

Introduced: 1/18/80
Referred: Judiciary

1 IN THE HOUSE

BY PARR

2 HOUSE BILL NO. 572

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to guardians and conservators; and
7 providing for an effective date."

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

9 * Section 1. AS 13.26.005(1) is repealed and re-enacted to read:

10 (1) "incapacitated person" means a person whose ability to
11 receive and evaluate information or to communicate decisions is impaired
12 for reasons other than minority to the extent that he lacks the ability
13 to provide for himself the essential requirements for his physical
14 health or safety without court-ordered assistance;

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

16 (5) "essential requirements for physical health or safety"
17 means the health care, food, shelter, clothing, personal hygiene and
18 protection without which serious physical injury or illness is more
19 likely than not to occur;

20 (6) "partial guardian" means a guardian who possesses fewer
21 than all of the legal duties and powers of a full guardian, and whose
22 rights, powers, and duties have been specifically enumerated by court
23 order;

24 (7) "full guardian" means a guardian who possesses the legal
25 duties and powers enumerated in AS 13.26.150(c);

26 (8) "visitor" means a person trained or experienced in law,
27 medical care, mental health care, education, rehabilitation, or social
28 work who is an officer, employee, or special appointee of the court with
29 no personal interest in the proceedings;

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(9) "guardian" includes full guardian and partial guardian;

(10) "respondent" means a person who, in a guardianship proceeding under this chapter, is alleged to be incapacitated and for whom the appointment of a guardian or alternative assistance is sought; "respondent" includes a person seeking the appointment of a guardian or alternative assistance for himself.

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

Sec. 13.26.090. PURPOSE AND BASIS FOR GUARDIANSHIP. Guardianship for an incapacitated person shall be used only as is necessary to promote and protect the well-being of the person, shall be designed to encourage the development of maximum self-reliance and independence of the person, and shall be ordered only to the extent necessitated by the person's actual mental and physical limitations. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court.

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

(e) A testamentary appointment of a guardian by the parent of an incapacitated person, or by the spouse of a married incapacitated person, may grant all guardianship powers and duties which the deceased parent or spouse held, subject to modification by the court under AS 13.26.125.

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

Sec. 13.26.105. PETITION. (a) Any person may petition the court for a finding of incapacity and the appointment of a guardian for himself or for another person.

(b) The petition for appointment of a guardian shall state

(1) the name, age, and address of the petitioner and his

1 relationship to the respondent;

2 (2) the name, age, and present address of the respondent;

3 (3) the name and address of the person or facility presently
4 having care, custody, guardianship, or conservatorship of the respon-
5 dent, if any, and the existence of any other restrictions on the legal
6 capacity of the respondent to act in his own behalf;

7 (4) the nature and degree of the alleged incapacity;

8 (5) the particular type and duration of appointment and the
9 protection and assistance being sought;

10 (6) the names and addresses, unless they are unknown and
11 cannot reasonably be ascertained, of the individuals most closely re-
12 lated to the respondent by blood or marriage;

13 (7) the facts supporting the allegations of incapacity and
14 the need for appointment of a guardian;

15 (8) the names and addresses of persons known to the peti-
16 tioner who have knowledge that might prove helpful in determining the
17 capacity and needs of the respondent.

18 (c) The petition may also nominate a guardian and include a re-
19 quest for temporary guardianship as provided in AS 13.26.140 if the
20 petitioner believes there is an imminent danger that the physical health
21 or safety of the respondent will be seriously impaired during the pen-
22 dency of the guardianship proceeding. A request for temporary guard-
23 ianship shall specify facts which cause the petitioner to believe that a
24 temporary guardian is necessary.

25 * Sec. 6. AS 13.26 is amended by adding new sections to read:

26 Sec. 13.26.106. INITIAL COURT PROCEDURES. (a) Upon the filing of
27 a petition, the court shall schedule a hearing on the issue of incapac-
28 ity. The hearing shall be conducted within 120 days from the filing of
29 the petition unless the court postpones the hearing for cause.

1 (b) If the respondent does not have an attorney of his own choice,
2 the court shall appoint an attorney to represent him in the proceeding.

