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HOUSE BILL 1525

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Dickerson, Constantine and Lambert

Read first time 01/27/1999. Referred to Committee on Judiciary.

1            AN ACT Relating to authorizing mediation in guardianship  
2 proceedings; and amending RCW 11.88.090 and 11.88.120.

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

4            **Sec. 1.** RCW 11.88.090 and 1996 c 249 s 10 are each amended to read  
5 as follows:

6            (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010  
7 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and  
8 11.92.180 shall affect or impair the power of any court to appoint a  
9 guardian ad litem to defend the interests of any incapacitated person  
10 interested in any suit or matter pending therein, or to commence and  
11 prosecute any suit in his or her behalf.

12            (2) Whenever it appears that the best interests of the  
13 incapacitated person would be served, the court may:

14            (a) Require any party or other person subject to the jurisdiction  
15 of the court to submit to mediation;

16            (b) Establish the terms for the mediation; and

17            (c) Allocate the cost of the mediation as justice requires among  
18 the parties or other persons subject to the jurisdiction of the court.

1 If the mediation authorized by this subsection does not result in  
2 an agreement approved by the court, the court retains the right to  
3 appoint a guardian ad litem as otherwise permitted by law. This  
4 subsection shall not apply to the mandatory appointment of a guardian  
5 ad litem under subsection (3) of this section.

6 (3) Upon receipt of a petition for appointment of guardian or  
7 limited guardian, except as provided herein, the court shall appoint a  
8 guardian ad litem to represent the best interests of the alleged  
9 incapacitated person, who shall be a person found or known by the court  
10 to:

11 (a) Be free of influence from anyone interested in the result of  
12 the proceeding; and

13 (b) Have the requisite knowledge, training, or expertise to perform  
14 the duties required by this section.

15 The guardian ad litem shall within five days of receipt of notice  
16 of appointment file with the court and serve, either personally or by  
17 certified mail with return receipt, each party with a statement  
18 including: His or her training relating to the duties as a guardian ad  
19 litem; his or her criminal history as defined in RCW 9.94A.030 for the  
20 period covering ten years prior to the appointment; his or her hourly  
21 rate, if compensated; whether the guardian ad litem has had any contact  
22 with a party to the proceeding prior to his or her appointment; and  
23 whether he or she has an apparent conflict of interest. Within three  
24 days of the later of the actual service or filing of the guardian ad  
25 litem's statement, any party may set a hearing and file and serve a  
26 motion for an order to show cause why the guardian ad litem should not  
27 be removed for one of the following three reasons: (i) Lack of  
28 expertise necessary for the proceeding; (ii) an hourly rate higher than  
29 what is reasonable for the particular proceeding; or (iii) a conflict  
30 of interest. Notice of the hearing shall be provided to the guardian  
31 ad litem and all parties. If, after a hearing, the court enters an  
32 order replacing the guardian ad litem, findings shall be included,  
33 expressly stating the reasons for the removal. If the guardian ad  
34 litem is not removed, the court has the authority to assess to the  
35 moving party, attorneys' fees and costs related to the motion. The  
36 court shall assess attorneys' fees and costs for frivolous motions.

37 No guardian ad litem need be appointed when a parent is petitioning  
38 for a guardian or a limited guardian to be appointed for his or her  
39 minor child and the minority of the child, as defined by RCW 11.92.010,

1 is the sole basis of the petition. The order appointing the guardian  
2 ad litem shall recite the duties set forth in subsection (~~((4))~~) (5) of  
3 this section. The appointment of a guardian ad litem shall have no  
4 effect on the legal competency of the alleged incapacitated person and  
5 shall not overcome the presumption of competency or full legal and  
6 civil rights of the alleged incapacitated person.

7 (~~((3))~~) (4)(a) The superior court of each county shall develop and  
8 maintain a registry of persons who are willing and qualified to serve  
9 as guardians ad litem in guardianship matters. The court shall choose  
10 as guardian ad litem a person whose name appears on the registry in a  
11 system of consistent rotation, except in extraordinary circumstances  
12 such as the need for particular expertise. The court shall develop  
13 procedures for periodic review of the persons on the registry and for  
14 probation, suspension, or removal of persons on the registry for  
15 failure to perform properly their duties as guardian ad litem. In the  
16 event the court does not select the person next on the list, it shall  
17 include in the order of appointment a written reason for its decision.

