



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



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

House Bills 4909 and 4910 (Substitute S-3 as reported)
House Bills 4911 and 4912 (Substitute S-2 as reported)
Sponsor: Representative Kelly Breen (H.B. 4909)
Representative Penelope Tsernoglou (H.B. 4910)
Representative Graham Filler (H.B. 4911)
Representative Ken Borton (H.B. 4912)
House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety

CONTENT

House Bill 4909 (S-3) would amend the Estates and Protected Individuals Code (EPIC) to do the following:

- Allow an interested person to file for notification of an order in a guardianship hearing for a temporary guardian as proposed under House Bill 4912 (S-2).
- Delete a provision specifying that a professional guardian or employee of the guardian would have to establish and maintain visitation appointments every three months.
- Allow a professional guardian or professional conservator to use support staff and other professionals, under the professional's active and direct supervision, to perform office functions and client services, but prohibit the delegation of decision-making authority to support staff.
- Require a court appointed guardian and court appointed conservator to meet certain suitability requirements prior to being considered eligible for priority appointment.
- Require a court to decide between two potential guardians or conservators of equal priority by using the proposed suitability requirements.
- Allow for the appointment of co-guardians or co-conservators in deciding between two individuals with equal priority.
- Allow a court to appoint a professional guardian if no guardian were designated or were suitable and willing to serve subject to priority appointment guidelines.
- Prescribe requirements for, and expiration dates of, letters of guardianship and conservatorship.

House Bill 4910 (S-3) would amend EPIC to do the following:

- Modify the duties of a guardian ad litem (GAL) appointed to a guardianship for an incapacitated individual and a GAL appointed to a conservatorship for a protected individual.
- Require a GAL to communicate specific information with the incapacitated individual, including the individual's rights, the hearing procedures, and the GAL's power to take certain actions on behalf of the individual including alternative appointments.
- Require a GAL to file a written report with the court in a form required by the State Court Administrative Office (SCAO) for contested and uncontested cases and serve the report on interested persons.
- Prohibit a court from appointing a GAL as legal counsel for an individual if the GAL's report or recommendation to the court conflicted with the individual's wishes.
- Allow for the appointment of a special limited GAL and prescribe that guardian's scope of work.

- Require a court to appoint legal counsel for an individual subject to a petition under Part 3 (Guardians of Incapacitated Individuals) if the individual requested legal counsel, objected to guardianship, or a GAL determined it was in the individual's best interest.
- Require the State to pay for legal counsel of an individual who was alleged to be incapacitated and indigent.
- Modify guardian visitation requirements to specify that a guardian would have to visit the ward within a month of appointment and at least once within three months after each visit, among other things.
- Allow a guardian who was not a professional guardian to delegate in person visits to another individual.
- Require a guardian or a conservator to make an inventory of a ward's estate and personal and sentimental items and serve the list of items to all interested persons within 56 days of appointment.
- Require a guardian responsible for a ward's estate when a conservator was not appointed to allow interested persons to review certain proofs of income and disbursements.
- Require a guardian to maintain a ward's permanent residence if possible and make all reasonable efforts to return the ward to his or her residence if the ward were removed.
- Prescribe certain requirements to establish a change in a ward's residence.
- Require a guardian to file a petition for permanent removal of a residence and prescribe the process for a hearing of that petition.
- Require a guardian of a ward for whom a conservator had not been appointed and the ward's qualified estate was greater than 400% of the Federal poverty level to file a petition for conservatorship under Part 4 (Notice, Parties, and Representation in Estate Litigation and Other Matters).
- Require a conservator to account certain information about the administration of a ward's trust, financial records, documentation of significant expenses, and how the ward's personal items were handled to the court and interested persons within 56 days of the conservatorship's termination.

House Bill 4911 (S-2) would amend EPIC to do the following:

- Modify the requirements of a petition to determine an individual incapacitated to require the court to set a date for an initial hearing and then set a trial date within seven days of the initial hearing.
- Specify that if an independent evaluation to determine an individual's incapacity were performed at the expense of the State, due to indigency, the evaluation would have to be performed by a physician or mental health professional.
- Modify the requirements of an examination report following a medical professional's evaluation to determine incapacity and specify that a court could not consider the evaluation if the report did not comply with certain requirements.
- Specify that a court could order a temporary guardianship with limited scope if the court found that the individual had the capacity to execute a power of attorney, patient advocate designation, or designate a representative payee.
- Modify the process to declare an emergency guardian to allow an interested person to file a petition for emergency guardian appointment, among other changes.
- Require petitions and orders to declare an emergency guardian to comply with Michigan court rules controlling temporary restraining orders.
- Prescribe the hearing procedures to appoint an emergency guardian and allow the court to appoint one either after a hearing or without notice to the allegedly incapacitated individual depending on the evidence presented.

House Bill 4912 (S-2) would amend EPIC to do the following:

- Allow a court to appoint a temporary guardian if a guardian were not appointed or an appointed guardian were not effectively performing the guardian's duties and the ward's welfare required immediate attention.
- Require a temporary guardian to undergo a trial period within 28 days after the guardian's appointment.
- Specify that a court would have to set a specified period for the temporary appointment that could not exceed six months.
- Allow a protected individual or person interested in the individual's welfare to petition for an order of removal of a conservator, appointment of a successor, or for an order of modifying the conservatorship.
- Specify that the appointment of conservators would be subject to priority appointment as described under House Bill 4909 (S-3).
- Require a court to state on the record why the sale of a ward's principal dwelling, real property, or interest in a property was in the best interest of the ward.

The bills are tie-barred, and each bill would take effect one year after its enactment.

MCL 700.5104 et al (H.B. 4909)
700.5305 et al (H.B. 4910)
700.5303 et al (H.B. 4911)
700.5414 et al (H.B. 4912)

BRIEF RATIONALE

Generally, guardians and conservators are individuals appointed through a probate court and are obligated to act in the best interests of an incapacitated individual. According to testimony, the current system of appointing guardians and conservators does not effectively protect wards from abuse and often awards guardianship to professional guardians instead of keeping a ward with a family member. Additionally, the State's Elder Abuse Task Force recommended modifying EPIC to require consistency among the expectations of guardians, GALs, and conservators.¹ It has been suggested to modify EPIC to ensure that elders' and wards' best interests are met and that they are protected from abuse.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the State and local court systems. While the bills would not increase or decrease guardian or conservator filings, per se, they would change requirements and procedures for those assignments, adding a licensure requirement for professional guardians and conservators, modifying requirements for temporary assignments, and requiring a trial for temporary guardian appointments under Sections 5301a and 5312a.

For context, the table below shows the number of total caseloads for guardians and conservators at the end of each calendar year from 2019 through 2023. These caseloads are relatively stable from year to year, even through the pandemic.

¹ "Guardian Legislation FAQ" Michigan Department of Attorney General.
<https://www.michigan.gov/ag/initiatives/elder-abuse/elder-abuse-task-force/guardian-legislation-faq>
Retrieved 11-23-24.

	Adults with a Guardian	Adults with a Conservator	Minors with a Guardian	Minors with a Conservator	Developmentally Disabled Persons with a Guardian
2019	33,807	11,670	19,878	5,553	29,784
2020	30,412	10,989	18,068	5,229	27,679
2021	30,867	11,103	16,038	5,382	29,421
2022	31,801	11,135	15,976	5,532	30,103
2023	32,034	10,997	15,963	5,388	30,795

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Fiscal Analyst: Joe Carrasco, Jr
Michael Siracuse

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