

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1510

Chapter 289, Laws of 1991

52nd Legislature
1991 Regular Session

GUARDIANSHIP

EFFECTIVE DATE: 7/28/91

Passed by the House April 26, 1991
Yeas 96 Nays 0

Joe King
**Speaker of the
House of Representatives**

Passed by the Senate April 25, 1991
Yeas 44 Nays 0

Joel Pritchard
President of the Senate

Approved May 20, 1991

Booth Gardner
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1510** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Alan Thompson
Chief Clerk

FILED

May 20, 1991 - 11:05 a.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 1510

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives R. Meyers and Padden).

Read first time February 26, 1991.

1 AN ACT Relating to guardianship; amending RCW 11.88.010, 11.88.030,
2 11.88.040, 11.88.045, 11.88.090, 11.88.095, 11.88.120, 11.88.125,
3 11.88.140, 11.92.040, 11.92.043, and 11.92.180; and adding a new
4 section to chapter 11.92 RCW.

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

6 **Sec. 1.** RCW 11.88.010 and 1990 c 122 s 2 are each amended to read
7 as follows:

8 (1) The superior court of each county shall have power to appoint
9 guardians for the persons and/or estates of incapacitated persons, and
10 guardians for the estates of nonresidents of the state who have
11 property in the county needing care and attention.

12 (a) For purposes of this chapter, a person may be deemed
13 incapacitated as to person when the superior court determines the
14 individual has a significant risk of personal harm based upon a

1 demonstrated inability to adequately provide for nutrition, health,
2 housing, or physical safety.

3 (b) For purposes of this chapter, a person may be deemed
4 incapacitated as to the person's estate when the superior court
5 determines the individual is at significant risk of financial harm
6 based upon a demonstrated inability to adequately manage property or
7 financial affairs.

8 (c) A determination of incapacity is a legal not a medical
9 decision, based upon a demonstration of management insufficiencies over
10 time in the area of person or estate. Age, eccentricity, poverty, or
11 medical diagnosis alone shall not be sufficient to justify a finding of
12 incapacity.

13 (d) A person may also be determined incapacitated if he or she is
14 under the age of majority as defined in RCW 26.28.010.

15 (e) For purposes of giving informed consent for health care
16 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any
17 person who is (i) incompetent by reason of mental illness,
18 developmental disability, senility, habitual drunkenness, excessive use
19 of drugs, or other mental incapacity, of either managing his or her
20 property or caring for himself or herself, or both, or (ii)
21 incapacitated as defined in (a), (b), or (d) of this subsection.

22 (f) For purposes of the terms "incompetent," "disabled," or "not
23 legally competent," as those terms are used in the Revised Code of
24 Washington to apply to persons incapacitated under this chapter, those
25 terms shall be interpreted to mean "incapacitated" persons for purposes
26 of this chapter.

27 (2) The superior court for each county shall have power to appoint
28 limited guardians for the persons and estates, or either thereof, of
29 incapacitated persons, who by reason of their incapacity have need for
30 protection and assistance, but who are capable of managing some of

1 their personal and financial affairs. After considering all evidence
2 presented as a result of such investigation, the court shall impose, by
3 order, only such specific limitations and restrictions on an
4 incapacitated person to be placed under a limited guardianship as the
5 court finds necessary for such person's protection and assistance. A
6 person shall not be presumed to be incapacitated nor shall a person
7 lose any legal rights or suffer any legal disabilities as the result of
8 being placed under a limited guardianship, except as to those rights
9 and disabilities specifically set forth in the court order establishing
10 such a limited guardianship. In addition, the court order shall state
11 the period of time for which it shall be applicable.

12 (3) Venue for petitions for guardianship or limited guardianship
13 shall lie in the county wherein the alleged incapacitated person is
14 domiciled, or if such person resides in a facility supported in whole
15 or in part by local, state, or federal funding sources, in either the
16 county where the facility is located, the county of domicile prior to
17 residence in the supported facility, or the county where a parent or
18 spouse of the alleged incapacitated person is domiciled.

19 If the alleged incapacitated person's residency has changed within
20 one year of the filing of the petition, any interested person may move
21 for a change of venue for any proceedings seeking the appointment of a
22 guardian or a limited guardian under this chapter to the county of the
23 alleged incapacitated person's last place of residence of one year or
24 more. The motion shall be granted when it appears to the court that
25 such venue would be in the best interests of the alleged incapacitated
26 person and would promote more complete consideration of all relevant
27 matters.

28 (4) Under RCW 11.94.010, a principal may nominate, by a durable
29 power of attorney, the guardian or limited guardian of his or her
30 estate or person for consideration by the court if guardianship

1 proceedings for the principal's person or estate are thereafter
2 commenced. The court shall make its appointment in accordance with the
3 principal's most recent nomination in a durable power of attorney
4 except for good cause or disqualification.

5 (5) When a court imposes a full guardianship for an incapacitated
6 person, the person shall be considered incompetent for purposes of
7 rationally exercising the right to vote and shall lose the right to
8 vote, unless the court specifically finds that the person is rationally
9 capable of exercising the franchise. Imposition of a limited
10 guardianship for an incapacitated person (~~(may)~~) shall not result in
11 the loss of the right to vote (~~(when in the courts discretion,)~~) unless
12 the court determines that the person is incompetent for purposes of
13 rationally exercising the franchise.

14 **Sec. 2.** RCW 11.88.030 and 1990 c 122 s 4 are each amended to read
15 as follows:

16 (1) Any person or entity may petition for the appointment of a
17 qualified person, trust company, national bank, or nonprofit
18 corporation authorized in RCW 11.88.020 as now or hereafter amended as
19 the guardian or limited guardian of an incapacitated person. No
20 liability for filing a petition for guardianship or limited
21 guardianship shall attach to a petitioner acting in good faith and upon
22 reasonable basis. A petition for guardianship or limited guardianship
23 shall state:

24 (a) The name, age, residence, and post office address of the
25 alleged incapacitated person;

26 (b) The nature of the alleged incapacity in accordance with RCW
27 11.88.010;

1 (c) The approximate value and description of property, including
2 any compensation, pension, insurance, or allowance, to which the
3 alleged incapacitated person may be entitled;

4 (d) Whether there is, in any state, a guardian or limited guardian,
5 or pending guardianship action for the person or estate of the alleged
6 incapacitated person;

7 (e) The residence and post office address of the person whom
8 petitioner asks to be appointed guardian or limited guardian;

9 (f) The names and addresses, and nature of the relationship, so far
10 as known or can be reasonably ascertained, of the persons most closely
11 related by blood or marriage to the alleged incapacitated person;

12 (g) The name and address of the person or facility having the care
13 and custody of the alleged incapacitated person;

14 (h) The reason why the appointment of a guardian or limited
15 guardian is sought and the interest of the petitioner in the
16 appointment, and whether the appointment is sought as guardian or
17 limited guardian of the person, the estate, or both, and why no
18 alternative to guardianship is appropriate;

19 (i) The nature and degree of the alleged incapacity and the
20 specific areas of protection and assistance requested and the
21 limitation of rights requested to be included in the court's order of
22 appointment;

23 (j) The requested term of the limited guardianship to be included
24 in the court's order of appointment;

25 (k) Whether the petitioner is proposing a specific individual to
26 act as guardian ad litem and, if so, the individual's knowledge of or
27 relationship to any of the parties, and why the individual is proposed.

