



15851 South U.S. Highway 27, Suite 73, Lansing, MI 48906
Main Line: 517-827-8010

OVERVIEW HBs 4847-4850
GUARDIANSHIP REFORM BILL PACKAGE
June 20, 2022

HB 4847

Sponsor: Rep. Graham Filler

Changes to current law:

1. Creates a framework for certification of professional guardians with input from all relevant stakeholders – but does not require certification. These bills put the framework in place to certify guardians but requires appropriation of funding by the Legislature and action by the Michigan Supreme Court. The process laid out in the bill, subject to an appropriation, would enable the Michigan Supreme Court to bring together stakeholders to develop certification standards, including appointees named by the Senate Majority Leader and the House Speaker.
2. The court must make specific findings of fact to determine whether an individual with priority to serve as a potential guardian or conservator is suitable before passing them over. The court must review “suitability factors,” such as the potential guardian or conservator’s availability, relationship to the individual, personal history, and ability to fulfil the role. Importantly, a court could not skip over suitable and willing family members solely because of interpersonal disputes.
3. The bill would require that only the certified guardian or conservator can make decisions about contracts, informed consent, and care planning. Support staff could still assist by carrying out the decisions of the certified guardian or conservator
4. A guardian could not renew their letters of guardianship until they provide the court with the required report.

HB 4848

Sponsor: Rep. Graham Filler

Changes to current law:

1. This bill would create uniformity in the reports and duties of guardians ad litem (GALs). This will give probate courts high quality information to make better decisions, leading to better outcomes. Specific changes include:
 - a. Requiring that GALs communicate with the individual in a way that the individual can understand. If the GAL is unable to do this, they must explain it to the court.
 - b. Interviewing the individual at their location, outside the presence of any interested persons.
 - c. Determining if the individual wants to be present at the hearing.
 - d. Explaining the individual’s legal rights.
 - e. Determining who the individual wants—and does not want—if a guardian or conservator is appointed.



- f. Explaining when, where, and for how long the GAL met with the individual.
 - g. Identifying barriers to attending the hearing so the court can move the hearing or provide other reasonable accommodations.
 - h. Identify more robust potential alternatives to guardianship.
2. GALs whose recommendations went against the wishes of the individual subject to the petition would be barred from being appointed as their lawyer.
 3. Increasing the number of required visits by a guardian from once a quarter to once a month, with the option for every other visit to be done via video technology. Professional guardians could not delegate the required in-person visit to another person.
 4. Requiring that guardians and conservators make a reasonable effort to identify items of particular importance to their wards, providing a list to interested persons within 56 days.
 5. Providing a uniform procedure to object to an account.
 6. Giving interested persons the right to review proofs of income and disbursements.

HB 4849

Sponsors: Rep. Kyra Harris Bolden & Rep. Graham Filler

Changes to Current Law:

1. HB 4849 would put an end to “traffic ticket” style hearings and instead give the parties adequate time and due process to prepare for the potential deprivation of civil rights. The bill would also require attendance of the individual subject to the petition if the individual wishes to attend.
2. The bill would ensure that medical reports are providing useful and high-quality information to probate courts regarding the abilities and limitations of the individual subject to the petition. The current “check the box” reports provide minimal useful information to courts.
3. The bill would provide an “off ramp” from guardianship if, during the proceedings, a feasible alternative to guardianship such as a power of attorney can be implemented.
4. Additionally, HB 4849 would create a uniform standard for when a probate court can grant emergency petitions for guardianship.

HB 4850

Sponsors: Rep. Rodney Wakeman & Rep. Graham Filler

Changes to current law:

1. HB 4850 establishes a procedure to appoint a temporary guardian if the current guardian is unable or ineffective in performing their duties.
2. HB 4850 provides that a request to modify or terminate a conservatorship can be made by letter.



