

Original sponsor: Rules Committee
by request of the Governor

Offered: 4/25/78
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 63

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to guardians of incapacitated per-
7 sons."

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, mental retardation or
12 other developmental disability, physical illness or disability, advanced
13 age, chronic use of drugs, chronic intoxication, or other cause (except
14 minority) to the extent that he lacks sufficient understanding or capa-
15 city to make 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 person
18 which

19 (A) is attributable to mental retardation, cerebral
20 palsy, epilepsy, autism, or any other condition resulting in sig-
21 nificant impairment of general intellectual functioning and adap-
22 tive behavior;

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

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

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

28 (6) "partial guardian" means a guardian who possesses fewer
29 than all of the legal rights and powers of a plenary guardian, and whose

1 rights, powers, and duties have been specifically enumerated by court
2 order;

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

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

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

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

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

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 AS 13.26.105 is repealed and re-enacted to read:

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

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

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

26 (3) a judgment as to the most appropriate living arrangement
27 for the individual;

28 (4) the signatures of all persons, one of whom must be a
29 physician or psychologist, who performed the evaluations upon which the

1 report is based.

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

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

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

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

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

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

28 Sec. 13.26.110. FINDINGS; ORDER OF APPOINTMENT. (a) The court,
29 at a hearing for the appointment of a guardian for an incapacitated

1 person, shall:

2 (1) inquire into the nature and extent of the general func-
3 tioning of the person asserted to need a guardian;

4 (2) determine the extent of the impairment of the person's
5 behavior;

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

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

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

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

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

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

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

26 Sec. 13.26.114. LIVING ARRANGEMENTS. (a) In addition to evalu-
27 ating capacity, the court with the help of a physician it has appointed
28 and a visitor (as defined in sec. 130 of this chapter) shall examine
29 proposed and alternative living arrangements for the person asserted to

1 need a guardian.

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

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

6 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED
7 PERSON. The authority and responsibility of a guardian for an incapaci-
8 tated person terminates upon the death of the guardian or ward, the
9 determination of incapacity of the guardian, or upon removal or resig-
10 nation as provided in sec. 125 of this chapter, or upon the expiration
11 of the period specified by court order for the duration of the guardian-
12 ship. Testamentary appointment under an informally probated will ter-
13 minates if the will is later denied probate in a formal proceeding.
14 Termination does not affect his liability for prior acts nor the guar-
15 dian's [HIS] obligation to account for funds and assets of the [HIS]
16 ward.

17 * Sec. 9. AS 13.26.125 is amended to read:

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

26 (b) The [AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM
27 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDI-
28 CATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT
29 SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE] ward, the guardian,

1 or any person interested in the ward's [HIS] welfare may petition for an
2 order that he or she is no longer incapacitated or no longer incapaci-
3 tated to the same degree, [AND] for removal or resignation of the
4 guardian, or for a change in the guardian's responsibilities. A request
5 for this order may be made by informal letter to the court or judge and
6 any person who knowingly interferes with transmission of this kind of
7 request to the court or judge may be adjudged guilty of contempt of
8 court.

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

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

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

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

26 (1) the ward or the person alleged to be incapacitated and
27 his or her spouse, parents and adult children;

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

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

4 (4) the petitioner;

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

7 (6) the director of the facility in which the individual is
8 residing; and

9 (7) the individual's guardian ad litem if one has been ap-
10 pointed.

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

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

18 * Sec. 12. AS 13.26.140 is amended to read:

19 Sec. 13.26.140. TEMPORARY GUARDIANS. If an incapacitated person
20 has no guardian and an emergency exists, the court may exercise the
21 power of a guardian pending notice and hearing. If an appointed guar-
22 dian is not effectively performing his duties and the court further
23 finds that the welfare of the incapacitated person requires immediate
24 action, it may, with or without notice, appoint a temporary guardian for
25 the incapacitated person for a specified period not to exceed six
26 months whose powers and duties shall be specifically enumerated by
27 court order. [A TEMPORARY GUARDIAN IS ENTITLED TO THE CARE AND CUSTODY
28 OF THE WARD AND THE AUTHORITY OF ANY PERMANENT GUARDIAN PREVIOUSLY
29 APPOINTED BY THE COURT IS SUSPENDED SO LONG AS A TEMPORARY GUARDIAN HAS

1 AUTHORITY. A TEMPORARY GUARDIAN MAY BE REMOVED AT ANY TIME. A TEMPO-
2 RARY GUARDIAN SHALL MAKE ANY REPORT THE COURT REQUIRES. IN OTHER
3 RESPECTS THE PROVISIONS OF THIS CODE CONCERNING GUARDIANS APPLY TO
4 TEMPORARY GUARDIANS.]

5 * Sec. 13. AS 13.26.145 is amended to read:

6 Sec. 13.26.145. WHO MAY BE GUARDIAN; PRIORITIES. (a) Any com-
7 petent person or a suitable agency or institution, public or private,
8 including any private association capable of conducting an active
9 guardianship program for an incapacitated person, may be appointed
10 guardian of an incapacitated person, but the court may not appoint as
11 guardian a public or private agency that is providing direct care to the
12 incapacitated person if the appointment could conflict with the best
13 interests of the incapacitated person.

14 (b) Persons who are not disqualified have priority for appointment
15 as guardian in the following order:

16 (1) the spouse of the incapacitated person;
17 (2) an adult child of the incapacitated person;
18 (3) a parent of the incapacitated person, including a person
19 nominated by will or other writing signed by a deceased parent;

20 (4) any relative of the incapacitated person with whom he
21 or she has resided for more than six months before the filing of the
22 petition;

23 (5) a person nominated by the person who is caring for the
24 incapacitated person [HIM] or paying benefits to him;

25 (6) a public or private agency, institution, or association
26 capable of conducting an active guardianship program for an incapaci-
27 tated person.

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

29 (5) a guardian is required to report the condition of his

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

4 (A) the person's current mental, physical and social
5 condition;

6 (B) his present living arrangements;

7 (C) the need for continued guardianship services;

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

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

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

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