

SENATE BILL REPORT

SB 5577

As of February 20, 2017

Title: An act relating to the rights and obligations associated with incapacitated persons and other vulnerable adults.

Brief Description: Concerning the rights and obligations associated with incapacitated persons and other vulnerable adults.

Sponsors: Senators Conway and Keiser.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/06/17, 2/14/17 [DPS].
Ways & Means: 2/20/17.

Brief Summary of Bill

- Restricts the authority of a guardian or limited guardian to restrict the communication, visitation, interaction, or association of an incapacitated person.
- Expands guardianship duties of notification of changes in residence or health status concerning a vulnerable adult.
- Requires the Office of Public Guardianship to offer trainings regarding different kinds of decision-making authority.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 5577 be substituted therefor, and the substitute bill do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Carlyle, Hunt, Padden and Walsh.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Julie Murray (786-7711)

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: Any person or entity may petition the court for the appointment of a guardian or limited guardian for an allegedly incapacitated person. Incapacitated means that the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. 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. A guardian ad litem must be appointed to represent an allegedly incapacitated person (IP) during the guardianship proceeding.

Summary of Bill (First Substitute): A guardian of an IP must personally inform the IP of a decision under consideration regarding communication, visitation, or interaction with a person, in a manner calculated to maximize the understanding of the IP and their participation in the decision-making process. The guardian must give substantial weight to the IP's preferences, both expressed and historical.

A guardian or limited guardian must not restrict an IP's right to communicate, visit, interact, or associate with a person unless:

- the restriction is specifically authorized by a guardianship court or pursuant to a protection order under law; and
- there is good cause to believe an immediate need exists to restrict interaction in order to protect the IP from abuse, neglect, abandonment, or financial exploitation. The guardian or limited guardian must file a petition for a protection order within 14 days of the restriction.

A protection order to protect an individual subject to a guardianship must include written findings of fact and conclusions of law and be no more restrictive than necessary to protect the IP from abuse, neglect, abandonment, or financial exploitation. Interaction may not be denied unless the court finds that placing reasonable time, place, or manner restrictions is unlikely to sufficiently protect the IP from abuse, neglect, abandonment, or financial exploitation.

The definition of improper use of restraint is expanded to include restraints used for the purpose of isolating a vulnerable adult. Isolating a vulnerable adult is defined to include acts that prevent use or receipt of mail, electronic communication, or telephone calls or which obstruct a vulnerable adult from meeting with others.

A guardian or limited guardian must provide reports from mental health professionals regarding the IP as part of their required report on the mental status of the IP as part of an annual report. A guardian or limited guardian must inform specified persons within five days about any change in residence expected to last more than 14 days, admission to a medical facility for emergency or acute care in response to a life-threatening injury or medical condition, or the IP's death. Notification of death must be made in person, by telephone, or certified mail.

The Office of Public Guardianship must develop and offer training targeted to the legal community and persons working in long-term care facilities regarding different kinds of

decision-making authority. The training must include information on the roles, duties, and responsibilities of different kinds of decision makers, scope of authority and limitations, and remedial measures available at law for activity that exceeds the scope of decision-making authority.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE (First Substitute):

- Removes requirement for protection orders filed by a guardian or limited guardian to be filed in the context of the guardianship hearing.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 17, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Human Services, Mental Health & Housing): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is the result of a dialogue Representative Jinkins held with stakeholders over the interim. The issue of isolation is one of the fundamental concerns when a guardian isolates a family member from other family members. Trying to find a solution is challenging. It seems that review is necessary; it's too bad it has to be with the courts. The Elder Law Section of the bar has provided comments. The basic purpose is to ensure that families have access to their loved ones.

Persons Testifying (Human Services, Mental Health & Housing): PRO: Senator Steve Conway, Prime Sponsor.

Persons Signed In To Testify But Not Testifying (Human Services, Mental Health & Housing): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This bill is the result of the work of a stakeholder group. It is an attempt to address the issue of isolation and how guardian decisions can isolate an incapacitated person from their families. Isolation is a major problem. This bill focuses on emphasizing the choices of an individual under the protection of a guardian. It will help guardians and facilities better understand what their responsibilities are.

Persons Testifying (Ways & Means): PRO: Senator Steve Conway, Prime Sponsor; David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.