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SENATE BILL 6235

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State of Washington

64th Legislature

2016 Regular Session

By Senators Padden and Conway

Read first time 01/13/16. Referred to Committee on Law & Justice.

1 AN ACT Relating to guardianships in respect to an incapacitated  
2 person's right of communication, visitation, and interaction with  
3 others; and adding new sections to chapter 11.88 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 11.88  
6 RCW to read as follows:

7 (1)(a) Unless specifically authorized by court order, a guardian  
8 may not restrict an incapacitated person's right of communication,  
9 visitation, or interaction with other persons, including the right to  
10 receive visitors, telephone calls, or personal mail.

11 (b) If an incapacitated person is unable to express consent to  
12 communication, visitation, or interaction with a person due to a  
13 physical or mental condition, then consent of the incapacitated  
14 person may be presumed based on the incapacitated person's prior  
15 relationship history with the person.

16 (2) A guardian may, for good cause shown, move the court to have  
17 restrictions placed on a person's ability to communicate, visit, or  
18 interact with an incapacitated person in accordance with subsection  
19 (3) of this section. Good cause includes:

1 (a) Whether any protective orders have been issued to protect the  
2 incapacitated person from the person seeking access to the  
3 incapacitated person;

4 (b) Whether abuse, neglect, or financial exploitation of the  
5 incapacitated person by the person seeking access to the  
6 incapacitated person has occurred or is likely to occur;

7 (c) Documented wishes of the incapacitated person to reject  
8 communication, visitation, or interaction with specific persons; and

9 (d) Any other factors deemed relevant by the court.

10 (3)(a) A court may order restrictions placed on communications,  
11 visitations, or interactions a person may have with an incapacitated  
12 person upon a showing of good cause by the guardian.

13 (b) In determining whether to issue an order in accordance with  
14 (a) of this subsection (3), the following factors must be considered  
15 by the court:

16 (i) Whether any protective orders have been issued to protect the  
17 incapacitated person from the person seeking access to the  
18 incapacitated person;

19 (ii) Whether the person has been charged with abuse, neglect, or  
20 financial exploitation of the incapacitated person;

21 (iii) Whether the incapacitated person expresses a desire to  
22 communicate, visit, or interact with the person;

23 (iv) If the incapacitated person is unable to communicate,  
24 whether a properly executed living will, durable power of attorney,  
25 or advance directive contains a preference by the incapacitated  
26 person with regard to the person's communication, visitation, or  
27 interaction with the incapacitated person; and

28 (v) Any other factors deemed relevant by the court.

29 (c) Prior to issuing an order pursuant to this subsection (3),  
30 the court must consider the following restrictions in the order  
31 listed:

32 (i) Placing reasonable time, manner, or place restrictions on  
33 communication, visitation, or interaction between the incapacitated  
34 person and another person based on the history between the  
35 incapacitated person and the person or the incapacitated person's  
36 wishes, or both;

37 (ii) Requiring that communication, visitation, or interaction  
38 between the incapacitated person and another person be supervised; or

39 (iii) Denying communication, visitation, or interaction between  
40 the incapacitated person and another person; provided, that unless

1 the court finds that the person poses a threat to the incapacitated  
2 person, supervised communication, visitation, or interaction under  
3 (c)(ii) of this subsection (3) must be ordered prior to the denial of  
4 any communication, visitation, or interaction.

5 (4)(a) If any interested person, including the incapacitated  
6 person, reasonably believes that subsection (1) of this section has  
7 been violated or an order issued pursuant to subsection (3) of this  
8 section has been violated, then such person may move the court to:

9 (i) Require the guardian to grant a person access to the  
10 incapacitated person;

11 (ii) Restrict, or further restrict, a person's access to the  
12 incapacitated person;

13 (iii) Modify the guardian's duties; or

14 (iv) Discharge and replace the guardian pursuant to RCW  
15 11.88.120.

16 (b) Notwithstanding actions available to the court pursuant to  
17 (a) of this subsection (4), a guardian who is found to be knowingly  
18 isolating an incapacitated person and who has violated subsection (1)  
19 of this section or has violated an order issued pursuant to  
20 subsection (3) of this section is subject to discharge and  
21 replacement pursuant to RCW 11.88.120.

22 (5)(a) Except as provided in (b) of this subsection, the court  
23 must schedule a hearing on a motion filed pursuant to subsection (2)  
24 or (4) of this section no later than sixty days after the date the  
25 motion is filed. The court may, in its discretion, order mediation to  
26 be conducted by the parties and the incapacitated person prior to the  
27 hearing. If mediation results in agreement of the parties and the  
28 incapacitated person with regard to communication, visitation, or  
29 interaction with the incapacitated person, the agreement must be  
30 approved and memorialized in an order by the court.

31 (b)(i) If the motion states that the incapacitated person's  
32 health is in significant decline or that the incapacitated person's  
33 death may be imminent, the court must conduct an emergency hearing as  
34 soon as practicable, but no later than ten days after the motion is  
35 filed.

36 (ii) When a scheduling order is issued upon a motion filed  
37 pursuant to (b)(i) of this subsection (5), the court must also order  
38 that supervised communication, visitation, or interaction with the  
39 incapacitated person be granted during the period prior to the  
40 hearing.

1 (c) Notice of the hearing, a copy of the motion, and a copy of  
2 any order issued pursuant to (b)(ii) of this subsection (5), if  
3 applicable, must be personally served upon the incapacitated person  
4 and any person against whom the motion is filed, and nothing in this  
5 section may affect the incapacitated person's right to appear and be  
6 heard in the proceedings.

7 (6)(a) The court may award the prevailing party in any action  
8 brought under this section court costs and reasonable attorneys'  
9 fees; provided, however, an award of court costs or attorneys' fees  
10 may not be paid out of the incapacitated person's estate.

11 (b) The court, upon motion or upon its own initiative, must  
12 impose upon a guardian who is found to be knowingly isolating an  
13 incapacitated person and who has violated subsection (1) of this  
14 section or who has violated an order issued pursuant to subsection  
15 (3) of this section an appropriate sanction, including an order to  
16 pay court costs and reasonable attorneys' fees of the other party or  
17 parties. However, no sanction may be paid out of the incapacitated  
18 person's estate.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 11.88  
20 RCW to read as follows:

21 (1) A guardian must promptly notify an incapacitated person's  
22 closest relatives and any person designated by the incapacitated  
23 person to be notified, along with the appropriate contact information  
24 and upon the incapacitated person's knowledge of such circumstance  
25 and information, in the event:

26 (a) The incapacitated person's residence has changed;

27 (b) The incapacitated person is staying at a location other than  
28 the incapacitated person's residence;

29 (c) The incapacitated person is admitted to a medical facility  
30 for:

31 (i) Emergency care in response to a life-threatening injury or  
32 medical condition; or

33 (ii) Acute care; or

34 (d) The incapacitated person dies. However, notification of the  
35 incapacitated persons death must be made in person or by telephone.

36 (2)(a) A guardian is not required to provide notice in accordance  
37 with subsection (1) of this section if:

1 (i) A person who is entitled to notice under subsection (1) of  
2 this section informs the guardian in writing that the person does not  
3 wish to receive such notice; or

4 (ii) The incapacitated person or a court order has expressly  
5 prohibited the guardian from providing notice to the person.

6 (b) A guardian may not provide contact information in accordance  
7 with subsection (1) of this section if an order of protection or  
8 restraining order has been issued against the person on behalf of the  
9 incapacitated person.

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