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Main Points in Support of HBs 4847- 4850
June 21, 2022

- 1. This bipartisan package of bills addresses the most serious issues facing the Estates and Protected Individuals Code (EPIC) guardianship and conservatorship system, as identified by experts in the field and those who have first-hand experiences with the system.**

The Elder Abuse Task Force (EATF), which includes both Democrat and Republican lawmakers, law enforcement, senior services providers, disability rights advocates, elder law experts, and others, engaged in an extensive listening tour. The most serious issues brought up by individuals at the listening tours included:

- Family members being passed over by courts in favor of professional guardians
- A lack of transparency about finances and treasured items
- Moving individuals from their longtime homes into institutional settings like nursing homes
- Individuals failing to attend their own hearings because they did not understand their rights or they lacked the means to attend
- Poor experiences with some professional guardians

Additionally, experts in the field including representatives of the Elder and Disability Rights Section of the State Bar, Probate and Estate Planning Section of the State Bar, the Michigan Probate Judges Association, the Michigan Juvenile and Probate Registers Association, and other practitioners identified a lack of uniformity across the state on a number of matters, including:

- The role of the guardian ad litem
- Facilitating hearing attendance of the individual subject to the petition
- Scheduling cases to permit time to engage in discovery, including independent medical evaluation
- The standard for granting an emergency guardianship

These bills address these major concerns.

- 2. These bills lay the framework for certification of professional guardians with input from all relevant stakeholders – but do not require certification.**

These bills put the framework in place to certify guardians but requires appropriation of funding by the Legislature and action by the Michigan Supreme Court. The process laid out in the bill, subject to appropriation, would enable the Michigan Supreme Court to



bring together stakeholders to develop certification standards. Professional guardians will be professionalized— something professional guardians themselves have sought. Friends and family members would still be allowed to act as guardians but would receive the support they need to competently fulfill their duties. The Guardian and Conservator Certification Advisory Council, as outlined in HB 4847, includes representation from the Michigan Guardianship Association, the Michigan Elder Justice Initiative, the Elder and Disability Rights Section of the State Bar, the Probate and Estate Planning Section of the State Bar, the Michigan Probate Judges Association, the Michigan Juvenile and Probate Registers Association, and appointees named by the Senate Majority Leader and the House Speaker.

3. These bills represent practical and meaningful change.

The legislative process requires compromise. These bills represent three years' worth of difficult conversations, pragmatism, and a focus on individuals impacted by the EPIC guardianship system. No one stakeholder has everything they want in these bills. Instead, by truly engaging—three times a month for three years during our EATF meetings—these bills represent solid, meaningful change.

The bills are carefully written so that as implemented, they will not overburden or overtax the current system. We negotiated to ensure that the hardworking probate courts across the state aren't buried under filings or paperwork. Finally, as stated above, the guardianship certification will not take effect until it is funded by the Legislature and implemented by the Michigan Supreme Court and other key stakeholders.

The Michigan Elder Justice Initiative is a private nonprofit organization. MEJI seeks to empower, educate, and protect low-income older adults and people with disabilities through administrative and policy advocacy, educational efforts, and collaboration with multi-disciplinary partners on the local, state, and national level. As a project of Michigan Statewide Advocacy Services, MEJI provides support to civil legal aid programs and other advocates to assist them in providing effective representation to and advocacy for low-income older adults and people with disabilities. The project focuses primarily on issues affecting the most vulnerable older adults including long term care; guardianship; public benefits; and elder abuse, neglect, and exploitation. It also works closely with disability advocates to address issues of shared concern. MEJI staff include legal and advocacy staff committed to empowering low income older adults and people with disabilities and assuring their dignity and autonomy.

MEJI is one of several statewide advocacy programs created by the Michigan Advocacy Program (MAP), formerly Legal Services of South Central Michigan. MAP's direct service components are Legal Services of South Central Michigan and Farmworker Legal Services. MAP provides administrative services to several statewide programs, including MEJI. These statewide programs are all housed at MSAS.



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THE REAL IMPACT OF HB 4847-4850

Unfortunately for some, HB 4847-4850 will come too late. But these bills can help prevent some of these tragic situations from happening again.

Barbara Delbridge and Robert Mitchell

In 2019, Barbara Delbridge and Robert Mitchell, a married couple, were placed under guardianship. Mr. Mitchell's daughter filed the petitions for guardianship and conservatorship because she believed that her aging father and stepmother were no longer able to handle their own affairs. During a hearing that took under 30 minutes for two guardianship and two conservatorship petitions, the Probate Court disregarded the family's request to serve as guardian and instead appointed a corporate guardian and conservator. Mr. Mitchell had no one representing him at the hearing.

