

SENATE BILL REPORT

SB 5825

As Reported by Senate Committee On:
Law & Justice, January 18, 2024
Ways & Means, February 5, 2024

Title: An act relating to guardianship and conservatorship.

Brief Description: Concerning guardianship and conservatorship.

Sponsors: Senators Pedersen and Padden.

Brief History:

Committee Activity: Law & Justice: 1/11/24, 1/18/24 [DPS-WM].
Ways & Means: 2/01/24, 2/05/24 [DP2S].

Brief Summary of Second Substitute Bill

- Requires the Office of Public Guardianship to contract with public or private entities to provide public decision making services for individuals who are currently receiving care in a hospital setting who are ready to discharge.
- Makes various technical changes to the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5825 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Joe McKittrick (786-7287)

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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5825 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Pedersen, Randall, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Tianyi Lan (786-7432)

Background: Guardianship. Guardianship is a legal process through which a person is given authority by the court to make decisions for another individual. A person may seek the appointment of a guardian for another individual when that individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety, or a significant risk of financial harm. In 2022 the existing state guardianship and conservatorship laws were replaced with the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA).

Under the UGA, following a hearing, the court may appoint a guardian who will exercise the legal rights of the respondent. The court may also establish the extent and duration of the authority of the guardian. For example, a full guardianship transfers authority for all major decisions to the appointed legal guardian, while a standby or limited guardianship may assume some or all duties, responsibilities, and powers of a full guardianship in a limited area, such as estate and property matters, or for a limited period of time.

When a guardianship is established, the respondent may lose the right to:

- marry or divorce;
- vote;
- enter into a contract, make, or revoke a will;
- maintain a driver license;
- buy, sell, own, or lease property;
- consent to or refuse medical treatment;
- decide who will provide care; and
- make decisions regarding social aspects of life.

Appointment of a Guardian. A court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:

- the parents of the minor consent 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 the parents are unwilling or unable

to exercise their parental rights.

The court may not appoint a guardian for a minor without consent of the parents unless parental rights have been terminated. When a court has appointed a guardian to a minor, the guardian has the duties and responsibilities of a parent regarding the minor's support, care, education, health, safety, and welfare. The guardian must act in the minor's best interest and exercise reasonable care, diligence, and prudence.

A court may appoint a guardian for an adult who lacks the ability to meet essential requirements for physical health, safety, or self-care because:

- the adult is unable to receive and evaluate information or make or communicate decisions even with the use of supportive services, technological assistance, and supported decision-making; and
- the adult's identified needs cannot be met by a less restrictive alternative.

The guardian must make decisions regarding the support, care, education, health, and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations, including promoting self-determination and encouraging the adult to participate in decision making.

A person may be disqualified from serving as a guardian if the person is convicted of a crime involving dishonesty, neglect, or use of physical force or other crimes relevant to the functions the individual would assume as guardian. A court may, upon consideration of the facts, find a relative convicted of a crime is qualified to serve as a guardian or conservator.

Appointment of Counsel. A court may appoint an attorney for a respondent subject to a proceeding for guardianship or conservatorship. An attorney appointed for a minor who is unable to ascertain the wishes of the minor must advocate for the minor's legal rights. A respondent has the right to counsel at any point in a guardianship, conservatorship, or other protective arrangement proceedings. A court is required to appoint counsel at public expense when the respondent is indigent.

Monitoring a Guardianship. The court must establish procedures for monitoring guardian's reports. The court must also specify the individuals who must receive notice of key events or conditions that could affect the well-being of the person under guardianship or conservatorship, and who can help monitor the guardian and protect the interests of the person subject to the guardianship or conservatorship.

Office of Public Guardianship. The Office of Public Guardianship (OPG) provides public guardianship services to respondents who need the service of a guardian and for whom adequate services may be otherwise unavailable. To be eligible for a public guardian, respondents must either be over the age of 18 and have an income less than 200 percent of the federal poverty level or be receiving long-term care services through the Department of Social and Health Services. OPG may contract with individuals and organizations, either

public or private, to provide public guardianship services.