3 (c) The court shall appoint a visitor as defined in AS 13.26.-
4 005(8). The visitor shall arrange for evaluations to be performed and
5 prepare a written report to be filed with the court. The court shall
6 also appoint an expert who has expertise in regard to the alleged or
7 admitted incapacity to investigate the issue of incapacity.

8 (d) The visitor shall interview the respondent and the person
9 seeking appointment as guardian, if any. The visitor shall conduct the
10 interviews and investigations necessary to prepare his report and shall
11 arrange for the respondent to be examined by the expert appointed under
12 (c) of this section. The expert's written report shall be incorporated
13 into the visitor's report.

14 (e) Interviews and examinations shall take place in the respon-
15 dent's usual residence unless

16 (1) the respondent consents to being examined or interviewed
17 in a medical or mental health facility; or

18 (2) the visitor considers it necessary to conduct interviews
19 or examinations in a medical or mental health facility.

20 Sec. 13.26.107. NOTICE OF RIGHTS. (a) Upon appointment, the
21 visitor shall promptly

22 (1) explain to the respondent, in a language or communication
23 system he can understand, the purpose of the interview and possible
24 consequences of the proceedings;

25 (2) serve a copy of the petition on the respondent in accor-
26 dance with the procedure described in AS 13.06.110;

27 (3) explain and provide to the respondent a written statement
28 of the following rights:

29 (A) he may communicate with an attorney or an expert in

1 the alleged incapacity before proceeding with the interview;

2 (B) if he does not have an attorney, an attorney, whose
3 name, address, and telephone number shall be included in the state-
4 ment, will be designated to advise and represent him before and at
5 any judicial hearings, and the attorney may arrange for an examina-
6 tion and consultation with an expert; and

7 (C) he may, instead, employ an attorney or expert of his
8 own choice; and

9 (4) offer assistance to the respondent in contacting an
10 attorney.

11 (b) A substantive interview of the respondent or other investi-
12 gation may not be conducted until (a) of this section has been satis-
13 fied.

14 Sec. 13.26.108. VISITOR'S REPORT. (a) The visitor shall file
15 with the court his evaluation report, proof of service of the petition
16 upon the respondent and proof of service of his report upon the respon-
17 dent, his attorney, and the petitioner, within 90 days after the date on
18 which the petition was filed.

19 (b) The visitor shall, as part of the evaluation report, explain
20 alternatives to guardianship and recommend any which will safeguard the
21 respondent's essential requirements for physical health and safety. The
22 evaluation report may recommend personal guardianship only if the visitor
23 determines that the needs of the respondent cannot be met by other
24 alternatives.

25 (c) The evaluation report shall include

26 (1) the results and analyses of medical and other tests and
27 examinations performed which describe the respondent's mental, emo-
28 tional, physical, and educational condition, adaptive behavior and
29 social skills, and which specify the data on which the description is

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based;

(2) recommendations regarding the types and extent of assistance, if any, necessary to meet the essential requirements for the physical health and safety of the respondent;

(3) an evaluation of the respondent's need for mental health treatment and whether there is a substantial probability that available treatment will significantly improve his mental condition;

(4) an evaluation of the respondent's need for educational or vocational assistance or personal care and whether these can be made available to the respondent;

(5) an evaluation of the probability that the incapacity may significantly lessen, and the type of services or treatment which will facilitate improvement in the respondent's condition or skills;

(6) a list of the names and addresses of all individuals who examined, interviewed, or investigated the respondent and of the names and addresses of all persons contacted in preparation of the report;

(7) a summary of the information which

(A) was supplied by the persons described in (6) of this subsection; and

(B) supports the conclusions of the report;

(8) a description of the alternatives to guardianship which were considered and not recommended and an explanation of why they are not feasible to meet the respondent's needs;

(9) a description of the present home and living arrangement of the respondent and of any other proposed placement and a recommendation for the respondent's living arrangement that provides the least restrictive setting necessary to protect the respondent from serious illness, injury, or disease; and

(10) a specification of the financial resources of the respon-

1 dent and his entitlements to insurance benefits and publicly operated or
2 sponsored health, mental health, and welfare assistance which might be
3 employed in the provision of services to him.