The corporate guardian and conservator engaged in self-dealing, built a fence around the property, and banned family visits, paying themselves a quarter-million dollars in the process. Though the corporate guardian and conservator was eventually relieved of duty, and the family member instated as guardian and conservator, Ms. Delbridge and Mr. Mitchell died shortly after this traumatic affair.

The package of bills will remedy some of the issues faced by Ms. Delbridge and Mr. Mitchell. First, HB 4847 would require that before determining someone with priority to serve as a guardian or conservator--such as a family member--the court must review a set of factors and make a finding on the record. If the court had conducted this kind of analysis in this case, the law likely would have required the court to thoroughly evaluate whether the family member was "suitable" before jumping over her to appoint a corporate guardian.

Additionally, the rapid-fire nature of these hearings means that an individual can be stripped of their civil rights with less time than a traffic court hearing. HB 4849 would require that a court provide sufficient time for all parties to prepare for a hearing, including time to obtain counsel and medical evaluations. If this law had been in place, there would have been time to ensure Mr. Mitchell had someone present to represent his interests.

<https://www.wxyz.com/news/local-news/investigations/why-did-a-macomb-co-judgeput-strangers-in-charge-of-an-elderly-couple-instead-of-family>

<https://www.wxyz.com/news/local-news/investigations/i-just-want-my-parents-back-woman-says-company-imprisoned-her-parents-in-their-own-home>



Rodrick Gordon

Rodrick Gordon is a Deaf-Blind man from Detroit. After becoming Deaf-Blind in his 20s and 30s due to a brain tumor, he managed his life independently for decades. He arranged for appropriate services, had certain days set aside for certain tasks, and lived life in Detroit. After a hospitalization, he was sent back home without any of his carefully organized plans in place. Adult Protective Services petitioned for a guardianship, placing Mr. Gordon in an Adult Foster Care home where he was limited in his ability to communicate with anyone. Mr. Gordon never appeared for his guardianship hearing because no one communicated with him about what was going on. His guardian ad litem advised the court that communication had not happened, yet the court went forward with the hearing anyway. Like too many people in the guardianship system, Mr. Gordon didn't have the information he needed to attend his day in court.

Years later, following a trip to the Michigan Court of Appeals, Mr. Gordon is back in charge of his own affairs.

HB 4848 would have ensured that Mr. Gordon received information about his hearing and that the court was fully advised on any barriers to attendance. Right now, guardians ad litem (GALs) serve as the "eyes and ears" of the court, advising people of their rights and providing recommendations to probate courts. GAL reports lack uniformity across the state, meaning that probate courts often lack the high quality information necessary to make appropriate rulings. HB 4848 would make these reports uniform, provide courts with the information they need, advise individuals of their rights, and ensure that the court is aware of any barriers to attendance so the hearing can be adjusted or moved if necessary.

<https://www.wxyz.com/news/detroit-man-who-is-deaf-blind-freed-after-spending-more-than-2-years-under-guardianship>

Bessie Owens

Bessie Owens, a woman in her late 70s, uses a wheelchair. When she tried to get a ramp installed following a hospitalization, she ended up under guardianship following a petition by Adult Protective Services. This, despite the fact that her guardian later stated that she did not need a guardian or conservator.

Ms. Owens has stated that she never received notice of the case, though a guardian ad litem was appointed. There is no guardian ad litem report listed in the Wayne County Probate case management software. Even once she was aware of the case, she was not able to attend in person due to her disability.

Eventually Ms. Owens retained pro bono legal counsel through the Crime Victim's Legal Assistance Project to terminate the guardianship.

As was the case with Mr. Gordon, HB 4848 might have prevented this situation by ensuring that the guardian ad litem fully advised the court about Ms. Owen's circumstances, including her challenges in attending court in person.

<https://www.wxyz.com/news/local-news/investigations/detroit-grandma-just-wanted-a-wheelchair-ramp-but-ended-up-being-put-under-guardianship>

<https://www.wxyz.com/news/local-news/investigations/detroit-grandmother-freed-from-guardianship-after-7-investigation>

