

SENATE BILL REPORT

ESSB 6287

As Amended by House, March 5, 2020

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: Law & Justice: 1/27/20, 1/30/20 [DPS, w/oRec].

Floor Activity:

Passed Senate: 2/18/20, 48-0.

Passed House: 3/05/20, 91-6.

Brief Summary of Engrossed First Substitute Bill

- Amends the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.
- Adopts provisions related to supported decision-making agreements as a less restrictive alternative to guardianships for adults with disabilities.
- Amends other related laws making technical corrections, terminology changes, and cross-reference changes.
- Adds an intent statement.
- Clarifies the existing right to a jury trial for adults
- Provides notice and due process protections.
- Provides mediation opportunities.
- Changes the effective date for parts of the act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6287 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

Staff: Tim Ford (786-7423)

Background: In 2019, the Legislature adopted the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGA). It repeals existing laws on state guardianship and replaces them with the UGA. It also repeals existing law on nonparental actions for child custody.

The UGA makes changes for guardianships of adults and minors in the following areas:

- terminology;
- qualifications of a guardian;
- legal standard for appointment;
- priority of appointment;
- duties of a guardian;
- emergency guardian;
- appointment of counsel;
- placement in a facility for mental health treatment;
- guardianship monitoring programs;
- delegation of a parent's powers; and
- model training program.

Summary of Engrossed First Substitute Bill: The UGA and other laws making technical corrections, terminology changes, and citation corrections for cross references to the repealed chapters of state guardianship and nonparental actions for child custody laws are amended. Terminology changes mostly ensure that other laws in statute correctly use the terms guardian of a person and conservator of an estate.

Substantive changes to the UGA include, but are not limited to, adding the following:

1. New section 112 adopts the repealed RCW 26.10.115 for temporary orders for the support of children including for domestic violence protection orders and support orders.
2. New section 123 requires any order for the relocation of a minor under a guardianship must comply with notice requirements pursuant to laws for dissolution proceedings.
3. New section 224 provides a process for conservators to access to certain assets held by financial institutions.
4. Part VI of the act contains 12 new sections. They adopt supported decision-making agreements for the purpose of recognizing a less restrictive alternative to guardianship for adults with disabilities who need assistance with decision regarding daily living.
5. New section 801 adopts the repealed RCW 11.88.005 providing a legislative intent for the UGA.

Due process and notice of legal rights are required. The existing right to a jury trial is clarified. Mediation opportunities are made available.

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

- the repeal of chapters 11.88 and 11.92;
- the effective dated of Articles 3 through 7 of the UGA except for RCW 1.130.645;
- 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: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: In Washington State the number of guardianships have gone down over that last 20 years. We have reduced the need because there are alternatives to guardianships. The bill creates other less restrictive alternatives such as supported decision making that will help disabled people without putting them into a guardianship. It is a wonderful addition to our law. The change for county funding of the court visitor is good. Mediation is important and should be included. The findings language is squishy because it is a threshold.

CON: Implementing the act will have a significant fiscal impact on counties. We need funding. This will add more cases to court caseload. Provision 101 is unconstitutional. Putting a minor in a guardianship takes away the rights of parents. Parenting is a fundamental constitutional right and a law that takes away the right to parent must survive strict scrutiny.

OTHER: The repeal of last year's law was an entire repeal and it has taken us time to go through the changes. There were some rights and protections repealed like due process, the right to be notified, the right to trial by jury that need to be restored. The system needs to be simpler and more easy to understand. The guardian can delegate authority and that needs to change. The right not to be placed against their will needs to be preserved. There also needs to be a right to file a grievance against a guardian. It is more difficult to complete the grievance form. This does not provide protections that standby guardians provide. We need to reinstate standby guardians. Legal determination of capacity is a key protection that needs to be restored. Remove the language authorizing emergency guardianships.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Steve Lindstrom, Washington Association of Professional Guardians; Judy Lin, King County Bar Association; Chris Neil, citizen; Eric Watness, citizen.

CON: Jacqueline Jeske, citizen; Patrick Rawnsley, Washington State Bar Association Family Law Executive Committee; Juliana Roe, Washington State Association of Counties; Judge

Rachelle Anderson, Superior Court Judges' Association; Judge Stephen Warning, Superior Court Judges' Association.

OTHER: Melanie Smith, NAMI Washington; Amy Freeman, Washington State Long Term Care Ombuds Program; Walt Bowen, Senior Lobby; Brad Forbes, citizen; Lauren Seaton, citizen; Demas Nesterenko, SEIU 775; David Lord, Disability Rights Washington; Adrienne Stuart, Developmental Disabilities Council; Paul Benz, Faith Action Network; Erin Lovell, Executive Director, Legal Counsel for Youth and Children; Victoria Barr, citizen; Richard Bartholomew, DRAW; Merkys Gomez, Unaccompanied Children's Task Force; Noah Seidel, Office of Developmental Disabilities Ombuds.

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

EFFECT OF HOUSE AMENDMENT(S):

- A complaint process in the courts which was formerly repealed under UGA is re-enacted.
- Technical amendments are made, including making language consistent throughout guardianship, conservatorship, and other protective arrangements.
- References to legal capacity are removed.