

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1053

Chapter 329, Laws of 2011

(partial veto)

62nd Legislature
2011 Regular Session

GUARDIANSHIP--TASK FORCE RECOMMENDATIONS

EFFECTIVE DATE: 07/22/11

Passed by the House April 21, 2011
Yeas 57 Nays 40

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 21, 2011
Yeas 46 Nays 0

BRAD OWEN

President of the Senate

Approved May 12, 2011, 2:04 p.m., with
the exception of Section 11, which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is
certify that the attached is
SUBSTITUTE HOUSE BILL 1053 as
passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 13, 2011

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1053

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By House Judiciary (originally sponsored by Representatives Moeller, Kenney, Ladenburg, Appleton, Roberts, Darneille, and Upthegrove; by request of Washington State Bar Association)

READ FIRST TIME 02/01/11.

1 AN ACT Relating to the implementation of recommendations from the
2 Washington state bar association elder law section's executive
3 committee report of the guardianship task force; amending RCW
4 11.88.020, 11.88.030, 11.92.043, 11.88.095, 11.88.125, 11.88.140,
5 11.92.053, 11.92.040, 11.92.050, and 36.18.016; and adding a new
6 section to chapter 11.88 RCW.

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

8 **Sec. 1.** RCW 11.88.020 and 1997 c 312 s 1 are each amended to read
9 as follows:

10 (1) Any suitable person over the age of eighteen years, or any
11 parent under the age of eighteen years or, if the petition is for
12 appointment of a professional guardian, any individual or guardianship
13 service that meets any certification requirements established by the
14 administrator for the courts, may, if not otherwise disqualified, be
15 appointed guardian or limited guardian of the person and/or the estate
16 of an incapacitated person. A financial institution subject to the
17 jurisdiction of the department of financial institutions and authorized
18 to exercise trust powers, and a federally chartered financial
19 institution when authorized to do so, may act as a guardian of the

1 estate of an incapacitated person without having to meet the
2 certification requirements established by the administrator for the
3 courts. No person is qualified to serve as a guardian who is

4 (a) under eighteen years of age except as otherwise provided
5 herein;

6 (b) of unsound mind;

7 (c) convicted of a felony or of a misdemeanor involving moral
8 turpitude;

9 (d) a nonresident of this state who has not appointed a resident
10 agent to accept service of process in all actions or proceedings with
11 respect to the estate and caused such appointment to be filed with the
12 court;

13 (e) a corporation not authorized to act as a fiduciary, guardian,
14 or limited guardian in the state;

15 (f) a person whom the court finds unsuitable.

16 (2) The professional guardian certification requirements required
17 under this section shall not apply to a testamentary guardian appointed
18 under RCW 11.88.080.

19 (3) If a guardian or limited guardian is not a certified
20 professional guardian or financial institution authorized under this
21 section, the guardian or limited guardian shall complete any
22 standardized training video or web cast for lay guardians made
23 available by the administrative office of the courts and the superior
24 court where the petition is filed unless granted a waiver by the court
25 under RCW 11.92.043 or 11.92.040. The training video or web cast must
26 be provided at no cost to the guardian or limited guardian.

27 (a) If a petitioner requests the appointment of a specific
28 individual to act as a guardian or limited guardian, the petition for
29 guardianship or limited guardianship shall include evidence of the
30 successful completion of the required training video or web cast by the
31 proposed guardian or limited guardian. The superior court may defer
32 the completion of the training requirement to a date no later than
33 ninety days after appointment if the petitioner requests expedited
34 appointment due to emergent circumstances.

35 (b) If no person is identified to be appointed guardian or limited
36 guardian at the time the petition is filed, then the court shall
37 require the completion of the required training video or web cast by a
38 date no later than ninety days after the appointment.

1 **Sec. 2.** RCW 11.88.030 and 2009 c 521 s 36 are each amended to read
2 as follows:

3 (1) Any person or entity may petition for the appointment of a
4 qualified person, (~~trust — company, — national — bank, — or — nonprofit~~
5 ~~corporation~~) certified professional guardian, or financial institution
6 authorized in RCW 11.88.020 as the guardian or limited guardian of an
7 incapacitated person. No liability for filing a petition for
8 guardianship or limited guardianship shall attach to a petitioner
9 acting in good faith and upon reasonable basis. A petition for
10 guardianship or limited guardianship shall state:

11 (a) The name, age, residence, and post office address of the
12 alleged incapacitated person;

13 (b) The nature of the alleged incapacity in accordance with RCW
14 11.88.010;

15 (c) The approximate value and description of property, including
16 any compensation, pension, insurance, or allowance, to which the
17 alleged incapacitated person may be entitled;

18 (d) Whether there is, in any state, a guardian or limited guardian,
19 or pending guardianship action for the person or estate of the alleged
20 incapacitated person;

21 (e) The residence and post office address of the person whom
22 petitioner asks to be appointed guardian or limited guardian;

23 (f) The names and addresses, and nature of the relationship, so far
24 as known or can be reasonably ascertained, of the persons most closely
25 related by blood, marriage, or state registered domestic partnership to
26 the alleged incapacitated person;

27 (g) The name and address of the person or facility having the care
28 and custody of the alleged incapacitated person;

29 (h) The reason why the appointment of a guardian or limited
30 guardian is sought and the interest of the petitioner in the
31 appointment, and whether the appointment is sought as guardian or
32 limited guardian of the person, the estate, or both;

33 (i) A description of any alternate arrangements previously made by
34 the alleged incapacitated person, such as trusts or powers of attorney,
35 including identifying any guardianship nominations contained in a power
36 of attorney, and why a guardianship is nevertheless necessary;

37 (j) The nature and degree of the alleged incapacity and the

1 specific areas of protection and assistance requested and the
2 limitation of rights requested to be included in the court's order of
3 appointment;

4 (k) The requested term of the limited guardianship to be included
5 in the court's order of appointment; and

6 (l) Whether the petitioner is proposing a specific individual to
7 act as guardian ad litem and, if so, the individual's knowledge of or
8 relationship to any of the parties, and why the individual is proposed.

