

FINAL BILL REPORT

2SSB 5604

C 437 L 19
Synopsis as Enacted

Brief Description: Concerning the uniform guardianship, conservatorship, and other protective arrangements act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Pedersen, Padden, Conway, Kuderer, Keiser, Salomon, Bailey and Dhingra; by request of Uniform Law Commission).

Senate Committee on Law & Justice
Senate Committee on Ways & Means
House Committee on Civil Rights & Judiciary
House Committee on Appropriations

Background: Guardianships of Incapacitated Persons. Any person or entity may petition the court for a guardian or limited guardian appointment 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 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;

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- buy, sell, own, or lease property;
- consent to or refuse medical treatment;
- decide who will provide care; and
- 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 are age 18 or older;
- whose income level does not exceed 200 percent of the federal poverty level; or
- who are receiving long-term care services through the Washington State Department of Social and Health Services (DSHS).

A person who is convicted of a felony or misdemeanor involving moral turpitude is not qualified to serve as a guardian. A dictionary definition of a crime involving "moral turpitude" means a criminal act considered base or vile which gravely violates accepted standards of a community. There are no crimes in state law that are listed as being crimes of moral turpitude.

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.

Nonparent Custody in Washington. A nonparent seeking court-ordered custody of a minor child must file a petition with sworn statements alleging either the child is not in a parent's physical custody, or no parent is a suitable custodian for the child.

The parents may file responsive pleadings and the court may permit interveners to join the case as additional parties.

The court reviews the filings, and determines whether the filings show adequate cause for a hearing on the merits of the custody request. If so, the court sets the matter for an expedited evidentiary hearing. The court may exclude the public from the hearing and seal the record if circumstances warrant. The court also appoints an attorney or guardian ad litem (GAL) for the child. The court may also order an investigation and report, enter temporary orders, seek the written advice of professionals, and interview the child in chambers.

The court will deny the nonparent's custody request unless the nonparent proves the parent is unfit, or placement with the parent would result in actual detriment to the child's growth and development.

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. The Uniform Law Commission (ULC) develops and proposes laws in areas where it believes uniformity between states is desirable. The ULC approved the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (Act) in 2017, and it has been enacted in Maine and introduced in New Mexico.

Summary: The Act, as adapted for Washington, repeals existing state guardianship laws and replaces them with the Act. The Act repeals existing law on nonparental actions for child custody. The Act covers guardianships, conservatorships, and protective arrangements for both minors and adults.

Terminology Changes. The Act uses person centered terminology. For example, "alleged incapacitated person" is replaced with "respondent," and "incapacitated person" is replaced with "person" under a guardianship or conservatorship. The Act uses "guardian" to refer to just a guardianship over the person, and a guardianship over the estate is now called a "conservatorship." A GAL is not eliminated in the Act, but the appointment of a GAL is optional. In adult proceedings, the investigator appointed by the court is called a "visitor" and that appointment is mandatory.

Qualifications of a Guardian. The disqualification to serve as a guardian based on a conviction of a felony or of a misdemeanor involving moral turpitude is eliminated. The disqualification is now based on a conviction of a crime involving dishonesty, neglect, or use of physical force or other crime relevant to the functions the individual would assume as guardian. However, an exception is provided and a court may, upon consideration of the facts, find that a relative convicted of a crime is qualified to serve as a guardian or conservator. A person must be over 21 years old to be a qualified guardian.

Legal Standard for a Guardian Appointment. The functional standard in existing law does not apply.

Minors. A court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:

- the parents consent, after being fully informed of the nature and consequences of guardianship;
- all parental rights have been terminated; or
- the court finds by clear and convincing evidence the parents are unwilling or unable to exercise their parental rights.

A visitor must ascertain whether the parents consent to the appointment of a guardian for a minor. The court may not appoint a guardian for a minor without consent of the parents unless parental rights have been terminated.

Adults. A court may appoint a guardian for an adult who lacks the ability to meet essential requirements for physical health, safety, or self-care because:

- the adult is unable to receive and evaluate information or make or communicate decisions even with the use of supportive services, technological assistance, and supported decision-making, and
- the adult's identified needs cannot be met by a less restrictive alternative.

The requirement that a qualified health care professional provide a report to the court is eliminated.

Priority of Appointment. The Act prioritizes a guardian appointment that generally emphasizes family over professionals.

For a minor the priority is:

- a person nominated by a parent in a will;
- the nominee in the best interest of the child if multiple parents have nominated different persons;
- a person nominated by the minor who is 12 years or older; or
- a person whose appointment is in the best interest of the minor if a person with a higher priority is not in the best interest of the minor.

