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Protection and advocacy for people with disabilities.

Disability Rights Wisconsin Testimony to Assembly Committee on Judiciary

AB 786: Creating a Guardian Training Requirement

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Thank you for the opportunity to provide our perspective on AB 786. This bill would create a modest requirement that volunteer and noncorporate guardians receive basic training in the areas in which they will be expected to exercise decision-making prior to accepting appointment. Based on experiences encountered in our practice, there is a critical need for training of guardians prior to them assuming their responsibilities. As the Protection and Advocacy agency for people with disabilities in Wisconsin, we are frequently contacted about conflicts between wards and guardians. Some of these contacts are initiated by wards. But many are initiated by service providers who are concerned and uncomfortable with the way a guardian is exercising authority.

Because the training will also cover less restrictive alternatives to guardianship, the training may also reveal to potential guardians (often times parents who are already deeply involved in their adult child's life) that there may be less restrictive ways to achieve the same—or higher—level of protection from abuse, neglect or exploitation than what guardianship affords. It also may help the proposed guardian tell the Judge how the guardianship could be limited.

An added benefit to this proposal is that the materials created pursuant to it would be generally available as training and orientation materials for people long before they are involved in an actual guardianship court proceeding. A parent of a 16 or 17-year-old might be directed to these materials by school personnel during the transition planning process and realize that there are less restrictive alternatives to guardianship—like supported decision-making, powers of attorney, etc.—that they can try out before seeking guardianship, potentially resulting in a limited guardianship or preventing the need for one at all.

This proposal has the potential to positively impact the lives of people with intellectual disabilities who are considered for guardianship by: 1) avoiding the need for guardianship altogether; 2) limiting the guardianship if one is justified; and 3) avoiding conflicts between guardians and their wards after the guardianship is imposed.

From our perspective, a critical area where guardians need training and orientation relates to the requirement to consider the wishes of and involve the ward in, decisions made by the guardian.

Section 54.25 of the Wisconsin guardianship statute imposes the following obligation on guardians regardless of the level of incompetency of the ward:

> **(d)3.** In exercising powers and duties delegated to the guardian of the person under this paragraph, the guardian of the person shall, consistent with meeting the individual's essential

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requirements for health and safety and protecting the individual from abuse, exploitation, and neglect, do all of the following:

a. Place the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the individual into his or her community.

b. Make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.

In our experience, guardians are usually unaware of these requirements and are surprised to learn of them. For younger people with intellectual disabilities, failure by the guardian to follow the statutory direction often leads to friction between the guardian and the ward, particularly when the guardian is a parent or other close relative.

Being unaware of the statutory requirement, the parent-guardian often assumes that becoming guardian simply extends the parental role beyond age 18. And extends it indefinitely. Much of our work involves providing individual education and training to guardians who are making decisions for their ward without consultation or consideration. For them, particularly if they have been guardians for some extended period of time, it is difficult to reorient their perspective. Some cannot.

Here are some examples of cases in which Disability Rights Wisconsin has represented people under guardianship that illustrate the need for guardian training:

- DRW represented a 50 year-old woman with a mild intellectual disability because her father who was also her guardian was prohibiting her from having any type of personal relationships (personal interactions, telephone communications etc.) with people of the opposite sex. Because the ward's residential provider agency was balking at his unreasonable and inhumane restrictions, his plan was to remove her from their care, terminate her employment situation, relocate her to the other side of the state, and place her with a new provider who had assured him they would implement any limitation he sought to impose. When DRW's attempt to educate the guardian about his duties and limitations of his authority failed, we represented the ward in a court action to review the conduct of the guardian and seek his removal (which the court did). Unfortunately, the experience destroyed the father/daughter relationship—something that might have been avoided had the guardian been aware of limitations on his authority when he first became guardian.

- DRW recently mediated a dispute between a 30 year old woman and her guardian—who is also her adoptive parent. The guardian was dictating the type of clothing and what

hairstyles her ward can wear and is restricting spending money and the development of financial management skills. The ward clearly has the capacity to control more money than what the guardian allowed. She also, obviously, has the right to personal choices in clothing and hairstyle. After education and mediation, the guardian now understands the limitation on her authority and is willing to engage with her ward on issues of personal preference and the need for the ward to gain experience in basic life activities.

- DRW has investigated several cases of medical neglect of wards by guardians. These are typically death investigations. These cases arise because guardians of people with significant intellectual impairment are unaware of limits on their authority to withhold or withdraw life-sustaining medical treatment from their wards. Because of a lack of training, guardians often make "quality of life" judgments about their wards that, under Wisconsin Supreme Court precedent, are impermissible. These cases have included the withholding of antibiotics with the expectation that the ward/patient's condition will worsen and lead to their death, based on the subjective belief that the person has "no quality of life" because they have a significant intellectual disability.

- DRW has also been involved in cases where guardians have declined to provide routine medical screenings to their wards because the exams themselves will be hard for caregivers and medical personnel to manage. One such case involved a guardian who initially declined to authorize a screening colonoscopy for her 50 year-old ward who had a strong family history of colorectal cancer. The reason for the failure to authorize was the guardian's belief that it would be difficult for the ward to tolerate the pre-procedure preparation. Once informed about her responsibilities and confronted with what was likely to happen to the ward if she developed untreated colorectal cancer, the guardian agreed to have her ward screened, despite the inconvenience of the prep.

DRW appreciates the opportunity to provide this information to the Committee.