## **Civil Rights & Judiciary Committee**

# HB 1259

**Brief Description**: Concerning the uniform guardianship, conservatorship, and other protective arrangements act.

**Sponsors**: Representatives Jinkins, Harris, Tharinger, Robinson, Kilduff, Appleton and Wylie; by request of Uniform Law Commission.

## **Brief Summary of Bill**

- Adopts the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act which governs guardianships, conservatorships, and protective arrangements for both minors and adults.
- Repeals current law provisions regarding guardianships.

#### Hearing Date: 1/30/19

Staff: Ingrid Lewis (786-7289).

#### **Background**:

#### Guardianship.

A guardian is an individual or entity appointed and empowered by the court to make decisions for either the person or the estate, or both, of an incapacitated person or minor. The court may also establish a limited guardianship for persons who need protection or assistance because of an incapacity, but who are capable of managing some of their affairs.

A guardian of an incapacitated person's estate is responsible for managing the person's property and finances. A guardian of the person is responsible for assessing and meeting the person's physical, mental, and emotional needs. Legislative intent emphasizes that guardianships are utilized only when clearly warranted and are to be fashioned such that a person's liberty and autonomy are restricted to the minimum extent necessary.

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.

## Guardian ad Litem.

A guardian ad litem (GAL) is a person appointed in a court proceeding to represent the best interests of a party or to investigate and report to the court on relevant matters. A GAL position is temporary and expires when the case is completed or dismissed. A court must appoint a GAL in an adult guardianship proceeding and may use its discretion whether to appoint a GAL in minor guardianship proceedings.

## Evidence, Standard of Proof, and Findings.

A person may be deemed incapacitated when the court determines that there is a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. Incapacity as to the person's estate means the person is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

A written report from one of a variety of professionals with expertise is required. The report must include information on the alleged incapacitated person's medical history, including a psychological or psychiatric report; the physician's or psychologist's findings as to the conditions of the alleged incapacitated person; and opinions on the specific assistance the alleged incapacitated person needs.

The standard of proof to be used in a contested guardianship hearing is clear, cogent, and convincing evidence.

## Duties of a Guardian.

Guardians and limited guardians have specific statutory duties. Among those duties are requirements to file with the court an initial personal care plan or inventory for the incapacitated person and annual reports regarding the status of the incapacitated person.

## Monitoring of a Guardianship.

Courts retain ultimate responsibility for protecting an incapacitated person and are responsible for monitoring guardianships. These monitoring practices vary widely by jurisdiction.

## Standby Guardians.

A standby guardian is designated by a guardian at the time of appointment. The standby guardian may serve as the guardian during a planned absence of the guardian. If the guardian dies or becomes incapacitated, the standby guardian has the all the powers, duties, and obligations of the guardian. Within 30 days of the death or adjudication of the guardian, the standby guardian must file a petition for appointment of a substitute guardian in the court where the guardianship is being administered.

## Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

The National Conference of Commissioners on Uniform State Laws develops and proposes laws in subject matters where it believes uniformity between states is desirable. The Commissioners approved the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act in 2017, and it has been enacted in Maine and introduced in New Mexico.

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

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (Act), as adapted for Washington, is enacted, and existing statutory provisions related to guardianship are repealed. The Act covers guardianships, conservatorships, and protective arrangements for both minors and adults.

Throughout the Act, the term "guardian" refers to a person appointed by a court to make decisions about the care and well-being of another person. The term "conservator" refers to a person appointed by a court to manage the property of another person.

The Act eliminates the term incapacitated person and replaces it with "adult subject to guardianship," "minor subject to guardianship," and "individual subject to conservatorship" instead.

#### Guardian ad Litem.

The Act makes the appointment of a guardian ad litem (GAL) optional, changing the mandatory requirement that a GAL be appointed in an adult guardianship proceeding. The court may appoint a GAL at any time if it determines that the individual's interests would not be adequately represented otherwise.

#### Evidence, Standard of Proof, and Findings.

Rather than utilize the functional impairment standard for considering whether a person is in need of a guardian and/or conservator, the Act instead requires that the following three elements be established: (1) the adult cannot meet essential requirements for physical health, safety, or self-care; (2) guardianship is the least restrictive approach to meeting the adult's identified need; and (3) the adult cannot receive and evaluate information or make or communicate decisions even with appropriate supportive services, technological assistance, or supported decision making.

The requirement that a qualified health care professional provide a report to the court is eliminated.

The standard of clear, cogent, and convincing remains.

#### Duties of a Guardian.

Consistent with current law, the Act outlines the duties of a guardian for an adult. It expands on the current provision as it relates to the guardian's duty to promote the person's involvement in decisionmaking.

#### Monitoring of a Guardianship.

The Act requires the court to establish procedures for monitoring guardians' reports. The Act also expands the list of persons who may be notified of a petition for appointment of a guardian or conservator. It requires that the court, when appointing a guardian, specify the persons who must receive notice of key events or conditions that could affect the well-being of the person under guardianship or conservatorship, and who can help to monitor the guardian and protect the interests of the person subject to guardianship or conservatorship.

#### Standby Guardians.

In addition to standby guardians, the court is authorized to appoint the following:

- a successor guardian or conservator, effective either upon appointment of the original guardian or conservator or upon a future contingency;
- a temporary guardian who would fill in for a regular guardian, whose powers are suspended for the duration of the appointment; or
- an emergency guardian or conservator who is appointed in an urgent situation in which there is no guardian or conservator but the needs of the individual are emergent.

#### Minor Guardianships.

The Act allows for temporary delegation of powers by a parent; it does not create a guardianship, nor does it allow a parent to grant powers the parent does not possess.

Appropriation: None.

Fiscal Note: Requested on January 23, 2019.

Effective Date: The bill takes effect on January 1, 2020.