28 (2)(a) The attorney general may petition for the appointment of a
29 guardian or limited guardian in any case in which there is cause to

1 believe that a guardianship is necessary and no private party is able
2 and willing to petition.

3 (b) Prepayment of a filing fee shall not be required in any
4 guardianship or limited guardianship brought by the attorney general.
5 Payment of the filing fee shall be ordered from the estate of the
6 incapacitated person at the hearing on the merits of the petition,
7 unless in the judgment of the court, such payment would impose a
8 hardship upon the incapacitated person, in which case the filing shall
9 be waived.

10 (3) No filing fee shall be charged by the court for filing either
11 a petition for guardianship or a petition for limited guardianship if
12 the petition alleges that the alleged incapacitated person has total
13 assets of a value of less than three thousand dollars.

14 (4)(a) Notice that a guardianship proceeding has been commenced
15 shall be personally served upon the alleged incapacitated person and
16 the guardian ad litem along with a copy of the petition for appointment
17 of a guardian. Such notice shall be served not more than (~~fifteen~~)
18 five days after the petition has been filed.

19 (b) Notice under this subsection shall include a clear and easily
20 readable statement of the legal rights of the alleged incapacitated
21 person that could be restricted or transferred to a guardian by a
22 guardianship order as well as the right to counsel of choice and to a
23 jury trial on the issue of incapacity. Such notice shall be in
24 substantially the following form and shall be in capital letters,
25 double-spaced, and in a type size not smaller than ten-point type:

26 IMPORTANT NOTICE

27 PLEASE READ CAREFULLY

1 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE
2 ... COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED,
3 YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- 4 (1) TO MARRY OR DIVORCE;
- 5 (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- 6 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- 7 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- 8 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- 9 (6) TO POSSESS A LICENSE TO DRIVE;
- 10 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- 11 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- 12 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- 13 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

14 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

15 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.
16 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO
17 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

18 YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED
19 A GUARDIAN TO HELP YOU.

20 YOU HAVE THE RIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO
21 DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

22 (5) All petitions filed under the provisions of this section shall
23 be heard within ((~~forty-five~~)) sixty days unless an extension of time
24 is requested by a party within such ((~~forty-five~~)) sixty day period and

1 granted for good cause shown. If an extension is granted, the court
2 shall set a new hearing date.

3 **Sec. 3.** RCW 11.88.040 and 1990 c 122 s 5 are each amended to read
4 as follows:

5 Before appointing a guardian or a limited guardian, notice of a
6 hearing, to be held not less than ten days after service thereof, shall
7 be ~~((given))~~ served personally to the alleged incapacitated person, if
8 over fourteen years of age, and served upon the guardian ad litem.

9 Before appointing a guardian or a limited guardian, notice of a
10 hearing, to be held not less than ten days after service thereof, shall
11 be given by registered or certified mail requesting a return receipt
12 signed by the addressee or an agent appointed by the addressee, or by
13 personal service in the manner provided for services of summons, to the
14 following:

15 (1) The alleged incapacitated person, or minor, if under fourteen
16 years of age;

17 (2) A parent, if the alleged incapacitated person is a minor, all
18 known children not residing with a notified person, and the spouse of
19 the alleged incapacitated person if any;

20 (3) Any other person who has been appointed as guardian or limited
21 guardian, or the person with whom the alleged incapacitated person
22 resides. No notice need be given to those persons named in subsections
23 (2) and (3) of this section if they have signed the petition for the
24 appointment of the guardian or limited guardian or have waived notice
25 of the hearing.

26 (4) If the petition is by a parent asking for appointment as
27 guardian or limited guardian of a minor child under the age of fourteen
28 years, or if the petition is accompanied by the written consent of a
29 minor of the age of fourteen years or upward, who consents to the

1 appointment of the guardian or limited guardian asked for, or if the
2 petition is by a nonresident guardian of any minor or incapacitated
3 person, then the court may appoint the guardian without notice of the
4 hearing. The court for good cause may reduce the number of days of
5 notice, but in every case, at least three days notice shall be given.

6 The alleged incapacitated person shall be present in court at the
7 final hearing on the petition: PROVIDED, That this requirement may be
8 waived at the discretion of the court for good cause other than mere
9 inconvenience shown in the report to be provided by the guardian ad
10 litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no
11 guardian ad litem is required to be appointed pursuant to RCW
12 11.88.090, as now or hereafter amended, at the discretion of the court
13 for good cause shown by a party. Alternatively, the court may remove
14 itself to the place of residence of the alleged incapacitated person
15 and conduct the final hearing in the presence of the alleged
16 incapacitated person. Final hearings on the petition may be held in
17 closed court without admittance of any person other than those
18 necessary to the action or proceeding.

19 If presence of the alleged incapacitated person is waived and the
20 court does not remove itself to the place of residence of such person,
21 the guardian ad litem shall appear in person at the final hearing on
22 the petition.

23 **Sec. 4.** RCW 11.88.045 and 1990 c 122 s 6 are each amended to read
24 as follows:

25 (1)(a) Alleged incapacitated individuals shall have the right to be
26 represented by counsel at any stage in guardianship proceedings. The
27 court shall provide counsel to represent any alleged incapacitated
28 person at public expense when either: (i) The individual is unable to
29 afford counsel, or (ii) the expense of counsel would result in

1 substantial hardship to the individual, or (iii) the individual does
2 not have practical access to funds with which to pay counsel. If the
3 individual can afford counsel but lacks practical access to funds, the
4 court shall provide counsel and may impose a reimbursement requirement
5 as part of a final order. When, in the opinion of the court, the
6 rights and interests of an alleged or adjudicated incapacitated person
7 cannot otherwise be adequately protected and represented, the court on
8 its own motion shall appoint an attorney at any time to represent such
9 person. Counsel shall be provided as soon as practicable after a
10 petition is filed and long enough before any final hearing to allow
11 adequate time for consultation and preparation. Absent a convincing
12 showing in the record to the contrary, a period of less than three
13 weeks shall be presumed by a reviewing court to be inadequate time for
14 consultation and preparation.

