

# SENATE BILL REPORT

## SB 5114

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As of February 1, 2019

**Title:** An act relating to creating a guardianship pilot program for persons who are gravely disabled to provide them individualized treatment, supervision, and appropriate placement to support successful transition to the community.

**Brief Description:** Creating a guardianship pilot program for persons who are gravely disabled to provide them individualized treatment, supervision, and appropriate placement to support successful transition to the community.

**Sponsors:** Senators O'Ban, Conway and Wagoner.

**Brief History:**

**Committee Activity:** Law & Justice: 2/04/19.

### Brief Summary of Bill

- Creates a pilot program for select counties authorizing one year guardianships for persons who are gravely disabled.
- Authorizes a limited guardianship for 30 days to provide a gravely disabled person with care which may include detention in a facility for intensive treatment.
- Requires an investigation and report by a guardian ad litem accompanied by a clinical assessment by a mental health professional.
- Requires an individualized treatment plan after a guardianship is established.
- Requires the Administrative Office of the Courts to establish a workgroup to evaluate the effectiveness of the pilot program and report its findings and recommendations to the Legislature by December 31, 2024.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

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*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.*

**Background:** Involuntary Treatment Act Procedures. Under the Involuntary Treatment Act (ITA), a person may be detained and ordered to undergo involuntary mental health treatment if the person, as a result of a mental disorder, poses a likelihood of serious harm or is gravely disabled.

Likelihood of serious harm is a ground for involuntary commitment which means a substantial risk:

- physical harm will be inflicted by a person upon themselves, as evidenced by threats or attempts to commit suicide or inflict physical harm on themselves;
- physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person in reasonable fear of sustaining such harm;
- physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage; or
- the person has threatened the physical safety of another and has a history of one or more violent acts.

Gravely disabled is a ground for involuntary commitment which means the person, who as a result of a mental disorder or drug addiction:

- is in danger of serious physical harm resulting from a failure to provide for the person's essential human needs of health or safety; or
- manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health and safety.

A designated crisis responder (DCR) is responsible for investigating and determining whether to detain an individual who may be in need of involuntary treatment.

In emergency situations where the likelihood of serious harm or grave disability is imminent, the DCR may detain a person without a court order for up to 72 hours. For detention to continue past the end of the 72-hour period, a probable cause hearing must be held in superior court. By making appropriate findings, the court may authorize up to 14 additional days of involuntary treatment. The person must have access to appointed counsel and be afforded an array of due process rights.

In nonemergent situations, the DCR may detain a person only upon a court order. When a DCR decides not to detain a person for evaluation and treatment, or does not take action to have a person detained within 48 hours of a request for investigation, the person's immediate family member, guardian, or conservator may petition the superior court for the person's initial detention. Immediate family members include spouses, domestic partners, children, stepchildren, parents, stepparents, grandparents, and siblings. The court may enter an order for initial detention if it finds, upon review of all information provided, there is probable cause to support a petition for initial detention and the person has refused or failed to accept appropriate evaluation and treatment voluntarily. The court must provide the order to the designated mental health professionals agency, which must execute the order without delay.

Guardianships of Incapacitated Persons. Any person or entity may petition the court for the appointment of a guardian or limited guardian for an allegedly incapacitated person who may

be either an adult or minor. A person may be incapacitated, either in their person or estate, when the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety; or a significant risk of financial harm. An incapacity determination is a legal decision, not a medical decision. However, prior to the an incapacity determination a medical report must be filed with the court by a licensed doctor or psychologist detailing the health history and specific needs of the alleged incapacitated person.

Following a court hearing determining incapacity, the court appoints a guardian who exercises the legal rights of the incapacitated person. The court may establish the extent and duration of the guardian's power as a decision-maker for the incapacitated person. A full guardianship transfers authority for all major decisions to the appointed legal guardian. A standby or limited guardianship may assume some or all of the duties, responsibilities, and powers of a full guardianship. Standby or limited guardianships may be limited to one area—such as estate or property matters, or may have full powers for a limited duration in the absence of the guardian.