9 (2) The petition shall include evidence of successful completion of
10 any training required under RCW 11.88.020 by the proposed guardian or
11 limited guardian unless the petitioner requests expedited appointment
12 due to emergent circumstances.

13 ~~((+2))~~ (3)(a) The attorney general may petition for the
14 appointment of a guardian or limited guardian in any case in which
15 there is cause to believe that a guardianship is necessary and no
16 private party is able and willing to petition.

17 (b) Prepayment of a filing fee shall not be required in any
18 guardianship or limited guardianship brought by the attorney general.
19 Payment of the filing fee shall be ordered from the estate of the
20 incapacitated person at the hearing on the merits of the petition,
21 unless in the judgment of the court, such payment would impose a
22 hardship upon the incapacitated person, in which case the filing shall
23 be waived.

24 ~~((+3))~~ (4) No filing fee shall be charged by the court for filing
25 either a petition for guardianship or a petition for limited
26 guardianship if the petition alleges that the alleged incapacitated
27 person has total assets of a value of less than three thousand dollars.

28 ~~((+4))~~ (5)(a) Notice that a guardianship proceeding has been
29 commenced shall be personally served upon the alleged incapacitated
30 person and the guardian ad litem along with a copy of the petition for
31 appointment of a guardian. Such notice shall be served not more than
32 five court days after the petition has been filed.

33 (b) Notice under this subsection shall include a clear and easily
34 readable statement of the legal rights of the alleged incapacitated
35 person that could be restricted or transferred to a guardian by a
36 guardianship order as well as the right to counsel of choice and to a
37 jury trial on the issue of incapacity. Such notice shall be in

1 substantially the following form and shall be in capital letters,
2 double-spaced, and in a type size not smaller than ten-point type:

3 IMPORTANT NOTICE PLEASE READ CAREFULLY

4 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE
5 COUNTY SUPERIOR COURT BY IF A GUARDIAN IS
6 APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- 7 (1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED
8 DOMESTIC PARTNERSHIP;
- 9 (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- 10 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- 11 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- 12 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- 13 (6) TO POSSESS A LICENSE TO DRIVE;
- 14 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- 15 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- 16 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- 17 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

18 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

19 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.
20 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO
21 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

22 YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED
23 A GUARDIAN TO HELP YOU.

24 YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING
25 IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD
26 LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE
27 THAT PERSON.

28 (~~(5)~~) (6) All petitions filed under the provisions of this
29 section shall be heard within sixty days unless an extension of time is
30 requested by a party or the guardian ad litem within such sixty day
31 period and granted for good cause shown. If an extension is granted,
32 the court shall set a new hearing date.

33 **Sec. 3.** RCW 11.92.043 and 1991 c 289 s 11 are each amended to read
34 as follows:

1 It shall be the duty of the guardian or limited guardian of the
2 person:

3 (1) To file within three months after appointment a personal care
4 plan for the incapacitated person which shall include (a) an assessment
5 of the incapacitated person's physical, mental, and emotional needs and
6 of such person's ability to perform or assist in activities of daily
7 living, and (b) the guardian's specific plan for meeting the identified
8 and emerging personal care needs of the incapacitated person.

9 (2) To file annually or, where a guardian of the estate has been
10 appointed, at the time an account is required to be filed under RCW
11 11.92.040, a report on the status of the incapacitated person, which
12 shall include:

13 (a) The address and name of the incapacitated person and all
14 residential changes during the period;

15 (b) The services or programs which the incapacitated person
16 receives;

17 (c) The medical status of the incapacitated person;

18 (d) The mental status of the incapacitated person;

19 (e) Changes in the functional abilities of the incapacitated
20 person;

21 (f) Activities of the guardian for the period;

22 (g) Any recommended changes in the scope of the authority of the
23 guardian;

24 (h) The identity of any professionals who have assisted the
25 incapacitated person during the period;

26 (i)(i) Evidence of the guardian or limited guardian's successful
27 completion of any standardized training video or web cast for guardians
28 or limited guardians made available by the administrative office of the
29 courts and the superior court when the guardian or limited guardian:
30 (A) Was appointed prior to the effective date of this section; (B) is
31 not a certified professional guardian or financial institution
32 authorized under RCW 11.88.020; and (C) has not previously completed
33 the requirements of RCW 11.88.020(3). The training video or web cast
34 must be provided at no cost to the guardian or limited guardian.

35 (ii) The superior court may, upon (A) petition by the guardian or
36 limited guardian; or (B) any other method as provided by local court
37 rule:

1 (I) For good cause, waive this requirement for guardians appointed
2 prior to the effective date of this section. Good cause shall require
3 evidence that the guardian already possesses the requisite knowledge to
4 serve as a guardian without completing the training. When determining
5 whether there is good cause to waive the training requirement, the
6 court shall consider, among other facts, the length of time the
7 guardian has been serving the incapacitated person; whether the
8 guardian has timely filed all required reports with the court; whether
9 the guardian is monitored by other state or local agencies; and whether
10 there have been any allegations of abuse, neglect, or a breach of
11 fiduciary duty against the guardian; or

12 (II) Extend the time period for completion of the training
13 requirement for ninety days; and

14 (j) Evidence of the guardian or limited guardian's successful
15 completion of any additional or updated training video or web cast
16 offered by the administrative office of the courts and the superior
17 court as is required at the discretion of the superior court unless the
18 guardian or limited guardian is a certified professional guardian or
19 financial institution authorized under RCW 11.88.020. The training
20 video or web cast must be provided at no cost to the guardian or
21 limited guardian.

