

SENATE BILL REPORT

SB 5607

As Reported by Senate Committee On:
Human Services, Mental Health & Housing, February 19, 2015

Title: An act relating to complaint procedure for the modification or termination of guardianship.

Brief Description: Concerning the complaint procedure for the modification or termination of guardianship.

Sponsors: Senators Conway, Dammeier, Darneille, O'Ban and Padden.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/02/15, 2/19/15 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 5607 be substituted therefor, and the substitute bill do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Hargrove and Padden.

Staff: Lindsay Erickson (786-7465)

Background: Any person or entity may petition the court for the appointment of a guardian or limited guardian for an allegedly incapacitated person. Incapacitated means that the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. A guardian may be a lay guardian, generally a family member or friend of the alleged incapacitated person, or a professional guardian, who charges a fee to provide guardianship services. Professional guardians are regulated by the Certified Professional Guardianship Board. The court has supervisory power over guardianships, and may modify a guardianship or remove a guardian upon petition and showing of good cause. A guardian ad litem must be appointed to represent an allegedly incapacitated person during the guardianship proceeding.

Summary of Bill (Recommended Substitute): The court may modify the authority of a guardian or limited guardian if the guardian has died or for good reason. This action may be taken on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written

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complaint. The court may grant relief as it deems just and in the best interest of the incapacitated person.

An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: the clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program. The complaint must:

- identify the complainant;
- identify the incapacitated person who is the subject of the guardianship;
- provide the complainant's address;
- provide the case number, if available;
- provide the address of the incapacitated person, if available; and
- state facts to support the claim.

By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court. Within 14 days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

1. show cause, with 14 days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;
2. appoint a guardian ad litem to investigate the issues raised by the complaint or take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;
3. dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint:
 - a. is without merit on its face;
 - b. is not filed in good faith;
 - c. is filed for an improper purpose;
 - d. regards issues that have already been adjudicated; or
 - e. is frivolous;
4. direct the guardian to provide, in not less than 14 days, a written report to the court on the issues raised in the complaint;
5. defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration; or
6. order another action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

A court may levy necessary sanctions against parties who file complaints without justification or for reason to harass or delay, with malice or other bad faith. Sanctions include but are not limited to imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE (Recommended Substitute): Allows a court to levy necessary sanctions against parties who file complaints without justification or for reason to harass or delay, with malice or other bad faith. Sanctions include but are not limited to imposition of

reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief. Subsection (5) is removed, which had previously addressed a protocol the Certified Professional Guardianship Board must follow relating to grievances it receives on active guardian cases.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill improve protections for incapacitated adults and allows an unrepresented person to bring an issue to the court, whereas current law says these people may only bring a written request. This also improves citizen access to a court when requesting a modification to an existing guardianship by removing barriers and doing away with the need to use an attorney in order to come forward to a court. Mandatory technical requirements are also added to the complaint requirements. There is some concern, however, that if all technical requirements are not followed, complaints may be dismissed summarily by a court.

OTHER: This clarifies the complaint process relating to the actions of guardians, it provides a process by which a court must respond to a written complaint, and it clarifies the issue of standing. For those who are incapacitated, they may have limited ability to fully comply with the complaint process as it is proposed. The bill language may be too specific. There is suggestion for a de minimus rule, allowing for some flexibility when filing these complaints in circumstances where parties may not have included all the necessary elements in the complaint. Additionally, in subsection 5, there is concern that the jurisdiction of the Certified Professional Guardianship Board is impacted by requiring that it take actions consistent with a court order. The jurisdiction of that board should not be compromised in order to make sure that standards of practice are followed.

Persons Testifying: PRO: Senator Conway, prime sponsor; Amy Freeman, Attorney for WA State Long-Term Care Ombudsman; Glenda Voller, Certified Professional Guardian, President, WA Assn. of Professional Guardians.

OTHER: David Lord, Disability Rights WA; Robert Nettleton, WA State Bar Assn. Elder Law Section.