

TO CHAIR BREEN AND MEMBERS OF MICH HOUSE JUDICIARY COMMITTEE

TESTIMONY AND RECOMMENDATIONS ON HB 4911 (9-27-23)

2 pages

CRUCIAL NEEDED AMENDMENTS TO EPIC GUARDIANSHIP STATUTES/BILLS

1. Amend the Guardianship Appointment Standard from a vague, subjective, overbroad and problematic: "unable to make informed decisions" to include a more objective and ascertainable: "unable to protect their own health, safety or money."
2. Amend to include the Least Restrictive Alternative as a mandatory Constitutional rule to be followed by the court before appointment, and by the guardian thereafter.

700.5306 Court appointment of guardian of incapacitated person; findings; appointment of limited guardian; effect of patient advocate designation; supervised access.

Sec. 5306. (1) The court may appoint a guardian if the court finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record. Alternately, the court may dismiss the proceeding or enter another appropriate order.

RCW 11.130.265 Basis for appointment of guardian for adult. (1)

On petition and after notice and hearing, the court may:
(a) Appoint a guardian for an adult if the court finds by clear and convincing evidence that:

- i 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;
- ii Appointment is necessary to prevent significant risk of harm to the adult respondent's physical health, safety, or self-care; and
- iii The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative;

Wash. Rev. Code UGCOPAA § 301(a)

700.1105 Definitions; I to L.

Sec. 1105. As used in this act:

(a) "Incapacitated individual" means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.

(5) "incapacitated person" means a person whose ability to receive and evaluate information or to communicate decisions is impaired for reasons other than minority to the extent that the person lacks the ability to provide the essential requirements for the person's physical health or safety without court-ordered assistance; AS 13.26

OR Rev Stat § 125.005 NH Rev Stat § 464-A:2

"Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them, which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their abilities to the maximum extent possible and which accomplishes these objectives through the use of the least restrictive alternative;

20 Pa. Cons. Stat. Ann. § 5502

"No conservatorship of the person or of the estate shall be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee."

Cal. Prob. Code, § 1800.3 (b)

Sean Bennett Disability Rights Advocate
1011 Crown Kal MI 49006 269-762-9995

2.

GUARDIANSHIP BILLS & MCL 700.5306
SHOULD INCLUDE "THE LEAST RESTRICTIVE TO LIBERTY" REQUIREMENTS

Adult full guardianship should be drastically reduced in Michigan and used only as a last resort. The idea that an adult person's life is to be "taken over" and subjected to the control of a stranger, or any other person, should be met with the highest level of Constitutional scrutiny and legislative protections. The guardian reform bills are progress, however, it is crucial that the statute also be amended to require both the court and guardian to adhere to the Least-Restrictive-to-Liberty rule, which the Constitution and most of the other states require. The statute should require that only if there is no other possible way to protect a person from substantial physical or financial harms, then guardianship may be imposed. And the guardian is not to act as dictator, but rather respect the wishes and choices of the subject to the greatest extent possible, while depriving the subject of their freedoms and rights to the least extent possible. Under Michigan law (700.5303) all that is required is that the court provide the petitioner with information about alternatives to full guardianship. This does not sufficiently protect the rights and interests of persons subject to guardianship proceedings.

Those who object to imposition of a guardian in Michigan usually lose. In a typical year 9,000 petitions are approved while 200 denied. The speed, simplicity and frequency in which guardianships are appointed and the difficulty and rarity of their removal is frightening. Too often the result is punishment, oppression, violation and exploitation rather than protection. If the state wants to help a person protect their money, then the state should pay guardian fees, legal fees, etc., or find alternatives. Similarly, depriving a person of their right to informed consent for health care is a prescription for disaster, as is depriving them of their freedom of speech, or other rights to make the most basic and intimate decisions in life. Freedom is valued in America, and even when the state just wants to help someone, this help should burden freedom and liberty the least amount possible. Statutes in the other states should provide guidance on how to word this amendment to 330.5306.

"The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship, or other less restrictive alternatives would meet the needs of the respondent."

UGCOPAA § 301(b) (Basis for Appointment of Guardian for Adult)

Standard 8 Least Restrictive Alternative *Texas S.C.R.*

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the needs of the ward while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.

744.1012 Legislative Intent. *Fla.*

(3) By recognizing that every individual has unique needs and differing abilities, it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf. This act shall be liberally construed to accomplish this purpose.

"Any guardian appointed under this article shall be granted only those powers which are necessary to provide for personal needs and/or property management of the incapacitated person in such a manner as appropriate to the individual and which shall constitute the least restrictive form of intervention, as defined in subdivision (d) of section 81.03 of this article." New York

Thank you. Sincerely,