When a guardianship has been established, incapacitated persons may lose the right to:

- marry, divorce, or enter into a domestic partnership;
- vote;
- enter into a contract, make or revoke a will;
- have a driver's license and drive;
- buy, sell, own, or lease property;
- consent to or refuse medical treatment;
- decide who will provide care; and
- to make decisions regarding social aspects of life

In Washington, there are professional guardians, public guardians, and lay guardians. A lay guardian may be a member of the incapacitated person's family. Lay guardians are required to complete a no cost training video. A professional guardian is not a member of the incapacitated person's family and charges fees for carrying out the duties of a court-appointed guardian of three or more incapacitated persons. Professional guardians may be a person, a professional agency, or a corporate fiduciary such as a nonprofit corporation or bank trust department. A public guardian is a professional guardian that provides guardianship services under a contract with the Office of Public Guardianship for incapacitated persons who are:

- age 18 or older,
- whose income level does not exceed 200 percent of the federal poverty level, or
- are receiving long-term care services through the Washington State Department of Social and Health Services.

Professional guardians are certified and regulated by the Certified Professional Guardianship Board (CPGB) established by court rule. The CPGB establishes standards of practice for professional guardians, and may investigate grievances and sanction professional guardians for violations of those standards. The court has supervisory power over all types of guardianships, and may modify a guardianship or remove a guardian upon petition and showing of good cause. A court may receive complaints regarding an incapacitated person under a guardianship, and the court has authority to investigate or issue emergency orders to protect the incapacitated person. Guardianship monitoring programs are not required by state

law, nor are there any statewide monitoring standards applied by courts. A few county courts use volunteers to review reports required to be filed by guardians.

**Summary of Bill:** A pilot program is established for Spokane, Pierce, or Snohomish counties authorizing legal guardianships for gravely disabled persons.

A mental health professional may recommend a guardianship for a gravely disabled person to a guardian ad litem (GAL) in the county where the person resides. The GAL must file a petition for guardianship if they concur. Other than a GAL, a person with a preexisting relationship to the gravely disabled person may also petition for a guardianship and must reside in the same or adjacent county. A preexisting relationship is defined to include the spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling of the incapacitated person.

The GAL must meet specific training requirements and have certain knowledge regarding guardianships for persons that are gravely disabled. The GAL must investigate all available alternatives to guardianship recommended by a mental health professional and recommend guardianship to the court only if no suitable alternatives are available. The GAL must submit a written report of investigation to the court before the guardianship hearing. The report must be comprehensive and contain all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition, and information obtained from the person's family members, close friends, social worker, or principal therapist. A clinical assessment by a mental health professional must accompany the report. The report must contain a recommendation for or against appointing a guardian, the scope of the guardian's powers, the legal disabilities to be imposed on the incapacitated person, and placement of the incapacitated person.

The court may appoint a limited guardianship for a period not to exceed 30 days on the basis of the comprehensive report of the GAL or on the basis of an affidavit of the mental health professional who recommended guardianship. A limited guardian must provide the person with food, shelter, and care pending the determination of guardianship. The limited guardian must give preference to arrangements that allow the person to return to the person's home, family, or friends. If necessary, the limited guardian may require the person to be detained in a facility providing intensive treatment pending the determination of guardianship. The limited guardian must take all reasonable steps to preserve the incapacitated person's previous place of residence.

If a guardianship is established the court must appoint a guardian that resides as close to the incapacitated person as possible. Public guardians and certified professional guardians are not eligible to be appointed as guardians or limited guardians. When appropriate, within ten days after guardianship has been established under this chapter, an individualized treatment plan must be developed by a mental health service provider. Placement may be either inpatient, outpatient, or a less restrictive alternative than commitment. The guardianship automatically terminates in one year.

The administrative office of the courts must establish a work group to assess the effectiveness of the pilot, and report its findings and recommendations to the Legislature by the end of 2024.

The pilot expires July 1, 2024.

**Appropriation:** None.

**Fiscal Note:** Requested on February 1, 2019.

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

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