

HOUSE BILL REPORT

SB 5788

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to guardianship of minors.

Brief Description: Concerning guardianship of minors.

Sponsors: Senators Pedersen, Padden, Dhingra and Lovick.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/18/22, 2/23/22 [DPA].

Brief Summary of Bill
(As Amended By Committee)

- Amends several provisions related to guardianship of minors in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA).
- Provides that the juvenile court has concurrent original jurisdiction with the probate court, in addition to the family court, over minor guardianship proceedings under the UGA.
- Exempts cases filed as a minor guardianship under the UGA from requirements of parenting seminar attendance.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 17 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, 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 part of the legislation nor does it constitute a statement of legislative intent.

Staff: Yelena Baker (786-7301).

Background:

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

In 2019 the Legislature adopted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA). As adapted for Washington, the UGA repealed and replaced existing state guardianship laws and laws on nonparental actions for child custody. The UGA covers guardianships, conservatorships, and protective arrangements for both minors and adults.

Guardianship of Minors under the UGA.

Any person interested in the welfare of a minor, including the minor, may petition for appointment of a guardian for the minor. A person becomes a guardian for a minor only on appointment by the court. The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest and:

- each parent consents, after being fully informed of the nature and consequences of guardianship;
- all parental rights have been terminated; or
- the court finds by clear and convincing evidence that no parent is willing or able to exercise parenting functions.

The court may appoint a guardian ad litem for a minor if the court determines the minor's interest otherwise would not be adequately represented.

Priority of Appointment for a Guardian of a Minor.

The priority of appointment for a guardian of a minor under the UGA is as follows:

- a person nominated by a parent in a will or other record, unless the appointment is contrary to the best interest of the minor;
- the nominee in the best interest of the minor if multiple parents have nominated different persons;
- a person nominated by the minor who is 12 years or older, unless appointing the minor's nominee is contrary to the best interest of the minor; or
- a person whose appointment is in the best interest of the minor if a person with a higher priority is not in the best interest of the minor.

Emergency Guardian.

On its own or on petition by a person interested in a minor's welfare, the court may appoint an emergency guardian for a minor to prevent substantial harm to the minor's health, safety, or welfare where no other person has the authority or willingness to act in the circumstances.

Disclosure of Bankruptcy or Criminal History.

Before accepting appointment as a guardian or conservator, a person must disclose to the

court whether the person:

- is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding;
- has been convicted of a felony or a crime involving dishonesty, neglect, violence, or use of physical force, or other crimes relevant to the functions the person would assume as guardian or conservator; or
- has any court finding of a breach of fiduciary duty or a violation of any state's consumer protection act, or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of business.

If a guardian or conservator engages or anticipates engaging an agent, the guardian or conservator must promptly disclose to the court any knowledge of the agent's conviction of a felony, a crime involving dishonesty, neglect, violence, or use of physical force, or other crimes relevant to the functions the agent is being engaged to perform.

Background Information to Be Consulted by the Court.

Before granting any order for guardianship of a minor, the court must consult the Judicial Information System, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child, and direct the Department of Children, Youth, and Families to release information retained in the course of conducting child protective services investigations.

The petitioner must provide to the court the results of an examination of state and national criminal identification data for the petitioner and adult members of the petitioner's household.

Concurrent Original Jurisdiction of the Juvenile Court and the Family Court.

The juvenile court has concurrent original jurisdiction with the family court over child custody proceedings under the repealed statutes related to nonparental actions for child custody, and over parenting plans or residential schedules under the statutes related to child welfare (dependency) court proceedings.

Parenting Seminars Ordered or Recommended by the Family Court.

Family court judges and court commissioners may order or recommend to the parties before the court parenting seminars, fully or partially at the expense of the parties, according to the parties' ability to pay.

Any court rules adopted for the implementations of parenting seminars must provide that in no case the opposing parties may be required to attend seminars together. Upon a showing of domestic violence or abuse or if a parent's attendance is not in the child's best interest, the court must either waive the requirement to complete the seminar or provide an alternative, voluntary seminar for battered spouses or battered domestic partners. The court may also waive the seminar for good cause.

