

HOUSE BILL REPORT

2SSB 5825

As Passed House - Amended:

February 29, 2024

Title: An act relating to guardianship and conservatorship.

Brief Description: Concerning guardianship and conservatorship.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Pedersen and Padden).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/20/24, 2/21/24 [DPA];

Appropriations: 2/23/24, 2/26/24 [DPA(CRJ)].

Floor Activity:

Passed House: 2/29/24, 96-0.

Brief Summary of Second Substitute Bill (As Amended by House)

- Requires the Office of Public Guardianship (OPG) to contract with public and private entities to provide decision-making assistance services, prioritizing certain adults who are receiving care in a hospital.
- Requires the OPG to submit annual reports to the Legislature and to provide specified information, including information regarding hospitalized persons who are prioritized for the public services provided by the OPG.
- Makes various revisions throughout the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 9 members: Representatives Taylor, Chair; Farivar, Vice Chair; Abbarno, Cheney, Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Staff: Yelena Baker (786-7301).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Civil Rights & Judiciary. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Staff: Yvonne Walker (786-7841).

Background:

The Office of Public Guardianship.

Established in 2007, the Office of Public Guardianship (OPG) within the Administrative Office of the Courts (AOC) contracts with certified professional guardians and conservators to provide public guardianship, conservatorship, decision-making assistance, and estate administration service to low-income adults who need these services and for whom there is no one else qualified who is willing and able to serve.

"Decision-making assistance" means support for an individual with diminished decision-making ability in making decisions affecting health or safety or to manage financial affairs. Assistance includes, but is not limited to, acting as a representative payee, an agent, a trustee, a public guardian, or a public conservator.

To be eligible for the public services provided by the OPG, an adult must have an income of less than 200 percent of the federal poverty level or be receiving long-term care services through the Department of Social and Health Services (DSHS).

The OPG must adopt and maintain eligibility criteria to enable it to serve individuals with the greatest need when the number of cases in which courts propose to appoint a public guardian or conservator exceeds the number of cases in which services can be provided. In adopting such criteria, the OPG may consider factors including, but not limited to, the following:

- whether an individual with diminished decision-making ability is at significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect; and
- whether an individual with diminished decision-making ability is in imminent danger of loss or significant reduction in public services that are necessary for the individual to live successfully in the most integrated and least restrictive environment that is appropriate in light of the individual's needs and values.

The OPG must identify training needs for contract service providers it contracts with and make recommendations to the Washington Supreme Court, the Certified Professional Guardianship and Conservatorship Board, and the Legislature for improvements in training. The OPG may offer training to individuals who are likely to provide such services in the future, to lay guardians or conservators, and to the family and friends of individuals subject to guardianship or conservatorship.

The OPG is prohibited from petitioning for appointment of a public guardian or conservator for any individual.

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. Enacted in 2019, the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA) took effect in 2021 and replaced previous statutory provisions related to guardianship and third-party custody. The UGA covers guardianships, conservatorships, and protective arrangements for both minors and adults.

Throughout the UGA, the term "guardian" refers to a person appointed by a court to make decisions about the care and well-being of another person. The term "conservator" refers to a person appointed by a court to manage the property of another person. The term "respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

Legal Basis for Appointment of a Guardian or Conservator.

The court may appoint a guardian for an adult if the court finds by clear and convincing evidence that:

- the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;
- appointment is necessary to prevent significant risk of harm to the adult respondent's physical health, safety, or self-care; and
- the respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative.

A determination by the court that a basis exists for the appointment of a guardian or conservator and on the issue of the rights that will be retained or restricted by the appointment of a guardian or conservator is a legal decision, not a medical decision.

The determination must be based on a demonstration of management insufficiencies over time in the area of physical health, safety, or self-care, if a guardianship is sought, and in the area of financial affairs if a conservatorship is sought.

Age, eccentricity, poverty, or medical diagnosis alone is not sufficient basis to justify a determination that a guardian or conservator should be appointed for the respondent.