22 (3) To report to the court within thirty days any substantial
23 change in the incapacitated person's condition, or any changes in
24 residence of the incapacitated person.

25 (4) Consistent with the powers granted by the court, to care for
26 and maintain the incapacitated person in the setting least restrictive
27 to the incapacitated person's freedom and appropriate to the
28 incapacitated person's personal care needs, assert the incapacitated
29 person's rights and best interests, and if the incapacitated person is
30 a minor or where otherwise appropriate, to see that the incapacitated
31 person receives appropriate training and education and that the
32 incapacitated person has the opportunity to learn a trade, occupation,
33 or profession.

34 (5) Consistent with RCW 7.70.065, to provide timely, informed
35 consent for health care of the incapacitated person, except in the case
36 of a limited guardian where such power is not expressly provided for in
37 the order of appointment or subsequent modifying order as provided in
38 RCW 11.88.125 as now or hereafter amended, the standby guardian or

1 standby limited guardian may provide timely, informed consent to
2 necessary medical procedures if the guardian or limited guardian cannot
3 be located within four hours after the need for such consent arises.
4 No guardian, limited guardian, or standby guardian may involuntarily
5 commit for mental health treatment, observation, or evaluation an
6 alleged incapacitated person who is unable or unwilling to give
7 informed consent to such commitment unless the procedures for
8 involuntary commitment set forth in chapter 71.05 or 72.23 RCW are
9 followed. Nothing in this section shall be construed to allow a
10 guardian, limited guardian, or standby guardian to consent to:

- 11 (a) Therapy or other procedure which induces convulsion;
- 12 (b) Surgery solely for the purpose of psychosurgery;
- 13 (c) Other psychiatric or mental health procedures that restrict
14 physical freedom of movement, or the rights set forth in RCW
15 (~~71.05.370~~) 71.05.217.

16 A guardian, limited guardian, or standby guardian who believes
17 these procedures are necessary for the proper care and maintenance of
18 the incapacitated person shall petition the court for an order unless
19 the court has previously approved the procedure within the past thirty
20 days. The court may order the procedure only after an attorney is
21 appointed in accordance with RCW 11.88.045 if no attorney has
22 previously appeared, notice is given, and a hearing is held in
23 accordance with RCW 11.88.040.

24 **Sec. 4.** RCW 11.88.095 and 1995 c 297 s 5 are each amended to read
25 as follows:

26 (1) In determining the disposition of a petition for guardianship,
27 the court's order shall be based upon findings as to the capacities,
28 condition, and needs of the alleged incapacitated person, and shall not
29 be based solely upon agreements made by the parties.

30 (2) Every order appointing a full or limited guardian of the person
31 or estate shall include:

- 32 (a) Findings as to the capacities, condition, and needs of the
33 alleged incapacitated person;
- 34 (b) The amount of the bond, if any, or a bond review period;
- 35 (c) (~~When the next report of the guardian is due;~~
36 ~~(d)~~) The date the account or report shall be filed. The date of

1 filing an account or report shall be within ninety days after the
2 anniversary date of the appointment;

3 (d) A date for the court to review the account or report and enter
4 its order. The court shall conduct the review within one hundred
5 twenty days after the anniversary date of the appointment and follow
6 the provisions of RCW 11.92.050. The court may review and approve an
7 account or report without conducting a hearing;

8 (e) A directive to the clerk of court to issue letters of
9 guardianship as specified in section 6 of this act;

10 (f) Whether the guardian ad litem shall continue acting as guardian
11 ad litem;

12 ~~((e))~~ (g) Whether a review hearing shall be required upon the
13 filing of the inventory;

14 ~~((f))~~ (h) Whether a review hearing is required upon filing the
15 initial personal care plan;

16 (i) The authority of the guardian, if any, for investment and
17 expenditure of the ward's estate; ~~(and~~

18 ~~(g))~~ (j) Names and addresses of those persons described in RCW
19 11.88.090(5)(d), if any, whom the court believes should receive copies
20 of further pleadings filed by the guardian with respect to the
21 guardianship. The guardian, within ninety days from the date of the
22 appointment, shall, in writing, notify the persons identified by the
23 court of their right to request special notice of proceedings as
24 described in RCW 11.92.150; and

25 (k) A guardianship summary placed directly below the case caption
26 or on a separate cover page in the following form, or a substantially
27 similar form, containing the following information:

28 **GUARDIANSHIP SUMMARY**

29 Date Guardian Appointed:
30 Due Date for Report and
31 Accounting:
32 Date of Next Review:
33 Letters Expire On:
34 Bond Amount: \$.....
35 Restricted Account
36 Agreements Required:

1 Due Date for Inventory:

2 Due Date for Care Plan:

3 Incapacitated Person Guardian of: Estate

4 (IP) Person

<u>Name:</u>	<u>Name:</u>
<u>Address:</u>	<u>Address:</u>
<u>Phone:</u>	<u>Phone:</u>
<u>Facsimile:</u>	<u>Facsimile:</u>

9 Interested Parties Address Relation to IP

15 (3) If the court determines that a limited guardian should be
16 appointed, the order shall specifically set forth the limits by either
17 stating exceptions to the otherwise full authority of the guardian or
18 by stating the specific authority of the guardian.

19 (4) In determining the disposition of a petition for appointment of
20 a guardian or limited guardian of the estate only, the court shall
21 consider whether the alleged incapacitated person is capable of giving
22 informed medical consent or of making other personal decisions and, if
23 not, whether a guardian or limited guardian of the person of the
24 alleged incapacitated person should be appointed for that purpose.

25 (5) Unless otherwise ordered, any powers of attorney or durable
26 powers of attorney shall be revoked upon appointment of a guardian or
27 limited guardian of the estate.

