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SENATE BILL 5691

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Bailey, Rivers, Becker, and Warnick

Read first time 02/02/17. Referred to Committee on Health Care.

1            AN ACT Relating to modifying or terminating a guardianship when a  
2 less restrictive alternative is available to provide for the needs of  
3 an incapacitated person; amending RCW 11.88.120; and creating a new  
4 section.

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

6            NEW SECTION.            **Sec. 1.**            The legislature finds that an  
7 incapacitated person should retain basic rights enjoyed by the  
8 public, including the freedom of associating with family and friends.  
9 A court or guardian should not remove or restrict the rights of an  
10 incapacitated person under a guardianship except when absolutely  
11 necessary to protect the incapacitated person. The legislature finds  
12 that less restrictive alternatives are preferred to guardianships and  
13 limited guardianships when they provide adequate support for an  
14 incapacitated person's needs. The legislature also recognizes that  
15 less restrictive alternatives are typically less expensive to  
16 administer than a guardianship, thereby preserving state resources,  
17 court resources, and the incapacitated person's estate. A less  
18 restrictive alternative may be in the form of a power of attorney, or  
19 a trust, or other legal, financial, or medical directives that allow  
20 an incapacitated person to enjoy a greater degree of individual  
21 liberty and decision making than for persons under a guardianship.

1       **Sec. 2.** RCW 11.88.120 and 2015 c 293 s 1 are each amended to  
2 read as follows:

3       (1)(a) At any time after establishment of a guardianship or  
4 appointment of a guardian, the court may, upon the death of the  
5 guardian or limited guardian, or, for other good reason, modify or  
6 terminate the guardianship or replace the guardian or limited  
7 guardian or modify the authority of a guardian or limited guardian.  
8 Such action may be taken based on the court's own motion, based on a  
9 motion by an attorney for a person or entity, based on a motion of a  
10 person or entity representing themselves, or based on a written  
11 complaint, as described in this section. The court may grant relief  
12 under this section as it deems just and in the best interest of the  
13 incapacitated person. For any hearing to modify or terminate a  
14 guardianship, the incapacitated person shall be given reasonable  
15 notice of the hearing and of the incapacitated person's right to be  
16 represented at the hearing by counsel of his or her own choosing.

17       (b) The court must modify or terminate a guardianship when a less  
18 restrictive alternative, such as a power of attorney or a trust, will  
19 adequately provide for the needs of the incapacitated person. In any  
20 motion to modify or terminate a guardianship with a less restrictive  
21 alternative, the court should consider any recent medical reports;  
22 whether a condition is reversible; testimony of the incapacitated  
23 person; testimony of persons most closely related by blood, marriage,  
24 or state registered domestic partnership to the alleged incapacitated  
25 person; testimony of persons entitled to notice of special  
26 proceedings under RCW 11.92.150; and other needs of the incapacitated  
27 person that are not adequately served in a guardianship or limited  
28 guardianship that may be better served with a less restrictive  
29 alternative. All motions under the provisions of this subsection  
30 (1)(b) must be heard within sixty days unless an extension of time is  
31 requested by a party or a guardian ad litem within such sixty-day  
32 period and granted for good cause shown. An extension granted for  
33 good cause should not exceed an additional sixty days from the date  
34 of the request of the extension, and the court must set a new hearing  
35 date.

36       (2)(a) An unrepresented person or entity may submit a complaint  
37 to the court. Complaints must be addressed to one of the following  
38 designees of the court: The clerk of the court having jurisdiction in  
39 the guardianship, the court administrator, or the guardianship  
40 monitoring program, and must identify the complainant and the

1 incapacitated person who is the subject of the guardianship. The  
2 complaint must also provide the complainant's address, the case  
3 number (if available), and the address of the incapacitated person  
4 (if available). The complaint must state facts to support the claim.

5 (b) By the next judicial day after receipt of a complaint from an  
6 unrepresented person, the court's designee must ensure the original  
7 complaint is filed and deliver the complaint to the court.

8 (c) Within fourteen days of being presented with a complaint, the  
9 court must enter an order to do one or more of the following actions:

10 (i) To show cause, with fourteen days' notice, directing the  
11 guardian to appear at a hearing set by the court in order to respond  
12 to the complaint;

13 (ii) To appoint a guardian ad litem to investigate the issues  
14 raised by the complaint or to take any emergency action the court  
15 deems necessary to protect the incapacitated person until a hearing  
16 can be held;

17 (iii) To dismiss the complaint without scheduling a hearing, if  
18 it appears to the court that the complaint: Is without merit on its  
19 face; is filed in other than good faith; is filed for an improper  
20 purpose; regards issues that have already been adjudicated; or is  
21 frivolous. In making a determination, the court may review the matter  
22 and consider previous behavior of the complainant that is documented  
23 in the guardianship record;

24 (iv) To direct the guardian to provide, in not less than fourteen  
25 days, a written report to the court on the issues raised in the  
26 complaint;

27 (v) To defer consideration of the complaint until the next  
28 regularly scheduled hearing in the guardianship, if the date of that  
29 hearing is within the next three months, provided that there is no  
30 indication that the incapacitated person will suffer physical,  
31 emotional, financial, or other harm as a result of the court's  
32 deferral of consideration;

33 (vi) To order other action, in the court's discretion, in  
34 addition to doing one or more of the actions set out in this  
35 subsection.

36 (d) If after consideration of the complaint, the court believes  
37 that the complaint is made without justification or for reason to  
38 harass or delay or with malice or other bad faith, the court has the  
39 power to levy necessary sanctions, including but not limited to the

1 imposition of reasonable attorney fees, costs, fees, striking  
2 pleadings, or other appropriate relief.

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

11 (4) The administrative office of the courts must develop and  
12 prepare(~~+~~), in consultation with interested persons, a model form  
13 for the complaint described in subsection (2)(a) of this section and  
14 a model form for the order that must be issued by the court under  
15 subsection (2)(c) of this section.

16 (5) The board may send a grievance it has received regarding an  
17 active guardian case to the court's designee with a request that the  
18 court review the grievance and take any action the court deems  
19 necessary. This type of request from the board must be treated as a  
20 complaint under this section and the person who sent the complaint  
21 must be treated as the complainant. The court must direct the clerk  
22 to transmit a copy of its order to the board. The board must consider  
23 the court order when taking any further action and note the court  
24 order in any final determination.

25 (6) In any court action under this section that involves a  
26 professional guardian, the court must direct the clerk of the court  
27 to send a copy of the order entered under this section to the board.

28 (7) The definitions in this subsection apply throughout this  
29 section unless the context clearly requires otherwise.

30 (a) "Board" means the certified professional guardianship board.

31 (b) "Complaint" means a written submission by an unrepresented  
32 person or entity, who is referred to as the complainant.

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