
Civil Rights & Judiciary Committee

ESSB 6287

Brief Description: Concerning guardianships and conservatorships.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Holy, Dhingra, Rivers, Kuderer, Salomon, Conway, Keiser and Wilson, C.).

Brief Summary of Engrossed Substitute Bill

- Amends the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA) as adopted by Washington.
- Creates the option of a supported decision-making agreement as a less restrictive alternative for an adult with a disability.
- Re-adopts certain provisions repealed by the UGA.
- Makes numerous technical corrections and substantive and nonsubstantive changes.
- Delays the effective date for portions of the UGA and the Act.

Hearing Date: 2/26/20

Staff: Ingrid Lewis (786-7289).

Background:

In 2019, the Legislature adopted the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGA). The UGA, as adapted for Washington, repeals existing state guardianship laws and law on nonparental actions for child custody effective January 1, 2021, and replaces them with the UGA. The UGA covers guardianships, conservatorships, and protective arrangements for both minors and adults.

Summary of Bill:

Provisions in the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGA) are revised to address issues including but not limited to: guardianships,

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conservatorships, supported decision-making agreements, the Certified Professional Guardianship Board, re-adopted provisions, and technical and conforming amendments.

Guardianships.

Revisions include, but are not limited to the following:

- a court may issue an appropriate order 14 days after notice of a guardian or conservator's petition for instruction or ratification;
- the requirements for appointment of an emergency guardian or conservator are largely mirrored to conform with standard appointment for guardianships or conservatorships;
- any order for the relocation of a minor subject to guardianship must comply with the notice requirements of laws related to dissolution proceedings; and
- the court may proceed with a guardianship proceeding if a respondent declines to participate in a professional evaluation, provided that the court finds that it has sufficient information to determine the needs and abilities of the respondent.

Conservatorships.

Revisions include, but are not limited to the following:

- a conservator must give notice and receive authorization by the court prior to selling or encumbering an interest in real estate;
- a conservator must file an inventory of the conservatorship estate no later than 90 days after appointment, instead of 60 days; and
- a professional evaluation is not required if the petition for conservatorship is for a minor or for an adult missing, detained, or unable to return to the United States. An adult who is residing in a long-term care facility or other care setting, or who is subject to involuntary commitment, is not considered missing or detained.

Supported Decision-Making Agreements.

A less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living is created. A supported decision-making agreement is a written agreement entered into voluntarily by an adult with a disability and a supporter. The agreement must be in the form as prescribed in statute and must be signed in the presence of two or more subscribing witnesses or a notary public.

The supporter is authorized to provide supported decision-making without making decisions on behalf of the adult with a disability; assist the adult in accessing, collecting, obtaining, and understanding information relevant to a life decision; and assist the adult in communicating decisions to appropriate persons.

A supported decision-making agreement is terminated: if either party terminates in the manner specified by law; by terms of the agreement; if the Department of Social and Health Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter; or the supporter is found criminally liable for the aforementioned conduct.

Certified Professional Guardianship Board.

A grievance filed against a certified professional guardian or conservator must provide sufficient details of the alleged conduct to demonstrate that a violation could have occurred.

The 180-day time limit to resolve a grievance is tolled during any period when:

- the board is awaiting a response to the grievance from a certified professional guardian;
- the board is awaiting receipt of a court's entered order with findings; or
- a disciplinary hearing has been requested or is in process and during the time of post-hearing board review of recommendations through issuance of a final board order on the matter.

Any unresolved grievance filed one year or more before January 1, 2021 must be forwarded to the superior court if the grievance is not in the process of a hearing or final resolution.

Re-Adopted Provisions.

Certain provisions that were repealed by the UGA are re-adopted. These provisions include, but are not limited to, the following:

- the ability for a party to petition a court for a temporary order for the support or protection of a minor subject to guardianship;
- notice to a respondent in a guardianship or conservatorship proceeding must be substantially in the same form as statutorily prescribed and must include a statement of the legal rights at stake, the right to counsel, and the right to a jury trial on the issue of legal capacity;
- an attorney purporting to represent an adult subject to guardianship or person subject to conservatorship or protective arrangement must petition the court for appointment;
- the requirement that court order a professional evaluation of the respondent upon receipt of petition and the content of the report associated for adult guardianships or conservatorship or protective arrangement proceeding;
- the authority of the court in an adult guardianship or conservatorship proceeding to revoke or amend a power of attorney;
- the determination of capacity is a legal, not a medical, decision;
- the court may order contesting parties in adult guardianship, conservatorship, or protective arrangements into mediation;
- the term court visitor applies to adult guardianships, conservatorships, and protective arrangements, and a guardian ad litem applies to minor guardianships;
- an adult is presumed to have legal capacity;
- an unrepresented person or entity may submit a complaint against a guardian or conservator to the court;
- upon the death of a person subject to conservatorship, the conservator has the authority to continue administering the estate, subject to the direction of the court; and
- the processes for conservators to access certain assets held by financial institutions are reinstated.

Technical and Conforming Amendments.

Statutes related to dependency and termination proceedings, the Office of Public Guardianship, and the Uniform Adult Guardianship and Protective Proceedings Jurisdictions Act are modified to reflect new guardianship and conservatorship provisions. Technical corrections to amend cross-references and nonsubstantive terminology changes are made to ensure that statutes correctly use the terms guardian of a person and conservator of an estate.

The effective dates are delayed until January 1, 2022, for the following:

- the repeal of chapters 11.88 and 11.92;
- the effective date of Articles 3 through 7 of the UGA except for RCW 11.130.645;

- changes by this bill to the Office of Public Guardianship and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;
- provisions related to supported decision-making agreements; and
- technical corrections in other statutes.

Other provisions of the UGA remain effective on January 1, 2021.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill contains multiple effective dates.