1 If there is an existing medical power of attorney, the court must
2 make a specific finding of fact regarding the continued validity of
3 that medical power of attorney before appointing a guardian or limited
4 guardian for the person.

5 **Sec. 5.** RCW 11.88.125 and 2008 c 6 s 805 are each amended to read
6 as follows:

7 (1) The person appointed by the court as either guardian or limited
8 guardian of the person and/or estate of an incapacitated person(~~(τ)~~)
9 shall file in writing with the court, within ninety days from the date
10 of appointment, a notice designating a standby limited guardian or
11 guardian to serve as limited guardian or guardian at the death or legal
12 incapacity of the court-appointed guardian or limited guardian. The
13 notice shall state the name, address, zip code, and telephone number of
14 the designated standby or limited guardian. Notice of the guardian's
15 designation of the standby guardian shall be given to the standby
16 guardian, the incapacitated person and his or her spouse or domestic
17 partner and adult children, any facility in which the incapacitated
18 person resides, and any person entitled to special notice under RCW
19 11.92.150 or any person entitled to receive pleadings pursuant to RCW
20 11.88.095(2)(~~(g)~~) (j). Such standby guardian or limited guardian
21 shall have all the powers, duties, and obligations of the regularly
22 appointed guardian or limited guardian and in addition shall, within a
23 period of thirty days from the death or adjudication of incapacity of
24 the regularly appointed guardian or limited guardian, file with the
25 superior court in the county in which the guardianship or limited
26 guardianship is then being administered, a petition for appointment of
27 a substitute guardian or limited guardian. Upon the court's
28 appointment of a new, substitute guardian or limited guardian, the
29 standby guardian or limited guardian shall make an accounting and
30 report to be approved by the court, and upon approval of the court, the
31 standby guardian or limited guardian shall be released from all duties
32 and obligations arising from or out of the guardianship or limited
33 guardianship.

34 (2) Letters of guardianship shall be issued to the standby guardian
35 or limited guardian upon filing an oath and posting a bond as required
36 by RCW 11.88.100 as now or hereafter amended. The oath may be filed
37 prior to the appointed guardian or limited guardian's death. Notice of

1 such appointment shall be provided to the standby guardian, the
2 incapacitated person, and any facility in which the incapacitated
3 person resides. The provisions of RCW 11.88.100 through 11.88.110 as
4 now or hereafter amended shall apply to standby guardians and limited
5 guardians.

6 (3) In addition to the powers of a standby limited guardian or
7 guardian as noted in subsection (1) of this section, the standby
8 limited guardian or guardian shall have the authority to provide
9 timely, informed consent to necessary medical procedures, as authorized
10 in RCW 11.92.040 as now or hereafter amended, if the guardian or
11 limited guardian cannot be located within four hours after the need for
12 such consent arises.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 11.88 RCW
14 to read as follows:

15 (1) A guardian or limited guardian may not act on behalf of the
16 incapacitated person without valid letters of guardianship. Upon
17 appointment and fulfilling all legal requirements to serve, as set
18 forth in the court's order, the clerk shall issue letters of
19 guardianship to a guardian or limited guardian appointed by the court.
20 All letters of guardianship must be in the following form, or a
21 substantially similar form:

22 IN THE SUPERIOR COURT OF THE
23 STATE OF WASHINGTON IN AND FOR THE
24 COUNTY OF

25 IN THE MATTER OF Guardianship Cause No.
26 THE
27 GUARDIANSHIP OF
28
29 Incapacitated Person LETTERS OF
30 GUARDIANSHIP OR LIMITED
31 GUARDIANSHIP
32
33 Date letters expire

34 THESE LETTERS OF GUARDIANSHIP PROVIDE OFFICIAL VERIFICATION OF THE FOLLOWING:

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(2) The court shall order the clerk to issue letters of guardianship that are valid for a period of up to five years from the anniversary date of the appointment. When determining the time period for which the letters will be valid, the court must consider: The length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian.

Sec. 7. RCW 11.88.140 and 1991 c 289 s 9 are each amended to read as follows:

(1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

1 (c) That the guardian has completed the administration of the
2 minor's estate and the guardianship is ready to be closed; and

3 (d) The amount of fees paid or to be paid to each of the following:

4 (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or
5 accountants; and that the guardian believes the fees are reasonable and
6 does not intend to obtain court approval of the amount of the fees or
7 to submit a guardianship accounting to the court for approval. Subject
8 to the requirement of notice as provided in this section, unless the
9 minor petitions the court either for an order requiring the guardian to
10 obtain court approval of the amount of fees paid or to be paid to the
11 guardian, lawyers, or accountants, or for an order requiring an
12 accounting, or both, within thirty days from the filing of the
13 declaration of completion of guardianship, the guardian shall be
14 automatically discharged without further order of the court. The
15 guardian's powers will cease thirty days after filing the declaration
16 of completion of guardianship. The declaration of completion of
17 guardianship shall, at the time, be the equivalent of an entry of a
18 decree terminating the guardianship, distributing the assets, and
19 discharging the guardian for all legal intents and purposes.

20 Within five days of the date of filing the declaration of
21 completion of guardianship, the guardian or the guardian's lawyer shall
22 mail a copy of the declaration of completion to the minor together with
23 a notice that shall be substantially as follows:

24
25 CAPTION OF CASE NOTICE OF FILING A
26 DECLARATION OF
27 COMPLETION OF
28 GUARDIANSHIP

1 NOTICE IS GIVEN that the attached Declaration of
2 Completion of Guardianship was filed by the undersigned
3 in the above-entitled court on theday of,
4 19...; unless you file a petition in the above-entitled court
5 requesting the court to review the reasonableness of the
6 fees, or for an accounting, or both, and serve a copy of the
7 petition on the guardian or the guardian's lawyer, within
8 thirty days after the filing date, the amount of fees paid or
9 to be paid will be deemed reasonable, the acts of the
10 guardian will be deemed approved, the guardian will be
11 automatically discharged without further order of the court
12 and the Declaration of Completion of Guardianship will be
13 final and deemed the equivalent of an order terminating the
14 guardianship, discharging the guardian and decreeing the
15 distribution of the guardianship assets.