An order appointing a guardian for a minor must state rights retained by any parent of the minor, which may include contact or visitation with the minor; decision making regarding the minor's health care, education, or other matter; or access to a record regarding the minor.

For an adult the priority is:

- a guardian currently acting for the respondent in another jurisdiction;
- a person most recently nominated by the respondent in a power of attorney;
- an agent appointed by the respondent in a power of attorney for health care;
- a spouse or domestic partner;
- a relative or other individual who has shown special care and concern for the respondent;
- a certified professional guardian or conservator; or
- a person in the best interest of the adult if a person with a higher priority is not in the best interest of the adult.

An owner, operator, or employee of a long-term care facility at which the respondent is receiving care may not be appointed as guardian unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

Duties of a Guardian. The Act codifies standards set forth in case law.

Minors. Custody over the minor is conferred to the guardian. The guardian has the duties and responsibilities of a parent regarding the minor's support, care, education, health, safety, and welfare. Among other listed duties, a guardian must act in the minor's best interest and exercise reasonable care, diligence, and prudence. When determining what is in the minor's best interest, the guardian must take into account the minor's preferences to the extent actually known or reasonably ascertainable by the guardian.

Adults. The guardian must make decisions regarding the support, care, education, health, and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations. A guardian's duty includes promoting the self-determination of the adult and, encouraging the adult to participate in decisions, act on the adult's own behalf, and regain the capacity to manage the adult's personal affairs.

Emergency Guardian. The court may appoint an emergency guardian for a minor to prevent substantial harm to the minor's health, safety, or welfare where no other person has the authority or willingness to act in the circumstances.

Appointment of Counsel. Appointment of legal counsel is not required, but a court may appoint an attorney for a person subject to a proceeding for guardianship or conservatorship. An attorney appointed for a minor who is unable to ascertain the wishes of the minor must advocate for the minor's legal rights. A respondent has the right to counsel at any point in a guardianship, conservatorship, or other protective arrangement proceedings. A court is required to appoint counsel at public expense when the respondent is indigent.

Placement in a Facility for Mental Health Treatment. A guardian may not place a person in a facility against their will except by following civil commitment laws. A guardian may move an adult to a nursing home, mental health facility, or other facility that places restrictions on the adult's ability to leave or have visitors only if the potential move is established in the guardian's plan, and either (1) the court authorizes the establishment or move; or (2) the guardian gives notice of the move at least 14 days before the move to the adult and all persons entitled to notice and no objection is filed.

Monitoring a Guardianship. The Act requires the court to establish procedures for monitoring guardians' reports. The requirement is subject to appropriation. The Act also expands the list of persons who may be notified of a petition for appointment of a guardian or conservator. It requires the court, when appointing a guardian, to specify the persons who must receive notice of key events or conditions that could affect the well-being of the person under guardianship or conservatorship, and who can help monitor the guardian and protect the interests of the person subject to guardianship or conservatorship.

Delegation of a Parent's Powers. A parent of a minor, by a power of attorney, may delegate to another person any of the parent's powers regarding care, custody, or property of the minor, other than power to consent to marriage or adoption. The period of delegation may not exceed 24 months.

Model Training Program. DSHS must convene an advisory group to develop a model GAL and visitor training program and must update the program every two years. The court must use the model training program to ensure minimum qualifications are met for persons applying for the role of a GAL or visitor. A lay guardian training program must be developed.

Miscellaneous Changes. The following changes are made throughout the act.

1. The validity of guardianship orders issued under repealed laws are retained.

2. The right to associate for adults under guardianships retains the statutory language from the old law being repealed.
3. "Relative" means any person related by blood or law to the person subject to a guardianship, conservatorship, or other protective arrangement. "Family member" is replaced with "relative."
4. The court must approve a guardian's compensation and expenses.
5. The court may assess the costs of a visitor or professional evaluation against a person who files a petition in bad faith.
6. The court must promptly review a grievance against a guardian and act to protect an individual subject to guardianship.
7. Guardians owe a duty of good faith and care to the person under a guardianship and must not substitute their values, opinions, or beliefs.
8. A guardian must petition the court for approval of its report.
9. A successor guardian must notify the person subject to the guardianship of their appointment within 14 days.
10. A grievance against a guardian may not be dismissed by the court due to an inability to resolve the grievance in a timely manner.

Votes on Final Passage:

Senate	32	16	
House	85	10	(House amended)
Senate			(Senate refused to concur)
House	91	7	(House receded/amended)
Senate	43	6	(Senate concurred)

Effective: January 1, 2021.