

Introduced: 1/17/77  
Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 CS HOUSE BILL NO. 63  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to guardians of incapacitated  
7 persons."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 13.26.005(1) is amended to read:

10 (1) "incapacitated person" means any person who is impaired  
11 by reason of mental illness, mental deficiency or other development  
12 disability, physical illness or disability, advanced age, chronic use  
13 of drugs, chronic intoxication, or other cause (except minority) to  
14 the extent that he lacks sufficient understanding or capacity to make  
15 or communicate responsible decisions concerning his person;

16 \* Sec. 2. AS 13.26.005 is amended by adding new paragraphs to read:

17 (5) "developmental disability" means a disability of a  
18 person which

19 (A) is attributable to mental retardation, cerebral  
20 palsy, epilepsy, autism, or any other condition resulting in  
21 impairment of general intellectual functioning or adaptive be-  
22 havior;

23 (B) originates before the person attains the age of  
24 18;

25 (C) has continued and can be expected to continue  
26 indefinitely; and

27 (D) constitutes a substantial handicap to the person's  
28 ability to function normally in society;

29 (6) "partial guardian" means a guardian who possesses fewer

1 than all of the legal rights and powers of a plenary guardian, and  
2 whose rights, powers, and duties have been specifically enumerated by  
3 court order;

4 (7) "plenary guardian" means a guardian who possesses the  
5 legal rights and powers of a full guardian of the person.

6 \* Sec. 3. AS 13.26 is amended by adding a new section to art. 3 to  
7 read:

8 Sec. 13.26.090. PURPOSE AND BASIS FOR GUARDIANSHIP. Guardian-  
9 ship for incapacitated persons shall be used only as is necessary to  
10 promote and protect well-being of the individual, shall be designed to  
11 encourage the development of maximum self-reliance and independence in  
12 the individual, and shall be ordered only to the extent necessitated  
13 by the individual's actual mental and adaptive limitations.

14 \* Sec. 4. AS 13.26.095 is amended by adding a new subsection to read:

15 (e) A testamentary guardian has the powers of a plenary guardian  
16 initially, but is subject to the authority of the court to modify the  
17 scope of guardianship or to be removed as guardian as provided in sec.  
18 125 of this chapter.

19 \* Sec. 5. AS 13.26.105 is repealed and re-enacted to read:

20 Sec. 13.26.105. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF  
21 AN INCAPACITATED PERSON. (a) A petition for the appointment of a  
22 guardian for an individual who is incapacitated must be accompanied by  
23 a report which contains:

24 (1) current evaluations of the individual's mental, physical,  
25 social, and educational condition;

26 (2) a recommendation proposing the type and scope of guardian-  
27 ship services needed by the individual;

28 (3) a judgment as to the most appropriate living arrange-  
29 ment for the individual;

1           (4) the signatures of all persons, one of whom must be a  
2 physician or psychologist, who performed the evaluations upon which  
3 the report is based.

4           (b) If no report accompanies the petition, the court shall ap-  
5 point a qualified person who may but need not be an employee of the  
6 state, a municipality, or the court, to arrange for evaluations to be  
7 performed, to prepare a report, and to file it with the court.

8           (c) Upon the filing of a petition, the court shall set a date  
9 for a hearing on the issues of incapacity.

10          (d) If the allegedly incapacitated person does not have an  
11 attorney of his own choice, the court shall appoint an attorney to  
12 represent him in the proceeding. The appointed attorney has the  
13 powers and duties of a guardian ad litem.

14          (e) The person alleged to be incapacitated must be examined by a  
15 physician appointed by the court who shall submit his report in writing  
16 to the court, and must be interviewed by a visitor sent by the court.  
17 The visitor shall also interview the person seeking appointment as  
18 guardian, and visit the present residence of the person alleged to be  
19 incapacitated and the place it is proposed that he or she will be  
20 detained or will reside if the requested appointment is made. The  
21 visitor shall submit the report in writing to the court.

22          (f) The person alleged to be incapacitated is entitled to be  
23 present at the hearing in person, and to see or hear all evidence  
24 bearing upon his condition. He or she is entitled, through an attorney,  
25 to present evidence, to cross-examine witnesses, including the court-  
26 appointed physician and the visitor, and to trial by jury. The issues  
27 may be determined at a closed hearing without a jury if the person  
28 alleged to be incapacitated or his or her attorney requests it.