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

19 (i) Present a written statement outlining his or her background and  
20 qualifications. The background statement shall include, but is not  
21 limited to, the following information:

22 (A) Level of formal education;

23 (B) Training related to the guardian ad litem's duties;

24 (C) Number of years' experience as a guardian ad litem;

25 (D) Number of appointments as a guardian ad litem and the county or  
26 counties of appointment;

27 (E) Criminal history, as defined in RCW 9.94A.030; and

28 (F) Evidence of the person's knowledge, training, and experience in  
29 each of the following: Needs of impaired elderly people, physical  
30 disabilities, mental illness, developmental disabilities, and other  
31 areas relevant to the needs of incapacitated persons, legal procedure,  
32 and the requirements of chapters 11.88 and 11.92 RCW.

33 The written statement of qualifications shall include a statement  
34 of the number of times the guardian ad litem has been removed for  
35 failure to perform his or her duties as guardian ad litem; and

36 (ii) Complete the model training program as described in (d) of  
37 this subsection.

38 (c) The background and qualification information shall be updated  
39 annually.

1 (d) The department of social and health services shall convene an  
2 advisory group to develop a model guardian ad litem training program  
3 and shall update the program biennially. The advisory group shall  
4 consist of representatives from consumer, advocacy, and professional  
5 groups knowledgeable in developmental disabilities, neurological  
6 impairment, physical disabilities, mental illness, aging, legal, court  
7 administration, the Washington state bar association, and other  
8 interested parties.

9 (e) The superior court shall require utilization of the model  
10 program developed by the advisory group as described in (d) of this  
11 subsection, to assure that candidates applying for registration as a  
12 qualified guardian ad litem shall have satisfactorily completed  
13 training to attain these essential minimum qualifications to act as  
14 guardian ad litem.

15 (~~(4)~~) (5) The guardian ad litem appointed pursuant to this  
16 section shall have the following duties:

17 (a) To meet and consult with the alleged incapacitated person as  
18 soon as practicable following appointment and explain, in language  
19 which such person can reasonably be expected to understand, the  
20 substance of the petition, the nature of the resultant proceedings, the  
21 person's right to contest the petition, the identification of the  
22 proposed guardian or limited guardian, the right to a jury trial on the  
23 issue of his or her alleged incapacity, the right to independent legal  
24 counsel as provided by RCW 11.88.045, and the right to be present in  
25 court at the hearing on the petition;

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

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

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

34 (ii) The steps the proposed guardian intends to take or has taken  
35 to identify and meet the needs of the alleged incapacitated person;

36 (d) To consult as necessary to complete the investigation and  
37 report required by this section with those known relatives, friends, or  
38 other persons the guardian ad litem determines have had a significant,  
39 continuing interest in the welfare of the alleged incapacitated person;

1 (e) To investigate alternate arrangements made, or which might be  
2 created, by or on behalf of the alleged incapacitated person, such as  
3 revocable or irrevocable trusts, or durable powers of attorney; whether  
4 good cause exists for any such arrangements to be discontinued; and why  
5 such arrangements should not be continued or created in lieu of a  
6 guardianship;

7 (f) To provide the court with a written report which shall include  
8 the following:

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

11 (ii) A description of the needs of the incapacitated person for  
12 care and treatment, the probable residential requirements of the  
13 alleged incapacitated person and the basis upon which these findings  
14 were made;

15 (iii) An evaluation of the appropriateness of the guardian or  
16 limited guardian whose appointment is sought and a description of the  
17 steps the proposed guardian has taken or intends to take to identify  
18 and meet current and emerging needs of the incapacitated person;

19 (iv) A description of any alternative arrangements previously made  
20 by the alleged incapacitated person or which could be made, and whether  
21 and to what extent such alternatives should be used in lieu of a  
22 guardianship, and if the guardian ad litem is recommending  
23 discontinuation of any such arrangements, specific findings as to why  
24 such arrangements are contrary to the best interest of the alleged  
25 incapacitated person;

26 (v) A description of the abilities of the alleged incapacitated  
27 person and a recommendation as to whether a guardian or limited  
28 guardian should be appointed. If appointment of a limited guardian is  
29 recommended, the guardian ad litem shall recommend the specific areas  
30 of authority the limited guardian should have and the limitations and  
31 disabilities to be placed on the incapacitated person;

