professional guardian is permitted to hire an attorney and pay the expenses from the estate. This puts the family in a difficult situation where they must choose between draining the estate and allowing the professional guardian to continue their abuse. It appears that the court develops relationships with GALs and professional guardians in a manner that adversely affects the court's ability to be objective in guardianship proceedings. It is very difficult to remove a professional guardian.

While House Bill 1053 is a step forward in providing more accountability in the guardianship system, the bill does not go far enough. The system is in need of checks and balances in order to prevent corruption and conflicts among the parties involved in the system from causing harm to individual incapacitated persons. This legislation will provide those checks and balances, and it will allow the families of incapacitated persons to have an opportunity to remove a professional guardian in order to prevent further abuse. This bill protects incapacitated persons, who are utilizing a service provided by professional guardians.

The bill should be strengthened. Background checks of guardians and limited guardians should be conducted prior to their appointment. The bill should also prohibit guardians from violating a person's right to practice religion and choose their medical doctor. Guardians should not be allowed to isolate an incapacitated person from their family and friends.

(Other) Guardianship reform is critical and important. Incapacitated persons' complaints about guardians overstepping and interfering often go unaddressed by the courts. Persons have tried to use the complaint process through the certified professional guardian board, but it seems as though the process is inadequate. A lack of an effective complaint process continues to be an issue. However, there are some concerns that this bill might be costly to incapacitated persons. Also, this bill's title is having polarizing effects.

(Opposed) The bill increases the costs of guardianships and opens the door to abuse of the guardianship system. Each time a family member requests modification or termination of a guardianship, the costs of the proceedings are charged to the incapacitated person's estate. This bill forces the court to consider each request unless it is clearly frivolous, which means that the costs to incapacitated persons will increase and the potential for abuse by disgruntled family members will also increase. Sometimes a family member will petition the court to be appointed as a guardian of the person, but the GAL determines that the family member is not a proper guardian. The court appoints a professional guardian and then the family member continually requests for removal of the guardian. Under this bill, the GAL and guardian will be put in a position to defend against these removal requests, which will cost the incapacitated person thousands of dollars.

The provision in the bill that shifts the burden to the professional guardian to prove that his or her conduct was appropriate might violate equal protection standards. All guardians have the same responsibilities and must provide the same standard of care. Professional guardians and lay guardians should be treated equally. If this bill moves forward, it should be amended to treat professional guardians and lay guardians fairly.

The bill is the result of individuals that are unhappy with the system. However, the person who is unhappy in a guardianship proceeding is usually the same person that the court and the GAL are trying to protect the incapacitated person against. The court is the ultimate guardian and creates the terms and budget of the guardianship. This bill negatively disrupts the system by allowing disgruntled family members to drastically increase costs and burden the court's time.

**Persons Testifying:** (In support) Senator Kastama, prime sponsor; Stephen Bradley; Claudia Donnelly; and Teresa Maxwell.

(Other) David Lord, Disability Rights Washington.

(Opposed) Jeff Hurder, Beagle Burke and Associates; and Karen Treiger, Washington State Bar Association Elder Law Section.

**Persons Signed In To Testify But Not Testifying:** None.