Confidential Information Form.

All petitioners and parties to all court actions under domestic relations laws, including actions under the repealed provisions regarding nonparental actions for child custody, must complete a verified and signed confidential information form or equivalent that provides the parties' identifying information, such as mailing addresses and telephone numbers, dates of birth, Social Security numbers, and contact information of the parties' employers.

Except in state-initiated parentage actions, the clerk of the court does not accept petitions, orders of child support, decrees of dissolution, or parentage orders for filing unless the confidential information form or equivalent is already on file with the court clerk. In lieu of or in addition to requiring the parties to complete a separate confidential information form, the clerk may collect the information in electronic form.

Summary of Amended Bill:

Provisions of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA) related to guardianship of minors are amended as follows:

- The definition of "guardian ad litem" is revised to mean a person appointed to inform the court about, or (rather than "and") represent the needs and best interests of a minor.
- The person with the highest priority for an appointment as a guardian for a minor is the person nominated by a parent in a probated will (rather than simply "a will") or other record. "Other record" must be a declaration or other sworn document and may include a power of attorney or other sworn statement as to the care, custody, or control of the minor.
- The court may appoint an emergency guardian on motion when a guardianship petition is filed, in addition to appointing an emergency guardian on its own or on petition by a person interested in a minor's welfare.
- An emergency guardian may be appointed when no other person appears to have the ability, in addition to authority and willingness, to act to prevent substantial harm to the minor's health, safety, or welfare (rather than to act "in the circumstances").
- The requirement to disclose bankruptcy and criminal history is modified to provide that the court may not be able to access certain databases and that the parties, and not the court, are responsible for confirming the accuracy of what is represented.
- The requirement for the Department of Children, Youth, and Families to release information retained in the course of conducting child protective services investigations is applied to all proposed guardians and all adult members of any proposed guardian's household.
- The requirement to provide the results of an examination of state and national criminal identification data is applied to all proposed guardians and all adult members of the proposed guardian's household, rather than to the petitioner and the adult members of the petitioner's household.

The juvenile court has concurrent original jurisdiction with the probate court, in addition to

the family court, over minor guardianship proceedings under the UGA.

Cases filed as a minor guardianship under the UGA are exempt from requirements of parenting seminar attendance.

Cross-references to the repealed provisions regarding nonparental actions for child custody are corrected to refer to the UGA in the statutes related to the jurisdiction of the juvenile court and confidential information form required in all domestic relations actions. It is specified that the requirement to complete the confidential information form ensures that the parties' information is added to the Judicial Information System's person database.

Amended Bill Compared to Original Bill:

As compared to Senate Bill 5788, the amended bill delays, until January 1, 2023, the requirement that all petitioners and parties to minor guardianship actions under the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (rather than under the repealed provisions regarding nonparental actions for child custody) complete a verified and signed confidential information form or equivalent. The amended bill specifies that this requirement is to ensure that the parties' information is added to the Judicial Information System's person database.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4, relating to confidential information form in minor guardianship actions, which takes effect January 1, 2023.

Staff Summary of Public Testimony:

(In support) This bill represents the agreed-upon changes that improve the minor guardianship statute that has been in effect now for just over a year. These changes reflect the things that judges, child welfare advocates, and other stakeholders have learned in working with this new law.

One of the areas of concern in current law pertains to emergency guardianships. Currently, emergency guardianships can only be granted if there is a separate petition filed in addition to the petition for guardianship of a minor. This is a huge burden for unrepresented parties to have to navigate this law on their own, so the bill addresses that problem.

The bill addresses some inconsistencies in the standards between an emergency guardianship and a full guardianship. The bill's clarification related to concurrent

jurisdiction is critical to the smooth operation of the guardianship process.

(Opposed) None.

Persons Testifying: Senator Jamie Pedersen, prime sponsor; Rachelle Anderson, Superior Court Judges' Association; Chach Duarte White, Legal Counsel for Youth and Children; and Karen Pillar, TeamChild.

Persons Signed In To Testify But Not Testifying: None.