4 (d) If personal guardianship is recommended, the evaluation report
5 required under (c) of this section shall include a guardianship outline
6 which identifies

7 (1) potential guardians;

8 (2) the specific services necessary and available to protect
9 the respondent from serious injury, illness or disease, and, to the
10 extent possible, return the respondent to full capacity in handling his
11 own affairs;

12 (3) the means by which the services described in (2) of this
13 subsection may be financed;

14 (4) the specific, least restrictive authority needed by the
15 guardian to provide the services described in (2) of this subsection.

16 (e) The petitioner and the respondent may file responses to the
17 evaluation report within 10 days of receiving it. The court may grant
18 additional time if requested for cause.

19 Sec. 13.26.109. EVALUATIONS: RIGHT TO REMAIN SILENT; RESPONDENT'S
20 ATTORNEY OR EXPERT. (a) A ward or respondent has the right to refuse
21 to respond to questions in the course of examinations and evaluations.
22 However, he may be required to submit to interviews for the purpose of
23 ascertaining whether he lacks the capacity to make informed decisions
24 about care and treatment services.

25 (b) Statements of a ward or respondent in the course of evalua-
26 tions, examinations, and treatment under AS 13.26.090 - 13.26.155 are
27 privileged and confidential and not admissible without the ward's or
28 respondent's consent in any civil or criminal proceeding other than
29 proceedings under AS 13.26.090 - 13.26.155. A ward or respondent at all

1 times has the right to refuse to answer questions if the answers may
2 tend to incriminate him.

3 (c) During an interview or testing conducted under AS 13.26.090 -
4 13.26.155, a ward or respondent has the right to be accompanied by an
5 attorney or expert of his own choosing.

6 (d) The court, if requested by a ward or respondent in preparation
7 for and in connection with a hearing held under AS 13.26.090 - 13.26.155,
8 shall appoint an expert having expertise in regard to the alleged or
9 admitted incapacity to examine the respondent and testify on his behalf.
10 The request shall be filed in court at least five days before the hear-
11 ing. An expert appointed under this subsection may be the same expert
12 appointed under AS 13.26.106(c).

13 Sec. 13.26.111. DUTIES AND POWERS OF RESPONDENT'S ATTORNEY. (a)
14 The principal duty of an attorney representing a ward or respondent is
15 to represent the ward or respondent zealously. Zealous representation
16 includes at least

17 (1) personal interviews with the ward or respondent;

18 (2) explaining, if possible, to the ward or respondent in
19 terms which the ward or respondent can understand, the nature and
20 possible consequences of the proceeding, the alternatives which are
21 available, and the rights to which he is entitled;

22 (3) securing and presenting evidence and testimony and offer-
23 ing arguments to protect the ward's or respondent's rights and to
24 further his interests.

25 (b) To the maximum extent possible, the ward or respondent shall
26 remain responsible for determining his interests. However, his attorney
27 may seek appointment of a guardian ad litem if the circumstances of
28 AS 13.26.112 apply.

29 Sec. 13.26.112. APPOINTMENT OF A GUARDIAN AD LITEM. (a) Upon the

1 request of a ward or respondent or his attorney, the court shall appoint
2 a guardian ad litem to protect the rights of the ward or respondent in
3 proceedings under AS 13.26.090 - 13.26.155 if the court is satisfied
4 that because of impaired ability to effectively receive and evaluate
5 information regarding the proceedings or because of impaired ability to
6 communicate decisions regarding the proceedings, the ward or respondent
7 cannot determine his own interests without assistance, and

- 8 (1) a guardian has not been appointed;
- 9 (2) his interests and those of his guardian conflict; or
- 10 (3) the appointment is otherwise in the interests of justice.

11 (b) The guardian ad litem shall assist the ward or respondent in
12 determining his interests in regard to the legal proceedings in which he
13 is involved. If the ward or respondent is entirely incapable of deter-
14 mining his own interests, the guardian ad litem shall make that deter-
15 mination and advise the court and counsel for all parties accordingly.

16 The guardian ad litem shall

17 (1) inquire thoroughly into all the circumstances that a
18 prudent individual in the position of the ward or respondent would
19 consider in determining his own interests in the proceedings; and

20 (2) encourage the ward or respondent to participate, to the
21 maximum extent of his capability, in all decisions and to act on his own
22 behalf on all matters in which he is able.

23 (c) The attorney may also be the guardian ad litem for the ward or
24 respondent if there is no other party readily available and able to
25 serve as a guardian ad litem and whose interests would not conflict with
26 those of the ward or respondent.

