

SENATE BILL REPORT

ESHB 1329

As of March 18, 2019

Title: An act relating to methods of services provided by the office of public guardianship.

Brief Description: Concerning methods of services provided by the office of public guardianship.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Kilduff, Harris, Jinkins, Klippert, Valdez, Walen, Tharinger and Leavitt).

Brief History: Passed House: 3/08/19, 93-5.

Committee Activity: Law & Justice: 3/18/19.

Brief Summary of Bill

- Expands the services of the Office of Public Guardianship to include supported decision-making assistance and estate administration.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Guardianship. A guardianship action is a legal process in which a guardian is appointed and empowered by the court to make decisions for an incapacitated person. This process removes decision-making authority from the incapacitated person and gives the authority to make decisions for an incapacitated person to the guardian. A determination of incapacity is a legal, not a medical, decision. A person may be deemed incapacitated if the court determines 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 person may also be deemed incapacitated if the person is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. The court may appoint a guardian for the person, for the person's estate, or both.

Office of Public Guardianship. In 2007, the Legislature established the Office of Public Guardianship (OPG) within the Administrative Office of the Courts to promote the availability of guardianship services

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to incapacitated individuals for whom adequate services may not otherwise be available. The OPG is authorized to contract with public or private entities or individuals to provide public guardianship services for persons age eighteen or older and whose income does not exceed 200 percent of the federal poverty level. The OPG monitors and oversees the use of state funding on public guardianship, but is prohibited from acting as a public guardian or in any other representative capacity for any individual. The OPG is also required to adopt eligibility criteria to enable it to serve individuals with the greatest need when the number of cases requiring appointment of a public guardian exceeds the number of cases in which public guardianship services can be provided.

The OPG creates minimum standards of practice for public guardianship services and adopts processes to receive and consider complaints against the OPG and contracted providers of public guardianship services. The OPG also has a system for monitoring the performance of public guardianship services.

Estate Administration. During a will probate process, letters of administration are granted by the court to the appointed personal representative. When a person dies, or if the personal representative named in a will declines or is unable to serve, state law specifies the order of persons to serve as follows:

- surviving spouse or state registered domestic partner, or such person as they may request to have appointed;
- next of kin, in the specified order;
- trustee, guardian, or attorney-in-fact, if any such fiduciary controlled or potentially controlled substantially all of the decedent's probate and non-probate assets;
- one or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets;
- the Director of the Department of Revenue, or the director's designee, for estates subject to laws regarding escheat property, which is property that reverts to the state;
- the Secretary of the Department of Social and Health Services for estates owing debts for long-term care services; and
- one or more of the principal creditors.

The court may appoint any suitable person to administer the estate if none of the above persons petition for letters of administration, as well as in certain other circumstances.

Summary of Bill: The OPG must administer supported decision-making assistance services. Supported decision making assistance is an alternative service to guardianship and is defined as "support for an individual with diminished decision-making ability in making decisions affecting health or safety or to manage financial affairs. Assistance includes, without limitation, acting as a representative payee, an attorney-in-fact, a trustee, and a public guardian."

The OPG must provide for supported decision-making assistance services in a similar manner as they provide for public guardianship services. Supported decision-making assistance services will be contracted through public or private entities and will be provided to individuals who meet the same age and financial requirements for public guardianship. The OPG also must create eligibility criteria and oversight for supported decision-making assistance services as it did for public guardianship services.

A provision stating the initial implementation of public guardianship services is on a pilot basis is removed. Three provisions requiring reports be made over the first several years of the OPG's operation are removed.

Estate Administration. In circumstances in which a court may appoint any suitable person to administer an estate, the court may appoint a service provider under contract with the OPG.

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: The bill is an opportunity to add more flexibility to OPG. Currently the OPG can only contract for a guardianship. This bill would allow least restrictive services such as a representative payee and other services. It makes OPG more efficient. Guardianship is very costly. Disabled people need these type of services to assist them with decision making. Alternatives to guardianships do not take away their rights.

Persons Testifying: PRO: Representative Christine Kilduff, Prime Sponsor; Steve Lindstrom, Washington Association of Professional Guardians; David Lord, Disability Rights Washington.

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