16 If you file and serve a petition within the period
17 specified, the undersigned will request the court to fix a
18 time and place for the hearing of your petition, and you will
19 be notified of the time and place of the hearing, by mail, or
20 by personal service, not less than ten days before the
21 hearing on the petition.

22 DATED this day of, 19...
23
24 Guardian

25 If the minor, after reaching legal age, waives in writing the
26 notice required by this section, the guardian will be automatically
27 discharged without further order of the court and the declaration of
28 completion of guardianship will be effective as an order terminating
29 the guardianship without an accounting upon filing the declaration. If
30 the guardian has been required to furnish a bond, and a declaration of
31 completion of guardianship is filed according to this section, any bond
32 furnished by the guardian shall be automatically discharged upon the
33 discharge of the guardian.

34 (3) TERMINATION ON COURT ORDER. A guardianship or limited
35 guardianship may be terminated by court order after such notice as the

1 court may require if the guardianship or limited guardianship is no
2 longer necessary.

3 The guardian or limited guardian shall, within (~~thirty~~) ninety
4 days of the date of termination of the guardianship, unless the court
5 orders a different deadline for good cause, prepare and file with the
6 court a final verified account of administration. The final verified
7 account of administration shall contain the same information as
8 required for (a) an intermediate verified account of administration of
9 the estate under RCW 11.92.040(2) and (b) an intermediate personal care
10 status report under RCW 11.92.043(2).

11 (4) EFFECT OF TERMINATION. When a guardianship or limited
12 guardianship terminates other than by the death of the incapacitated
13 person, the powers of the guardian or limited guardian cease, except
14 that a guardian or limited guardian of the estate may make
15 disbursements for claims that are or may be allowed by the court, for
16 liabilities already properly incurred for the estate or for the
17 incapacitated person, and for expenses of administration. When a
18 guardianship or limited guardianship terminates by death of the
19 incapacitated person, the guardian or limited guardian of the estate
20 may proceed under RCW 11.88.150 as now or hereafter amended, but the
21 rights of all creditors against the incapacitated person's estate shall
22 be determined by the law of decedents' estates.

23 **Sec. 8.** RCW 11.92.053 and 1995 c 297 s 7 are each amended to read
24 as follows:

25 Within ninety days, unless the court orders a different deadline
26 for good cause, after the termination of a guardianship for any reason,
27 the guardian or limited guardian of the estate shall petition the court
28 for an order settling his or her account as filed in accordance with
29 RCW 11.92.040(2) with regard to any receipts, expenditures, and
30 investments made and acts done by the guardian to the date of the
31 termination. Upon the filing of the petition, the court shall set a
32 date for the hearing of the petition after notice has been given in
33 accordance with RCW 11.88.040. Any person interested may file
34 objections to the petition or may appear at the time and place fixed
35 for the hearing thereof and present his or her objections thereto. The
36 court may take such testimony as it deems proper or necessary to

1 determine whether an order settling the account should be issued and
2 the transactions of the guardian be approved, and the court may appoint
3 a guardian ad litem to review the report.

4 At the hearing on the petition of the guardian or limited guardian,
5 if the court is satisfied that the actions of the guardian or limited
6 guardian have been proper, and that the guardian has in all respects
7 discharged his or her trust with relation to the receipts,
8 expenditures, investments, and acts, then, in such event, the court
9 shall enter an order approving the account, and the order shall be
10 final and binding upon the incapacitated person, subject only to the
11 right of appeal as upon a final order. However, within one year after
12 the incompetent attains his or her majority any such account may be
13 challenged by the incapacitated person on the ground of fraud.

14 **Sec. 9.** RCW 11.92.040 and 1991 c 289 s 10 are each amended to read
15 as follows:

16 It shall be the duty of the guardian or limited guardian of an
17 estate:

18 (1) To file within three months after the guardian's appointment a
19 verified inventory of all the property of the incapacitated person
20 which comes into the guardian's possession or knowledge, including a
21 statement of all encumbrances, liens, and other secured charges on any
22 item;

23 (2) To file annually, within ninety days after the anniversary date
24 of the guardian's or limited guardian's appointment, and also within
25 (~~(thirty)~~) ninety days after termination of the appointment, unless the
26 court for good cause orders a different deadline to file following
27 termination, a written verified account of the administration for court
28 approval, which account shall contain at least the following
29 information:

30 (a) Identification of property of the guardianship estate as of the
31 date of the last account or, in the case of the initial account, as of
32 the date of inventory;

33 (b) Identification of all additional property received into the
34 guardianship, including income by source;

35 (c) Identification of all expenditures made during the account
36 period by major categories;

1 (d) Any adjustments to the guardianship estate required to
2 establish its present fair market value, including gains or losses on
3 sale or other disposition and any mortgages, deeds of trust or other
4 encumbrances against the guardianship estate; and

5 (e) Identification of all property held in the guardianship estate
6 as of the date of account, the assessed value of any real property and
7 the guardian's estimate of the present fair market values of other
8 property (including the basis on which such estimate is made), and the
9 total net fair market value of the guardianship estate. In addition,
10 immediately following such statement of present fair market value, the
11 account shall set forth a statement of current amount of the guardian's
12 bond and any other court-ordered protection for the security of the
13 guardianship assets;

