

Testimony to the Senate Law & Justice Committee and the House Judiciary Committee

Washington State Legislature

January 19 and 20, 2016

Good morning. My name is Tina Baldwin. I come before you today with comments related to SB 6235 (HB 2402)

This bill is meant to address a person's right to communicate, visit, and interact with others. There are some significant areas, however, that must be addressed before it will accomplish this goal.

Washington is in a minority of states that do not require counsel for respondents with a cognitive disability involved in guardianship proceedings. Language must be added to ensure that these individuals have access to representation when a petition is filed to restrict his or her freedom of association. Such a restriction is a major deprivation of liberty. Therefore, access to justice requires the appointment of counsel when such deprivation of liberty is sought.

Appointed counsel for a respondent with a disability is not optional. It is mandated by federal law. Failure to appoint counsel is a violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

The appointment of a guardian ad litem or GAL is not sufficient. A GAL is appointed by the court to represent the "best interests" of the individual per the GAL's opinion. The individual has constitutional and civil rights to challenge the opinion of the GAL and collateral witnesses' opinions. A respondent with a disability has a right to bring forth their own witnesses and to challenge these opinions. They cannot do this without legal representation.

Mr. Chair, I am providing you a copy of *Due Process Plus*, a White Paper written by Tom Coleman, Legal Director of the Disability and Guardianship Project as well as a letter he wrote to Washington State's Supreme Court Justices. These provide details on why the addition of this language is a MUST do. They also provide links to the website of the Disability and Guardianship Project and the Disability and Abuse Project. A familiarity with the work of these projects is essential if we are to improve guardianship services for people with disabilities and to eliminate isolation in Washington State.

Then there is the issue of evidence to substantiate that a restriction is warranted.

According to the 2012 National Survey on Abuse of People with Disabilities, abuse of people with disabilities is a hidden epidemic. The signs and symptoms of abuse can be subtle and difficult to recognize. Whether the person has a cognitive disability or not, victims of abuse are often afraid and easily intimidated. They may say or write what they think is needed to appease the perpetrator and to mitigate future abuse.

Language MUST be included in SB 6235 (HB 2402) to address evidentiary standards to support any restrictions on association.

Also, there MUST be an evaluation submitted by a mental health professional with expertise in evaluating for mental abuse when restrictions on association are being contemplated. This evaluation MUST also address if the "documented wishes" of the respondent are indeed an accurate reflection of the respondent's wishes. GAL reports should not be considered a substitution for such an evaluation.

And finally, the bill MUST also mandate that any opinions offered by a guardian must be under oath and that they meet the same evidentiary standards used in other types of judicial proceedings.

The amendments I am suggesting to this bill will address due process, civil, and constitutional rights that all of us would want in place should we find ourselves under guardianship and someone was trying to restrict our right to associate with our family or friends. Thank you.

<http://spectruminstitute.org/guardianship/>

<http://disabilityandabuse.org/>