The court must grant a guardian or conservator only those powers necessitated by the demonstrated needs and limitations of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence.

An adult respondent may demand a jury trial on the issue of whether a basis exists for the appointment of a guardian or conservator and on the rights to be retained or restricted if a guardian or conservator is appointed.

Qualifications of a Guardian or Conservator.

Any person over the age of 21 years may be appointed a guardian or conservator. If a guardian or conservator is not a certified professional guardian or conservator, the guardian or conservator must complete standardized training made available by the AOC.

A person is not qualified to serve as a guardian or conservator if the person is:

- under 18 years of age, except as otherwise provided in the UGA;
- convicted of a crime involving dishonesty, neglect, or use of physical force or other relevant crime, except that 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; or
- found unsuitable by the court.

Petition for a Guardian or Conservator.

Any individual or entity interested in an adult's welfare, including the adult, may petition for appointment of a guardian for the adult. A petition for appointment of a conservator may be filed by the individual for whom the appointment is sought, the individual's guardian, or any individual or entity interested in the individual's estate, financial affairs, or welfare, including a person that would be adversely affected by lack of effective management of the individual's property or financial affairs.

The petition must specify the nature and extent of the respondent's alleged need, the reason guardianship or conservatorship is necessary, and the reason a protective arrangement instead of guardianship or conservatorship or other less restrictive alternative is insufficient to meet the respondent's alleged need.

If no person is identified to be appointed guardian or conservator at the time the petition is filed, then the court must require that the petitioner identify within 14 days from the filing a specific individual to act as a guardian, subject to the training requirements.

All petitions for appointment of a guardian or conservator for an adult must be heard within 60 days unless an extension is requested by a party or the court visitor within the 60-day period and granted for good cause shown.

If the court dismisses a petition and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or court visitor against the petitioner.

Court Visitor.

On receipt of a petition for a guardianship or conservatorship for an adult, the court must appoint a court visitor, who must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition. The appointment of a court visitor has no effect on the determination of the adult respondent's legal capacity and does not overcome the presumption of legal capacity or full legal and civil rights of the adult respondent.

A court visitor must interview the respondent in person and, in a manner the respondent is best able to understand:

- explain to the respondent: the substance of the petition; the nature, purpose, and effect of the proceeding; the respondent's rights at the hearing on the petition; and the general powers and duties of a guardian or conservator;
- determine the respondent's views about the appointment sought by the petitioner, including views about a proposed guardian or conservator, and the proposed powers and duties of a guardian or conservator; and
- inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.

Additionally, a court visitor must: interview the petitioner and proposed guardian or conservator, obtain information from any person known to have treated or assessed the respondent's relevant physical or mental condition, review the respondent's financial records, and investigate the allegations in the petition and any other matter as directed by the court.

At least 15 days prior to the hearing on the petition, the court visitor must file a report in a record with the court, which must include specified information, including a recommendation regarding the appropriateness of guardianship or conservatorship and whether a protective arrangement instead of guardianship or conservatorship or other less restrictive alternative for meeting the respondent's needs is available.

Guardian's or Conservator's Report.

A guardian for an adult or a conservator must file with the court periodic reports regarding the condition of the adult and administration of the conservatorship estate. The report must contain specified information and include a recommendation as to the need for continued

guardianship or conservatorship and any recommended change in the scope of the guardianship or conservatorship.

If the court approves the report, the court must reissue letters of office to the guardian or conservator containing an expiration date within 180 days after the date the court directs the guardian or conservator to file its next report.

Supported Decision-Making Agreements.

Under the UGA, all adults are presumed to be capable of managing their affairs, and the manner in which an adult communicates with others is not grounds for deciding that the adult is incapable of managing the adult's affairs. The UGA was amended in 2020 to create a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living.

A supported decision-making agreement is a written agreement entered into voluntarily by an adult with a disability and a supporter. Execution of a supported decision-making agreement may not be used as evidence for the petition or appointment of a guardian or conservator, and it does not preclude the ability of the adult who has entered into the agreement to act independently of the agreement.

