

# SENATE BILL REPORT

## SB 5691

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As Amended by House, April 10, 2017

**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:** Health Care: 2/13/17, 2/16/17 [DP].

**Floor Activity:**

Passed Senate: 2/27/17, 49-0.

Passed House: 4/10/17, 98-0.

**Brief Summary of Bill**

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

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### SENATE COMMITTEE ON HEALTH CARE

**Majority Report:** Do pass.

Signed by Senators Rivers, Chair; Becker, Vice Chair; Cleveland, Ranking Minority Member; Kuderer, Assistant Ranking Minority Member; Bailey, Conway, Fain, Keiser, Miloscia, Mullet, O'Ban and Walsh.

**Staff:** Kathleen Buchli (786-7488)

**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

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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.

The court may modify the authority of a guardian or limited guardian if the guardian has died or for good reason. This action may be taken on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of 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, including terminating the guardianship, replacing the guardian, or modifying the authority of the guardian.

**Summary of Bill:** The court must modify or terminate a guardianship when a less restrictive alternative, such as a power of attorney or trust, will adequately provide for the needs of the incapacitated person. In making its decision, the court should consider: recent medical reports, testimony of the incapacitated person and the person's relatives, testimony of persons entitled to notice of special proceedings, and other needs of the incapacitated person that may be better served in a less restrictive alternative.

**Appropriation:** None.

**Fiscal Note:** Available.

**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:** PRO: People who are placed into guardianships are very restricted in what they can do and who they can interact with. It is appropriate to terminate the guardianship if there is a less restrictive alternative available. There have been concerns about the whole guardianship structure and whether it is appropriate for all people, especially those who benefit from a less restrictive environment. People need to have support but in the environment that best suits them. People are in abusive guardianships and many of those people could have been in a less restrictive environment, rather than in a guardianship. People need more service options.

**Persons Testifying:** PRO: Senator Barbara Bailey, Prime Sponsor; Jennifer Roach; Diana Stadden, The Arc Of WA.

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

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Makes a technical correction to remove the word "alleged" before the phrase "incapacitated person" to make the use of the term consistent throughout the bill.