15 (b) Counsel for an alleged incapacitated individual shall act as an
16 advocate for the client and shall not substitute counsel's own judgment
17 for that of the client on the subject of what may be in the client's
18 best interests. Counsel's role shall be distinct from that of the
19 guardian ad litem, who is expected to promote the best interest of the
20 alleged incapacitated individual, rather than the alleged incapacitated
21 individual's expressed preferences.

22 (c) If an alleged incapacitated person is represented by counsel
23 and does not communicate with counsel, counsel may ask the court for
24 leave to withdraw for that reason. If satisfied, after affording the
25 alleged incapacitated person an opportunity for a hearing, that the
26 request is justified, the court may grant the request and allow the
27 case to proceed with the alleged incapacitated person unrepresented.

28 (2) During the pendency of any guardianship, any attorney
29 purporting to represent a person alleged or adjudicated to be
30 incapacitated((7)) shall ((enter a notice of appearance for

1 ~~appointment))~~ petition to be appointed to represent the incapacitated
2 or alleged incapacitated person. Fees for representation described in
3 this section shall be subject to approval by the court pursuant to the
4 provisions of RCW 11.92.180.

5 (3) The alleged incapacitated person is further entitled upon
6 request to a jury trial on the issues of his or her alleged incapacity.
7 The standard of proof to be applied in a contested case, whether before
8 a jury or the court, shall be that of clear, cogent, and convincing
9 evidence.

10 (4) In all proceedings for appointment of a guardian or limited
11 guardian, the court must be presented with a written report from a
12 physician licensed to practice under chapter 18.71 or 18.57 RCW or
13 licensed or certified psychologist selected by the guardian ad litem.
14 The physician or psychologist shall have personally examined and
15 interviewed the alleged incapacitated person within thirty days of the
16 report to the court and shall have expertise in the type of disorder or
17 incapacity the alleged incapacitated person is believed to have. The
18 report shall contain the following information and shall be set forth
19 in substantially the following format:

20 (a) The name and address of the examining physician or
21 psychologist;

22 (b) The education and experience of the physician or psychologist
23 pertinent to the case;

24 (c) The dates of examinations of the alleged incapacitated person;

25 (d) A summary of the relevant medical, functional, neurological,
26 psychological, or psychiatric history of the alleged incapacitated
27 person as known to the examining physician or psychologist;

28 (e) The findings of the examining physician or psychologist as to
29 the condition of the alleged incapacitated person;

30 (f) Current medications;

1 (g) The effect of current medications on the alleged incapacitated
2 person's ability to understand or participate in guardianship
3 proceedings;

4 (h) Opinions on the specific assistance the alleged incapacitated
5 person needs;

6 (i) Identification of persons with whom the physician or
7 psychologist has met or spoken regarding the alleged incapacitated
8 person.

9 The court shall not enter an order appointing a guardian or limited
10 guardian until a medical or psychological report meeting the above
11 requirements is filed.

12 **Sec. 5.** RCW 11.88.090 and 1990 c 122 s 8 are each amended to read
13 as follows:

14 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
15 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
16 11.92.180, as now or hereafter amended, shall affect or impair the
17 power of any court to appoint a guardian ad litem to defend the
18 interests of any incapacitated person interested in any suit or matter
19 pending therein, or to commence and prosecute any suit in his behalf.

20 (2) Upon receipt of a petition for appointment of guardian or
21 limited guardian, except as provided herein, the court shall appoint a
22 guardian ad litem to represent the best interests of the alleged
23 incapacitated person, who shall be a person found or known by the court
24 to

25 (a) be free of influence from anyone interested in the result of
26 the proceeding;

27 (b) have the requisite knowledge, training, or expertise to perform
28 the duties required by this section.

1 No guardian ad litem need be appointed when a parent is petitioning
2 for a guardian or a limited guardian to be appointed for his or her
3 minor child and the minority of the child, as defined by RCW 11.92.010,
4 is the sole basis of the petition. The order appointing the guardian
5 ad litem shall recite the duties set forth in subsection (5) of this
6 section. The appointment of a guardian ad litem shall have no effect
7 on the legal competency of the alleged incapacitated person and shall
8 not overcome the presumption of competency or full legal and civil
9 rights of the alleged incapacitated person.

10 (3)(a) The superior court of each county shall develop by September
11 1, 1991, a registry of persons who are willing and qualified to serve
12 as guardians ad litem in guardianship matters. The court shall choose
13 as guardians ad litem only persons whose names appear on the registry,
14 except in extraordinary circumstances.

15 (b) To be eligible for the registry a person shall:

16 (i) Present a written statement of qualifications describing the
17 person's knowledge, training, and experience in each of the following:
18 Needs of impaired elderly people, physical disabilities, mental
19 illness, developmental disabilities, and other areas relevant to the
20 needs of incapacitated persons, legal procedure, and the requirements
21 of ~~((chapter[s]))~~ chapters 11.88 and 11.92 RCW; and

22 (ii) Complete a training program ~~((approved))~~ adopted by the court,
23 or, in the absence of a locally adopted program, a candidate for
24 inclusion upon the registry shall have completed a model training
25 program as described in (d) of this subsection.

26 (c) The superior court of each county shall approve training
27 programs designed to:

28 (i) Train otherwise qualified human service professionals in those
29 aspects of legal procedure and the requirements of chapters 11.88 and
30 11.92 RCW with which a guardian ad litem should be familiar;

1 (ii) Train otherwise qualified legal professionals in those aspects
2 of medicine, social welfare, and social service delivery systems with
3 which a guardian ad litem should be familiar.

4 (d) The superior court of each county (~~shall~~) may approve a
5 guardian ad litem training program on or before June 1, 1991. The
6 department of social and health services, aging and adult services
7 administration, shall convene an advisory group to develop a model
8 guardian ad litem training program. The advisory group shall consist of
9 representatives from consumer, advocacy, and professional groups
10 knowledgeable in developmental disabilities, neurological impairment,
11 physical disabilities, mental illness, aging, legal, court
12 administration, and other interested parties.

