

SENATE BILL REPORT

2SHB 1402

As Reported by Senate Committee On:
Human Services, Mental Health & Housing, March 27, 2017
Ways & Means, March 30, 2017

Title: An act relating to the rights and obligations associated with incapacitated persons and other vulnerable adults.

Brief Description: Concerning the rights and obligations associated with incapacitated persons and other vulnerable adults.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Jinkins, Griffey, Rodne, Goodman, Muri, Kilduff, Orwall, Haler, Kirby, Hansen, Frame, Johnson, Appleton, Ortiz-Self and Cody).

Brief History: Passed House: 3/03/17, 97-0.

Committee Activity: Human Services, Mental Health & Housing: 3/21/17, 3/27/17 [DPA-WM].

Ways & Means: 3/30/17 [DPA(HSMH)].

Brief Summary of Amended Bill

- Restricts the authority of a guardian or limited guardian to restrict the communication, visitation, interaction, or association of an incapacitated person.
- Expands guardianship duties to notify persons of changes in residence or health status concerning a vulnerable adult.
- Requires the Office of Public Guardianship to offer trainings regarding different kinds of decision-making authority.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

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

Staff: Kevin Black (786-7747)

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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Human Services, Mental Health & Housing.

Signed by Senators Braun, Chair; Brown, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Keiser, Miloscia, Padden, Pedersen, Rivers, Schoesler, Warnick and Zeiger.

Staff: Julie Murray (786-7711)

Background: Any person or entity may petition the court for the appointment of a guardian or limited guardian for an allegedly incapacitated person (IP). 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 IP, 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 IP during the guardianship proceeding.

Summary of Amended Bill: A guardian of an IP must personally inform the IP of a decision under consideration regarding communication, visitation, or interaction with a person, in a manner calculated to maximize the understanding of the IP and their participation in the decision-making process. The guardian must give substantial weight to the IP's preferences, both expressed and historical. The IP retains the right to associate with persons of the IP's choosing, including through in-person visits, telephone calls, electronic communication, personal mail, or other means.

A guardian or limited guardian must not restrict an IP's right to communicate, visit, interact, or associate with a person unless:

- the restriction is specifically authorized by a guardianship court or pursuant to a protection order under law; and
- there is good cause to believe an immediate need exists to restrict interaction in order to protect the IP from abuse, neglect, abandonment, or financial exploitation, or to protect the IP from activities that unnecessarily impose significant distress on the IP. The guardian or limited guardian must file a petition for a protection order within 14 days of the restriction.

A protection order to protect an individual subject to a guardianship must include written findings of fact and conclusions of law and be no more restrictive than necessary to protect the IP from abuse, neglect, abandonment, or financial exploitation. Interaction may not be denied unless the court finds that placing reasonable time, place, or manner restrictions is unlikely to sufficiently protect the IP from abuse, neglect, abandonment, or financial exploitation.

Isolating a vulnerable adult is defined to include acts that prevent use or receipt of mail, electronic communication, or telephone calls or which obstruct a vulnerable adult from meeting with others. The term may not be construed to prevent a guardian or limited guardian from performing fiduciary obligations or preventing a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

A guardian or limited guardian must provide reports from mental health professionals regarding the IP as part of their required report on the mental status of the IP as part of an annual report. A guardian or limited guardian must inform specified persons within five business days about any change in residence expected to last more than 14 days, admission to a medical facility for emergency or acute care in response to a life-threatening injury or medical condition, treatment in an emergency room or admission to the hospital for observation for more than 24 hours, or the IP's death. Notification of death must be made in person, by telephone, or certified mail.

Subject to amount appropriated for this purpose, the Office of Public Guardianship must develop and offer training targeted to the legal community and persons working in long-term care facilities regarding different kinds of decision-making authority. The training must include information on the roles, duties, and responsibilities of different kinds of decision makers, scope of authority and limitations, and remedial measures available at law for activity that exceeds the scope of decision-making authority.

EFFECT OF HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE AMENDMENT(S):

- Increases time available for a guardian or limited guardian to inform specified persons of a change of circumstances related to an IP from five days to five business days.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Second Substitute House Bill (Human Services, Mental Health & Housing): *The committee recommended a different version of the bill than what was heard.* PRO: I convened a work group of around 30 stakeholders with an interest in guardianship issues. There was agreement that persons in guardianships should not be isolated unless there is a strong and evident reason for doing so. We do not want guardians making unreviewable decisions to isolate vulnerable adults. Education of long-term care facilities was identified as the most important piece by our stakeholder group. It is too challenging to join the vulnerable adult protection hearing proceeding with the guardianship proceeding. We prefer this bill to the Senate version because of the greater stakeholder participation. I was improperly barred from seeing my mother for retaliatory reasons when I made a police report for elder abuse. It is sad when parents cannot see their

children. Isolation of adults is a national problem, and we have problems in this state. What does upsetting or agitating a relative mean? I support this bill because it requires use of the Vulnerable Adult Protection Act, which will provide due process to affected persons. Guardians jump too quickly to "keep them away" to avoid getting into he-said she-said disputes. The same judge should hear the vulnerable adult protection order case and the guardianship case. Please amend the bill to say the petition should be heard by the judge who is presiding in the guardianship proceeding. As our society ages, these problems are creeping up. This is a good landing point. Please amend the bill to increase the length of time for notification for change of residence or medical issues to greater than five days. Incapacitated persons know what's going on even if they can't always express themselves.

Persons Testifying (Human Services, Mental Health & Housing): PRO: Representative Laurie Jenkins, Prime Sponsor; Joanna Grist, AARP; Claudia Donnelly, Douglas Schafer, citizens; Maureen McCaslin, Protective Parents Association; Larry Shannon, WA State Assn. for Justice; Steve Lindstrom, WA Assn. of Professional Guardians.

Persons Signed In To Testify But Not Testifying (Human Services, Mental Health & Housing): No one.

Staff Summary of Public Testimony on Bill as Amended by Human Services, Mental Health & Housing (Ways & Means): No public hearing was held.

Persons Testifying (Ways & Means): N/A.

Persons Signed In To Testify But Not Testifying (Ways & Means): N/A.