32 (vi) An evaluation of the person's mental ability to rationally  
33 exercise the right to vote and the basis upon which the evaluation is  
34 made;

35 (vii) Any expression of approval or disapproval made by the alleged  
36 incapacitated person concerning the proposed guardian or limited  
37 guardian or guardianship or limited guardianship;

38 (viii) Identification of persons with significant interest in the  
39 welfare of the alleged incapacitated person who should be advised of

1 their right to request special notice of proceedings pursuant to RCW  
2 11.92.150; and

3 (ix) Unless independent counsel has appeared for the alleged  
4 incapacitated person, an explanation of how the alleged incapacitated  
5 person responded to the advice of the right to jury trial, to  
6 independent counsel and to be present at the hearing on the petition.

7 Within forty-five days after notice of commencement of the  
8 guardianship proceeding has been served upon the guardian ad litem, and  
9 at least fifteen days before the hearing on the petition, unless an  
10 extension or reduction of time has been granted by the court for good  
11 cause, the guardian ad litem shall file its report and send a copy to  
12 the alleged incapacitated person and his or her counsel, spouse, all  
13 children not residing with a notified person, those persons described  
14 in (f)(viii) of this subsection, and persons who have filed a request  
15 for special notice pursuant to RCW 11.92.150. If the guardian ad litem  
16 needs additional time to finalize his or her report, then the guardian  
17 ad litem shall petition the court for a postponement of the hearing or,  
18 with the consent of all other parties, an extension or reduction of  
19 time for filing the report. If the hearing does not occur within sixty  
20 days of filing the petition, then upon the two-month anniversary of  
21 filing the petition and on or before the same day of each following  
22 month until the hearing, the guardian ad litem shall file interim  
23 reports summarizing his or her activities on the proceeding during that  
24 time period as well as fees and costs incurred;

25 (g) To advise the court of the need for appointment of counsel for  
26 the alleged incapacitated person within five court days after the  
27 meeting described in (a) of this subsection unless (i) counsel has  
28 appeared, (ii) the alleged incapacitated person affirmatively  
29 communicated a wish not to be represented by counsel after being  
30 advised of the right to representation and of the conditions under  
31 which court-provided counsel may be available, or (iii) the alleged  
32 incapacitated person was unable to communicate at all on the subject,  
33 and the guardian ad litem is satisfied that the alleged incapacitated  
34 person does not affirmatively desire to be represented by counsel.

35 ~~((+5))~~ (6) If the petition is brought by an interested person or  
36 entity requesting the appointment of some other qualified person or  
37 entity and a prospective guardian or limited guardian cannot be found,  
38 the court shall order the guardian ad litem to investigate the  
39 availability of a possible guardian or limited guardian and to include

1 the findings in a report to the court pursuant to subsection (~~(4)~~)  
2 (5)(f) of this section.

3 (~~(6)~~) (7) The parties to the proceeding may file responses to the  
4 guardian ad litem report with the court and deliver such responses to  
5 the other parties and the guardian ad litem at any time up to the  
6 second day prior to the hearing. If a guardian ad litem fails to file  
7 his or her report in a timely manner, the hearing shall be continued to  
8 give the court and the parties at least fifteen days before the hearing  
9 to review the report. At any time during the proceeding upon motion of  
10 any party or on the court's own motion, the court may remove the  
11 guardian ad litem for failure to perform his or her duties as specified  
12 in this chapter, provided that the guardian ad litem shall have five  
13 days' notice of any motion to remove before the court enters such  
14 order. In addition, the court in its discretion may reduce a guardian  
15 ad litem's fee for failure to carry out his or her duties.

16 (~~(7)~~) (8) The court appointed guardian ad litem shall have the  
17 authority, in the event that the alleged incapacitated person is in  
18 need of emergency life-saving medical services, and is unable to  
19 consent to such medical services due to incapacity pending the hearing  
20 on the petition to give consent for such emergency life-saving medical  
21 services on behalf of the alleged incapacitated person.

