

HOUSE BILL REPORT

SHB 1525

As Amended by the Senate

Title: An act relating to authorizing mediation in guardianship proceedings.

Brief Description: Authorizing mediation in guardianship proceedings.

Sponsors: By House Committee on Judiciary (Originally sponsored by Representatives Dickerson, Constantine and Lambert).

Brief History:

Committee Activity:

Judiciary: 2/19/99, 3/2/99 [DPS].

Floor Activity:

Passed House: 3/10/99, 98-0.

Senate Amended.

Passed Senate: 4/15/99, 48-0.

Brief Summary of Substitute Bill
<ul style="list-style-type: none">· Authorizes a court to order parties to a guardianship proceeding into mediation.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Minority Report: Without recommendation. Signed by 1 member: Representative Carrell, Republican Co-Chair.

Staff: Jim Morishima (786-7191).

Background:

A court may appoint a guardian to help an "incapacitated" person manage his or her personal or financial affairs. A person may be "incapacitated" because of old age, disability, or youth. In order to establish a guardianship, a person must file a petition with the superior court. Upon the filing of such a petition, the court must appoint a guardian ad litem to represent the best interests of the alleged incapacitated person.

Once a guardianship has been established, a person may apply to the court to have the guardianship modified or terminated. After the application has been filed, the court may (1) schedule a hearing, (2) appoint a guardian ad litem to investigate the issues raised by the application or protect the incapacitated person until the hearing, or (3) deny the application. In a hearing to modify or terminate a guardianship, the court may grant any relief it deems just and in the best interests of the incapacitated person.

Summary of Bill:

Whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, the court may order the parties subject to its jurisdiction into mediation upon a motion of the parties. Before the appointment of the guardian, a motion for mediation can be made by the incapacitated person or the guardian ad litem. After the appointment of the guardian, a motion for mediation can be made by any interested person. The court must establish the terms for the mediation and allocate the costs of the mediation among the parties and the estate of the incapacitated person as justice requires.

EFFECT OF SENATE AMENDMENT(S): The Senate amendment:

- Requires the development and implementation of training and continuing education requirements for guardians ad litem (GALs);
- Requires the development of a model grievance procedure for disputes involving a GAL, a court-appointed special advocate (CASA), or an investigator;
- Requires a GAL to disclose whether he or she has been removed from a GAL registry pursuant to a grievance or from a pending case for failure to adequately perform;
- Requires a court to specify the hourly fee and maximum amount a GAL or investigator may charge;
- Prohibits a GAL, CASA, or investigator from engaging in ex parte communications;
- Allows the removal of a GAL not selected from a rotational registry from a case in child dependency and family law proceedings upon motion of a party;
- Limits the duties of a GAL in child dependency and family law proceedings to investigating and reporting information; and

- Allows information obtained by a GAL, CASA, or investigator in family law proceedings to be discovered by the parties and the Office of the Family and Children’s Ombudsman, but protects such information from third parties.

For a more detailed description of the Senate amendment, see the bill analysis for ESSB 5447.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Guardianship proceedings often involve disputes between family members. Disputes arise throughout the process on a wide variety of issues. Courts do not have the specific authority to refer these disputes to mediation. This bill gives courts the discretionary authority to order the parties into mediation and does not affect any other existing right.

Testimony Against: None.

Testified: (In support) Representative Dickerson, prime sponsor; and Neil Sarles, King County Bar Association.

(In support with concerns) Donald Barovic, ALSO.