29 \* Sec. 6. AS 13.26.110 is repealed and re-enacted to read:

1           Sec. 13.26.110. FINDINGS; ORDER OF APPOINTMENT. (a) The  
2 court, at a hearing for the appointment of a guardian for an incapacitated  
3 person, shall:

4           (1) inquire into the nature and extent of the general  
5 functioning of the person asserted to need a guardian;

6           (2) determine the extent of the impairment of the person's  
7 behavior;

8           (3) ascertain his capacity to care for himself.

9           (b) If it is found that the person for whom a guardian is sought  
10 possesses the capacity to care for himself, the court may dismiss the  
11 action or enter any other appropriate order.

12           (c) If it is found that the person for whom a guardian is sought  
13 is able to perform some but not all of the functions necessary to care  
14 for himself, the court may appoint a partial guardian to provide  
15 limited guardianship services, but may not appoint a plenary guardian.

16           (d) If it is found that the person for whom a guardian is sought  
17 is totally without capacity to care for himself, the court may appoint  
18 a plenary guardian, but not before the feasibility of a partial guardian  
19 has been considered.

20           (e) The duration of the term of guardianship under this section  
21 shall be specified in the court order.

22 \* Sec. 7. AS 13.26 is amended by adding new sections to read:

23           Sec. 13.26.112. PARTIAL GUARDIANSHIP. A court order establishing  
24 partial guardianship shall contain findings of fact, shall define  
25 the powers and duties of the partial guardian so as to permit the  
26 incapacitated person to care for himself to the extent he is able, and  
27 shall specify legal disabilities to which the incapacitated person is  
28 subject.

29           Sec. 13.26.114. LIVING ARRANGEMENTS. (a) In addition to evalu-

1 ating capacity, the court with the help of a physician it has appointed  
2 and a visitor (as defined in sec. 130 of this chapter) shall examine  
3 proposed and alternative living arrangements for the person asserted  
4 to need a guardian.

5 (b) A guardian who, other than in response to a court order,  
6 places his ward in an out-of-home living situation shall inform the  
7 court of the placement.

8 \* Sec. 8. AS 13.26.120 is amended to read:

9 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED  
10 PERSON. The authority and responsibility of a guardian for an in-  
11 capacitated person terminates upon the death of the guardian or ward,  
12 the determination of incapacity of the guardian, or upon removal or  
13 resignation as provided in sec. 125 of this chapter, or upon the  
14 expiration of the period specified by court order for the duration of  
15 the guardianship. Testamentary appointment under an informally probated  
16 will terminates if the will is later denied probate in a formal pro-  
17 ceeding. Termination does not affect his liability for prior acts nor  
18 the guardian's [HIS] obligation to account for funds and assets of the  
19 [HIS] ward.

20 \* Sec. 9. AS 13.26.125 is amended to read:

21 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR  
22 TERMINATION OF INCAPACITY. (a) On petition of the ward, the guardian,  
23 or any person interested in the ward's [HIS] welfare, the court may  
24 modify the provisions of the court order to change the responsibilities  
25 of the guardian or remove a guardian and appoint a successor if in the  
26 best interests of the ward. On petition of the guardian, the court  
27 may accept his resignation and make any other order which may be  
28 appropriate.

29 (b) The [AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM

1 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDI-  
2 CATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT  
3 SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE] ward, the guardian,  
4 or any person interested in the ward's [HIS] welfare may petition for  
5 an order that he or she is no longer incapacitated or no longer in-  
6 capacitated to the same degree, [AND] for removal or resignation of  
7 the guardian, or for a change in the guardian's responsibilities. A  
8 request for this order may be made by informal letter to the court or  
9 judge and any person who knowingly interferes with transmission of  
10 this kind of request to the court or judge may be adjudged guilty of  
11 contempt of court.

12 (c) Before removing a guardian, changing his responsibilities,  
13 accepting the resignation of a guardian, or ordering that a ward's  
14 incapacity has changed or terminated, the court, following the same  
15 procedures to safeguard the rights of the ward as apply to a petition  
16 for appointment of a guardian, may send a visitor to the residence of  
17 the present guardian and to the place where the ward resides or is  
18 detained, to observe conditions and report in writing to the court.

19 (d) If at any time the incapacitated person requests or indicates  
20 to his guardian or to the agency (or employees of the agency) responsi-  
21 ble for his care that he desires a change in guardianship or change in  
22 living arrangements, the guardian or the agency providing care shall  
23 inform the court of the request.

