



**House
Legislative
Analysis
Section**

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**DD GUARDIANSHIPS:
REMOVE TIME LIMIT**

**House Bill 4023 with committee
amendments**

First Analysis (1-18-96)

Sponsor: Rep. Kirk Profit

Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Under the Mental Health Code provisions for guardianships, a guardianship for a developmentally disabled ("DD") person may be "plenary" (full) or partial. Plenary guardians have the legal rights and powers of a full guardian over the developmentally disabled person, his or her estate, or both, while the rights, powers, and duties of partial guardians are specifically enumerated by court order. And while full guardianships have no time limitations, partial guardianships are limited by law to a period of five years. Reportedly at the request of the Michigan Probate Judges' Association, in an attempt to reduce unnecessary use of court resources, legislation has been introduced to eliminate the five-year time limit on partial guardianships.

THE CONTENT OF THE BILL:

The bill would amend the Mental Health Code to eliminate the five-year time limit on partial guardianships of developmentally disabled people. Instead, the probate court would conduct an informal review of all guardianships under the code (whether full or partial) every five years (within five years after the guardian's appointment and at five-year intervals after the initial review). The bill would not take effect until a court rule defining the scope of the informal review had been implemented.

MCL 330.1626

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal implications for the state, and indeterminate fiscal impact on local governments. (1-17-96)

ARGUMENTS:

For:

Establishing a guardianship under the Mental Health Code is a fairly involved process that involves submitting a petition, reports, appointing attorneys, holding a court hearing, taking testimony from the treatment team and so on. When a guardianship is established, moreover, the developmental disability upon which it is based must legally be expected to continue indefinitely. So when a partial guardianship is established, in order to continue it after the initial five years, the entire process (involving a court hearing, etc.) must be repeated every five years. This can be hard on the ward and his or her family, and uses valuable court time for what usually is a purely routine process. The bill would streamline the guardianship process for developmentally disabled people, creating a procedure that is more like the existing procedure for legally incapacitated people (guardianships for legally incapacitated people do not expire after a set period of time, but are reviewed periodically instead). Probate courts, like the rest of the court system, are increasingly overburdened, and streamlining the existing process for guardianships would result in a more efficient use of scarce court resources without jeopardizing the rights of developmentally disabled people with guardians. The bill also could result in more partial guardianships being established instead of plenary guardianships, which also could be to the benefit of developmentally disabled wards (since full guardianships remove more rights from people than do partial guardianships). Finally, the bill would implement new protections for developmentally disabled people that currently don't exist: full guardianships under the Mental Health Code have no set expiration date nor are there any requirements that they be periodically reviewed. The bill would require that all guardianships, whether full or partial, be periodically reviewed.

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Against:

Partial guardianships recognize that people under such guardianships are competent to make decisions about some aspects of their lives. While guardianships for developmentally disabled people are established because the wards' disabilities are expected to continue indefinitely, the law under which such guardianships are established also directs that they "be designed to encourage the development of maximum self reliance and independence." With proper support, developmentally disabled people's skills can develop and change to such an extent that they become able to make competent decisions in areas of their lives that they formerly were unable to do. The current five-year limitation on partial guardianships ensures that there is adequate periodic review of these guardianships. Eliminating the five-year mandatory expiration of partial guardianships, and replacing it with periodic "informal" reviews, would remove important existing protection for developmentally disabled people. There is no indication what the proposed court rule for implementing such informal reviews would require. There is the possibility that the proposed informal reviews could be as minimal as the current annual reports required of guardians (which reportedly are at best perfunctory, if submitted at all). This is not the group whose day in court should be taken away to ease the courts' workload problems. If anything, there should be more reviews and more protections of the due process rights of developmentally disabled people, not less, since guardianships remove significant rights.

POSITIONS:

The Michigan Probate Judges Association supports the bill. (1-17-96)

The Department of Mental Health supports requiring a court rule ensuring due process rights and will recommend the appointment of a guardian ad litem to ensure that these rights are preserved for developmentally disabled people under guardianship. (1-18-96)

A representative of the Michigan Protection and Advocacy Service testified in opposition to the bill. (1-17-96)

A representative of the ARC Michigan (formerly the Association of Retarded Citizens of Michigan) testified in opposition to the bill. (1-17-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.