

HOUSE BILL REPORT

HB 1407

As Reported by House Committee On:
Judiciary

Title: An act relating to procedures for guardianship termination and modification.

Brief Description: Concerning procedures for guardianship termination and modification.

Sponsors: Representative Jinkins.

Brief History:

Committee Activity:

Judiciary: 2/5/15, 2/19/15 [DP].

Brief Summary of Bill

- Provides that incapacitated persons in hearings to modify or terminate a guardianship shall have the same due process and procedural rights as alleged incapacitated persons have in initial guardianship proceedings.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

Staff: Brent Campbell (786-7152).

Background:

Guardianship.

A guardianship action is a legal process in which a guardian is appointed and empowered by the court to make decisions for an incapacitated person. This process removes decision-making authority from the incapacitated person and gives the authority to make decisions for an incapacitated person to the guardian.

Establishing a Guardianship.

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.

In order to establish a guardianship, a petition must first be filed with the court. This petition may be filed by any person or entity interested in the welfare of an alleged incapacitated person. A guardianship hearing date is set within 60 days of the petition and a guardian ad litem (GAL) is appointed.

After the GAL is appointed, he or she conducts an investigation to determine whether a guardianship is necessary. This investigation may include speaking with the alleged incapacitated person and obtaining medical and/or psychological reports. After the GAL's investigation is completed, the GAL files a written report with the court.

A hearing is then held and the court reviews all evidence in order to decide, by clear, cogent, and convincing evidence, whether the alleged incapacitated person is incapacitated.

During the hearing, an alleged incapacitated person has the right to be represented by counsel. The court also must provide counsel to represent any alleged incapacitated person at public expense if the alleged incapacitated person cannot afford one. This counsel must be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. A period of less than three weeks is presumed to be inadequate time for consultation and preparation.

An alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. In all proceedings for appointment of a guardian, the court must be presented with a written report from a physician, psychologist, or advanced registered nurse practitioner selected by the GAL. If the alleged incapacitated person opposes the health care professional selected by the GAL to prepare the medical report, then the GAL shall use the health care professional selected by the alleged incapacitated person. The physician, psychologist, or advanced registered nurse practitioner must have personally examined and interviewed the alleged incapacitated person within 30 days of preparation of the report to the court and must have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have.

Modification or Termination of a Guardianship.

A court may modify or terminate the guardianship at any time after establishment of a guardianship or appointment of a guardian. Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian.

After receiving an application to modify or terminate a guardianship, the court may: (1) schedule a hearing; (2) appoint a GAL to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held; or (3) deny the application without scheduling a hearing if it appears that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained.

In a hearing on an application to modify or terminate a guardianship, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

Summary of Bill:

In a hearing to terminate or modify a guardianship, an incapacitated person shall have the same due process and procedural rights as an alleged incapacitated person is afforded in an initial guardianship proceeding.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington's Legislature was on the cutting edge for reforms of guardianship 40 years ago. At that time, the Legislature recognized that an incapacitated person may have a range of abilities or inabilities. In 1975 the statute was amended to create limited guardianships which allowed a person to be deemed incapacitated over only specific issues. For example, someone may be found not to have the capacity to understand their financial estate but still have the ability to take care of themselves. This was a great step. Unfortunately, the Legislature at the time was not clear with regard to hearings to modify or terminate a guardianship. Due process is ensured at the initial hearing, but statutes say nothing about hearings to modify or terminate a guardianship. Due process rights are important for anybody, but they are absolutely essential for incapacitated persons.

When an incapacitated person declines further, a limited guardian will sometimes suggest to the court to revoke more of their rights. If the protected person objects to that, they should have the due process rights to be represented by counsel and present evidence. This bill is intended to ensure that.

Also, if an incapacitated person improves over time they might want to have their civil rights restored. They may even have strong evidence to show that they no longer need such a strict guardianship, but if the guardian has some motivation to maintain control, the guardian might oppose the protected person's civil rights. This bill would ensure that the protected person is able to retain counsel and have medical practitioners of their choice so they can bring that information forward.

(Opposed) This bill is too broad. The requirements are appropriate in initial hearings, but are not necessary for the review process. The significant fiscal impact of this bill is also a

concern. It would grant a whole new trial and would take substantial time and money. The bill could be narrowed to make it more acceptable.

Persons Testifying: (In support) Representative Jenkins, prime sponsor; Douglas Schafer; and David Lord, Disability Rights Washington.

(Opposed) Tom Parker, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.