27 Sec. 13.26.113. HEARING. (a) At the hearing scheduled under
28 AS 13.26.106, the respondent has the right to

- 29 (1) present evidence on his own behalf;

1 (2) cross-examine witnesses who testify against him;
2 (3) remain silent;
3 (4) have the hearing open or closed to the public as he
4 elects;

5 (5) be present unless the court determines that his conduct
6 in the courtroom is so disruptive that the proceedings cannot reasonably
7 continue with him present;

8 (6) be tried by jury on the issue of incapacity.

9 (b) The burden of proof by clear and convincing evidence is upon
10 the petitioner, and a determination of incapacity shall be made before
11 consideration of proper disposition.

12 (c) If the respondent is found to be incapacitated, the court
13 shall determine the extent of the incapacity and the feasibility of
14 alternatives to guardianship to meet the needs of the respondent.

15 (d) If it is found that alternatives to guardianship are feasible
16 and adequate to meet the needs of the respondent, the court may dismiss
17 the action and order an alternative form of protection.

18 (e) If it is found that the respondent is able to perform some,
19 but not all, of the functions necessary to care for himself, and alterna-
20 tives to guardianship are not feasible or adequate to provide for the
21 needs of the respondent, the court may appoint a partial guardian, but
22 may not appoint a full guardian.

23 (f) If it is found that the respondent is totally without capacity
24 to care for himself and that a combination of alternatives to guardian-
25 ship and the appointment of a partial guardian is not feasible or ade-
26 quate to meet the needs of the respondent, the court may appoint a full
27 guardian.

28 (g) At the time a guardian is appointed, the court shall make a
29 reasonable effort to acquaint the ward with his right to request, at a

1 later time, his guardian's dismissal or a modification of the guardian-
2 ship order. The court shall provide a written statement to the ward,
3 explaining his rights and specifying the procedures to be followed in
4 petitioning the court.

5 Sec. 13.26.114. PSYCHOTROPIC MEDICATION INFLUENCING WARDS OR
6 RESPONDENTS AT JUDICIAL HEARINGS. (a) A ward or respondent has a right
7 to participate to the maximum extent possible in all judicial proceed-
8 ings concerning him and to be free from the influence of psychotropic
9 medication during the proceedings.

10 (b) It is the responsibility of the attorney for the ward or
11 respondent to determine if the ward or respondent is being given treat-
12 ment with psychotropic medication the effects of which would continue
13 during the judicial proceedings and, if so, to inform the court in
14 writing a reasonable time before the hearing.

15 (c) The court, upon receipt of the information, shall determine
16 the advisability of continuation or suspension of the treatment for the
17 duration of the judicial proceedings and may make any appropriate order
18 it considers necessary. The court in making its determination shall
19 balance the interest of maximum participation from the ward or respon-
20 dent in the hearings against the medical and rehabilitative needs of the
21 ward or respondent.

22 (d) If the ward or respondent is under the influence of psycho-
23 tropic medication during the judicial proceeding determining capacity,
24 the trier of fact shall take that fact into consideration in making its
25 determination.

26 Sec. 13.26.116. GUARDIANSHIP ORDER. (a) If the court or jury
27 determines that a person is incapacitated and the services of a guardian
28 are necessary, the court shall enter an order which

29 (1) names the guardian and establishes a guardian-ward rela-

1 tionship;

2 (2) includes findings of fact which support each grant of
3 authority to the guardian;

4 (3) adopts a guardianship plan.

5 (b) The guardianship plan shall specify the authority which the
6 guardian has with regard to

7 (1) medical care for the ward's physical condition;

8 (2) mental health treatment which the guardian considers to
9 be in the ward's best interests;

10 (3) housing for the ward with consideration of the following:

11 (A) the wishes of the ward;

12 (B) the preferability of allowing the ward to retain
13 local community ties; and

14 (C) the requirement for services to be provided in the
15 least restrictive setting;

16 (4) personal care, educational and vocational services neces-
17 sary for the physical and mental welfare of the ward and to return the
18 ward to full capacity;

19 (5) application for health and accident insurance and any
20 other private or governmental benefits to which the ward may be entitled
21 to meet any part of the costs of medical, mental health, or related
22 services provided to the ward;

23 (6) physical and mental examinations necessary to determine
24 the ward's medical and mental health treatment needs; and

25 (7) control of the estate and income of the ward to pay for
26 the cost of services which the guardian is authorized to obtain on
27 behalf of the ward.

