

SENATE BILL REPORT

SB 6235

As of February 9, 2016

Title: An act relating to guardianships in respect to an incapacitated person's right of communication, visitation, and interaction with others.

Brief Description: Concerning guardianships in respect to an incapacitated person's right of communication, visitation, and interaction with others.

Sponsors: Senators Padden and Conway.

Brief History:

Committee Activity: Law & Justice: 1/19/16.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Any person or entity may petition the court for the appointment of a guardian or limited guardian for an allegedly incapacitated person. A person may be legally incapacitated, either by their person or estate, when the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety; or a significant risk of financial harm. A guardian may be a lay guardian - generally a family member or friend of the alleged incapacitated person - or a professional guardian, who charges a fee to provide guardianship services. Professional guardians are regulated by the Certified Professional Guardianship Board. The court has supervisory power over guardianships, and may modify a guardianship or remove a guardian upon petition and showing of good cause.

Summary of Bill: Unless specifically authorized by court order a guardian must not restrict an incapacitated person's right of communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail.

Upon good cause, a guardian may request the court to grant restrictions be put in place to protect the incapacitated person. Good cause includes:

- whether protective orders have been issued;
- whether abuse, neglect, or financial exploitation has occurred by persons seeking to interact with the incapacitated person;

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- documented wishes of the incapacitated person to reject interactions with specific persons; or
- other factors deemed relevant by the court.

Prior to issuing an order restricting interactions with other persons, a court shall consider:

- reasonable time, manner, place restrictions; and
- requiring supervision on interactions.

Any interested person, including the incapacitated person, may move the court for relief from restrictions prohibited by the act. The court must schedule a hearing no later than 60 days after the date the motion is filed, or no later than 10 days for emergencies. The court may award costs and attorney fees that are not payable from the incapacitated person's estate.

A guardian must promptly notify the incapacitated person's closest relatives in the event that the incapacitated person changes location, is admitted to a medical facility for emergency or acute care, or dies.

A guardian who has knowingly violated the act, or a court order issued pursuant to the act, is subject to discharge and replacement and may also be sanctioned.

Appropriation: None.

Fiscal Note: Requested on January 17, 2016.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Family should have visitation rights but guardians have control over visitation. People inside guardianships are being wrongly isolated. Isolation is elder abuse, a crime, and it doesn't belong in civil court. There is a basic right of incapacitated persons to association. Professional guardians must protect incapacitated persons from abuse and neglect.

CON: Incapacitated persons may be disabled and counsel should be appointed for them when there is a petition to create a guardianship over the incapacitated person.

OTHER: The bill contains language awarding costs and attorney fees to the prevailing party. This may allow professional guardians to use the funds of the incapacitated person to hire an attorney and threaten to sue friends and family. Friends and family may not have the funds to fight a lawsuit yet if they lose, then they would have to pay the attorney fees of the professional guardian.

Persons Testifying: PRO: Catherine Falk; Steve Lindstrom, Professional Guardians Assoc.; Marsha Southwhite.

CON: Christina Baldwin; Tom Parker, Superior Court Judges Assoc.; Larry Shannon, WA Assoc. of Justice.

OTHER: Claudia Donnelly; Kerri Kasem.

Persons Signed In To Testify But Not Testifying: No one.