

# HOUSE BILL REPORT

## ESSB 5607

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to complaint procedure for the modification or termination of guardianship.

**Brief Description:** Concerning the complaint procedure for the modification or termination of guardianship.

**Sponsors:** Senate Committee on Human Services, Mental Health & Housing (originally sponsored by Senators Conway, Dammeier, Darneille, O'Ban and Padden).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 3/24/15, 4/1/15 [DPA].

#### **Brief Summary of Engrossed Substitute Bill (As Amended by Committee)**

- Creates a complaint process for the modification or termination of a guardianship.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Goodman, Hansen, Kirby, Orwall and Walkinshaw.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Shea, Assistant Ranking Minority Member; Haler and Klippert.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Rodne, Ranking Minority Member; Muri and Stokesbary.

**Staff:** Brent Campbell (786-7152).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Guardianship.

A guardianship is a legal relationship in which a guardian is appointed and empowered by the court to make decisions for an incapacitated person. This process removes decision-making authority from the incapacitated person and gives that authority to the guardian.

### Modification or Termination of a Guardianship.

A court may modify or terminate the guardianship at any time after establishment of a guardianship or appointment of a guardian. Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian.

Within 30 days of receiving an application to modify or terminate a guardianship, the court may: (1) schedule a hearing; (2) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held; or (3) deny the application without scheduling a hearing if it appears that the application is frivolous. Any denial of an application without a hearing must be in writing with the reasons for the denial explained.

In a hearing on an application to modify or terminate a guardianship, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

### The Certified Professional Guardianship Board.

The Certified Professional Guardianship Board (Board) is the regulatory authority for the practice of professional guardianship in Washington. The Board is charged with establishing the standards and criteria for the certification of professional guardians. A "professional guardian" means a guardian who is not a member of the incapacitated person's family and who charges fees for carrying out guardianship duties for three or more incapacitated persons. The Board is authorized to investigate professional guardians in order to determine whether a professional guardian has violated any statute, duty, or other requirement governing the conduct of professional guardians. The Board may also take disciplinary action and impose disciplinary sanctions based on its findings.

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### **Summary of Amended Bill:**

The application process to modify or terminate a guardianship is removed. Instead, the court may take action to modify or terminate a guardianship based on: the court's own motion; a motion by an attorney for a person or entity; a motion of a person or entity representing themselves; or a written complaint. The court may grant relief as it deems just and in the best interest of the incapacitated person in any action to modify or terminate a guardianship. An incapacitated person must be given reasonable notice of any hearing to modify or terminate a guardianship and reasonable notice of the incapacitated person's right to be represented by counsel of his or her own choosing.

A complaint may be submitted to the court by any unrepresented person or entity. The complaint must be properly addressed and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also state

facts to support the claim. The Administrative Office of the Courts must develop a model form for the complaint.

Within 14 days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

- direct the guardian to appear at a hearing in order to respond to the complaint;
- appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary;
- dismiss the complaint without scheduling a hearing;
- direct the guardian to provide a written report to the court;
- defer consideration until the next regularly scheduled hearing; or
- order other action, in the court's discretion, in addition to doing one or more of the previously listed actions.

If, after considering the complaint, the court believes that the complaint is made without justification or in bad faith, the court may levy necessary sanctions, including reasonable attorney fees, costs, fees, striking of pleadings, or other appropriate relief.

The Board may send a grievance it has received regarding an active guardian case to the court with a request that the court review the grievance and take any action the court deems necessary. This request must be treated as a complaint and the person who sent the complaint must be treated as the complainant. A copy of any order the court enters must be transmitted to the Board, and the Board must consider the court order in any further action and note the court order in any final determination.

The court must direct the clerk of the court to send a copy of the order entered to the Board for any action that involves a professional guardian.

#### **Amended Bill Compared to Engrossed Substitute Bill:**

The incapacitated person must be given reasonable notice of any hearing to modify or terminate the guardianship and reasonable notice of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

The Board is no longer required to act consistent with court orders. The Board must instead consider the court order in any further action and note the court order in any final determination.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Guardianship is a very complicated and challenging issue, and that is why a number of stakeholders were brought together to look at these issues. The Washington State Bar's elder law section, superior courts, public guardianship programs, professional guardianship groups, and many others all came together and had long range discussions regarding guardianship. Everyone agreed that guardianship needs a clear complaint procedure. Current statute does allow a person to bring complaints, but this process is not clear and this bill would be an improvement.

Section 1(5) should remain in the bill. Section 1(5) does not usurp the Board's authority, it only requires the Board to discipline in accordance with the court order. This will lead to consistent rulings. Also, saying that the Board should not follow these orders is saying that the court is doing a bad job. This is not true; the courts do a good job in guardianship cases.

There was an understanding that there could be changes to this bill. The Senate recognized that this is a work in progress. Hopefully any stakeholder disagreement on Section 1(5) will not stop this much needed reform on guardianship.

(In support with concerns) Remove Section 1(5). The standards of review for court orders are completely different than the Board. The Board has a broad duty to review professional conduct, and it should be able to act autonomously with the court. It would be a mistake to move forward with Section 1(5).

Modifying a guardianship is completely different from a complaint procedure. A complaint procedure should be put in the code where it deals with court authority over guardians.

Sanctions should not be available against those who raise complaints. Sanctions might lead to a chilling effect where people do not report abuse.

(Opposed) There are many horror stories about professional guardians. The public doesn't need any more laws to protect guardians. The public needs help to protect vulnerable adults from guardians. Professional guardians are violating their duties, and the courts just do not have funding to do proper investigations. The Board has people to investigate these allegations the Board just needs more money so it can do its job.

**Persons Testifying:** (In support) Senator Conway, prime sponsor; Dan Smerken and Steve Lindstrom, Washington Association of Professional Guardians; Deborah Jameson; and Chris Neil.

(In support with concerns) Doug Schafer; Tom Goldsmith; David Lord, Disability Rights Washington; and Robert Nettleton, Washington State Bar Association.

(Opposed) Claudia Donnelly; and Tina Baldwin.

**Persons Signed In To Testify But Not Testifying:** None.