28 (c) The guardianship plan may not be more restrictive of the
29 liberty of the ward than is reasonably necessary to protect the ward

1 from serious physical injury, illness or disease and to provide him with
2 medical care and mental health treatment for his physical and mental
3 health. The guardianship plan shall be designed to encourage a ward to
4 participate in all decisions which affect him and to act on his own
5 behalf to the maximum extent possible. The court may not assign a duty
6 or power to a guardian unless the need for it has been proven to the
7 satisfaction of the court and no less restrictive alternative or combi-
8 nation of alternatives is sufficient to satisfy the need.

9 (d) The duration of the term of guardianship shall be determined
10 by the court order. Upon receipt of a report or other information that
11 requires further consideration, the court may order a review hearing if
12 it determines that the hearing is in the best interests of the ward.

13 Sec. 13.26.117. GUARDIANSHIP IMPLEMENTATION REPORT. Within 90
14 days after appointment as guardian, the guardian shall submit to the
15 court a report. The report shall describe the guardian's program for
16 implementing the guardianship plan. The primary goal of the program
17 described in the report shall be, to the maximum extent possible, to
18 develop or regain the ward's abilities to handle his own affairs. The
19 report shall consider housing, medical care, and educational and voca-
20 tional needs and resources. In developing the report, the guardian
21 shall consult with his ward to the maximum extent possible. The office
22 of public guardian shall contact the guardian to offer assistance in
23 preparing the report. The report shall specify the services which are
24 necessary to meet the essential requirements for the ward's physical
25 health or safety and the means for obtaining the services. The report
26 shall specify the manner in which the guardian will exercise and share
27 decision-making authority and other items which will assist in fulfill-
28 ing the needs of the ward, the terms of the guardianship order, and the
29 duties of the guardian.

1 Sec. 13.26.118. REPORTING. (a) A guardian shall submit a report
2 to the court or request that a visitor be appointed to prepare and
3 submit a report at least annually. A court-appointed visitor shall
4 prepare the report at least once in each three-year period. The guard-
5 ian shall submit an additional report to the court when

6 (1) the court orders it;

7 (2) there is a significant change in the capacity of the ward
8 to meet the essential requirements for his health and safety or to
9 protect his rights;

10 (3) the guardian resigns or is removed; or

11 (4) the guardianship is terminated.

12 (b) The report shall contain, but is not limited to, the following
13 information:

14 (1) the name and address of the ward and the guardian;

15 (2) the ward's present mental, physical, and social condi-
16 tions and present living arrangements;

17 (3) changes in the capacity of the ward to meet essential
18 requirements for his physical health and safety;

19 (4) the services being provided to the ward;

20 (5) the significant actions taken by the guardian during the
21 reporting period in regard to his ward;

22 (6) a financial accounting of the estate which has been
23 subject to the possession or control of the guardian;

24 (7) any other information requested by the court or necessary
25 or desirable in the opinion of the guardian or visitor.

26 Sec. 13.26.131. COSTS IN GUARDIANSHIP PROCEEDINGS. (a) The state
27 shall bear the costs of the visitor and expert appointed under AS 13.26.-
28 106(c).

29 (b) Subject to (c) of this section, the respondent shall bear the

1 costs of the attorney appointed under AS 13.26.106(b), of the expert
2 appointed under AS 13.26.109(d), of the guardian ad litem appointed
3 under AS 13.26.112, and of other court and guardianship costs incurred
4 under this chapter.

5 (c) The state shall pay all or part of the costs described in (b)
6 of this section if the court finds that the payment is necessary to
7 prevent the respondent from suffering financial hardship or from becom-
8 ing dependent upon a government agency or a private person or agency.

