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**SENATE BILL 6235**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Padden and Conway

AN ACT Relating to guardianships in respect to an incapacitated person's right of communication, visitation, and interaction with others; and adding new sections to chapter 11.88 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 11.88 RCW to read as follows:

(1)(a) Unless specifically authorized by court order, a guardian may not restrict an incapacitated person's right of communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail.

(b) If an incapacitated person is unable to express consent to communication, visitation, or interaction with a person due to a physical or mental condition, then consent of the incapacitated person may be presumed based on the incapacitated person's prior relationship history with the person.

(2) A guardian may, for good cause shown, move the court to have restrictions placed on a person's ability to communicate, visit, or interact with an incapacitated person in accordance with subsection (3) of this section. Good cause includes:

(a) Whether any protective orders have been issued to protect the incapacitated person from the person seeking access to the incapacitated person;

(b) Whether abuse, neglect, or financial exploitation of the incapacitated person by the person seeking access to the incapacitated person has occurred or is likely to occur;

(c) Documented wishes of the incapacitated person to reject communication, visitation, or interaction with specific persons; and

(d) Any other factors deemed relevant by the court.

(3)(a) A court may order restrictions placed on communications, visitations, or interactions a person may have with an incapacitated person upon a showing of good cause by the guardian.

(b) In determining whether to issue an order in accordance with (a) of this subsection (3), the following factors must be considered by the court:

(i) Whether any protective orders have been issued to protect the incapacitated person from the person seeking access to the incapacitated person;

(ii) Whether the person has been charged with abuse, neglect, or financial exploitation of the incapacitated person;

(iii) Whether the incapacitated person expresses a desire to communicate, visit, or interact with the person;

(iv) If the incapacitated person is unable to communicate, whether a properly executed living will, durable power of attorney, or advance directive contains a preference by the incapacitated person with regard to the person's communication, visitation, or interaction with the incapacitated person; and

(v) Any other factors deemed relevant by the court.

(c) Prior to issuing an order pursuant to this subsection (3), the court must consider the following restrictions in the order listed:

(i) Placing reasonable time, manner, or place restrictions on communication, visitation, or interaction between the incapacitated person and another person based on the history between the incapacitated person and the person or the incapacitated person's wishes, or both;

(ii) Requiring that communication, visitation, or interaction between the incapacitated person and another person be supervised; or

(iii) Denying communication, visitation, or interaction between the incapacitated person and another person; provided, that unless the court finds that the person poses a threat to the incapacitated person, supervised communication, visitation, or interaction under (c)(ii) of this subsection (3) must be ordered prior to the denial of any communication, visitation, or interaction.

(4)(a) If any interested person, including the incapacitated person, reasonably believes that subsection (1) of this section has been violated or an order issued pursuant to subsection (3) of this section has been violated, then such person may move the court to:

(i) Require the guardian to grant a person access to the incapacitated person;

(ii) Restrict, or further restrict, a person's access to the incapacitated person;

(iii) Modify the guardian's duties; or

(iv) Discharge and replace the guardian pursuant to RCW 11.88.120.

(b) Notwithstanding actions available to the court pursuant to (a) of this subsection (4), a guardian who is found to be knowingly isolating an incapacitated person and who has violated subsection (1) of this section or has violated an order issued pursuant to subsection (3) of this section is subject to discharge and replacement pursuant to RCW 11.88.120.

(5)(a) Except as provided in (b) of this subsection, the court must schedule a hearing on a motion filed pursuant to subsection (2) or (4) of this section no later than sixty days after the date the motion is filed. The court may, in its discretion, order mediation to be conducted by the parties and the incapacitated person prior to the hearing. If mediation results in agreement of the parties and the incapacitated person with regard to communication, visitation, or interaction with the incapacitated person, the agreement must be approved and memorialized in an order by the court.

(b)(i) If the motion states that the incapacitated person's health is in significant decline or that the incapacitated person's death may be imminent, the court must conduct an emergency hearing as soon as practicable, but no later than ten days after the motion is filed.

(ii) When a scheduling order is issued upon a motion filed pursuant to (b)(i) of this subsection (5), the court must also order that supervised communication, visitation, or interaction with the incapacitated person be granted during the period prior to the hearing.

(c) Notice of the hearing, a copy of the motion, and a copy of any order issued pursuant to (b)(ii) of this subsection (5), if applicable, must be personally served upon the incapacitated person and any person against whom the motion is filed, and nothing in this section may affect the incapacitated person's right to appear and be heard in the proceedings.

(6)(a) The court may award the prevailing party in any action brought under this section court costs and reasonable attorneys' fees; provided, however, an award of court costs or attorneys' fees may not be paid out of the incapacitated person's estate.

(b) The court, upon motion or upon its own initiative, must impose upon a guardian who is found to be knowingly isolating an incapacitated person and who has violated subsection (1) of this section or who has violated an order issued pursuant to subsection (3) of this section an appropriate sanction, including an order to pay court costs and reasonable attorneys' fees of the other party or parties. However, no sanction may be paid out of the incapacitated person's estate.

NEW SECTION. **Sec.**  A new section is added to chapter 11.88 RCW to read as follows:

(1) A guardian must promptly notify an incapacitated person's closest relatives and any person designated by the incapacitated person to be notified, along with the appropriate contact information and upon the incapacitated person's knowledge of such circumstance and information, in the event:

(a) The incapacitated person's residence has changed;

(b) The incapacitated person is staying at a location other than the incapacitated person's residence;

(c) The incapacitated person is admitted to a medical facility for:

(i) Emergency care in response to a life-threatening injury or medical condition; or

(ii) Acute care; or

(d) The incapacitated person dies. However, notification of the incapacitated persons death must be made in person or by telephone.

(2)(a) A guardian is not required to provide notice in accordance with subsection (1) of this section if:

(i) A person who is entitled to notice under subsection (1) of this section informs the guardian in writing that the person does not wish to receive such notice; or

(ii) The incapacitated person or a court order has expressly prohibited the guardian from providing notice to the person.

(b) A guardian may not provide contact information in accordance with subsection (1) of this section if an order of protection or restraining order has been issued against the person on behalf of the incapacitated person.

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