

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: HB 406

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Levine

3. Committee: Courts of Justice

4. Title: Guardianship; communication between incapacitated persons & others, notification of relatives

5. Summary: The proposed legislation prohibits a guardian of an incapacitated person from restricting such incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has expressed a desire to communicate with, visit, or interact with, or with whom the incapacitated person has an established relationship. The bill creates a means by which a guardian may petition the court to restrict such incapacitated person's right to communicate. The bill allows the court to restrict such communication for good cause shown but specifies that the court shall limit itself to the least restrictive means possible if it finds such a restriction to be necessary. The bill allows the court to require a guardian found to have brought such a petition in bad faith or not for the benefit of the incapacitated person to pay or reimburse all or some of the incapacitated person's reasonable costs and fees. The bill also specifies that such a finding may be grounds for termination of the guardianship appointment. The bill requires the guardian to notify certain relatives of the incapacitated person of certain life events of the incapacitated person, unless the guardian is notified in writing that any such relative does not wish to be notified or if there exists between such relative and the incapacitated person a protective order or court order otherwise prohibiting contact.

6. Budget Amendment Necessary: Yes.

7. Fiscal Impact Estimates: Preliminary

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2019	\$210,000	General
2020	\$210,000	General
2020	\$210,000	General
2021	\$210,000	General
2022	\$210,000	General
2023	\$210,000	General
2024	\$210,000	General

8. Fiscal Implications: The Virginia Public Guardian and Conservator Program pursuant to §51.5-150 et seq. funds guardianship for adults who are indigent, incapacitated, and in need

of someone to help them make medical, financial, or daily living decisions and do not have a suitable family member or friend to serve as a guardian. Department for Aging and Rehabilitative Services (DARS) administers the guardianship program and is currently budgeted to provide guardians to an estimated 1,046 incapacitated adults.

Currently guardians can limit the interaction between an incapacitated individual and someone who, in the opinion of the guardian, is likely to perpetrate abuse, neglect and/or financial exploitation. This proposal would require that guardians petition the court before placing any such limitations. DARS reports that the public guardianship program does not typically have court interactions after the initial petition for guardianship. Therefore, the program does not have any funding available for returning to court for petition modification per the requirements of this bill. In the few instances where a modification is necessary, the agency typically relies on 'pro bono' legal work, as these modifications are not typically time sensitive or complex.

Based on a survey of attorneys, DARS estimates the legal cost of filing the required petition on behalf of the public guardian programs and subsequent hearing could run between \$1,500 to \$5,000 depending on the complexity of the case. Therefore, until improved data becomes available, it is assumed that the legal cost of each petition is \$2,000. There is no readily available data as to the number of additional petitions this bill would generate. Assuming ten percent the cases (105 individuals) would require a modification order to address visitation restrictions, the impact of this legislation on the Virginia Public Guardian and Conservator Program would be \$210,000. It should be noted that this statement does not address the impact on private guardianships where such legal costs would be billed to the incapacitated individual's estate.

Although guardians ad litem may be paid from the Criminal Fund under Virginia Code §64.2-2008 (in cases of indigency), we do not anticipate this bill will generate sufficient additional proceedings that it will have a material fiscal impact on the fund.

9. Specific Agency or Political Subdivisions Affected:

Department for Aging and Rehabilitative Services
Courts

10. Technical Amendment Necessary: No

11. Other Comments: None