9 * Sec. 7. AS 13.26.120 is amended to read:

10 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED
11 PERSON. The authority and responsibility of a guardian for an incapa-
12 citated person terminates upon the death of the guardian or ward, the
13 determination of incapacity of the guardian, the [OR UPON] removal or
14 resignation of the guardian as provided in AS 13.26.125, or upon the
15 expiration of the period specified by court order as the duration of the
16 guardianship. Testamentary appointment under an informally probated
17 will terminates if the will is later denied probate in a formal proceed-
18 ing. Termination does not affect a guardian's [HIS] liability for prior
19 acts nor his obligation to account for [FUNDS AND] assets of the [HIS]
20 ward over which he exercised control.

21 * Sec. 8. AS 13.26.125 is amended to read:

22 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR
23 TERMINATION OF GUARDIANSHIP [INCAPACITY]. (a) On petition of the ward,
24 the guardian, or any person interested in the ward's [HIS] welfare, the
25 court may (1) review and amend a decision of a guardian; or (2) if
26 alternatives which are less restrictive than guardianship or less re-
27 strictive than the existing guardianship plan would assist the ward in
28 meeting his essential requirements for physical health and safety,
29 modify the provisions of its order to (A) amend the guardianship plan

1 or the responsibilities of the guardian; (B) remove a guardian and
2 appoint a successor; or (C) terminate the guardianship [IF IN THE BEST
3 INTERESTS OF THE WARD]. On petition of the guardian, the court may
4 accept his resignation and make any other order which may be appropriate.

5 (b) The [AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM
6 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDI-
7 CATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT
8 SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE] ward, the guardian, or
9 any person interested in the ward's [HIS] welfare may petition for an
10 order that the ward [HE] is no longer incapacitated or no longer incapa-
11 citated to the same extent as he was when the original guardianship
12 order was made or when the court last amended the guardianship order,
13 and for removal or resignation of the guardian, termination of the guard-
14 ianship, or a change in the responsibilities of the guardian. A request
15 for this order may be made by informal letter to the court or judge and
16 any person who knowingly interferes with transmission of this kind of
17 request to the court or judge may be held in [ADJUDGED GUILTY OF] con-
18 tempt of court.

19 (c) Before removing a guardian, changing his responsibilities,
20 accepting the resignation of a guardian, or ordering that a ward's
21 guardianship be changed or [INCAPACITY HAS] terminated, the court,
22 following the same procedures to safeguard the rights of the ward as
23 apply to a petition for appointment of a guardian and applying the least
24 restrictive alternative necessary to meet the needs of the ward after
25 consideration of alternatives to guardianship services, may send a
26 visitor to the residence of the present guardian and to the place where
27 the ward resides or is detained, to observe conditions and report in
28 writing to the court.

29 (d) If at any time the ward requests or indicates to his guardian

1 or to the agency responsible for his care or its employee that he
2 desires a change in guardianship, the guardian or the agency providing
3 care shall inform the court of the request or indication.

4 (e) If the guardian dies, or if on the basis of a petition filed
5 under this section or a report or other information, there is probable
6 cause to believe a guardian is not performing his responsibilities
7 effectively and there is an imminent danger that the physical health or
8 safety of the ward will be seriously impaired, the court shall take what-
9 ever action is necessary to protect the ward, including the dismissal of
10 the guardian and appointment of a temporary guardian without a hearing.

11 * Sec. 9. AS 13.26.135 is amended to read:

12 Sec. 13.26.135. NOTICES IN GUARDIANSHIP PROCEEDINGS. (a) In a
13 proceeding for the appointment, change in responsibilities, [OR] removal
14 of a guardian, or termination of guardianship, [OF AN INCAPACITATED
15 PERSON] other than the appointment of a temporary guardian or temporary
16 suspension of a guardian, notice of hearing shall be given to each of
17 the following:

18 (1) the ward or respondent by the visitor as provided in
19 AS 13.26.107 [THE PERSON ALLEGED TO BE INCAPACITATED AND HIS SPOUSE,
20 PARENTS AND ADULT CHILDREN];

21 (2) any person who is serving as his guardian, conservator or
22 who has his care and custody; [AND]

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

26 (4) the spouse, parents, and adult children of the ward or
27 respondent;

28 (5) any person who performed an evaluation for the visitor's
29 report within the previous two years;

1 (6) the ward's or respondent's attorney; and
2 (7) the ward's or respondent's guardian ad litem if one
3 has been appointed.

