



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 713 (as introduced 12-6-17)  
Sponsor: Senator Jim Marleau  
Committee: Judiciary

Date Completed: 2-13-18

**CONTENT**

The bill would add Part 6 (Isolated Adults) to Article 5 of the Estates and Protected Individuals Code to do the following:

- Allow a qualified person to petition the court for a finding that an adult was being isolated from a qualified person (such as a spouse or child) by another individual.
- State a presumption that it was in the best interest of an allegedly isolated adult to visit with a qualified person; and allow the respondent to rebut the presumption with clear and convincing evidence that the petitioner had abused the allegedly isolated adult or that visitation would be harmful to him or her.
- Specify that if an allegedly isolated adult objected to a petitioner's visitation, the petitioner would have to demonstrate that the objection resulted from the respondent's undue influence over the allegedly isolated adult.
- Allow the court to enter an order establishing reasonable times for a petitioner to visit an isolated adult if the court found that the petitioner was a qualified person, the individual subject to a petition was an isolated adult, and visitation between the isolated adult and the petitioner was being denied.
- Allow the court to assess reasonable attorney fees and guardian ad litem costs if a petition were granted, or if the court found that the petitioner had filed the petition in bad faith.

The bill would amend Article 5 (Protection of an Individual under Disability and His or Her Property) to do the following:

- Require a guardian ad litem appointed for an incapacitated individual to make determinations as to with whom the incapacitated individual wished to communicate and visit, and whether it would be appropriate for the incapacitated individual to do so.
- Require a court to design a guardianship to continue the development of an incapacitated individual's existing relationships with qualified persons.
- Specify that an individual for whom a guardian was sought or had been appointed would have the right to visit and communicate with individuals of his or her choice.
- Allow a qualified person to petition the court for a finding that a ward was an isolated adult and for an order of visitation with the ward under proposed Part 6.
- Allow a patient advocate designation to include a statement of the patient's desires on communication and visitation with others.

## Definitions

The bill would define "isolated adult" as an individual who is 18 years of age or older, including a ward, and who has been denied visitation with a qualified person by another person.

"Qualified person" would mean any of the following:

- The spouse, child, grandchild, parent, or sibling of an allegedly isolated adult.
- An individual who has a significant and ongoing relationship with an allegedly isolated adult.
- An individual whom the allegedly isolated adult named in his or her patient advocate designation with whom the allegedly isolated adult would like to visit.

"Respondent" would mean an individual alleged to have interfered with or denied visitation between an allegedly isolated adult and a petitioner.

## Part 6: Visitation Proceedings, Isolated Adult

Venue & Petition. Under Part 6, a qualified person could petition the court for a finding that an individual who was at least 18 years of age was being isolated from a qualified person by another individual. The petition would have to include all of the following:

- The petitioner's interest as a qualified person.
- The residence of the allegedly isolated adult or where he or she was present.
- A statement of facts as to why the petitioner's visitation with the allegedly isolated adult was being interfered with or denied.
- The identity of any person alleged to be interfering with or denying visitation between the petitioner and the allegedly isolated adult.

The venue for a visitation proceeding would be in the county where the allegedly isolated individual resided or was present.

When a petition was filed, the court would have to set a date for a hearing on the issue of isolation.

Notice of hearing would have to be given to the allegedly isolated adult and the respondent. Notice would have to be served personally on the allegedly isolated adult. Notice to all other people would have to be given as prescribed by court rule. A copy of the petition would have to be attached to the notice of hearing.

Presumption, Objection, & Burden of Proof. The bill states, "It is presumed that it is in the best interest of an allegedly isolated adult to visit with a qualified person." The respondent could rebut the presumption with clear and convincing evidence of either of the following:

- That the petitioner committed mental, physical, or financial abuse against the allegedly isolated adult.
- That visitation between the petitioner and the allegedly isolated adult would be harmful to the allegedly isolated adult's health or mental well-being.

