

**House Bill 1049
House Judiciary Committee**

**Testimony Presented by
Cynthia M. Feland
District Court Judge
Chair, Guardianship Workgroup
January 11, 2021**

Chair Klemin, members of the House Judiciary Committee, I am Cynthia Feland, District Court Judge in the South Central Judicial District and Chair of the Guardianship Workgroup. In the fall of 2013, the Guardianship Workgroup, a multi-disciplinary group made up of stakeholders in the guardianship and conservatorship process, was created by then Chief Justice VandeWalle and assigned the task of evaluating current guardianship and conservator statutes and procedures in light of the National Probate Standards. For the last three legislative sessions, the Guardianship Workgroup has identified and recommended a number of statutory amendments to improve and strengthen procedures in cases involving guardianship for incapacitated adults, minors and in conservatorship cases.

The proposed amendments contained in House Bill 1049 are intended to establish procedures for a guardian to restrict visitation, communication and interaction with a ward and for an aggrieved party to challenge the restrictions imposed by the guardian.

Currently, there is no clear statutory authority under the provisions of Chapter 30.1-28 for a guardian to impose restrictions on an individual whose contact has been detrimental to the ward. As a result, there is a wide spectrum of restrictions being imposed by guardians and no clear mechanism to challenge unwarranted restrictions. Recognizing that there are times when restrictions on access to the ward may be in the ward's best interest, the Guardianship Workgroup considered a wide range of options

and determined that the proposed amendments to Chapter 30.1-28 constituted the best balance between allowing a guardian to place necessary restrictions on access to the ward and providing a mechanism for challenging unwarranted restrictions.

Section 1 – Restrictions on visitation, communication, and interaction with the ward –

Removal of restriction.

Page 1, lines 5-8, creates a new section to Chapter 30.1-28 to address the imposition of restrictions imposed by a guardian on an individual's access to a ward and a method for challenging unwarranted restrictions

Subsection 1, Page 1, lines 9-10, provides a guardian with authority to restrict access to the ward only when it is in the ward's best interest for the restriction to be imposed. No court approval is needed before a guardian may impose restrictions on access to the ward.

Subsection 2, Page 1, lines 11-13, identifies who may request court intervention to lift restrictions imposed by the guardian which are unwarranted. In addition to identifying individuals typically having contact with a ward, the term "other interested person" was added to include individuals who were designated by the Court as "interested persons" at the time a guardianship was ordered as well as individuals interested in the ward's well-being who were not known or addressed by the court at the time guardianship was ordered.

Subsection 3, Page 1, lines 14-21, specifies the required contents of a motion to remove the restriction on contact with the ward. Under the proposed amendments, the

movant must explain their relationship to the ward, and provide facts supporting the allegation that the guardian's restrictions on the individual being restricted are unreasonable or arbitrary. Restricted party is used to account for those situations where the movant and the person being restricted are not the same.

Subsection 4, Page 1, lines 22-23, requires service of the motion on the ward, the ward's spouse, and any other interested persons previously designated by the Court. The proposed service requirements are consistent with other notice provisions in Chapter 30.1-28.

Subsection 5, Page 2, lines 1-2, requires that a hearing be held on the motion requesting removal of the restrictions. Notice of the hearing date must be provided to the movant, the guardian, the ward, the ward's spouse and any other interested persons previously designated by the Court.

Subsection 6, Page 2, lines 3-4, requires the court to consider the ward's wishes in determining whether to lift any restrictions on contact. Although a guardianship removes many of the ward's rights, the proposed provision ensures that the ward's wishes are given consideration when making the decision to lift or to approve the restriction. When warranted, the proposed provisions allow the Court to conduct an in-camera interview of the ward. If additional information is needed, the Court also has the ability to appoint a visitor or guardian ad litem.

Subsections 7, Page 2, lines 5-7, allows the court to impose other restrictions on the interactions between the restricted party and the ward if determined necessary as part of an order lifting the guardian's restriction on contact with the ward.

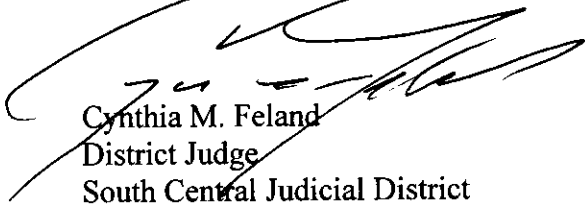
Subsection 8, Page 2, lines 8-10, clarifies that the court has final authority to prohibit the restricted party from having access to the ward if that access is contrary to the ward's best interest. Under the proposed provision, the restriction may be the same as the restriction initially imposed by the guardian or modified by the court after hearing.

Subsection 9, Page 2, lines 11-16, provides for an award of attorney's fees and costs. To deter both a guardian from imposing frivolous or unreasonable restrictions and a restricted party from challenging reasonable restrictions, the Workgroup determined that a court should have the ability to imposed monetary sanctions.

Subsection 10, Page 2, lines 17-18, prohibits the guardian from paying any court ordered attorney's fees or costs from the ward's estate.

Subsection 11, Page 2, lines 19-22, establishes a procedure for an emergency hearing where the ward's health is in significant decline or death is imminent. The proposed amendment is intended to provide timely intervention in emergency situations such as where a guardian is not properly caring for the ward's health and is preventing those who seek to help the ward from accessing the ward. A hearing in emergency cases must be held no later than 14 days following the date the motion is filed. A good cause provision is included to allow the court flexibility in setting the hearing for a later date when warranted.

Respectfully Submitted:



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Guardianship Workgroup Members: Judge **Cynthia M. Feland**, Chair; Judge **Pamela Nesvig**, South Central Judicial District; Judge **Stacey Louser**, North Central Judicial District; **Jon Alm**, N.D. Department of Human Services; **Mikayla Jablonski Jahner**, North Dakota Legal Services; **Rachel Thomason**, attorney, Bismarck, **Tracey Laaveg**, attorney, Park River; **Lauren Bosch**, Guardian Ad Litem; **Aaron Birst**, North Dakota Association of Counties; **Donna Byzewski**, Catholic Charities; **Michelle Gayette**, N.D. Department of Human Services; **David Boeck**, Protection and Advocacy; **Chris Carlson**, attorney, Bismarck; **Brittany Fode**, N.D. Department of Human Services; **Sally Holewa**, State Court Administrator; **Donna Wunderlich**, Trial Court Administrator, Unit 3; **Karen Kringlie**, Juvenile Court Director, Unit 2; **Catherine Palsgraff**, Citizen Access Coordinator; **Cathy Ferderer**, Family Law Mediation Program Administrator; **Rose Nichols**, Guardian Monitoring Program; **Norma O'Halloran**, Grand Forks County Clerk of Court's Office; **Rebecca Nelson**, Ramsey County Clerk of Court; **Audrey Urich**, Guardian and Protective Services; and **Margo Haut**, Guardian Angels Inc.