The supporter is authorized to provide supported decision-making without making decisions on behalf of the adult with a disability; assist the adult in accessing, collecting, obtaining, and understanding information relevant to a life decision; and assist the adult in communicating decisions to appropriate persons.

Unless the supporter is an immediate family member of the adult, the supporter may not be an employer or employee of the adult, or a person directly providing paid support services to the adult. An individual is disqualified from acting as a supporter if the individual is the subject of a civil or criminal order prohibiting contact with the adult, or if the adult obtains an order of protection from abuse against the individual.

Summary of Amended Bill:

The Office of Public Guardianship.

Subject to the availability of funds appropriated for this specific purpose, the OPG must contract with public and private entities and individuals to provide decision-making assistance services for certain adults who are receiving care in a hospital.

Specifically, the OPG must prioritize adults:

- whose income does not exceed 400 percent of the federal poverty level or who are eligible to receive long-term care services through the DSHS;
- who are in an acute care hospital, a psychiatric hospital, a state psychiatric hospital, or in a location funded by a hospital;
- who are medically ready or will soon be medically ready for discharge to a post-acute

- care or community setting; and
- who are without a qualified person who is willing and able to serve as a decision-maker.

The OPG must establish a streamlined process to review, on a weekly basis, requests for decision-making assistance for persons who meet the above requirements.

Subject to the availability of funds appropriated for this specific purpose, the OPG must establish a navigator service to provide assistance and support for hospitals and persons in hospitals, including assistance in navigating options for guardianship, public conservatorship, decision-making assistance, and estate administration services as appropriate for the person.

Subject to the availability of funds appropriated for this specific purpose, the OPG must fund training for decision-makers regarding considerations for specific populations, including behavioral health, involuntary treatment, disability, family law, and Medicaid programs.

Subject to the availability of funds appropriated for this specific purpose, the OPG must offer low-barrier trainings to certified professional guardians on topics such as aging, mental health, and dementia.

By October 1, 2025, and annually thereafter, the OPG must submit a report to the Legislature regarding the demand for the services provided by the OPG, barriers to service delivery, and outcomes achieved. The report must contain specified information, including:

- the number of contract service providers under contract with the OPG and the caseload of each contract service provider;
- the number of guardianships, conservatorships, and each of the less restrictive options supported by the OPG; and
- the total number of hospitalized persons prioritized and a summary of outcomes with regard to prioritized persons.

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

Various provisions across the UGA are revised as follows:

- If no person is identified to be appointed guardian or conservator at the time the petition is filed, the court must require the petitioner to identify a specific individual to act as a guardian or conservator within 30 days, rather than 14 days.
- If the petition fails to identify a guardian or conservator within 30 days of filing, the court must dismiss the guardianship or conservatorship.
- If the court dismisses a petition and determines the petition was filed in bad faith, the court may assess the cost of a court-appointed attorney against the petitioner.
- A person interested in the welfare of a minor who, within 45 days of the filing of the petition, will attain the age of majority, may petition for appointment of a guardian for the minor. The minor may petition on the minor's own behalf.

- The petition for appointment of a guardian or conservator for an adult or a minor must additionally state the name and address of the respondent's parents, if living and involved in the respondent's life.
- A court visitor appointed on receipt of a petition for a guardianship or conservatorship for an adult must explain to the respondent that the respondent has the right to counsel of choice and to a jury trial at the hearing.
- If the court approves a guardian's or conservator's report, the order approving the report must direct the clerk of the court to reissue letters of office to the guardian or conservator containing an expiration date which must be within 180 days of the anniversary date of appointment, rather than within 120 days after the date the court directs the guardian to file its next report or within 180 days after the date the court directs the conservator to file its next report.
- In all transactions involving the sale of real property, a conservator must receive additional authority from the court as to the disposition of the proceedings from the sale of the real property.
- Provisions concerning petitions for an emergency guardian or conservator are revised to clarify that the petitioner must cause a copy of the petition and notice of the hearing to be personally served on the respondent, the respondent's attorney, and the court visitor.
- Duplicative requirements to send notice of appointment of a guardian or conservator are eliminated.

