

Bill would spell out wards' legal rights in guardianship system

Unguarded

State representatives have drafted legislation to reform Ohio's guardianship system, using problems exposed in a series of stories in *The Dispatch* as a guide, Rep. Dorothy Pelanda said.

"This is about protecting the state's most vulnerable people," Pelanda said. "We want to hold those in charge of others responsible and ensure they know what's expected of them."

Pelanda, of Marysville, and state Sen. Shannon Jones, of Springboro, both Republicans, are behind House Bill 624, which calls for a ward's bill of rights. The bill also would require probate courts to give guardians a handbook that specifies how to care for a ward, manage assets and talk with doctors.

A [Dispatch investigation in May](#) uncovered unscrupulous lawyers and selfish family members who are court-appointed guardians for people the probate judge has deemed to be incompetent to handle their own affairs. The series, available online at Dispatch.com/unguarded, showed how they are allowed to abuse the wards they are supposed to protect and to steal from them.

Each county probate court has its own rules on how to oversee guardianships. The *Dispatch* investigation found that there were no statewide standards and that many courts lacked necessary safeguards or ignored their own rules.

The bill proposes to codify 19 separate rights. First, a ward must be "treated with dignity and respect." Other important rights for wards would force courts to implement changes:

- Wards would be given copies of all medical, financial and treatment records submitted to the court in their case so that they could review them. Nearly all courts surveyed last year by *The Dispatch* did not send copies of those documents to wards.
- Wards would be allowed to speak privately with an attorney, ombudsman or other advocate upon request.
- Wards would be able to meet with an attorney and independent expert for evaluation and have the costs for those things paid by the court if the ward were indigent. Some courts do this, but many do not, the investigation found.
- Wards would be able to bring a grievance against their guardian, to ask the court to review a guardian's actions and to request removal and replacement of a guardian. Wards also could ask a court to restore certain rights (to marry, vote, drive) if they could show they had regained the capacity to make some or all decisions.

Many courts have a process that allows a ward to file a request to remove a guardian. In some courts, such as Franklin County's, evidence introduced by a ward or concerned family member about a guardian's actions is put in the ward's file with some variation of the label "non-evidence, correspondence only."

Pelanda called the bill "the first step." It doesn't address the most-important issues that plague wards — such as theft, abuse and neglect — or put a higher burden on courts to closely monitor a ward's finances.

"You're never going to be able to stop people that want to do bad things to others," she said.

The bill has bipartisan support and is expected to sail through the Ohio House and Senate. Pelanda and Jones consulted with Attorney General Mike DeWine, probate judges and a few guardians to draft the bill.

DeWine was outraged by the problems and abuses in the guardianship system and called for sweeping reform. His office has since launched an investigation of potential criminal conduct by some attorneys who are guardians.

DeWine wanted to do more to help those struggling to figure out the duties of a guardian, so he developed a 47-page handbook for guardians.

The book is included in House Bill 624 to explain all aspects of the guardian's role, including information on the probate court, when a guardian is needed, how to find the proper resources to care for a ward, the responsibilities of caring for adults and minors, and the proper way to manage a ward's estate.

The handbook is being printed and is to be distributed to all 88 Ohio county probate courts and advocacy groups around the state this month.

Before publishing the handbook, DeWine's office consulted with several experts, including the Department of Developmental Disabilities, Department of Aging, Disability Rights Ohio, Trumbull County Probate Judge Thomas A. Swift, Pelanda and Columbus probate lawyer Sam Peppers.

"Our aim in creating this booklet on guardianship is to help clarify some of the more-complex legal terminology and serve as a guide to those who may be considering taking on this important role," DeWine said.

Pelanda said having the handbook throws a blanket of standards over all county courts. Previously, no unified statewide rules existed. She said guardians will have to sign a court document to show that they've received the booklet.

Swift said the bill will be discussed by the executive committee of the Ohio Association of Probate Judges at a November meeting.

"All of this activity should be coordinated to avoid any confusion or misconceptions by the members of the public," he said.

Julia Nack, one of the state's few certified master guardians and the director of the volunteer guardianship program at the Central Ohio Area Agency on Aging, said the idea of a ward's bill of rights is a good one, and one she hasn't seen in other states.

She thinks the proposed law will spark plenty of discussion about how to balance those rights against the role that guardians should play.

"There's going to be a lot of debate about where the job of guardian and autonomy and the best interest of the ward run into each other," she said.

Nack said she, too, was consulted, though only briefly, about the attorney general's guidebook.

Mike Moran, chief counsel to Franklin County Probate Judge Robert G. Montgomery, said he has seen the bill but hasn't been able to analyze it "in depth or discuss it with the judge."