If an allegedly isolated adult who was the subject of a petition objected to visitation with the petitioner, the petitioner would have to demonstrate by clear and convincing evidence that the objection resulted from the respondent's undue influence over the allegedly isolated adult. If the petitioner did so, the court would have to grant the petitioner reasonable visitation and notice of change in residency, as described below.

Entry of Order. If the court found that the petitioner was a qualified person, that the individual subject to a petition was an isolated adult, and that visitation between the isolated adult and the petitioner was being denied, the court could enter an order to do any of the following:

- Establish reasonable times for the petitioner to visit the isolated adult.
- Require the respondent to notify the petitioner within 14 days after a change in the isolated adult's residence or the isolated adult's admission to a hospital or skilled nursing facility.

("Skilled nursing facility" would mean that term as defined in Section 20109 of the Public Health Code: a hospital long-term care unit, nursing home, county medical care facility, or other nursing care facility, or a distinct part of such a facility, certified by the Department of Licensing and Regulatory Affairs to provide skilled nursing care.)

Fees. If the court determined that a petitioner filed a petition in bad faith, it could assess against the petitioner reasonable attorney fees incurred by the respondent and any guardian ad litem costs.

If the court granted the petitioner's petition, the court could assess against the respondent any of the following: a) the cost of filing and serving the petition, b) any cost for a guardian ad litem, and c) reasonable attorney fees incurred by the petitioner.

#### Duties of Guardian Ad Litem

A guardian ad litem is a person appointed by the court to appear in a matter on behalf of an incapacitated individual. The Code prescribes duties of a guardian ad litem appointed for an individual alleged to be incapacitated, including making certain determinations, and informing the court of them. These include, among others, determinations on whether there are appropriate alternatives to the appointment of a full guardian, whether a dispute related to the guardianship petition might be resolved through court-ordered mediation, and whether the individual objects to a particular person being appointed guardian.

Under the bill, a guardian ad litem also would have to make determinations, and inform the court of those determinations, on the following:

- With whom the individual wished to communicate and visit, and if the individual named another individual in a patient advocate designation with whom the individual would like to visit and communicate, that individual's identity.
- Whether it would be appropriate for the individual to visit or communicate with the named individual.

#### Appointment of Guardian: Existing Relationships

Under the Code, the court is permitted to appoint a guardian if it finds by clear and convincing evidence 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.

The court may grant a guardian only those powers and only for that period of time as necessary to provide for the demonstrated need of the incapacitated individual. The court must design the guardianship to encourage the development of maximum self-reliance and independence in the individual. Under the bill, the court also would have to design the guardianship to continue the existing relationships with qualified persons.

### Rights of Incapacitated Individual

Under the Code, an individual for whom a guardian is sought or has been appointed has certain rights. These include, among others, the following:

- The right to petition on his or her own behalf for the appointment of a guardian.
- The right to have an independent evaluation of his or her capacity by a physician or mental health professional.
- The right to quarterly visits by the guardian.

The bill also would grant an individual for whom a guardian was sought or had been appointed the right, if he or she were able to express his or her preference, to visit and communicate with individuals of his or her choice. If the individual were unable to express his or her preferences, and if the individual named another individual in a patient advocate designation with whom the individual would like to visit and communicate, he or she would have the right to visit and communicate with that other individual.

### Petition for Finding Ward was Isolated Adult; Visitation Order

The bill would allow a qualified person to petition the court for a finding that a ward was an isolated adult and for an order of visitation with the ward under Part 6. A qualified person also could petition the court for an order that required the guardian to notify the qualified person in writing within 14 days after either of the following: a) a change in the ward's residence, or b) the ward's admission to a hospital or skilled nursing facility.

### Patient Advocate Designation Statement

The Code allows an individual who is 18 years of age or older and of sound mind to designate in writing another individual who is 18 or older to exercise powers concerning care, custody, and medical or mental health treatment for the individual making the designation.

A patient advocate designation may include a statement of the patient's desires on care, custody, and medical treatment or mental health treatment, or both. The bill also would allow a patient advocate designation to include a statement of the patient's desires on communication and visitation with others.

MCL 700.5101 et al.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

SAS\S1718\s713sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.