24 \* Sec. 10. AS 13.26.135(a) is amended to read:

25 (a) In a proceeding for the appointment, change in responsibili-  
26 ties, or removal of a guardian of an incapacitated person other than  
27 the appointment of a temporary guardian or temporary suspension of a  
28 guardian, notice of hearing shall be given to each of the following:

29 (1) the ward or the person alleged to be incapacitated and

1 his or her spouse, parents and adult children;

2 (2) any person [WHO IS] serving as his or her guardian or  
3 [,] conservator or having [WHO HAS] his or her care and custody; [AND]

4 (3) in case no other person is notified under (1) of this  
5 subsection, at least one of his closest adult relatives, if any can be  
6 found;

7 (4) the petitioner;

8 (5) any person who performed an evaluation for the peti-  
9 tioner's report;

10 (6) the director of the facility in which the individual is  
11 residing; and

12 (7) the individual's guardian ad litem if one has been  
13 appointed.

14 \* Sec. 11. AS 13.26.135 is amended by adding a new subsection to read:

15 (c) A reasonable effort shall be made by the court at the time a  
16 guardian is appointed to acquaint the incapacitated person with his  
17 right to request, at a later date, his guardian's dismissal or a  
18 modification of the guardianship order, and a written statement shall  
19 be provided to him, explaining his rights and specifying the procedures  
20 to be followed in petitioning the court.

21 \* Sec. 12. AS 13.26.140 is amended to read:

22 Sec. 13.26.140. TEMPORARY GUARDIANS. If an incapacitated person  
23 has no guardian and an emergency exists, the court may exercise the  
24 power of a guardian pending notice and hearing. If an appointed  
25 guardian is not effectively performing his duties and the court further  
26 finds that the welfare of the incapacitated person requires immediate  
27 action, it may, with or without notice, appoint a temporary guardian  
28 for the incapacitated person for a specified period not to exceed six  
29 months whose powers and duties shall be specifically enumerated by

1 court order. [A TEMPORARY GUARDIAN IS ENTITLED TO THE CARE AND CUSTODY  
2 OF THE WARD AND THE AUTHORITY OF ANY PERMANENT GUARDIAN PREVIOUSLY  
3 APPOINTED BY THE COURT IS SUSPENDED SO LONG AS A TEMPORARY GUARDIAN  
4 HAS AUTHORITY. A TEMPORARY GUARDIAN MAY BE REMOVED AT ANY TIME. A  
5 TEMPORARY GUARDIAN SHALL MAKE ANY REPORT THE COURT REQUIRES. IN OTHER  
6 RESPECTS THE PROVISIONS OF THIS CODE CONCERNING GUARDIANS APPLY TO  
7 TEMPORARY GUARDIANS.]

8 \* Sec. 13. AS 13.26.145 is amended to read:

9       Sec. 13.26.145. WHO MAY BE GUARDIAN; PRIORITIES. (a) Any  
10 competent person or a suitable agency or institution, public or private,  
11 including any private association capable of conducting an active  
12 guardianship program for an incapacitated person, may be appointed  
13 guardian of an incapacitated person, but the court may not appoint as  
14 guardian a public or private agency that is providing direct care to  
15 the incapacitated person.

16       (b) Persons who are not disqualified have priority for appoint-  
17 ment as guardian in the following order:

- 18       (1) the spouse of the incapacitated person;  
19       (2) an adult child of the incapacitated person;  
20       (3) a parent of the incapacitated person, including a  
21 person nominated by will or other writing signed by a deceased parent;  
22       (4) any relative of the incapacitated person with whom he  
23 or she has resided for more than six months before the filing of the  
24 petition;  
25       (5) a person nominated by the person who is caring for the  
26 incapacitated person [HIM] or paying benefits to him;  
27       (6) a public or private agency, institution, or association  
28 capable of conducting an active guardianship program for an incapaci-  
29 tated person.

1 \* Sec. 14. AS 13.26.150(a)(5) is amended to read:

2 (5) a guardian is required to report the condition of his  
3 ward and of the estate which has been subject to his possession or  
4 control, as required by the court or court rule but at least once a  
5 year; the report shall as a minimum contain statements indicating:

6 (A) the person's current mental, physical and social  
7 condition;

8 (B) his present living arrangements;

9 (C) the need for continued guardianship services;

10 (D) any other information requested by the court or  
11 necessary or desirable in the opinion of the guardian;

12 \* Sec. 15. AS 13.26.170 is amended by adding a new subsection to read:

13 (b) When both guardianship and protective proceedings as to the  
14 same person are commenced or pending, the proceedings may be consoli-  
15 dated.