

**SB 2345**  
**Senate Human Services Committee**  
**January 30, 2023**  
**Testimony of Sally Holewa**

Chair Lee and members of the committee, for the record, my name is Sally Holewa. I am the state court administrator.

SB 2345 is a bill to create a task force under the Supreme Court to work on issues related to guardianship accountability and to provide funding for the PASS program for professional guardians and the guardianship program for the developmentally disabled.

Since 2013, the Supreme Court has had a Guardianship Standards Workgroup. This is an interdisciplinary group that is charged with making recommendations to improve the protections for persons under guardianship or conservatorship. Attachment A is a summary of the progress that has been made based upon the recommendations of that group. In 2018, the Supreme Court created the Guardianship Monitoring Program. This program employs one individual who may conduct financial reviews and may contract with court visitors to meet with protected persons if there are concerns about their well-being. The program manager cannot accept referrals from outside entities or private individuals.

Section 1 of the bill creates a task force specifically to study issues related to the accountability of guardians and the investigative authority of the guardianship monitoring program. I believe this is a large enough topic that it warrants a separate task force. As recent events have shown, there is an urgent need to clarify

who may investigate allegations of wrongdoing and the process for responding to both pending and proven allegations. Section 1(1) lists who must be included on the task force. It is my suggestion that this list be expanded to include a representative from the Vulnerable Adult Protective Services division of the North Dakota Department of Health and Human Services and a representative from law enforcement.

Section 1(2) appears to require the task force to recommend that the guardianship monitoring program be expanded to include an investigator. I believe that it is premature to require an investigator position housed within the court system prior to the task force study being complete. It is possible, for example, that the task force may conclude that a better alternative is to strengthen the authority of those entities already authorized and trained to do investigations or to allow them to directly file reports with the court or to recommend statutory changes to clarify a judge's authority to suspend or remove a guardian prior to a final determination of wrongdoing. In other words, I would be reluctant to tie the task force to one solution without giving them the opportunity to fully study the issues.

Section 1(2)(c), page 2, line 5 appears to have a wording error where it refers to "... guardianship service provider managed by a guardianship investigator." I am not sure what the drafter intended that to be.

Section 2 authorizes funding and one FTE for the Supreme Court to hire an administrator for the guardianship monitoring program. We currently employ a program manager who, in the absence of an assistant state court administrator, is being temporarily supervised by the Family Law Mediation Program Manager. I do not believe we need an administrator specifically for this program. A better

resource would be an additional staff attorney who holds the guardianship portfolio. A staff attorney would have the necessary research and analytical skills to understand the complex relationship between state and federal laws and be able to provide the task force with information and recommendations necessary to complete the requirements of Section 2 of the bill. To hire a staff attorney we would need to have an appropriation of \$288,988. This would include \$276,498 for salary and wages and an additional \$12,500 for furniture, equipment, IT costs, supplies, travel and professional development.

As a member of the PASS oversight committee, I have seen first-hand how thinly stretched that program and the DD program are and I strongly support the increased funding for both that is proposed under section 3 and section 4 of the bill.

With the suggested amendments, I urge a do pass on SB 2345.

## **ATTACHMENT A – Summary of Guardianship Standards Workgroup Initiatives**

2013 – Guardianship Standards Workgroup formed

2015 Legislative Session

- Added additional information that must be provided in the petition for guardianship including information about the ward's current physical and mental health.
- Clarified the role of the guardian ad litem and added a requirement for them to file a report.
- Included a provision requiring the court to consider reports from the guardian ad litem, visitor, and doctor and made the reports of the visitor and doctor confidential.
- Gave the guardian 90 days after appointment to file a beginning inventory.
- Put in place the 5 year review of guardianships to determine if any changes need to be made.
- Required additional information be contained in the annual report filed by the guardian.

2016

- Administrative Order 22 adopted to provide the process for the guardianship reviews.

2017 Legislative Session

- The big changes for guardianships were:
  - Requires petition for guardianship to state if the proposed guardian wants to restrict rights of the ward.
  - Adds some additional duties for the guardian ad litem and visitor to provide explanation to the ward and providing more information to the court.
  - Expanded the group of medical professionals who could provide a report regarding the incapacity of the ward.
- The big changes for conservatorships were:
  - Requiring more information in the petition.
  - Making the statutes more similar to the guardianship statutes so that the guardian ad litem and visitor provide more information to the court.
  - Requiring the conservator to file annual reports and requiring 5 year reviews of the conservatorship by the court.

2017

- Administrative Order 23 adopted to provide the process for the conservatorship reviews.

## 2018

- Administrative Order created the Guardianship Monitoring Program. Judges can refer cases to the program when they have concerns about the ward's finances or well-being. The program manager can also do random reviews. A report is filed with the court and the judge can take action as needed.
- Administrative Rule 59 requires completion of the online guardianship training program for each individual serving as a guardian. It also provides the qualifications required for nonprofessional and professional guardians.

## 2019 Legislative Session

- Guardianships of minors/juveniles overhauled. Only uncontested guardianships of minors appointed in a will remain in probate court. All others must begin in or be sent to juvenile court.
- The process in the juvenile code is much more detailed than what previously existed.
- Added 3 year reviews of guardianships of minors/juveniles. The court can do the reviews more often if needed.

## 2021

- Administrative Order 34 adopted the process for the review of minor guardianships.
- Administrative Rule 59 amended to require individuals working as guardians for a guardianship business to provide the same criminal background information as nonprofessional guardians have to provide. Added certain crimes that would prevent someone from being a guardian.

## 2021 Legislative Session

- Made it clear that a judge can require a guardian to get a bond to protect the ward's assets if the judge thinks it's needed.
- Added a section to the guardianship chapter allowing a guardian to prevent others from contacting the ward if it's in the ward's best interests. Also provides a procedure for the person prevented from contacting the ward to challenge the restrictions.
- Added a section to require a guardian to get the judge's approval before selling the ward's personal possessions (if value is over \$2500) or the ward's land (any amount).