

HOUSE BILL REPORT

SB 5691

As Reported by House Committee On:
Judiciary

Title: An act relating to modifying or terminating a guardianship when a less restrictive alternative is available to provide for the needs of an incapacitated person.

Brief Description: Modifying or terminating a guardianship when a less restrictive alternative is available to provide for the needs of an incapacitated person.

Sponsors: Senators Bailey, Rivers, Becker and Warnick.

Brief History:

Committee Activity:

Judiciary: 3/16/17, 3/22/17 [DPA].

Brief Summary of Bill
(As Amended by Committee)

- Requires a court to modify or terminate a guardianship when a less restrictive alternative, such as a power of attorney or a trust, will adequately provide for the needs of an incapacitated person.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

Staff: Audrey Frey (786-7289).

Background:

Any person or entity may petition a superior court for the appointment of a guardian or limited guardian for an allegedly incapacitated person. In determining the disposition of a petition for guardianship, the court's order must be based on findings as to the capacities, conditions, and needs of the alleged incapacitated person.

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.

A person may be deemed incapacitated when the court determines that the individual has a significant risk of personal harm based on a demonstrated inability to adequately provide for his or her own nutrition, health, housing, or physical safety. Incapacity as to the person's estate means the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage his or her own property or financial affairs. If a person is incapacitated in some aspects, but not others, a limited guardian may be appointed over the person, the estate, or both, to make decisions regarding the areas in which the person is incapacitated.

A guardian may be a lay guardian (generally a family member or friend of the alleged incapacitated person) or a professional guardian. Lay guardians must be over 18 years of age and meet certain other requirements, including completing an online training video or webcast made available by the Administrative Office of the Courts. Professional guardians charge a fee to provide guardianship services and are regulated by the Certified Professional Guardianship Board.

Modification or Termination of a Guardianship. At any time after the establishment of a guardianship, the court may, for good reason, modify or terminate the guardianship, replace a guardian or limited guardian, or modify the authority of a guardian or limited guardian. This action may be based on the court's own motion, a motion by an attorney for a person or entity, a motion by a person or entity representing themselves, or based on a written complaint. The court may grant relief as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented by counsel.

Summary of Amended Bill:

A guardianship court must modify or terminate a guardianship when a less restrictive alternative, such as a power of attorney or a trust, will adequately provide for the needs of an incapacitated person.

Motion for Less Restrictive Alternative. In any motion to modify or terminate a guardianship and replace it with a less restrictive alternative, the court should consider:

- any recent medical reports;
- whether a condition is reversible;
- testimony of the incapacitated person;
- testimony of persons most closely related by blood, marriage, or state registered domestic partnership to the incapacitated person;
- testimony of persons entitled to notice of special proceedings; and
- other needs of the incapacitated person that are not adequately served in a guardianship or limited guardianship that may be better served with a less restrictive alternative.

Timing. All motions must be heard within 60 days, unless an extension of time is requested by a party or a guardian ad litem within the 60-day period, and the extension is granted for good cause shown. An extension granted for good cause should not exceed an additional 60 days from the date of the extension request, and the court must set a new hearing date.

Amended Bill Compared to Original Bill:

The word "alleged" is removed before the phrase "incapacitated person" for consistency and proper usage of the terminology.

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) This bill is trying to get at an issue that does not have an easy solution. There have been a number of high profile situations around guardianship mistreatment and complaints that have been well-documented in the news media. There is a time and a place for a guardianship, and this bill tries to help identify when a guardianship is necessary and when it is not. If a guardian is appointed but the guardianship is not something that is working well, this bill provides a way that the guardian can be replaced or the guardianship can be eliminated if there is a better way for the good of the individual.

Washington has approximately 7,000 new guardianships per year. It is estimated that there are 20,000 to 40,000 people actually under guardianship right now. Looking into the records, about half of those people should have been placed in a less restrictive environment. There are approximately 10,000 people under professional guardianship. Looking at the professional guardianship records, 80 percent of those people should have been placed in a less restrictive environment or with a different guardian. In Washington, it is extremely difficult to change guardianships without the guardian's approval. There is a national standard of practice for guardians but it is not required to be followed in Washington. The word "must" in this bill is extremely important for those people seeking to terminate a guardianship. Guardianship reform is desperately needed, and this bill is a start.

(Opposed) None.

Persons Testifying: Senator Bailey, prime sponsor; and Jennifer Roach.

Persons Signed In To Testify But Not Testifying: None.