

March 4, 2022

RE: SB 514 laws pertaining to Adults in Guardianship

TO: Members of the Appropriations - Health and Human Resources Subcommittee and others

Dear Legislators:

I am writing to thank you for your efforts on behalf of adults with disabilities and to respectfully ask that you please consider restoring some of the cuts you made to SB 514, if that is possible at this time. I have learned only this week of the existence of SB 514. I read it as originally submitted and also read the most recent and proposed version as of March 2, 2022.

Enactment of enforceable guardianship legislation, protections and safeguards is sorely needed. As the JLARC study showed, and from my personal experience, Virginia judges, guardians ad litem, guardians and social services staff simply cannot be completely relied upon to proactively look after the best interests of incapacitated adults, or even be responsive in an appropriate way. They do not have the information they need to do this, and often, not the inclination. Specific statutes help petitioners like myself get rulings based on law. If nothing else, I hope you will agree to amend Section 64.2-2019 of the Code pertaining to powers and duties of a guardian to remove the vague language of “unreasonably” and restore the bill’s provision that a guardian may not restrict an incapacitated adult’s ability to visit, interact and communicate with persons he desires, unless the person(s) poses a risk of substantial harm to the person or has exploited them in some way. You may be aware that the National Probate Court Standards also recommend that family members not be restricted from visits and contact for more than 7 days unless an order of protection is in place. This provision would be beneficial for Virginian families at risk of overreaching guardians.

May I share my story of how the consequences of guardian overreach and unbalanced access to justice has impacted my life and that of my son?

I grew up in Virginia and have lived here most of my life. I work for Fairfax County Public Schools and I am the mom of a 23-year-old young man with autism and intellectual disability. I am also the creator of Living Well With Autism, a free online resource for parents of children with autism. My son, my only child, William, is bright, social, verbal and sweet. He has worked as a volunteer and held a paying job and has voted in every single election since he was 18. He is always smiling and has an endearing and innocent way about him. Basically, he’s an angel :) If you met him, you would love him. He has that effect on people. He is everything to me.

Being a mother to my son has been the most important role of my life. My husband and I divorced when my son was a toddler and I mostly raised William on my own. However, we were very happy. Importantly, I've never mistreated my son and I am, in every way, a fit parent.

Right before my son was to enter high school, in May 2013. I asked my ex for any increase in child support since my son's child support had not changed since he was two years old. The house we were renting in Falls Church was sold and I couldn't find a two-bedroom to rent that I could afford. My ex had threatened me not to move out of the area; he is a wealthy man and unfortunately, a vindictive one. He refused to voluntarily pay the increase of even a dime. I went to DCSE to request a child support review and modification and the moment they asked for his tax return, he sued me for full custody of my son.

I went to Legal Aid for help and was told they only took domestic violence cases. I tried to represent myself in court but I found myself overwhelmed with the demands of moving, caring for my son, working and meeting the unfamiliar-to-me requirements of discovery and hearings. Intimidated and afraid I would lose all custody, I offered to switch custody and take the liberal visitation my ex enjoyed in exchange for paying him child support and granting him primary custody as my teenage son. My ex agreed to this concession and my son, heartbroken, went to live with his father. That was my mistake – I should have never switched custody – but I was under terrible pressure and I was afraid of losing my son altogether.

My son and I held out hope that when my son turned 18, he could resume living with me again when he became an adult. But to my shock, my ex filed for guardianship of my son when my son was only 17. I had very little notice of the hearing, my son, maybe none at all. I had less than a week to try and talk to the GAL and get representation; my ex prevented my son from seeing or talking to me. The judge awarded guardianship to my ex husband, a plenary guardianship, without ever having seen my son. Neither I nor my son received the evaluation report or the guardian ad litem's report, and the GAL would not give them to me when I requested them. The documents are under seal, so I've never seen them. That was in November 2016.

Since then, my ex, as my son's guardian, has restricted my adult son's ability to visit, interact and communicate with me and my family with ever increasing severity, while failing to state why. If my son refers to an incident of mistreatment by his stepmother, his guardian shuts down all communication, sometimes for several months at a time. He monitors all calls, emails, mail and visits. If my son says something his guardian does not want me to know, he plays music so loud we cannot hear each other, mutes the phone, grabs the phone out of his hand or disconnects the phone. My son tells me he has even dismantled the phone and confiscated his cell phone and iPad so that my son cannot contact me. My own phone number is blocked from the house phone and my son's cell. Despite my son's wishes, for the past 8 years, the guardian has prohibited him from sharing a single holiday or vacation period with me and my family, including Mother's

Day, Thanksgiving and Christmas and all birthdays. This year, I have had 2 hour-long visits, all supervised, despite there being no protective order or other restriction in place. The guardian dictates what we may say and do during our infrequent visits together.

I've reported all this to APS but they say they can find no preponderance of evidence – it's he said, she said, according to them. My ex told them I had regular visits with my son – not true.

What is important for this committee to know is this bill would save me and others like me so much misery. Can you imagine how hard it is to prove "unreasonableness" as a pro se litigant? The judges don't know how to rule on that. In its original form, SB 514 would have provided persons in guardianship and their loved ones with enhanced protections and safeguards against overreaching guardians, ill-informed or apathetic judges and poor performing guardians ad litem.

You cannot possibly comprehend the mental anguish I have suffered which is likely nothing next to what my son has suffered. When I have no contact for months and months, it's almost as if my son has died. During the pandemic, I never knew if he was okay, for long periods of time. On top of this, I've had to learn how to be a lawyer using YouTube and examples I found in the law library. I'm constantly mortified and hamstrung by the civil procedure mistakes I make, yet not one of the many lawyers I have consulted will take my case, saying my chances were too slim. When I learned that the provisions of this law were cut, it was just another blow on top of so many. I understand that some of those provisions would involve the expenditure of resources that training and oversight would require but I tell you from my heart, it is urgently needed.

I will end my letter with another story about my son. When he was born at Fairfax Hospital, he had a meconium ileus that required surgery and a stay in the NICU. The doctor told me that meant he likely had cystic fibrosis; 98% certainty. I said, hopefully, that means there is a 2% chance he doesn't have it? He looked at me with pity. But I and so many people prayed for a miracle. You are not supposed to bargain with God, I know, but I prayed, if you take this from me, I will take anything else. After 3 weeks, the DNA tests came back and my son did not have CF. I was so grateful. All my family called him the Miracle Baby. When he was diagnosed with autism, I was sad but I accepted it. I kept my bargain and I loved him all the more. I will never stop fighting for him and I guess, all I am asking of you is another miracle for William and those like him. Thank you for thoughtfully considering my requests, and if nothing else, please change 64.2-2019.

Sincerely,

Mary Fletcher Jones
1541 Cameron Crescent Drive, #2, Reston, VA 20190
maryfletcherjones@yahoo.com (571) 287-3544