Additionally, a new section is added to the UGA to grant the court authority to bring before it any person or persons suspected of having in their possession or having concealed, embezzled, conveyed, or disposed of any of the property of the estate of the individual subject to conservatorship under the UGA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) Guardianship is one of the barriers to patients discharging from a hospital. It is part of a complex discharge issue for hospitals. A one-day survey of hospitals in January 2024 showed 984 patients stuck in hospitals without an acute care need. Hospitals strongly support this bill as a necessary step to continue addressing barriers that keep patients from getting the right post-hospital care.

(Opposed) This bill should be rejected. In recent years, the idea has been that alternatives to guardianship should be pursued and that guardianship should be used as a last resort

measure, but this bill represents a massive expansion of guardianship, which in turn means a massive expansion of human rights violations. Guardianship is a legal proceeding that erases human rights and the individual rights set forth in the Universal Declaration of Human Rights. Guardianship also erases the constitutional rights and the civil rights of the targeted individual, and may even erase their voting rights. Protecting people should not mean taking away their human rights or civil rights. People who are stuck in hospitals after they have finished their treatment do indeed need legal representation, but they need legal representation to stand up for their constitutional rights and to sue the hospital for false imprisonment.

(Other) Disability advocates support the technical fixes in the bill but cannot fully support the provisions regarding hospitalized persons. While some people may require guardians to make discharge decisions for them, that does not apply to everyone stuck in the hospital. The larger systemic issue here is the lack of community-based placements available for people stuck in the hospital. Not every person requires a skilled nursing facility or a full guardianship. A person should not lose their autonomy for the sake of a hospital's administrative convenience.

Staff Summary of Public Testimony (Appropriations):

(In support) Guardianship is one of the barriers that keep patients in hospitals when they do not need to be there. On any given day, over 100 patients are stuck in hospitals around Washington because they need a guardian or legal decision maker. In fiscal year 2023, Harborview Hospital had over 1,600 complex discharge patients who stayed for over 32,000 days resulting in a loss of over \$84 million. Generally, hospitals do not receive reimbursement when these patients remain in the hospital without acute care needs.

Section 15 of the bill has three positive impacts. It will allow the OPG to serve more individuals in response to rising demand, it will reduce court costs and caseloads by providing less restrictive alternatives to guardianship, and it will help discharge individuals from acute care hospitals and psychiatric facilities in a safe way. The OPG is not a program of the courts but rather a program directly administered by the Administrative Office of the Courts. It is a program of last resort for individuals who have no resources, no family or friends to help care for them, and no way of taking care of themselves. Patients should be able to move to supportive environments in the community instead of living in an outpatient hospital unit.

(Opposed) It is wrong that people are being detained in hospitals after the completion of their medical treatment. It is wrong that people who are ready for discharge are not allowed to leave. The state should not solve one human rights violation by creating an additional human rights violation. No one should have to be required to surrender their general freedom of decision-making which is an inherent of all human rights, constitutional rights, and civil liberties.

Persons Testifying (Civil Rights & Judiciary): (In support) Cara Helmer, Washington State Hospital Association.

(Opposed) Michael Brunson.

(Other) Chloe Merino, Disability Rights Washington.

Persons Testifying (Appropriations): (In support) Christopher Stanley; Zosia Stanley, Washington State Hospital Association; and Rashi Gupta, University of Washington Medicine.

(Opposed) Michael Brunson.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): Robert Nettleton, Harlowe and Falk Limited Liability Partnership; Christopher Stanley, Administrative Office of the Courts; Andi Chatburn, Providence Health and Services; David Lord; Rashi Gupta, University of Washington Medicine; Jennifer Roach, and Noah Seidel, Office of Developmental Disabilities Ombuds.

Persons Signed In To Testify But Not Testifying (Appropriations): None.