4 (b) Notice shall be served personally on the ward's or respon-
5 dent's [ALLEGED INCAPACITATED PERSON, AND HIS] spouse and parents if
6 they can be found within the state. Except as provided in (a)(1) of
7 this section, notice [NOTICE] to the spouse and parents, if they cannot
8 be found within the state, and to all other persons [EXCEPT THE ALLEGED
9 INCAPACITATED PERSON] shall be given as provided in AS 13.06.110.
10 [WAIVER OF NOTICE BY THE PERSON ALLEGED TO BE INCAPACITATED IS NOT
11 EFFECTIVE UNLESS HE ATTENDS THE HEARING OR HIS WAIVER OF NOTICE IS
12 CONFIRMED IN AN INTERVIEW WITH THE VISITOR. REPRESENTATION OF THE
13 ALLEGED INCAPACITATED PERSON BY A GUARDIAN AD LITEM IS NOT NECESSARY.]

14 (c) The notice shall set out the date, time, place, purpose and
15 possible consequences of the hearing and the rights of the ward or
16 respondent and any other parties to the proceedings.

17 * Sec. 10. AS 13.26.140 is repealed and re-enacted to read:

18 Sec. 13.26.140. TEMPORARY GUARDIANS. (a) If during the pendency
19 of an initial petition for guardianship it appears that the respondent
20 is in need of immediate services to protect him against serious injury,
21 illness or disease and the respondent is not capable of procuring the
22 necessary services, the petitioner may request the appointment of a
23 temporary guardian to authorize the services. The request shall state
24 the reasons and factual basis for the request. The petitioner shall
25 immediately file the request with the court and serve copies on the
26 respondent and his attorney. The court shall conduct a hearing within
27 72 hours after the filing.

28 (b) At the temporary guardianship hearing, the respondent shall
29 have the rights set out in AS 13.26.113(b).

1 (c) The burden of proof at the hearing shall be by a preponderance
2 of the evidence and shall be upon the petitioner.

3 (d) If the court determines that a temporary guardian should be
4 appointed, it shall make the appointment and grant to the guardian only
5 the authorities that are least restrictive upon the liberty of the
6 respondent and which enable the temporary guardian to provide the emer-
7 gency services necessary to protect the respondent from serious injury,
8 illness or disease.

9 (e) The temporary guardianship shall expire at the time of the
10 appointment of a full or partial guardian or upon the dismissal of the
11 petition for guardianship.

12 (f) If no guardianship petition is pending but the court is in-
13 formed of a person who is apparently incapacitated and in need of emer-
14 gency life-saving services, the court may authorize the services upon
15 determining that delay until a guardianship hearing can be held would
16 entail a life-threatening risk to the person.

17 * Sec. 11. AS 13.26 is amended by adding a new section to read:

18 Sec. 13.26.141. EMERGENCY POWERS. Notwithstanding the limits of a
19 temporary guardianship or guardianship order, a temporary guardian and
20 guardian at all times have the right to authorize the provision of
21 emergency life-saving services. This right includes the power to autho-
22 rize hospitalization without advance court approval.

23 * Sec. 12. AS 13.26.145 is repealed and re-enacted to read:

24 Sec. 13.26.145. WHO MAY BE GUARDIAN; PRIORITIES. (a) The court
25 may appoint a competent person, the public guardian, or a private asso-
26 ciation organized solely to conduct an active guardianship program for
27 incapacitated persons, as guardian of an incapacitated person.

28 (b) The court may not appoint a person to be a guardian of an
29 incapacitated person if the person

1 (1) provides, or is likely to provide during the guardianship
2 period, substantial services to the incapacitated person in a profes-
3 sional or business capacity, other than in his capacity as guardian;

4 (2) is, or is likely to become during the guardianship period,
5 a creditor of the incapacitated person, other than in his capacity as
6 guardian;

7 (3) has, or is likely to have during the guardianship period,
8 interests which may conflict with those of the incapacitated person; or

9 (4) is employed by a person who would be disqualified under
10 (1) - (3) of this subsection.

11 (c) A person may be appointed as the guardian of an incapacitated
12 person notwithstanding the provisions of (b) of this section if he is
13 the spouse, adult child, parent, or sibling of the incapacitated person
14 and the court determines that the potential conflict of interest is
15 insubstantial and that the appointment would clearly be in the best
16 interests of the incapacitated person.