OPG also provides supported decision-making assistance and estate administration. Supported decision-making assistance means support for an individual with diminished decision-making ability related to making decisions affecting health or safety or to manage financial affairs. Assistance includes acting as a representative payee, an attorney-in-fact, or a trustee. These services are available to individuals based on the same eligibility criteria as for guardianship services. Supported decision-making services are available to individuals age 18 or older when there is no one else qualified who is willing and able to serve, and estate administration services are available to the estate of an individual who died at age 18 or older in circumstances where a service provider under contract with OPG is granted letters of administration.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Second Substitute): Office of Public Guardianship. The OPG must, subject to the availability of funds, contract with public or private entities to provide decision making services for individuals who are currently receiving care in a hospital setting who are ready to discharge. To be eligible, the person must be:

- age 18 or older with an income that does not exceed 400 percent of the federal poverty level or who are eligible to receive long-term care services through the Washington State Department of Social and Health Services;
- in an acute care hospital, a psychiatric hospital, or in a location funded by a hospital;
- medically ready for discharge, or will soon be medically ready for discharge to a post-acute care or community settings; and
- without a qualified person who is willing and able to serve as a guardian.

OPG must establish a streamlined process to review requests for decision makers for individuals who meet these criteria on a weekly basis. OPG must also establish a navigator service to provide assistance and support for individuals in hospitals including assistance in navigating options for guardianship, public conservatorship, decision-making assistance, and estate administration services. OPG, subject to funding, must offer low-barrier trainings to certified professional guardians on topics such as aging, mental health, and dementia must fund training for guardians regarding considerations for specific populations including:

- behavior health;
- involuntary treatment;
- disability;
- family law; and
- Medicaid programs.

Miscellaneous Changes. Various technical changes are made through the UGA, including:

- if a petition for guardianship or conservatorship fails to identify a guardian or conservator within 30 days of filing the petition, the court must dismiss the petition;

- a person whose services resulted in a beneficial order to an individual subject to guardianship, conservatorship, or protective arraignment, who is not otherwise compensated, is entitled to reasonable compensation for services and expenses from the property of the individual;
- a hearing requirement is added to approve the disposition of real property sale proceeds and to ensure funds are properly blocked or bonded;
- courts are granted authority to bring before them any person suspected of having in their possession, or having concealed, embezzled, conveyed, or disposed of any of the property of the estate of an individual subject to conservatorship;
- if the respondent to a petition for guardianship or conservatorship objects to the petition or requests appointment of an attorney, the court visitor must petition the court for the appointment of an attorney within five days of meeting the respondent;
- provisions of the UGA regarding confidentiality of records are aligned with existing state laws;
- duplicative requirements to send notice of appointment of a guardian are eliminated;
- the petitioner for an emergency guardian for an adult must personally serve a copy of the petition and notice of the hearing on the respondent, the respondent's attorney, and the court visitor not more than two days after the petition has been filed;
- if the court approves a guardian's report, the order must direct the clerk of the court to reissue letters of office to the guardian containing an expiration date within 180 days of the anniversary date of appointment;
- if one of the divorced parents of a person with disabilities who recently turned 18 years of age files a petition for guardianship or conservatorship, the other parent must receive notice if that parent is alive and in the person's life; and
- a person interested in the welfare of a minor who, within 45 days of the filing of the petition for appointment of a guardian, will turn 18 years of age, may petition for appointment of a guardian for the minor. The minor may petition on the minor's own behalf.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Requires court visitors in conservatorship proceedings to explain the right of the respondent to choice of counsel and a jury trial.
- Requires court visitors in Conservatorship proceedings to determine whether the respondent requests the appointment of an attorney.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Requires a court visitor appointed under the uniform guardianship act to explain to the respondent the right to counsel and a jury trial and to determine whether the respondent would like to request appointment of an attorney.
- Requires the Office of Public Guardianship pilot program to prioritize individuals

who meet the stated criteria.

