

HOUSE BILL REPORT

ESSB 6287

As Reported by House Committee On:
Civil Rights & Judiciary
Appropriations

Title: An act relating to guardianships and conservatorships.

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 History:

Committee Activity:

Civil Rights & Judiciary: 2/26/20, 2/28/20 [DPA];
Appropriations: 2/29/20, 3/2/20 [DPA(CRJ)].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Amends the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA) as adopted by Washington state.
- 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- Re-adopts certain provisions repealed by the UGA.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.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 15 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kirby, Klippert, Orwall, Peterson, Rude, Valdez, Walen and Ybarra.

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.

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 Amended Bill:

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

- a "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, as outlined in statute;
- 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 RCW and 11.92 RCW;
- 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.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment amends provisions related to minor guardianship notice requirements; removes references to legal capacity; re-adopts the complaint process which was repealed in adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act; and makes additional technical amendments, including making language consistent throughout guardianship, conservatorship, and protective arrangement articles.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill contains multiple effective dates.

Staff Summary of Public Testimony:

(In support) This is the trailer bill to the large guardianship reform passed out of the Legislature last year. It is the product of two Senate work sessions and a number of stakeholder meetings over the summer that worked through implementation challenges in the minor and adult provisions.

Implementation of the adult guardianship statute is delayed one year and the minor guardianship statutes will continue to go into effect January 1, 2021. Bifurcating the effective dates should help with implementation and a smooth transition. There is substantial funding in the Senate budget this year for a smooth transition to the new structure.

Provisions are added that build out the concept of supportive decision-making agreements for individuals who do not need a full guardianship but could use help with the administration of their affairs.

This is going to lead to significant improvement for the vulnerable people who depend on the protections that are in our guardianship laws.

A grievance should not have to be continued for multiple years.

Clarifying language regarding the right to a jury trial has been added, as well as an addition to a form that provides a pre-appointment notice of potential loss of rights.

There has been work on emergency guardian provisions.

The trailer bill restores significant legal protections that had been repealed.

Housing continues to be an issue, but it is a fundamental policy issue regarding how to work with individuals who have cognitive impairments and need housing assistance. Compelling a person to move is a difficult problem to solve.

Provisions regarding notice to minors and the role of court visitors would ensure that youth are fully informed about a legal proceeding that impacts their lives and ensure that a court visitor meets with the youth and ascertains their views or positions.

Funding for training is important.

(Opposed) None.

(Other) The Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGA) repealed and replaced the existing system of guardianship. Guardianship is a complete loss of civil rights.

The previous law was a balance between the needs, desires, and autonomy of the person under guardianship and the need to take care of that person. This balance has been achieved over decades of case law. The balance should be restored so that individual needs are taken into consideration when a guardian is making decisions on a person's behalf.

Despite being unable to make certain legal decisions that affect daily life, many people subject to guardianship lead independent lives. They are entitled to input and notice on the major decisions that affect their lives, such as residence or health care decisions.

Under the UGA, a guardian can delegate powers to an agent who is not a court-appointed guardian. There are higher standards for delegation in sales contracts in the Uniform Commercial Code than vulnerable adults have now.

Current law requires a guardian to use a substituted judgment standard and to proceed in the person's best interests if it cannot be determined what the person would have wanted if they had capacity. The UGA allows other exceptions, in which the guardian can disregard what the adult would have done. It also applies a reasonable person standard which the state Supreme Court has said does not exist.

The standard that is provided for minor guardianship is unconstitutional under the strict scrutiny test. Case law provides that parents have a fundamental constitutional right to autonomy and childrearing that may only be overcome by a compelling state interest and a statute that is sufficiently narrow to pass a strict scrutiny test. The standard of best interest of the child is insufficient to serve as a compelling state interest. The standard in the UGA addresses the ability to perform parenting functions as opposed to an actual detriment standard.

Persons Testifying: (In support) Senator Pedersen, prime sponsor; Steve Lindstrom, Washington Association of Professional Guardians; Robert Nettleton; and Laurie Lippold, Partners for Our Children.

(Other) Melanie Smith, National Alliance on Mental Illness Washington; Brad Forbes; David Lord, Disability Rights Washington; Amy Freeman, Washington State Long Term Care Ombuds Program; Ivanova Smith, Self Advocates in Leadership; Anthony Nash, Self Advocates in Leadership and People First of Washington; Patrick Rawnsley, Washington State Bar Association Family Law Executive Committee; and Erin Shea McCann, Legal Counsel for Youth and Children.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Civil Rights & Judiciary. Signed by 23 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Rude, Assistant Ranking Minority Member; Caldier, Chopp, Cody, Corry, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Steele, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 10 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Sutherland and Ybarra.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Civil Rights & Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill contains multiple effective dates.

Staff Summary of Public Testimony:

(In support) This is an important bill. It restores many rights that are in Washington's guardianship law that, when the original guardianship act was repealed, would have been lost unless they are protected. This bill also enacts supportive decision-making so that people who have some limits on their capacity to make decisions can set up supportive decision-making arrangements so that they are able to keep their rights. They will not have to go to court for a guardianship but instead they will have a mechanism for making decisions that will be respected and they have an agreement that will make that happen.

(Opposed) None.

Persons Testifying: David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: None.