

SB 5691 - H COMM AMD
By Committee on Judiciary

ADOPTED 04/10/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that an
4 incapacitated person should retain basic rights enjoyed by the
5 public, including the freedom of associating with family and friends.
6 A court or guardian should not remove or restrict the rights of an
7 incapacitated person under a guardianship except when absolutely
8 necessary to protect the incapacitated person. The legislature finds
9 that less restrictive alternatives are preferred to guardianships and
10 limited guardianships when they provide adequate support for an
11 incapacitated person's needs. The legislature also recognizes that
12 less restrictive alternatives are typically less expensive to
13 administer than a guardianship, thereby preserving state resources,
14 court resources, and the incapacitated person's estate. A less
15 restrictive alternative may be in the form of a power of attorney, or
16 a trust, or other legal, financial, or medical directives that allow
17 an incapacitated person to enjoy a greater degree of individual
18 liberty and decision making than for persons under a guardianship.

19 **Sec. 2.** RCW 11.88.120 and 2015 c 293 s 1 are each amended to
20 read as follows:

21 (1)(a) At any time after establishment of a guardianship or
22 appointment of a guardian, the court may, upon the death of the
23 guardian or limited guardian, or, for other good reason, modify or
24 terminate the guardianship or replace the guardian or limited
25 guardian or modify the authority of a guardian or limited guardian.
26 Such action may be taken based on the court's own motion, based on a
27 motion by an attorney for a person or entity, based on a motion of a
28 person or entity representing themselves, or based on a written
29 complaint, as described in this section. The court may grant relief
30 under this section as it deems just and in the best interest of the
31 incapacitated person. For any hearing to modify or terminate a

1 guardianship, the incapacitated person shall be given reasonable
2 notice of the hearing and of the incapacitated person's right to be
3 represented at the hearing by counsel of his or her own choosing.

4 (b) The court must modify or terminate a guardianship when a less
5 restrictive alternative, such as a power of attorney or a trust, will
6 adequately provide for the needs of the incapacitated person. In any
7 motion to modify or terminate a guardianship with a less restrictive
8 alternative, the court should consider any recent medical reports;
9 whether a condition is reversible; testimony of the incapacitated
10 person; testimony of persons most closely related by blood, marriage,
11 or state registered domestic partnership to the incapacitated person;
12 testimony of persons entitled to notice of special proceedings under
13 RCW 11.92.150; and other needs of the incapacitated person that are
14 not adequately served in a guardianship or limited guardianship that
15 may be better served with a less restrictive alternative. All motions
16 under the provisions of this subsection (1)(b) must be heard within
17 sixty days unless an extension of time is requested by a party or a
18 guardian ad litem within such sixty-day period and granted for good
19 cause shown. An extension granted for good cause should not exceed an
20 additional sixty days from the date of the request of the extension,
21 and the court must set a new hearing date.

22 (2)(a) An unrepresented person or entity may submit a complaint
23 to the court. Complaints must be addressed to one of the following
24 designees of the court: The clerk of the court having jurisdiction in
25 the guardianship, the court administrator, or the guardianship
26 monitoring program, and must identify the complainant and the
27 incapacitated person who is the subject of the guardianship. The
28 complaint must also provide the complainant's address, the case
29 number (if available), and the address of the incapacitated person
30 (if available). The complaint must state facts to support the claim.

31 (b) By the next judicial day after receipt of a complaint from an
32 unrepresented person, the court's designee must ensure the original
33 complaint is filed and deliver the complaint to the court.

34 (c) Within fourteen days of being presented with a complaint, the
35 court must enter an order to do one or more of the following actions:

36 (i) To show cause, with fourteen days' notice, directing the
37 guardian to appear at a hearing set by the court in order to respond
38 to the complaint;

39 (ii) To appoint a guardian ad litem to investigate the issues
40 raised by the complaint or to take any emergency action the court

1 deems necessary to protect the incapacitated person until a hearing
2 can be held;

3 (iii) To dismiss the complaint without scheduling a hearing, if
4 it appears to the court that the complaint: Is without merit on its
5 face; is filed in other than good faith; is filed for an improper
6 purpose; regards issues that have already been adjudicated; or is
7 frivolous. In making a determination, the court may review the matter
8 and consider previous behavior of the complainant that is documented
9 in the guardianship record;

10 (iv) To direct the guardian to provide, in not less than fourteen
11 days, a written report to the court on the issues raised in the
12 complaint;

13 (v) To defer consideration of the complaint until the next
14 regularly scheduled hearing in the guardianship, if the date of that
15 hearing is within the next three months, provided that there is no
16 indication that the incapacitated person will suffer physical,
17 emotional, financial, or other harm as a result of the court's
18 deferral of consideration;

19 (vi) To order other action, in the court's discretion, in
20 addition to doing one or more of the actions set out in this
21 subsection.

22 (d) If after consideration of the complaint, the court believes
23 that the complaint is made without justification or for reason to
24 harass or delay or with malice or other bad faith, the court has the
25 power to levy necessary sanctions, including but not limited to the
26 imposition of reasonable attorney fees, costs, fees, striking
27 pleadings, or other appropriate relief.

28 (3) The court may order persons who have been removed as
29 guardians to deliver any property or records belonging to the
30 incapacitated person in accordance with the court's order. Similarly,
31 when guardians have died or been removed and property or records of
32 an incapacitated person are being held by any other person, the court
33 may order that person to deliver it in accordance with the court's
34 order. Disobedience of an order to deliver (~~shall be~~) is punishable
35 as contempt of court.

36 (4) The administrative office of the courts must develop and
37 prepare(~~+~~), in consultation with interested persons, a model form
38 for the complaint described in subsection (2)(a) of this section and
39 a model form for the order that must be issued by the court under
40 subsection (2)(c) of this section.

1 (5) The board may send a grievance it has received regarding an
2 active guardian case to the court's designee with a request that the
3 court review the grievance and take any action the court deems
4 necessary. This type of request from the board must be treated as a
5 complaint under this section and the person who sent the complaint
6 must be treated as the complainant. The court must direct the clerk
7 to transmit a copy of its order to the board. The board must consider
8 the court order when taking any further action and note the court
9 order in any final determination.

10 (6) In any court action under this section that involves a
11 professional guardian, the court must direct the clerk of the court
12 to send a copy of the order entered under this section to the board.

13 (7) The definitions in this subsection apply throughout this
14 section unless the context clearly requires otherwise.

15 (a) "Board" means the certified professional guardianship board.

16 (b) "Complaint" means a written submission by an unrepresented
17 person or entity, who is referred to as the complainant."

18 Correct the title.

EFFECT: Removes the word "alleged" before the phrase
"incapacitated person" for consistency and proper usage throughout
the section.

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