13 (e) Any superior court that has (~~failed to adopt~~) not adopted a
14 guardian ad litem training program by September 1, (~~1992~~) 1991, shall
15 (~~use the~~) require utilization of a model program developed by the
16 advisory group (~~convened by the department of social and health~~
17 ~~services, aging and adult services administration~~) as described in (d)
18 of this subsection, to assure that candidates applying for registration
19 as a qualified guardian ad litem shall have satisfactorily completed
20 training to attain these essential minimum qualifications to act as
21 guardian ad litem.

22 (4) The guardian ad litem's written statement of qualifications
23 required by RCW 11.88.090(3)(b)(i) shall be made part of the record in
24 each matter in which the person is appointed guardian ad litem.

25 (5) The guardian ad litem appointed pursuant to this section shall
26 have the following duties:

27 (a) To meet and consult with the alleged incapacitated person as
28 soon as practicable following appointment and explain, in language
29 which such person can reasonably be expected to understand, the
30 substance of the petition, the nature of the resultant proceedings, the

1 person's right to contest the petition, the identification of the
2 proposed guardian or limited guardian, the right to a jury trial on the
3 issue of his or her alleged incapacity, the right to independent legal
4 counsel as provided by RCW 11.88.045, and the right to be present in
5 court at the hearing on the petition;

6 (b) To obtain a written report according to RCW 11.88.045; and such
7 other written or oral reports from other qualified professionals as are
8 necessary to permit the guardian ad litem to complete the report
9 required by this section;

10 (c) To meet with the person whose appointment is sought as guardian
11 or limited guardian and ascertain:

12 (i) The proposed guardian's knowledge of the duties, requirements,
13 and limitations of a guardian; and

14 (ii) The steps the proposed guardian intends to take or has taken
15 to identify and meet the needs of the alleged incapacitated person; ~~and~~
16 To consult as necessary to complete the investigation and report
17 required by this section with those known relatives, friends, or other
18 persons the guardian ad litem determines have had a significant,
19 continuing interest in the welfare of the alleged incapacitated person;

20 (e) To provide the court with a written report which shall include
21 the following:

22 (i) A description of the nature, cause, and degree of incapacity,
23 and the basis upon which this judgment was made;

24 (ii) A description of the needs of the incapacitated person for
25 care and treatment, the probable residential requirements of the
26 alleged incapacitated person and the basis upon which these findings
27 were made;

28 (iii) An evaluation of the appropriateness of the guardian or
29 limited guardian whose appointment is sought and a description of the

1 steps the proposed guardian has taken or intends to take to identify
2 and meet current and emerging needs of the incapacitated person;

3 (iv) A description of the abilities of the alleged incapacitated
4 person and a recommendation as to whether a guardian or limited
5 guardian should be appointed. If appointment of a limited guardian is
6 recommended, the guardian ad litem shall recommend the specific areas
7 of authority the limited guardian should have and the limitations and
8 disabilities to be placed on the incapacitated person;

9 (v) An evaluation of the person's mental ability to rationally
10 exercise the right to vote and the basis upon which the evaluation is
11 made;

12 (vi) Any expression of approval or disapproval made by the alleged
13 incapacitated person concerning the proposed guardian or limited
14 guardian or guardianship or limited guardianship;

15 (vii) Identification of persons with significant interest in the
16 welfare of the alleged incapacitated person who should be advised of
17 their right to request special notice of proceedings pursuant to RCW
18 11.92.150; and

19 (viii) Unless independent counsel has appeared for the alleged
20 incapacitated person, an explanation of how the alleged incapacitated
21 person responded to the advice of the right to jury trial, to
22 independent counsel and to be present at the hearing on the petition.

23 Within ~~((twenty))~~ forty-five days after ~~((appointment of))~~ notice
24 of commencement of the guardianship proceeding has been served upon the
25 guardian ad litem, and at least ten days before the hearing on the
26 petition, unless an extension or reduction of time has been granted by
27 the court for good cause, the guardian ad litem shall file its report
28 and send a copy to the alleged incapacitated person and his or her
29 spouse, all children not residing with a notified person, those persons

1 described in (d) of this subsection, and persons who have filed a
2 request for special notice pursuant to RCW 11.92.150;

3 (f) To advise the court of the need for appointment of counsel for
4 the alleged incapacitated person within five days after the meeting
5 described in (a) of this subsection unless (i) counsel has appeared,
6 (ii) the alleged incapacitated person affirmatively communicated a wish
7 not to be represented by counsel after being advised of the right to
8 representation and of the conditions under which court-provided counsel
9 may be available, or (iii) the alleged incapacitated person was unable
10 to communicate at all on the subject, and the guardian ad litem is
11 satisfied that the alleged incapacitated person does not affirmatively
12 desire to be represented by counsel.

13 (6) If the petition is brought by an interested person or entity
14 requesting the appointment of some other qualified person or entity and
15 a prospective guardian or limited guardian cannot be found, the court
16 shall order the guardian ad litem to investigate the availability of a
17 possible guardian or limited guardian and to include the findings in a
18 report to the court pursuant to RCW 11.88.090(5)(e) as now or hereafter
19 amended.

20 (7) The court appointed guardian ad litem shall have the authority,
21 in the event that the alleged incapacitated person is in need of
22 emergency life-saving medical services, and is unable to consent to
23 such medical services due to incapacity pending the hearing on the
24 petition to give consent for such emergency life-saving medical
25 services on behalf of the alleged incapacitated person.

26 (8) The guardian ad litem shall receive a fee determined by the
27 court. The fee shall be charged to the alleged incapacitated person
28 unless the court finds that such payment would result in substantial
29 hardship upon such person, in which case the county shall be
30 responsible for such costs: PROVIDED, That if no guardian or limited

1 guardian is appointed the court may charge such fee to the petitioner
2 or the alleged incapacitated person, or divide the fee, as it deems
3 just; and if the petition is found to be frivolous or not brought in
4 good faith, the guardian ad litem fee shall be charged to the
5 petitioner. The court shall not be required to provide for the payment
6 of a fee to any salaried employee of a public agency.

7 (9) Upon the presentation of the guardian ad litem report and the
8 entry of an order either dismissing the petition for appointment of
9 guardian or limited guardian or appointing a guardian or limited
10 guardian, the guardian ad litem shall be dismissed and shall have no
11 further duties or obligations unless otherwise ordered by the court.
12 If the court orders the guardian ad litem to perform further duties or
13 obligations, they shall not be performed at county expense.

14 **Sec. 6.** RCW 11.88.095 and 1990 c 122 s 9 are each amended to read
15 as follows:

16 (1) In determining the disposition of a petition for guardianship,
17 the court's order shall be based upon findings as to the capacities,
18 condition, and needs of the alleged incapacitated person, and shall not
19 be based solely upon agreements made by the parties.