14 (3) The court in its discretion may allow reports at intervals of
15 up to thirty-six months for estates with assets (exclusive of real
16 property) having a value of not more than twice the homestead
17 exemption. Notwithstanding contrary provisions of this section, the
18 guardian or limited guardian of an estate need not file an annual
19 report with the court if the funds of the guardianship are held for the
20 benefit of a minor in a blocked account unless the guardian requests a
21 withdrawal from such account, in which case the guardian shall provide
22 a written verified account of the administration of the guardianship
23 estate along with the guardian's petition for the withdrawal. The
24 guardian or limited guardian shall report any substantial change in
25 income or assets of the guardianship estate within thirty days of the
26 occurrence of the change. A hearing shall be scheduled for court
27 review and determination of provision for increased bond or other
28 provision in accordance with RCW 11.88.100;

29 (4) All court orders approving accounts or reports filed by a
30 guardian or limited guardian must contain a guardianship summary placed
31 directly below the case caption or on a separate cover page in the
32 following form, or a substantially similar form, containing the
33 following information:

34 **GUARDIANSHIP SUMMARY**

35 Date Guardian Appointed:

1 Due Date for Report and
 2 Accounting:

3 Date of Next Review:

4 Letters Expire On:

5 Bond Amount: \$

6 Restricted Account:

7 Agreements Required:

8 Incapacitated Person Guardian of: Estate Person
 9 (IP)

<u>Name:</u>	<u>Name:</u>
<u>Address:</u>	<u>Address:</u>
<u>Phone:</u>	<u>Phone:</u>
<u>Facsimile:</u>	<u>Facsimile:</u>

<u>Standby Guardian</u>	<u>Address</u>	<u>Relation to IP</u>

<u>Interested Parties</u>	<u>Address</u>	<u>Relation to IP</u>

22 (5) To protect and preserve the guardianship estate, to apply it as
 23 provided in this chapter, to account for it faithfully, to perform all
 24 of the duties required by law, and at the termination of the
 25 guardianship or limited guardianship, to deliver the assets of the
 26 incapacitated person to the persons entitled thereto. Except as
 27 provided to the contrary herein, the court may authorize a guardian or
 28 limited guardian to do anything that a trustee can do under the

1 provisions of RCW 11.98.070 for a period not exceeding one year from
2 the date of the order or for a period corresponding to the interval in
3 which the guardian's or limited guardian's report is required to be
4 filed by the court pursuant to subsection (2) of this section,
5 whichever period is longer;

6 ~~((+5))~~ (6) To invest and reinvest the property of the
7 incapacitated person in accordance with the rules applicable to
8 investment of trust estates by trustees as provided in chapter 11.100
9 RCW, except that:

10 (a) No investments shall be made without prior order of the court
11 in any property other than unconditional interest bearing obligations
12 of this state or of the United States and in obligations the interest
13 and principal of which are unconditionally guaranteed by the United
14 States, and in share accounts or deposits which are insured by an
15 agency of the United States government. Such prior order of the court
16 may authorize specific investments, or, in the discretion of the court,
17 may authorize the guardian or limited guardian to invest and reinvest
18 as provided in chapter 11.100 RCW without further order of the court;

19 (b) If it is for the best interests of the incapacitated person
20 that a specific property be used by the incapacitated person rather
21 than sold and the proceeds invested, the court may so order;

22 ~~((+6))~~ (7) To apply to the court no later than the filing of the
23 inventory for an order authorizing disbursements on behalf of the
24 incapacitated person(~~(:—PROVIDED,—HOWEVER,—That)~~). However, the
25 guardian or limited guardian of the estate, or the person, department,
26 bureau, agency, or charitable organization having the care and custody
27 of an incapacitated person, may apply to the court for an order
28 directing the guardian or limited guardian of the estate to pay to the
29 person, department, bureau, agency, or charitable organization having
30 the care and custody of an incapacitated person, or if the guardian or
31 limited guardian of the estate has the care and custody of the
32 incapacitated person, directing the guardian or limited guardian of the
33 estate to apply an amount weekly, monthly, quarterly, semi-annually, or
34 annually, as the court may direct, to be expended in the care,
35 maintenance, and education of the incapacitated person and of his or
36 her dependents. In proper cases, the court may order payment of
37 amounts directly to the incapacitated person for his or her maintenance
38 or incidental expenses. The amounts authorized under this section may

1 be decreased or increased from time to time by direction of the court.
2 If payments are made to another under an order of the court, the
3 guardian or limited guardian of the estate is not bound to see to the
4 application thereof;

5 (8) To provide evidence of the guardian or limited guardian's
6 successful completion of any standardized training video or web cast
7 for guardians or limited guardians made available by the administrative
8 office of the courts and the superior court when the guardian or
9 limited guardian: (a) Was appointed prior to the effective date of
10 this section; (b) is not a certified professional guardian or financial
11 institution authorized under RCW 11.88.020; and (c) has not previously
12 completed the requirements of RCW 11.88.020(3). The training video or
13 web cast must be provided at no cost to the guardian or limited
14 guardian. The superior court may, upon (i) petition by the guardian or
15 limited guardian; or (ii) any other method as provided by local court
16 rule: (A) For good cause, waive this requirement for guardians
17 appointed prior to the effective date of this section. Good cause
18 shall require evidence that the guardian already possesses the
19 requisite knowledge to serve as a guardian without completing the
20 training. When determining whether there is good cause to waive the
21 training requirement, the court shall consider, among other facts, the
22 length of time the guardian has been serving the incapacitated person;
23 whether the guardian has timely filed all required reports with the
24 court; whether the guardian is monitored by other state or local
25 agencies; and whether there have been any allegations of abuse,
26 neglect, or a breach of fiduciary duty against the guardian; or (B)
27 extend the time period for completion of the training requirement for
28 ninety days; and

29 (9) To provide evidence of the guardian or limited guardian's
30 successful completion of any additional or updated training video or
31 web cast offered by the administrative office of the courts and the
32 superior court as is required at the discretion of the superior court
33 unless the guardian or limited guardian is a certified professional
34 guardian or financial institution authorized under RCW 11.88.020. The
35 training video or web cast must be provided at no cost to the guardian
36 or limited guardian.

