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(ORIGINALLY FORMED 1892)

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Virginia House of Delegates  
Courts of Justice Sub-committee 2

RE: SB987 – Periodic Review of Guardianship

Members of the Committee:

I am a third-generation lawyer and have practiced law in the Salem-Roanoke area for over 46 years, at least 30 of those with significant representation in adult guardianship. I've taught continuing legal education courses on adult guardianship, have been a member of WINGS since its inception in 2016 and on the board of directors for VAELA for 12 years. My remarks here are entirely my own.

I am concerned about the unintended cost of SB987 which provides for annual review of guardianships. I agree that the court must always be available to review guardianship matters with minimum cost and hassle, but this bill is too expensive, particularly since (1) Virginia Code Section 64.2-2012 already allows any person to request a review/modification of a guardianship and (2) courts already have the power to build review hearings into guardianship orders in those cases where the court believes this is needed.

## FISCAL IMPACT ON COMMONWEALTH

The Department of Planning and Budget (DP&B) could not guess the cost of the periodic review to the commonwealth because of unknown factors. (There's also the cost to families to consider) I want to provide a simplistic overview of the potential cost; it assumes no waivers of future hearings.

DP&B says the average adult Guardian ad litem (GAL) expenditure for past 3 years was \$842,141.32 per year. In my opinion at the end of the first year of mandatory review that number could double to nearly 1.7 million and then increase significantly each year after that.

SB987 requires the GAL has to investigate and submit a report; that will likely take the same time as for the original hearing. While the cohort of the first-year guardianships will reduce by attrition of that group, many who were not indigent at the original hearing will have become indigent requiring the Commonwealth to pay the GAL. I estimate (guess) occurrence at the rate of attrition, effectively having twice the number of GAL cases paid by the Commonwealth. (In cases I've been involved in over the years, easily half have become indigent by the end of the first year; half of the remaining by the end of the second year, and so forth)

In my opinion, at the end of the 3<sup>rd</sup> year, the Commonwealth could pay \$2.4 Million in additional GAL fees due to mandatory review; add the \$842,000 'average' for new cases gives a total

potential adult GAL fee over \$3.2 Million. If the committee assumes that 1/3 of the review hearings are waived, that drops the cost to \$1.6 Million additional or almost \$2.5 million total for adult GAL fees paid by the Commonwealth in the 3rd year.

Not even considered or included is if there is a petitioner's attorney for an indigent family, or if the ward wants or needs an attorney to represent them at that hearing.

There is also the cost in judicial time. With this is a very primitive chart I used to calculate judicial time. It (a) assumes a constant case load of 2379 new cases each year (3-year average per DP&B); (b) does not consider 'waivers but (3) assumes an attrition rate of 20% per year in guardianships under review. At the end of the third year, there will be over 4600 cases 'reviewed' by the circuit courts. Based on my experience, a judge will (or should) spend 30 minutes per case under review, or 2300 hours of Virginia Circuit Court judge's time. The internet says the average judge's salary is \$55 per hour so 3<sup>rd</sup> year cost to the Commonwealth for judicial review could be \$127,000. In addition, dockets are already packed full in many jurisdictions and this will only increase the strain on calendar control.

I have great respect for Circuit Court Clerk's and their staff. I have no idea how to even simplistically calculate their time, but at a minimum they would have to receive and file the paperwork – medical certifications, GAL report, any motions filed, and of course the court order after the review hearing. None of that is included.

#### FISCAL IMPACT ON FAMILIES

The impact on families is also needs comment. They have already altered their lives to care for a family member. The time I spent for my special needs daughter gives me an idea of what they do without compensation. And quite a large number of these families don't qualify for indigent status so they pay 'street rates' for the review hearing. SB987 would require a medical certification of continuing need – more uncompensated time a family member loses from work to take the ward to the doctor, the cost of the doctor exam, appearing at the hearing, etc. Then they have the insult of possibly having to pay two lawyers – their attorney and the GAL – at their 'street rate' (not the embarrassingly low 'court appointed' rate Virginia is infamous for). In my area those combined fees could exceed \$3000.00 per year.

Finally, I repeat what I said at the beginning: Allowing Circuit Courts to revisit and review adult guardianship is a good idea. Unfortunately, in my opinion, mandating it for every guardianship under SB987 would cost the Commonwealth or the families too much.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ross C. Hart", with a long horizontal flourish extending to the right.

Ross C. Hart

**JUDICIAL TIME FOR REVIEW HEARINGS**  
Assumes 2379 new guardianship cases per year

REVIEW YR	CASES FWD	NEW	TOTAL	TIME	COMP 55-HR
1	0	1903	1903	952	\$ 52,338.00
2	1523	1903	3426	1713	\$ 94,202.90
3	2740	1903	4643	2322	\$ 127,694.82
4	3715	1903	5618	2809	\$ 154,488.36
5	4494	1903	6397	3199	\$ 175,923.18
6	5118	1903	7021	3510	\$ 193,071.05
7	5617	1903	7520	3760	\$ 206,789.34
8	6016	1903	7919	3959	\$ 217,763.97
9	6335	1903	8238	4119	\$ 226,543.68
10	6590	1903	8493	4247	\$ 233,567.44

REVIEW YR = the year the review takes place after the year of appointment

CASES FWD = cases from prior year less 20% (constant) attrition

NEW = new cases entering the review pipeline from prior year; less 20% attrition

TOTAL = number of cases statewide to review carried forward plus new

TIME =in hours, total estimated time for statewide judicial review at 30 minutes per case