20 (2) Every order appointing a full or limited guardian of the person
21 or estate shall include:

22 (a) Findings as to the capacities, condition, and needs of the
23 alleged incapacitated person;

24 (b) The amount of the bond, if any, or a bond review period;

25 (c) When the next report of the guardian is due;

26 (d) Whether the guardian ad litem shall continue acting as guardian
27 ad litem;

28 (e) Whether a review hearing shall be required upon the filing of
29 the inventory;

1 (f) The authority of the guardian, if any, for investment and
2 expenditure of the ward's estate; and

3 (g) Names and addresses of those persons described in RCW
4 (~~(11.92.090(5)(d))~~) 11.88.090(5)(d), if any, whom the court believes
5 should receive copies of further pleadings filed by the guardian with
6 respect to the guardianship.

7 (3) If the court determines that a limited guardian should be
8 appointed, the order shall specifically set forth the limits by either
9 stating exceptions to the otherwise full authority of the guardian or
10 by stating the specific authority of the guardian.

11 (4) In determining the disposition of a petition for appointment of
12 a guardian or limited guardian of the estate only, the court shall
13 consider whether the alleged incapacitated person is capable of giving
14 informed medical consent or of making other personal decisions and, if
15 not, whether a guardian or limited guardian of the person of the
16 alleged incapacitated person should be appointed for that purpose.

17 (~~((5) If a court determines that the person is incapacitated and
18 that a guardian or limited guardian should be appointed, the court
19 shall determine whether the incapacity is a result of a developmental
20 disability as defined by RCW 71A.10.020, and if so, determine whether
21 the incapacity due to the developmental disability can be expected to
22 continue indefinitely.))~~)

23 **Sec. 7.** RCW 11.88.120 and 1990 c 122 s 14 are each amended to read
24 as follows:

25 (1) At any time after establishment of a guardianship or
26 appointment of a guardian, the court may, upon the death of the
27 guardian or limited guardian, or, for other good reason, modify or
28 terminate the guardianship or replace the guardian or limited guardian.

1 (2) Any person, including an incapacitated person, may apply to the
2 court for an order to modify or terminate a guardianship or to replace
3 a guardian or limited guardian. If applicants are represented by
4 counsel, counsel shall move for an order to show cause why the relief
5 requested should not be granted. If applicants are not represented by
6 counsel, they may move for an order to show cause, or they may deliver
7 a written request to the clerk of the court.

8 (3) By the next judicial day after receipt of an unrepresented
9 person's request to modify or terminate a guardianship order, or to
10 replace a guardian or limited guardian, the clerk shall (~~present~~)
11 deliver the request to the court. The court may (a) direct the clerk to
12 schedule a hearing, (b) appoint a guardian ad litem to investigate the
13 issues raised by the application or to take any emergency action the
14 court deems necessary to protect the incapacitated person until a
15 hearing can be held, or (c) deny the application without scheduling a
16 hearing, if it appears based on documents in the court file that the
17 application is frivolous. Any denial of an application without a
18 hearing shall be in writing with the reasons for the denial explained.
19 A copy of the order shall be mailed by the clerk to the applicant, to
20 the guardian, and to any other person entitled to receive notice of
21 proceedings in the matter. Unless within thirty days after receiving
22 the request from the clerk the court directs otherwise, the clerk shall
23 schedule a hearing on the request and mail notice to the guardian, the
24 incapacitated person, the applicant, all counsel of record, and any
25 other person entitled to receive notice of proceedings in the matter.
26 (4) In a hearing on an application to modify or terminate a
27 guardianship, or to replace a guardian or limited guardian, the court
28 may grant such relief as it deems just and in the best interest of the
29 incapacitated person.

1 (5) The court may order persons who have been removed as guardians
2 to deliver any property or records belonging to the incapacitated
3 person in accordance with the court's order. Similarly, when guardians
4 have died or been removed and property or records of an incapacitated
5 person are being held by any other person, the court may order that
6 person to deliver it in accordance with the court's order.
7 Disobedience of an order to deliver shall be punishable as contempt of
8 court.

9 **Sec. 8.** RCW 11.88.125 and 1990 c 122 s 15 are each amended to read
10 as follows:

11 (1) The person appointed by the court as either guardian or limited
12 guardian of the person and/or estate of an incapacitated person, shall
13 file in writing with the court, a (~~designated~~) notice designating a
14 standby limited guardian or guardian to serve as limited guardian or
15 guardian at the death or legal incapacity of the court-appointed
16 guardian or limited guardian. The notice shall state the name,
17 address, zip code, and telephone number of the designated standby or
18 limited guardian. Notice of the guardian's designation of the standby
19 guardian shall be given to the standby guardian, the incapacitated
20 person and his or her spouse and adult children, any facility in which
21 the incapacitated person resides, and any person entitled to special
22 notice under RCW 11.92.150 or any person entitled to receive pleadings
23 pursuant to RCW 11.88.095(2)(g). Such standby guardian or limited
24 guardian shall have all the powers, duties, and obligations of the
25 regularly appointed guardian or limited guardian and in addition shall,
26 within a period of thirty days from the death or adjudication of
27 incapacity of the regularly appointed guardian or limited guardian,
28 file with the superior court in the county in which the guardianship or
29 limited guardianship is then being administered, a petition for

1 appointment of a substitute guardian or limited guardian. Upon the
2 court's appointment of a new, substitute guardian or limited guardian,
3 the standby guardian or limited guardian shall make an accounting and
4 report to be approved by the court, and upon approval of the court, the
5 standby guardian or limited guardian shall be released from all duties
6 and obligations arising from or out of the guardianship or limited
7 guardianship.

8 (2) Letters of guardianship shall be issued to the standby guardian
9 or limited guardian upon filing an oath and posting a bond as required
10 by RCW 11.88.100 as now or hereafter amended. The oath may be filed
11 prior to the appointed guardian or limited guardian's death. Notice of
12 such appointment shall be provided to the standby guardian, the
13 incapacitated person, and any facility in which the incapacitated
14 person resides. The provisions of RCW 11.88.100 through 11.88.110 as
15 now or hereafter amended shall apply to standby guardians and limited
16 guardians.

17 (3) In addition to the powers of a standby limited guardian or
18 guardian as noted in subsection (1) of this section, the standby
19 limited guardian or guardian shall have the authority to provide
20 timely, informed consent to necessary medical procedures, as authorized
21 in RCW 11.92.040 as now or hereafter amended, if the guardian or
22 limited guardian cannot be located within four hours after the need for
23 such consent arises.