22 (~~(8)~~) (9) The court-appointed guardian ad litem shall have the  
23 authority to move for temporary relief under chapter 7.40 RCW to  
24 protect the alleged incapacitated person from abuse, neglect,  
25 abandonment, or exploitation, as those terms are defined in RCW  
26 74.34.020, or to address any other emergency needs of the alleged  
27 incapacitated person. Any alternative arrangement executed before  
28 filing the petition for guardianship shall remain effective unless the  
29 court grants the relief requested under chapter 7.40 RCW, or unless,  
30 following notice and a hearing at which all parties directly affected  
31 by the arrangement are present, the court finds that the alternative  
32 arrangement should not remain effective.

33 (~~(9)~~) (10) The guardian ad litem shall receive a fee determined  
34 by the court. The fee shall be charged to the alleged incapacitated  
35 person unless the court finds that such payment would result in  
36 substantial hardship upon such person, in which case the county shall  
37 be responsible for such costs: PROVIDED, That if no guardian or  
38 limited guardian is appointed the court may charge such fee to the  
39 petitioner or the alleged incapacitated person, or divide the fee, as

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

5 ~~((10))~~ (11) Upon the presentation of the guardian ad litem report  
6 and the entry of an order either dismissing the petition for  
7 appointment of guardian or limited guardian or appointing a guardian or  
8 limited guardian, the guardian ad litem shall be dismissed and shall  
9 have no further duties or obligations unless otherwise ordered by the  
10 court. If the court orders the guardian ad litem to perform further  
11 duties or obligations, they shall not be performed at county expense.

12 ~~((11))~~ (12) The guardian ad litem shall appear in person at all  
13 hearings on the petition unless all parties provide a written waiver of  
14 the requirement to appear.

15 ~~((12))~~ (13) At any hearing the court may consider whether any  
16 person who makes decisions regarding the alleged incapacitated person  
17 or estate has breached a statutory or fiduciary duty.

18 **Sec. 2.** RCW 11.88.120 and 1991 c 289 s 7 are each amended to read  
19 as follows:

20 (1) At any time after establishment of a guardianship or  
21 appointment of a guardian, the court may, upon the death of the  
22 guardian or limited guardian, or, for other good reason, modify or  
23 terminate the guardianship or replace the guardian or limited guardian.

24 (2) Any person, including an incapacitated person, may apply to the  
25 court for an order to modify or terminate a guardianship or to replace  
26 a guardian or limited guardian. If applicants are represented by  
27 counsel, counsel shall move for an order to show cause why the relief  
28 requested should not be granted. If applicants are not represented by  
29 counsel, they may move for an order to show cause, or they may deliver  
30 a written request to the clerk of the court.

31 (3) By the next judicial day after receipt of an unrepresented  
32 person's request to modify or terminate a guardianship order, or to  
33 replace a guardian or limited guardian, the clerk shall deliver the  
34 request to the court. The court may (a) direct the clerk to schedule  
35 a hearing, (b) appoint a guardian ad litem to investigate the issues  
36 raised by the application or to take any emergency action the court  
37 deems necessary to protect the incapacitated person until a hearing can  
38 be held, ~~((or))~~ (c) deny the application without scheduling a hearing,

1 if it appears based on documents in the court file that the application  
2 is frivolous, or (d) order a mediation under RCW 11.88.090(2). Any  
3 denial of an application without a hearing shall be in writing with the  
4 reasons for the denial explained. A copy of the order shall be mailed  
5 by the clerk to the applicant, to the guardian, and to any other person  
6 entitled to receive notice of proceedings in the matter. Unless within  
7 thirty days after receiving the request from the clerk the court  
8 directs otherwise, the clerk shall schedule a hearing on the request  
9 and mail notice to the guardian, the incapacitated person, the  
10 applicant, all counsel of record, and any other person entitled to  
11 receive notice of proceedings in the matter.

12 (4) In a hearing on an application to modify or terminate a  
13 guardianship, or to replace a guardian or limited guardian, the court  
14 may grant such relief as it deems just and in the best interest of the  
15 incapacitated person.

16 (5) The court may order persons who have been removed as guardians  
17 to deliver any property or records belonging to the incapacitated  
18 person in accordance with the court's order. Similarly, when guardians  
19 have died or been removed and property or records of an incapacitated  
20 person are being held by any other person, the court may order that  
21 person to deliver it in accordance with the court's order.  
22 Disobedience of an order to deliver shall be punishable as contempt of  
23 court.

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