

GUARDIANSHIP: GUARDIAN AD LITEM REPORT AND RIGHT TO COUNSEL

HB 623 Delegate Hudson

In the name of protection, guardianship significantly limits the rights of adults who may need help in making decisions and managing their affairs. A Guardian ad Litem (GAL) is the court's eyes and ears in a guardianship proceeding – reviewing evidence, meeting with the parties, and advising the judge. Judges rely heavily on GAL recommendations.

This bill implements Recommendation 1 of the 2021 *Joint Legislative Audit and Review Commission* guardianship study, which concerns legal counsel and other safeguards for an adult alleged to need a guardian (respondent). Legal counsel is essential to protecting rights.

The issue:

- Once a guardianship is in place, it is hard to remove or modify. Securing legal counsel can help to avoid guardianship orders that are unnecessary or overbroad.
- Under the law, the respondent has the right to be represented by counsel of their choice. The judge can appoint counsel if the GAL recommends it, the respondent requests it, or the judge determines it is necessary to protect the respondent's interests.
- The GAL is often best positioned to protect the rights of an individual and may be the only contact that person has with court if they are unable to attend court in person. Under the law, the GAL must advise the court on whether counsel is needed.

This bill:

- Ensures that the GAL informs the judge when a respondent requests counsel.
- Implements recommendation 1 of the JLARC report requiring the GAL report to include justification for not recommending the following:
 - counsel for the respondent,
 - a less restrictive alternative to guardianship/conservatorship, and
 - a limited guardianship or conservatorship.

Judges need to know what the GAL's reasoning was behind these determinations that may drastically affect the respondent's life so they can make an informed decision or ask that the GAL investigate additional options.

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