24 **Sec. 9.** RCW 11.88.140 and 1990 c 122 s 17 are each amended to read
25 as follows:

26 (1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited
27 guardianship is terminated:

28 (a) Upon the attainment of full and legal age, as defined in RCW
29 26.28.010 as now or hereafter amended, of any person defined as an

1 incapacitated person pursuant to RCW 11.88.010 as now or hereafter
2 amended solely by reason of youth, RCW 26.28.020 to the contrary
3 notwithstanding, subject to subsection (2) of this section;

4 (b) By an adjudication of capacity or an adjudication of
5 termination of incapacity;

6 (c) By the death of the incapacitated person;

7 (d) By expiration of the term of limited guardianship specified in
8 the order appointing the limited guardian, unless prior to such
9 expiration a petition has been filed and served, as provided in RCW
10 11.88.040 as now or hereafter amended, seeking an extension of such
11 term.

12 (2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF
13 COMPLETION. A guardianship for the benefit of a minor may be
14 terminated upon the minor's attainment of legal age, as defined in RCW
15 26.28.010 as now or hereafter amended, by the guardian filing a
16 declaration that states:

17 (a) The date the minor attained legal age;

18 (b) That the guardian has paid all of the minor's funds in the
19 guardian's possession to the minor, who has signed a receipt for the
20 funds, and that the receipt has been filed with the court;

21 (c) That the guardian has completed the administration of the
22 minor's estate and the guardianship is ready to be closed; and

23 (d) The amount of fees paid or to be paid to each of the following:

24 (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or
25 accountants; and that the guardian believes the fees are reasonable and
26 does not intend to obtain court approval of the amount of the fees or
27 to submit a guardianship accounting to the court for approval. Subject
28 to the requirement of notice as provided in this section, unless the
29 minor petitions the court either for an order requiring the guardian to
30 obtain court approval of the amount of fees paid or to be paid to the

1 guardian, lawyers, or accountants, or for an order requiring an
2 accounting, or both, within thirty days from the filing of the
3 declaration of completion of guardianship, the guardian shall be
4 automatically discharged without further order of the court. The
5 guardian's powers will cease thirty days after filing the declaration
6 of completion of guardianship. The declaration of completion of
7 guardianship shall, at the time, be the equivalent of an entry of a
8 decree terminating the guardianship, distributing the assets, and
9 discharging the guardian for all legal intents and purposes.

10 Within five days of the date of filing the declaration of
11 completion of guardianship, the guardian or the guardian's lawyer shall
12 mail a copy of the declaration of completion to the minor together with
13 a notice that shall be substantially as follows:

14 CAPTION OF CASE NOTICE OF FILING A DECLARATION OF
15 COMPLETION OF GUARDIANSHIP

16 NOTICE IS GIVEN that the attached Declaration of Completion of
17 Guardianship was filed by the undersigned in the above-entitled court
18 on the day of, 19..; unless you file a petition
19 in the above-entitled court requesting the court to review the
20 reasonableness of the fees, or for an accounting, or both, and serve a
21 copy of the petition on the guardian or the guardian's lawyer, within
22 thirty days after the filing date, the amount of fees paid or to be
23 paid will be deemed reasonable, the acts of the guardian will be deemed
24 approved, the guardian will be automatically discharged without further
25 order of the court and the Declaration of Completion of Guardianship
26 will be final and deemed the equivalent of an order terminating the
27 guardianship, discharging the guardian and decreeing the distribution
28 of the guardianship assets.

1 If you file and serve a petition within the period specified, the
2 undersigned will request the court to fix a time and place for the
3 hearing of your petition, and you will be notified of the time and
4 place of the hearing, by mail, or by personal service, not less than
5 ten days before the hearing on the petition.

6 DATED this day of, 19...
7
8 Guardian

9 If the minor, after reaching legal age, waives in writing the
10 notice required by this section, the guardian will be automatically
11 discharged without further order of the court and the declaration of
12 completion of guardianship will be effective as an order terminating
13 the guardianship without an accounting upon filing the declaration. If
14 the guardian has been required to furnish a bond, and a declaration of
15 completion of guardianship is filed according to this section, any bond
16 furnished by the guardian shall be automatically discharged upon the
17 discharge of the guardian.

18 (3) TERMINATION ON COURT ORDER. A guardianship or limited
19 guardianship may be terminated by court order after such notice as the
20 court may require if the guardianship or limited guardianship is no
21 longer necessary.

22 The guardian or limited guardian shall, within thirty days of the
23 date of termination, unless the court orders a different deadline for
24 good cause, prepare and file with the court a final verified account of
25 administration. The final verified account of administration shall
26 contain the same information as required for (a) an intermediate
27 verified account of administration of the estate under RCW 11.92.040(2)

1 and (b) an intermediate personal care status report under RCW
2 11.92.043(2).

3 (4) EFFECT OF TERMINATION. When a guardianship or limited
4 guardianship terminates other than by the death of the incapacitated
5 person, the powers of the guardian or limited guardian cease, except
6 that a guardian or limited guardian of the estate may make
7 disbursements for claims that are or may be allowed by the court, for
8 liabilities already properly incurred for the estate or for the
9 incapacitated person, and for expenses of administration. When a
10 guardianship or limited guardianship terminates by death of the
11 incapacitated person, the guardian or limited guardian of the estate
12 may proceed under RCW 11.88.150 as now or hereafter amended, but the
13 rights of all creditors against the incapacitated person's estate shall
14 be determined by the law of decedents' estates.

15 **Sec. 10.** RCW 11.92.040 and 1990 c 122 s 20 are each amended to
16 read as follows:

17 It shall be the duty of the guardian or limited guardian of an
18 estate:

19 (1) To file within three months after the guardian's appointment a
20 verified inventory of all the property of the incapacitated person
21 which comes into the guardian's possession or knowledge, including a
22 statement of all encumbrances, liens, and other secured charges on any
23 item;

24 (2) To file annually, within (~~thirty~~) ninety days after the
25 anniversary date of the guardian's or limited guardian's appointment,
26 and also within thirty days after termination of the appointment,
27 unless the court for good cause orders a different deadline to file
28 following termination, a written verified account of the

1 administration, which account shall contain at least the following
2 information:

3 (a) Identification of property of the guardianship estate as of the
4 date of the last account or, in the case of the initial account, as of
5 the date of inventory;

6 (b) Identification of all additional property received into the
7 guardianship, including income by source;

8 (c) Identification of all expenditures made during the account
9 period by major categories;

10 (d) Any adjustments to the guardianship estate required to
11 establish its present fair market value, including gains or losses on
12 sale or other disposition and any mortgages, deeds of trust or other
13 encumbrances against the guardianship estate; and

