

CERTIFICATION OF ENROLLMENT

SENATE BILL 5691

Chapter 271, Laws of 2017

65th Legislature
2017 Regular Session

GUARDIANSHIP--LESS RESTRICTIVE ALTERNATIVE

EFFECTIVE DATE: 7/23/2017

Passed by the Senate April 17, 2017
Yeas 49 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House April 10, 2017
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 10, 2017 11:16 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5691** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 10, 2017

**Secretary of State
State of Washington**

SENATE BILL 5691

AS AMENDED BY THE HOUSE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By Senators Bailey, Rivers, Becker, and Warnick

Read first time 02/02/17. Referred to Committee on Health Care.

1 AN ACT Relating to modifying or terminating a guardianship when a
2 less restrictive alternative is available to provide for the needs of
3 an incapacitated person; amending RCW 11.88.120; and creating a new
4 section.

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

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

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

3 (1)(a) At any time after establishment of a guardianship or
4 appointment of a guardian, the court may, upon the death of the
5 guardian or limited guardian, or, for other good reason, modify or
6 terminate the guardianship or replace the guardian or limited
7 guardian or modify the authority of a guardian or limited guardian.
8 Such action may be taken based on the court's own motion, based on a
9 motion by an attorney for a person or entity, based on a motion of a
10 person or entity representing themselves, or based on a written
11 complaint, as described in this section. The court may grant relief
12 under this section as it deems just and in the best interest of the
13 incapacitated person. For any hearing to modify or terminate a
14 guardianship, the incapacitated person shall be given reasonable
15 notice of the hearing and of the incapacitated person's right to be
16 represented at the hearing by counsel of his or her own choosing.

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

35 (2)(a) An unrepresented person or entity may submit a complaint
36 to the court. Complaints must be addressed to one of the following
37 designees of the court: The clerk of the court having jurisdiction in
38 the guardianship, the court administrator, or the guardianship
39 monitoring program, and must identify the complainant and the
40 incapacitated person who is the subject of the guardianship. The

1 complaint must also provide the complainant's address, the case
2 number (if available), and the address of the incapacitated person
3 (if available). The complaint must state facts to support the claim.

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

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

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

12 (ii) To appoint a guardian ad litem to investigate the issues
13 raised by the complaint or to take any emergency action the court
14 deems necessary to protect the incapacitated person until a hearing
15 can be held;

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

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

26 (v) To defer consideration of the complaint until the next
27 regularly scheduled hearing in the guardianship, if the date of that
28 hearing is within the next three months, provided that there is no
29 indication that the incapacitated person will suffer physical,
30 emotional, financial, or other harm as a result of the court's
31 deferral of consideration;

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

35 (d) If after consideration of the complaint, the court believes
36 that the complaint is made without justification or for reason to
37 harass or delay or with malice or other bad faith, the court has the
38 power to levy necessary sanctions, including but not limited to the
39 imposition of reasonable attorney fees, costs, fees, striking
40 pleadings, or other appropriate relief.

1 (3) The court may order persons who have been removed as
2 guardians to deliver any property or records belonging to the
3 incapacitated person in accordance with the court's order. Similarly,
4 when guardians have died or been removed and property or records of
5 an incapacitated person are being held by any other person, the court
6 may order that person to deliver it in accordance with the court's
7 order. Disobedience of an order to deliver (~~shall be~~) is punishable
8 as contempt of court.

9 (4) The administrative office of the courts must develop and
10 prepare(~~{,}~~), in consultation with interested persons, a model form
11 for the complaint described in subsection (2)(a) of this section and
12 a model form for the order that must be issued by the court under
13 subsection (2)(c) of this section.

14 (5) The board may send a grievance it has received regarding an
15 active guardian case to the court's designee with a request that the
16 court review the grievance and take any action the court deems
17 necessary. This type of request from the board must be treated as a
18 complaint under this section and the person who sent the complaint
19 must be treated as the complainant. The court must direct the clerk
20 to transmit a copy of its order to the board. The board must consider
21 the court order when taking any further action and note the court
22 order in any final determination.

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

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

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

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

Passed by the Senate April 17, 2017.

Passed by the House April 10, 2017.

Approved by the Governor May 10, 2017.

Filed in Office of Secretary of State May 10, 2017.

--- END ---