1 **Sec. 10.** RCW 11.92.050 and 1995 c 297 s 6 are each amended to read
2 as follows:

3 (1) Upon the filing of any intermediate guardianship or limited
4 guardianship account or report required by statute, or of any
5 intermediate account or report required by court rule or order, the
6 ~~((guardian or limited guardian may petition the court for))~~ court shall
7 enter an order settling ~~((his or her))~~ the guardianship account or
8 report with regard to any receipts, expenditures, and investments made
9 and acts done by the guardian or limited guardian to the date of the
10 interim report.

11 (2) Upon such ~~((petition))~~ account or report being filed, the court
12 may, in its discretion, ~~((where the size or condition of the estate~~
13 ~~warrants it,))~~ set a date for the hearing ~~((of the petition))~~ and
14 require the service of the ~~((petition))~~ guardian's report or account
15 and a notice of the hearing as provided in RCW 11.88.040 as now or
16 hereafter amended or as specified by the court; and, in the event a
17 hearing is ordered, the court may also appoint a guardian ad litem,
18 whose duty it shall be to investigate the account or report of the
19 guardian or limited guardian of the estate and to advise the court
20 thereon at the hearing, in writing.

21 (3) At the hearing on or upon the court's review of the account or
22 report of the guardian or limited guardian, if the court is satisfied
23 that the actions of the guardian or limited guardian have been proper,
24 and that the guardian or limited guardian has in all respects
25 discharged his or her trust with relation to the receipts,
26 expenditures, investments, and acts, then, in such event, the court
27 shall enter an order approving such account or report.

28 (4) If a guardian or limited guardian fails to file the account or
29 report or fails to appear at the hearing, the court shall enter an
30 order for one or more of the following actions:

31 (a) Entering an order to show cause and requiring the guardian to
32 appear at a show cause hearing. At the hearing the court may take
33 action to protect the incapacitated person, including, but not limited
34 to, removing the guardian or limited guardian pursuant to RCW 11.88.120
35 and appointing a successor;

36 (b) Directing the clerk to extend the letters, for good cause
37 shown, for no more than ninety days, to permit the guardian to file his
38 or her account or report;

1 (c) Requiring the completion of any approved guardianship training
2 made available to the guardian by the court;

3 (d) Appointing a guardian ad litem subject to the requirements in
4 RCW 11.88.090;

5 (e) Providing other and further relief the court deems just and
6 equitable.

7 (5) If the court has appointed a guardian ad litem, the order shall
8 be final and binding upon the incapacitated person, subject only to the
9 right of appeal as upon a final order; provided that at the time of
10 final account of said guardian or limited guardian or within one year
11 after the incapacitated person attains his or her majority any such
12 interim account may be challenged by the incapacitated person on the
13 ground of fraud.

14 ((+2)) (6) The procedure established in (~~subsection (1) of~~) this
15 section for financial accounts by guardians or limited guardians of the
16 estate shall apply to personal care reports filed by guardians or
17 limited guardians of the person under RCW 11.92.043.

18 ***Sec. 11. RCW 36.18.016 and 2009 c 417 s 2 are each amended to read**
19 **as follows:**

20 (1) **Revenue collected under this section is not subject to division**
21 **under RCW 36.18.025 or 27.24.070.**

22 (2)(a) **For the filing of a petition for modification of a decree of**
23 **dissolution or paternity, within the same case as the original action,**
24 **and any party filing a counterclaim, cross-claim, or third-party claim**
25 **in any such action, a fee of thirty-six dollars must be paid.**

26 (b) **The party filing the first or initial petition for dissolution,**
27 **legal separation, or declaration concerning the validity of marriage**
28 **shall pay, at the time and in addition to the filing fee required under**
29 **RCW 36.18.020, a fee of thirty dollars. The clerk of the superior**
30 **court shall transmit monthly twenty-four dollars of the thirty-dollar**
31 **fee collected under this subsection to the state treasury for deposit**
32 **in the domestic violence prevention account. The remaining six dollars**
33 **shall be retained by the county for the purpose of supporting**
34 **community-based services within the county for victims of domestic**
35 **violence, except for five percent of the six dollars, which may be**
36 **retained by the court for administrative purposes.**

1 (3)(a) The party making a demand for a jury of six in a civil
2 action shall pay, at the time, a fee of one hundred twenty-five
3 dollars; if the demand is for a jury of twelve, a fee of two hundred
4 fifty dollars. If, after the party demands a jury of six and pays the
5 required fee, any other party to the action requests a jury of twelve,
6 an additional one hundred twenty-five dollar fee will be required of
7 the party demanding the increased number of jurors.

8 (b) Upon conviction in criminal cases a jury demand charge of one
9 hundred twenty-five dollars for a jury of six, or two hundred fifty
10 dollars for a jury of twelve may be imposed as costs under RCW
11 10.46.190.

12 (4) For preparing a certified copy of an instrument on file or of
13 record in the clerk's office, for the first page or portion of the
14 first page, a fee of five dollars, and for each additional page or
15 portion of a page, a fee of one dollar must be charged. For
16 authenticating or exemplifying an instrument, a fee of two dollars for
17 each additional seal affixed must be charged. For preparing a copy of
18 an instrument on file or of record in the clerk's office without a
19 seal, a fee of fifty cents per page must be charged. When copying a
20 document without a seal or file that is in an electronic format, a fee
21 of twenty-five cents per page must be charged. For copies made on a
22 compact disc, an additional fee of twenty dollars for each compact disc
23 must be charged.

24 (5) For executing a certificate, with or without a seal, a fee of
25 two dollars must be charged.