14 (e) Identification of all property held in the guardianship estate
15 as of the date of account, the assessed value of any real property and
16 the guardian's estimate of the present fair market values of other
17 property (including the basis on which such estimate is made), and the
18 total net fair market value of the guardianship estate. In addition,
19 immediately following such statement of present fair market value, the
20 account shall set forth a statement of current amount of the guardian's
21 bond and any other court-ordered protection for the security of the
22 guardianship assets((-))i

23 (3) The court in its discretion may allow reports at intervals of
24 up to thirty-six months for estates with assets (exclusive of real
25 property) having a value of not more than twice the homestead
26 exemption. Notwithstanding contrary provisions of this section, the
27 guardian or limited guardian of an estate need not file an annual
28 report with the court if the funds of the guardianship are held for the
29 benefit of a minor in a blocked account unless the guardian requests a
30 withdrawal from such account, in which case the guardian shall provide

1 a written verified account of the administration of the guardianship
2 estate along with the guardian's petition for the withdrawal. The
3 guardian or limited guardian shall report any substantial change in
4 income or assets of the guardianship estate within thirty days of the
5 occurrence of the change. A hearing shall be scheduled for court
6 review and determination of provision for increased bond or other
7 provision in accordance with RCW 11.88.100;

8 ~~((3) If the court has made a finding as provided in RCW
9 11.88.095(5), that the person is incapacitated as a result of a
10 developmental disability that is expected to continue indefinitely and
11 the incapacitated person's estate has a value, exclusive of real
12 property, of not more than twice the homestead exemption, the court, in
13 its discretion, may allow reports at intervals up to thirty six months
14 and may modify or waive certain reporting requirements in subsection
15 (2) of this section that the court considers unduly burdensome or
16 inapplicable. The court may not waive the requirement that the
17 guardian or limited guardian report any substantial change in the
18 incapacitated person's income or assets;))~~

19 (4) To protect and preserve the guardianship estate, to apply it as
20 provided in this chapter, to account for it faithfully, to perform all
21 of the duties required by law, and at the termination of the
22 guardianship or limited guardianship, to deliver the assets of the
23 incapacitated person to the persons entitled thereto. Except as
24 provided to the contrary herein, the court may authorize a guardian or
25 limited guardian to do anything that a trustee can do under the
26 provisions of RCW 11.98.070 for a period not exceeding one year from
27 the date of the order or for a period corresponding to the interval in
28 which the guardian's or limited guardian's report is required to be
29 filed by the court pursuant to subsection (2) of this section,
30 whichever period is longer;

1 (5) To invest and reinvest the property of the incapacitated person
2 in accordance with the rules applicable to investment of trust estates
3 by trustees as provided in chapter 11.100 RCW, except that:

4 (a) No investments shall be made without prior order of the court
5 in any property other than unconditional interest bearing obligations
6 of this state or of the United States and in obligations the interest
7 and principal of which are unconditionally guaranteed by the United
8 States, and in share accounts or deposits which are insured by an
9 agency of the United States government. Such prior order of the court
10 may authorize specific investments, or, in the discretion of the court,
11 may authorize the guardian or limited guardian (~~during a period not~~
12 ~~exceeding one year following the date of the order or for a period~~
13 ~~corresponding to the interval in which the guardian's or limited~~
14 ~~guardian's report is required to be filed by the court pursuant to~~
15 ~~subsection (2) of this section, whichever period is longer,~~) to invest
16 and reinvest as provided in chapter 11.100 RCW without further order of
17 the court;

18 (b) If it is for the best interests of the incapacitated person
19 that a specific property be used by the incapacitated person rather
20 than sold and the proceeds invested, the court may so order;

21 (6) To apply to the court no later than the filing of the inventory
22 for an order authorizing disbursements on behalf of the incapacitated
23 person: PROVIDED, HOWEVER, That the guardian or limited guardian of
24 the estate, or the person, department, bureau, agency, or charitable
25 organization having the care and custody of an incapacitated person,
26 may apply to the court for an order directing the guardian or limited
27 guardian of the estate to pay to the person, department, bureau,
28 agency, or charitable organization having the care and custody of an
29 incapacitated person, or if the guardian or limited guardian of the
30 estate has the care and custody of the incapacitated person, directing

1 the guardian or limited guardian of the estate to apply an amount
2 weekly, monthly, quarterly, semi-annually, or annually, as the court
3 may direct, to be expended in the care, maintenance, and education of
4 the incapacitated person and of his or her dependents. In proper
5 cases, the court may order payment of amounts directly to the
6 incapacitated person for his or her maintenance or incidental expenses.
7 The amounts authorized under this section may be decreased or increased
8 from time to time by direction of the court. If payments are made to
9 another under an order of the court, the guardian or limited guardian
10 of the estate is not bound to see to the application thereof.

11 **Sec. 11.** RCW 11.92.043 and 1990 c 122 s 21 are each amended to
12 read as follows:

13 It shall be the duty of the guardian or limited guardian of the
14 person:

15 (1) To file within three months after appointment a personal care
16 plan for the incapacitated person which shall include (a) an assessment
17 of the incapacitated person's physical, mental, and emotional needs and
18 of such person's ability to perform or assist in activities of daily
19 living, and (b) the guardian's specific plan for meeting the identified
20 and emerging personal care needs of the incapacitated person.

21 (2) To file annually or, where a guardian of the estate has been
22 appointed, at the time an account is required to be filed under RCW
23 11.92.040, a report on the status of the incapacitated person, which
24 shall include:

25 (a) The address and name of the incapacitated person and all
26 residential changes during the period;

27 (b) The services or programs which the incapacitated person
28 receives;

29 (c) The medical status of the incapacitated person;

1 (d) The mental status of the incapacitated person;

2 (e) Changes in the functional abilities of the incapacitated
3 person;

4 (f) Activities of the guardian for the period;

5 (g) Any recommended changes in the scope of the authority of the
6 guardian;

7 (h) The identity of any professionals who have assisted the
8 incapacitated person during the period.

9 ~~((If the court has made a finding as provided in RCW 11.88.095(5),
10 that the person is incapacitated as a result of a developmental
11 disability that is expected to continue indefinitely, the court in its
12 discretion, may allow reports at intervals up to thirty-six months and
13 may modify or waive certain reporting requirements in this subsection,
14 that the court considers inapplicable or unduly burdensome. The court
15 may not waive the requirement that the guardian or limited guardian
16 report any substantial change in the incapacitated person's
17 condition.))~~

18 (3) To report to the court within thirty days any substantial
19 change in the incapacitated person's condition, or any changes in
20 residence of the incapacitated person.

