

HCS HB 1553 -- GUARDIANSHIP PROCEEDINGS

SPONSOR: Neely

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 9 to 1.

This bill changes and adds certain duties and reporting requirements for guardians and conservators. It also specifies that existing guardians and conservators have one year from August 28, 2018, to meet any reporting requirements that change as of August 28, 2018. The bill also gives the court authority to, as part of its review and in its discretion, contact the Department of Health and Senior Services or other appropriate agencies to investigate the conduct of the guardian.

The bill adds a definition for "conservator ad litem" and for "interested persons" and amends the definition for "habilitation" and changes the term "least restrictive environment" to "least restrictive alternative."

The bill also allows a guardianship to terminate if the court determines that the guardian is unable to provide guardianship services due to the ward's absence from the state or other particular circumstances of the ward. If a ward or protectee petitions the court to return rights to the ward or protectee, the petition may be an informal letter to the court, and anyone who interferes with the transmission of the ward's or protectee's letter or petition may be cited for contempt of court after notice and a hearing. The court may also, on its own motion, set the matter for a hearing if it has reason to believe the powers of a guardian or conservator should be increased or decreased or additional rights should be returned to the ward. Limited guardians and limited conservators may also petition the court at any time to increase the guardian's or conservator's powers or to remove rights from the ward.

The bill allows a conservator to, after notice to interested persons and with the express authorization by the court, make financial and property decisions, as specified in the bill, on behalf of a protectee. The bill specifies what the court must consider when exercising or approving a conservator's exercise of his or her powers expressed in the bill. The bill also establishes what a conservator has the power to do without authorization or approval from the court.

The bill repeals certain provisions related to the powers and duties of a guardian or limited guardian of an incapacitated person.

Currently, no medical or surgical procedure can be performed on a ward without the guardian's consent. This bill allows emergency treatment to be administered without the guardian's consent if such treatment is required. The bill also specifies what a guardian is supposed to do when making health care decisions for an adult ward. If the court appoints an attorney for the respondent, the order shall specify that the attorney has a right to obtain all medical and financial information of the respondent, and no medical care provider or financial institution shall be liable for damages or otherwise for the release of the information to the attorney. Upon entry of appearance by private counsel on behalf of the respondent, the court may permit the court-appointed attorney to withdraw only if, after a hearing, the court finds cause to permit the withdrawal. Additionally, the bill sets out what a court is required to consider when determining the amount of support allowance for a protectee or any other person entitled to such support.

The bill provides that, unless it is waived by the court for cause, a protectee is entitled to 10 days' prior notice of a required court hearing on the petition for the sale of the protectee's real or tangible personal property. The protectee is not entitled to notice of a hearing on the petition for the sale of the protectee's intangible personal property.

Currently, a conservator must file a settlement of the conservator's accounts with the court, if required by the court. The annual settlement shall be made within 30 days after the anniversary of the appointment of the conservator. This bill revises that provision to require the conservator to file the settlement at least annually or more often if required by the court, the settlement must detail the current status of the estate under conservatorship, and it is required to be filed within 60 days after the anniversary of the appointment of the conservator. The bill specifies what information the settlement must include.

The bill specifies what duties a conservator may delegate to an agent; how a conservator must administer a protectee's estate; to what extent a conservator must pay a protectee's or a protectee's dependents' expenses; and in what circumstances a conservator may petition the court for liquidation or redemption of a decedent's joint assets or assets titled with nonprobate transfers.

If a ward's estate and available public benefits are inadequate for the proper care of the ward, the ward's guardian is not obligated to use the guardian's own financial resources for the support of the ward. The guardian may apply to the county commission for such care. A guardian shall not have the authority to seek admission of

a ward to a mental health or intellectual disability facility for more than 30 days without a court order. Additionally, a social service agency serving as guardian of an incapacitated person is required to notify the court within 15 days after any change in the identity of the professional individual who has primary responsibility for providing guardianship services to the incapacitated person.

The bill provides that the probate division of the court has jurisdiction over issues of the adjudication of incapacity and disability and over appointment of a guardian or conservator of an adult who is 18 or older or over whose parents have a matter pending under Chapters 210 or 452, RSMo.

This bill establishes specified rights that every incapacitated person has in every guardianship.

PROPOSERS: Supporters say that this legislation is about the quality of life of people who are under guardianship or conservatorship. There is a nationwide movement to move away from guardianship and toward supported decision making. Something needs to change since our current statute was enacted 35 years ago. There are more stories of guardians controlling their charges rather than supporting them. The guardianship hearings last only a few minutes, and the wards usually have very little say in what happens. And, because guardians are substitute decision makers, they do not have an actual duty to look into the true interest of the individual. The due process provisions of the guardianship code are not consistently followed.

Testifying for the bill were Representative Neely; Elizabeth A. Moran; Susan K. Eckles, Missouri Protection and Advocacy Services; Stephanie Briscoe; Thomas Briscoe; David English; Catherine R. Edwards, Missouri Association of Area Agencies on Aging; and Mike Bishop.

OPPOSERS: Those who oppose the bill say that there are approximately 50,000 people in Missouri who have guardians, and some guardians care very much about their wards. There is a complaint process in current guardian law to get rid of bad guardians. It is tough for the public administrator to do some of the required job, because the budget for that office is tiny and there is not a large staff. The office has to consider a ward's capacity and inability, because there are a lot of things they'd want that might cause a danger to society.

Testifying against the bill were Christopher Cross; Eldon Flaherty; Cher Caudel, and the Missouri Association of Public Administrators.

OTHERS: Others testifying on the bill say that some organizations have not taken a position on the bill.

Testifying on the bill was the Missouri Bar.