

Department of Planning and Budget 2022 Fiscal Impact Statement

1. **Bill Number:** SB 514

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. **Patron:** McPike

3. **Committee:** -

4. **Title:** Incapacitated persons; changes to provisions of adult guardianship and conservatorship

5. **Summary:** The substitute bill makes several changes to the provisions of adult guardianships and conservatorships, including:

- Adding certain powers and duties to the Department for Aging and Rehabilitative Services (DARS) to provide support and guidance with respect to private guardianships, including developing and providing training for such guardians;
- Requiring a guardian ad litem appointed to represent a respondent to a guardianship proceeding to notify the court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem recommends counsel;
- Requiring the notice of hearing on a guardianship or conservatorship petition to include notice that any adult individual required to receive a copy of such notice may file a motion to intervene in the action to become a party and request to be appointed as guardian or conservator or offer an alternative to the guardian or conservator selected;
- Requiring a schedule for periodic review hearings in the order of appointment of a guardian or conservator to be set by a court, unless the court makes a determination that such hearings are unnecessary or impracticable, and specifying circumstances under which such review hearings shall not be waived;
- Requiring guardians and staff employed or contracted by such guardian to perform guardianship duties on behalf of the guardians to complete training within four months of the date of entry of the initial order of appointment; and
- Providing that a guardian shall not restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship unless such restriction is necessary to prevent physical, mental, or emotional harm to or financial exploitation of the incapacitated person. The bill further requires that the guardian must provide written notice to any restricted person stating (a) the nature and terms of the restriction, (b) the reasons why the guardian believes the restriction is necessary, and (c) how the restricted person may challenge such restriction in court. The bill sets up a procedure by which a person whose visit, communication with, or interaction with an incapacitated person

has been restricted may challenge such restriction in court, and provides that if the court finds that the claim of a restricted person who filed a motion to challenge such restriction was brought in bad faith, the court may require the restricted person to pay or reimburse the guardian all or some of the his costs and fees, including attorney fees.

6. Budget Amendment Necessary: Yes

7. Fiscal Impact Estimates: Preliminary (See Item 8)

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2023	\$895,052	General
2024	\$2,025,264	General
2025	\$1,786,864	General
2026	\$1,788,544	General
2027	\$1,958,308	General
2028	\$1,900,160	General
2029	\$1,902,105	General

8. Fiscal Implications:

Department for Aging and Rehabilitative Services

DARS administers the public guardianship program (PGP) which provides guardianship services for adults who are incapacitated, indigent and have no suitable person to serve as their guardian. The PGP currently serves approximately 1,000 individuals and is entirely supported with state dollars. In contrast, there are over 11,000 individuals with a court appointed guardian in Virginia. DARS currently has no responsibilities related to these guardianships. This legislation would expand DARS roles pertaining to all guardianships making the agency responsible for training and receiving complaints. The following provisions of SB 514 have been identified by DARS as likely having a fiscal impact:

- The bill requires DARS to develop and provide training for all appointed guardians related to responsibilities, completing reports, and involving the participation of incapacitated adults in decision making. DARS expects that this provision will require the agency to hire two positions at a total cost of \$271,295 annually.
- DARS must also develop a process for providing information to guardians ad litem on any valid report of adult abuse, neglect, or exploitation regarding prospective or appointed guardians. DARS estimates the cost of this to be \$90,325 annually.
- The bill's provisions to provide training to local departments of social services on how to review annual guardianship reports and identifying areas of concern regarding appointments can be absorbed by additional adult protective services staff (\$599,207 and five positions) included in the introduced budget. Should this funding be removed, then this cost assumption will need to be revised.

- DARS must take action to assist in improving data tracking and reporting related to guardianships. The agency estimates a cost of approximately \$25,000 for software development and implementation. Personal services support associated with this effort can be absorbed.
- The agency assumes that two positions at a cost of \$294,486 will be needed to create and administer a process for receiving complaints against appointed guardians.
- The bill requires that courts set a schedule in the order of appointment for periodic review hearings. These hearings must be held no later than one year after the initial appointment and no less frequently than every three years thereafter. This provision will require additional PGP staff time to develop necessary information and make additional court appearances. In addition, the guardian is expected to provide an evaluation report at each periodic review hearing. It is assumed that the periodic review requirement would only apply to new orders of appointment beginning July 1, 2022.¹ As such, there would be no costs for these reviews in FY 2023. However, in FY 2024 the cost of meeting the annual periodic review requirements is expected to be \$1,130,212. These costs are expected to fluctuate in the out years based on the expected number of new orders of appointment and the need for triennial reviews.
- The new procedures related to communications and visitations between an incapacitated person and others is expected to require additional attorney time at a cost of \$213,946 each year.
- DARS expects the bill's provision to develop a proposal to facilitate the additional monitoring of guardians through visitation can be covered with existing resources. The proposal is due December 31, 2022 to the House Appropriations Committee and the Senate Finance and Appropriations Committee.

Supreme Court of Virginia

The Supreme Court of Virginia (SCV) reports that the magnitude of the fiscal impact of this bill is indeterminate but is expected to be substantial.

9. Specific Agency or Political Subdivisions Affected:

Department for Aging and Rehabilitation Services
Supreme Court of Virginia

10. Technical Amendment Necessary: No

11. Other Comments: None

¹ Should the agency be expected to perform a periodic review on orders of appointment that were in place prior to July 1, 2022, then it is expected that there would significant additional costs in the 2022-2024 biennium.