- Requires the Office of Public Guardianship, subject to funding, to offer low-barrier trainings to certified professional guardians on topics such as aging, mental health, and dementia.

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 on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: These are largely technical changes to the Uniform Guardianship Act. The Uniform Guardianship Act was adopted two years ago, and this bill is an attempt to clean up some issues that arose in those interceding years. Sadly, some people in hospitals languish there because they do not have the ability to make decisions on their own behalf. The creation of the Office of Public Guardian pilot program would help provide those people with a guardian who can help them transition to a more appropriate care setting. At some hospitals, people who are ready to discharge, who need guardianship service, are waiting an average of 124 days to receive those services and discharge. The need for guardianship services for people in hospitals has been steadily rising over the past five years. It is a life-disrupting experience to be stuck in a hospital awaiting a guardian. People may lose their housing, they cannot pay their bills, and they can become deconditioned and disheartened. Expanding the capacity of the Office of Public Guardianship to provide guardians and navigators for people stuck in hospitals will help get these people into more appropriate care settings faster. This will also reduce court costs and caseloads. The Office of Public Guardianship is a program of last resort for people who cannot care for themselves and have no resources. In 2011, the Washington Institute for Public Policy estimated there are up to 5000 people in Washington in need of public guardianship services. Currently, the Office of Public Guardianship has funding for only 215.

OTHER: The technical changes in this bill will make it easier for those in need to access guardianship services, however having hospitals initiate guardianship proceedings is concerning. Some in this state are subject to guardianship solely for the sake of discharging that person from a hospital setting. No one should be stuck in a hospital longer than is necessary, but this cannot come at the cost of that person's right to autonomy.

Persons Testifying (Law & Justice): PRO: Senator Jamie Pedersen, Prime Sponsor; Robert Nettleton; Christopher Stanley, Administrative Office of the Courts; Andi Chatburn, Providence; Zosia Stanley, Washington State Hospital Association; Madeline Grant, UW Medicine; Amy Freeman, WA State Long Term Care Ombuds Program.

OTHER: Chloe Merino, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Proposed Second Substitute (Ways & Means):

The committee recommended a different version of the bill than what was heard.

PRO: Guardianship is the last resort for individuals who have no resources, no family or friends to care for them and no way to care for themselves. In 2011 the Washington State Institute for Public Policy estimated 4000 to 5000 individuals who need guardianship services. Our current funding supports only 215 slots. OPG has enough guardians and the indeterminate costs are the request from the hospital association, roughly \$1.5 million a year for additional OPG services. The funding roughly allows the agency to double the caseload. However, if there are extra needs in the future, the agency would reach out to the University of Washington through the education pipeline to recruit more guardians.

Promoting health system capacity is a top priority for emergency physicians in the state. The inability to discharge patients who are medically ready for discharge from hospitals is a crisis that a lot of emergency departments are facing in the state. It causes financial loss for hospitals and leads to human costs for these individuals. The funding and the provision for facilitating public guardianships in Section 15 is an important and welcome tool for appropriately promoting health system capacity.

OTHER: The change from guardian to decision maker and guardianship services to decision making assistance services in the proposed substitute is important because it acknowledges that guardianship should be a last resort to other less restrictive forms of guardianship under Washington law. There are still general concerns about section 15 leading to the unnecessary loss of autonomy for some individuals in the hospital.

Persons Testifying (Ways & Means): PRO: Senator Jamie Pedersen, Prime Sponsor; Christopher Stanley, Administrative Office of the Courts; robert m wardell, self advocates; Rashi Gupta, UW Medicine; Sean Graham, Washington Chapter -- American College of Emergency Physicians.

OTHER: Chloe Merino, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.