

SENATE BILL REPORT

ESHB 1510

AS REPORTED BY COMMITTEE ON CHILDREN & FAMILY SERVICES,
APRIL 4, 1991

Brief Description: Changing provisions relating to guardianship.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives R. Meyers and Padden).

HOUSE COMMITTEE ON JUDICIARY

HOUSE COMMITTEE ON APPROPRIATIONS

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: Do pass as amended.

Signed by Senators Roach, Chairman; L. Smith, Vice Chairman; Stratton, and Talmadge.

Staff: Lidia Mori (786-7755)

Hearing Dates: April 3, 1991; April 4, 1991

BACKGROUND:

In 1990, the Legislature passed a comprehensive revision of the guardianship statutes.

Right to vote. People subject to a full guardianship are presumed incompetent to vote and lose the right to vote unless the court specifically finds that the person is rationally capable of exercising the franchise. A person subject to a limited guardianship can lose the right to vote when in the court's discretion the court determines that the person cannot rationally exercise the franchise.

Attorneys' notice of appearance. Attorneys who claim to represent the alleged incapacitated person may enter a notice of appearance to represent the person.

Superior court training programs. The superior court in each county must adopt a guardian ad litem training program by June 1, 1991. An advisory group of agencies must adopt a model program. If the counties fail to adopt a training program by September 1, 1991, then the counties must use the model program developed by the advisory group.

Guardian's duties to developmentally disabled, incapacitated persons. The court must determine whether a person is incapacitated due to a developmental disability and whether the incapacity is likely to continue indefinitely. If so, then the person's guardian, rather than file annual verified

accounts of the administration, may file an account every 36 months, depending upon the value of the person's estate, and may be relieved of other reporting requirements in the court's discretion.

Standby guardians. A person appointed as a guardian must designate a standby guardian and file the designation with the court.

Deadlines for filing verified accounting. A court may terminate a guardianship if the guardianship is no longer necessary. No specific provision exists regarding the deadline for filing a verified account of the administration or the type of verified account that must be filed under this circumstance. A separate provision in another chapter on guardianship administration provides for a 30-day filing period.

The guardian must file an annual verified account of the administration within 30 days of the anniversary date of the guardian's appointment.

Payment of guardians ad litem and guardians. Current law provides that guardians will not be paid at "public" expense.

Guardian's power to make investments. The court in its discretion may authorize a guardian to make investments for the ward as provided in the trust statutes without specific approval for each investment during one period or during the reporting interval whichever is longer. If the court does not authorize the guardian to make a variety of investments, the guardian may only invest in unconditional interest-bearing state or federal securities.

Financial institution's duties toward the incapacitated person and the guardian. A financial institution may hold assets of the incapacitated person to which the guardian may seek access. Issues may arise regarding the financial institution's right to permit the guardian to have access to the property of the incapacitated person's assets at the institution and the liability of the institution for releasing the assets to the guardian.

SUMMARY:

Several technical and substantive changes are made to the guardianship provisions adopted in 1990.

Right to vote. An incapacitated person under a full or limited guardianship shall not be considered incompetent to vote and will not lose the right to vote unless a court specifically finds that the person is incapable of rationally exercising the franchise. This amendment reverses last year's presumption regarding voting rights.

Attorney's petition for appointment as guardian. An attorney who claims to represent the alleged incapacitated person must petition to be appointed as the person's representative.

Superior court training programs. The superior courts may adopt a model training program for guardians but they are not required to do so. If a court has not adopted a guardianship training program by September 1, 1991, the candidate for inclusion in the registry of guardians must have completed a model training program as developed by DSHS, Aging and Adult Services Administration Advisory Group.

Guardians' duties to developmentally disabled, incapacitated persons. The special provisions governing guardians of people who are incapacitated due to a developmental disability are stricken. Guardians of the developmentally disabled must comply with the reporting requirements within the time set for other guardians.

Standby guardians. Guardians must give the court a notice designating a standby guardian, including the standby guardian's name, address, zip code, and telephone number.

Deadlines for filing verified accounting. When a guardianship is being terminated under court order, the guardian must file within 30 days of the date of termination a final verified account of the administration, unless the court orders a different deadline for good cause. The account must contain the same information as required for an intermediate verified account of the estate administration and an intermediate personal care status report.

The guardian must annually file a written verified account of the administration within 90, instead of 30, days of the anniversary date of the guardian's appointment.

Payment of guardians. Guardians or limited guardians must not be paid at county or state expense.

Guardian's power to make investments. The one year or interval reporting limitation upon the authority of the guardian to make investments for the incapacitated person without prior court approval is removed. The court in its discretion may authorize a guardian to invest on behalf of the person without further court order approving the investments.

Financial institution's duties toward the incapacitated person and the guardian. A guardian may obtain access to the incapacitated person's assets deposited at a financial institution but must prepare an affidavit to obtain those assets and must prepare an inventory of the assets. An employee of the financial institution must observe the inventory and file a statement that the inventory appears accurate. The guardian must forward a copy of the affidavit and the inventory list to the court. A financial institution may charge the guardian a fee for the inventory and the statement. A financial institution is not subject to liability for relying upon the guardian's affidavit and for delivering the assets to the guardian.

Appropriation: none

Revenue: none

Fiscal Note: available

SUMMARY OF PROPOSED SENATE AMENDMENTS:

Notice that a guardianship has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. The notice shall be served not more than five days after the petition has been filed. All petitions filed under the provisions of this section shall be heard within 60 days unless an extension of time is requested and granted.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally on the alleged incapacitated person, if over 14 years of age and served upon the guardian ad litem.

Within 45 days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem and at least ten days before the hearing on the petition, the guardian ad litem shall file its report.

When a court imposes a full guardianship for an incapacitated person, the person shall be considered incompetent for purposes of rationally exercising the right to vote unless the court specifically finds the person is rationally capable of exercising the franchise.

TESTIMONY FOR:

The Committee to Revise Guardianship Provisions supports these changes to the guardianship statute. They expand the time lines and make the entire guardianship process more workable.

TESTIMONY AGAINST: None

TESTIFIED: Karen Thompson, Chairperson, WA State Bar Assn.
Committee to Revise Guardianship Provisions