21 (4) Consistent with the powers granted by the court, to care for
22 and maintain the incapacitated person in the setting least restrictive
23 to the incapacitated person's freedom and appropriate to the
24 incapacitated person's personal care needs, assert the incapacitated
25 person's rights and best interests, and if the incapacitated person is
26 a minor or where otherwise appropriate, to see that the incapacitated
27 person receives appropriate training and education and that the
28 incapacitated person has the opportunity to learn a trade, occupation,
29 or profession.

1 (5) Consistent with RCW 7.70.065, to provide timely, informed
2 consent for health care of the incapacitated person, except in the case
3 of a limited guardian where such power is not expressly provided for in
4 the order of appointment or subsequent modifying order as provided in
5 RCW 11.88.125 as now or hereafter amended, the standby guardian or
6 standby limited guardian may provide timely, informed consent to
7 necessary medical procedures if the guardian or limited guardian cannot
8 be located within four hours after the need for such consent arises.
9 No guardian, limited guardian, or standby guardian may involuntarily
10 commit for mental health treatment, observation, or evaluation an
11 alleged incapacitated person who is unable or unwilling to give
12 informed consent to such commitment unless the procedures for
13 involuntary commitment set forth in chapter 71.05 or 72.23 RCW are
14 followed. Nothing in this section shall be construed to allow a
15 guardian, limited guardian, or standby guardian to consent to:

16 (a) Therapy or other procedure which induces convulsion;

17 (b) Surgery solely for the purpose of psychosurgery;

18 (c) Other psychiatric or mental health procedures that restrict
19 physical freedom of movement, or the rights set forth in RCW 71.05.370.

20 A guardian, limited guardian, or standby guardian who believes
21 these procedures are necessary for the proper care and maintenance of
22 the incapacitated person shall petition the court for an order unless
23 the court has previously approved the procedure within the past thirty
24 days. The court may order the procedure only after an attorney is
25 appointed in accordance with RCW 11.88.045 if no attorney has
26 previously appeared, notice is given, and a hearing is held in
27 accordance with RCW 11.88.040.

28 **Sec. 12.** RCW 11.92.180 and 1990 c 122 s 36 are each amended to
29 read as follows:

1 A guardian or limited guardian shall be allowed such compensation
2 for his or her services as guardian or limited guardian as the court
3 shall deem just and reasonable. Guardians and limited guardians shall
4 not be compensated at ((public)) county or state expense. Additional
5 compensation may be allowed for other administrative costs, including
6 services of an attorney and for other services not provided by the
7 guardian or limited guardian. Where a guardian or limited guardian is
8 an attorney, the guardian or limited guardian shall separately account
9 for time for which compensation is requested for services as a guardian
10 or limited guardian as contrasted to time for which compensation for
11 legal services provided to the guardianship is requested. In all
12 cases, compensation of the guardian or limited guardian and his or her
13 expenses including attorney's fees shall be fixed by the court and may
14 be allowed at any annual or final accounting; but at any time during
15 the administration of the estate, the guardian or limited guardian or
16 his or her attorney may apply to the court for an allowance upon the
17 compensation or necessary expenses of the guardian or limited guardian
18 and for attorney's fees for services already performed. If the court
19 finds that the guardian or limited guardian has failed to discharge his
20 or her duties as such in any respect, it may deny the guardian any
21 compensation whatsoever or may reduce the compensation which would
22 otherwise be allowed.

23 NEW SECTION. **Sec. 13.** A new section is added to chapter 11.92 RCW
24 to read as follows:

25 (1) All financial institutions as defined in RCW 30.22.040(12), all
26 insurance companies holding a certificate of authority under chapter
27 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer
28 of securities under the definitions of RCW 21.20.005 (hereafter
29 individually and collectively referenced as "institution") shall

1 provide the guardian access and control over the asset(s) described in
2 (a)(vii) of this subsection, including but not limited to delivery of
3 the asset to the guardian, upon receipt of the following:

4 (a) An affidavit containing as an attachment a true and correct
5 copy of the guardian's letters of guardianship and stating:

6 (i) That as of the date of the affidavit, the affiant is a duly
7 appointed guardian with authority over assets held by the institution
8 but owned or subject to withdrawal or delivery to a client or depositor
9 of the institution;

10 (ii) The cause number of the guardianship;

11 (iii) The name of the incapacitated person and the name of the
12 client or depositor (which names shall be the same);

13 (iv) The account or the safety deposit box number or numbers;

14 (v) The address of the client or depositor;

15 (vi) The name and address of the affiant-guardian being provided
16 assets or access to assets;

17 (vii) A description of and the value of the asset or assets, or,
18 where the value cannot be readily ascertained, a reasonable estimate
19 thereof, and a statement that the guardian receives delivery or control
20 of each asset solely in its capacity as guardian;

21 (viii) The date the guardian assumed control over the assets; and

22 (ix) That a true and correct copy of the letters of guardianship
23 duly issued by a court to the guardian is attached to the affidavit;
24 and

25 (b) An envelope, with postage prepaid, addressed to the clerk of
26 the court issuing the letters of guardianship.

27 The affidavit shall be sent in the envelope by the institution to the
28 clerk of the court together with a statement signed by an agent of the
29 institution that the description of the asset set forth in the

1 affidavit appears to be accurate, and confirming in the case of cash
2 assets, the value of the asset.

3 (2) Any guardian provided with access to a safe deposit box
4 pursuant to subsection (1) of this section shall make an inventory of
5 the contents of the box and attach this inventory to the affidavit
6 before the affidavit is sent to the clerk of the court and before the
7 contents of the box are released to the guardian. Any inventory shall
8 be prepared in the presence of an employee of the institution and the
9 statement of the institution required under subsection (1) of this
10 section shall include a statement executed by the employee that the
11 inventory appears to be accurate. The institution may require payment
12 by the guardian of any fees or charges then due in connection with the
13 asset or account and of a reasonable fee for witnessing preparation of
14 the inventory and preparing the statement required by this subsection
15 or subsection (1) of this section.

16 (3) Any institution to which an affidavit complying with subsection
17 (1) of this section is submitted may rely on the affidavit without
18 inquiry and shall not be subject to any liability of any nature
19 whatsoever to any person whatsoever, including but not limited to the
20 institution's client or depositor or any other person with an ownership
21 or other interest in or right to the asset, for the reliance or for
22 providing the guardian access and control over the asset, including but
23 not limited to delivery of the asset to the guardian.

Passed the House April 26, 1991.

Passed the Senate April 25, 1991.

Approved by the Governor May 20, 1991.

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