26 (6) For a garnishee defendant named in an affidavit for garnishment
27 and for a writ of attachment, a fee of twenty dollars must be charged.

28 (7) For filing a supplemental proceeding, a fee of twenty dollars
29 must be charged.

30 (8) For approving a bond, including justification on the bond, in
31 other than civil actions and probate proceedings, a fee of two dollars
32 must be charged.

33 (9) For the issuance of a certificate of qualification and a
34 certified copy of letters of administration, letters testamentary, or
35 letters of guardianship, there must be a fee of five dollars.

36 (10) For the preparation of a passport application, the clerk may
37 collect an execution fee as authorized by the federal government.

1 (11) For clerk's services such as performing historical searches,
2 compiling statistical reports, and conducting exceptional record
3 searches, the clerk may collect a fee not to exceed thirty dollars per
4 hour.

5 (12) For processing ex parte orders, the clerk may collect a fee of
6 thirty dollars.

7 (13) For duplicated recordings of court's proceedings there must be
8 a fee of ten dollars for each audio tape and twenty-five dollars for
9 each video tape or other electronic storage medium.

10 (14) For registration of land titles, Torrens Act, under RCW
11 65.12.780, a fee of twenty dollars must be charged.

12 (15) For the issuance of extension of judgment under RCW 6.17.020
13 and chapter 9.94A RCW, a fee of two hundred dollars must be charged.
14 When the extension of judgment is at the request of the clerk, the two
15 hundred dollar charge may be imposed as court costs under RCW
16 10.46.190.

17 (16) A facilitator surcharge of up to twenty dollars must be
18 charged as authorized under RCW 26.12.240.

19 (17) For filing a water rights statement under RCW 90.03.180, a fee
20 of twenty-five dollars must be charged.

21 (18) For filing a claim of frivolous lien under RCW 60.04.081, a
22 fee of thirty-five dollars must be charged.

23 (19) For preparation of a change of venue, a fee of twenty dollars
24 must be charged by the originating court in addition to the per page
25 charges in subsection (4) of this section.

26 (20) A service fee of five dollars for the first page and one
27 dollar for each additional page must be charged for receiving faxed
28 documents, pursuant to Washington state rules of court, general rule
29 17.

30 (21) For preparation of clerk's papers under RAP 9.7, a fee of
31 fifty cents per page must be charged.

32 (22) For copies and reports produced at the local level as
33 permitted by RCW 2.68.020 and supreme court policy, a variable fee must
34 be charged.

35 (23) Investment service charge and earnings under RCW 36.48.090
36 must be charged.

37 (24) Costs for nonstatutory services rendered by clerk by authority
38 of local ordinance or policy must be charged.

1 (25) For filing a request for mandatory arbitration, a filing fee
2 may be assessed against the party filing a statement of arbitrability
3 not to exceed two hundred twenty dollars as established by authority of
4 local ordinance. This charge shall be used solely to offset the cost
5 of the mandatory arbitration program.

6 (26) For filing a request for trial de novo of an arbitration
7 award, a fee not to exceed two hundred fifty dollars as established by
8 authority of local ordinance must be charged.

9 (27) A public agency may not charge a fee to a law enforcement
10 agency, for preparation, copying, or mailing of certified copies of the
11 judgment and sentence, information, affidavit of probable cause, and/or
12 the notice of requirement to register, of a sex offender convicted in
13 a Washington court, when such records are necessary for risk
14 assessment, preparation of a case for failure to register, or
15 maintenance of a sex offender's registration file.

16 (28) For the filing of a will or codicil under the provisions of
17 chapter 11.12 RCW, a fee of twenty dollars must be charged.

18 (29) For the collection of unpaid legal financial obligations, the
19 clerk may impose an annual fee of up to one hundred dollars, pursuant
20 to RCW 9.94A.780.

21 (30) A surcharge of up to twenty dollars may be charged in
22 dissolution and legal separation actions as authorized by RCW
23 26.12.260.

24 (31) For the filing of accounts required under RCW 11.92.040(2), a
25 fee must be charged to the estate of the incapacitated person. The
26 amount of the fee is determined by the total net fair market value of
27 the guardianship estate identified pursuant to RCW 11.92.040(2)(e). If
28 the total fair market value of the guardianship estate is less than or
29 equal to one hundred thousand dollars, a filing fee is not required.
30 If the superior court finds that payment of the filing fee would result
31 in substantial hardship upon the incapacitated person, the superior
32 court may waive or reduce the filing fee. The amount of the fee is as
33 follows:

34 (a) Seventy-five dollars for guardianship estates with a total net
35 fair market value greater than one hundred thousand dollars but not
36 exceeding five hundred thousand dollars;

37 (b) One hundred fifty dollars for guardianship estates with a total

1 net fair market value greater than five hundred thousand dollars but
2 not exceeding one million dollars; or

3 (c) Two hundred fifty dollars for guardianship estates with a total
4 net fair market value greater than one million dollars.

5 (32) The revenue to counties from the fees established in this
6 section shall be deemed to be complete reimbursement from the state for
7 the state's share of benefits paid to the superior court judges of the
8 state prior to July 24, 2005, and no claim shall lie against the state
9 for such benefits.

**Sec. 11 was vetoed. See message at end of chapter.*

Passed by the House April 21, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor May 12, 2011, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 13, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 11, Substitute House Bill 1053 entitled:

"AN ACT Relating to the implementation of recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force."

Section 11 implements a fee schedule for filing of reports under RCW 11.92.040(2). The Judicial Branch has indicated support for the underlying bill, but opposition to the fee. Therefore, I am vetoing Section 11 and expect that the Judicial Branch agencies will implement the requirements of the bill within appropriated resources.

For this reason, I have vetoed Section 11 of Substitute House Bill 1053.

With the exception of Section 11, Substitute House Bill 1053 is approved."