17 (d) Subject to (e) of this section, qualified persons have prior-
18 ity for appointment as guardian in the following order:

19 (1) a person or association nominated by the incapacitated
20 person, if at the time of the nomination the incapacitated person had
21 the capacity to make a reasonably intelligent choice;

22 (2) the spouse of the incapacitated person;

23 (3) an adult child or parent of the incapacitated person;

24 (4) a relative of the incapacitated person with whom the
25 incapacitated person has resided for more than six months during the
26 year before the filing of the petition;

27 (5) a relative or friend who has demonstrated a sincere,
28 longstanding interest in the welfare of the incapacitated person;

29 (6) the public guardian.

1 (e) The priorities established in (d) of this section are not
2 binding, and the court shall select the person or association who is
3 best qualified and willing to serve. The court shall also give con-
4 sideration to a nomination by a person described in (d) of this section
5 and to a nomination in the will of a deceased parent or spouse of the
6 incapacitated person.

7 * Sec. 13. AS 13.26.150 is repealed and re-enacted to read:

8 Sec. 13.26.150. GENERAL POWERS AND DUTIES OF GUARDIAN. (a) A
9 guardian shall diligently and in good faith carry out the specific
10 duties and powers assigned by the court. In carrying out his duties and
11 powers, the guardian shall encourage the ward to participate to the
12 maximum extent of his capacity in all decisions which affect him, to act
13 on his own behalf in all matters in which he is able, and to develop or
14 regain, to the maximum extent possible, his capacity to meet the essen-
15 tial requirements for his physical health or safety, to protect his
16 rights, and to manage his financial resources.

17 (b) A partial guardian of an incapacitated person has only the
18 powers and duties respecting his ward enumerated in the court order.

19 (c) A full guardian of an incapacitated person has the same powers
20 and duties respecting his ward that a parent has respecting his uneman-
21 cipated minor child except that the guardian is not liable to third
22 persons for acts of the ward solely by reason of the parental relation-
23 ship. Except as modified by order of the court, a full guardian's
24 powers and duties include, but are not limited to, the following:

25 (1) he is entitled to custody of the person of his ward and
26 shall assure that the ward has a place of abode in the least restrictive
27 setting consistent with the essential requirements for the ward's physi-
28 cal health and safety;

29 (2) he shall assure the care, comfort, and maintenance of the

ward;

2 (3) he shall assure that the ward receives the services
3 necessary to meet the essential requirements for the ward's physical
4 health and safety and to develop or regain, to the maximum extent pos-
5 sible, the capacity to meet his needs for physical health and safety;

6 (4) he shall assure through the initiation of court action
7 and other means that the ward enjoys all personal, civil, and human
8 rights to which the ward is entitled;

9 (5) he may give consents or approvals necessary to enable the
10 ward to receive medical or other professional care, counsel, treatment
11 or services except as otherwise limited by (e) of this section;

12 (6) if a conservator for the estate of the ward has not been
13 appointed, the guardian may receive money and property deliverable to
14 the ward and apply the money and property for support, care, and educa-
15 tion of the ward; however, he may not use the ward's money or property
16 to pay for room and board which he, his spouse, parent, or child have
17 furnished the ward unless a charge for the service is approved by order
18 of the court made upon notice to at least one of the next of kin of the
19 ward, if notice is possible; he shall exercise care to conserve any
20 excess for the ward's needs;

21 (7) if a conservator of the estate of the ward has been
22 appointed, the guardian shall pay all of the ward's estate received by
23 the guardian in excess of the money expended to meet current expenses
24 for support, care, and education of the ward to the conservator for
25 management as provided in AS 13.26.165 - 13.26.315, and the guardian
26 shall account to the conservator for money expended.

27 (d) A full guardian of a ward, for whom a conservator has also
28 been appointed, shall control the custody and care of the ward and is
29 entitled to receive reasonable sums for his services and for room and

board furnished to the ward as agreed upon between the guardian and the conservator. The guardian may request the conservator to expend the ward's estate for the ward's care and maintenance.

(e) A guardian may not

(1) place the ward in a facility or institution for the mentally ill other than through a formal commitment proceeding under AS 47.30.070 in which the ward has a separate guardian ad litem;

(2) consent on behalf of the ward to an abortion, sterilization, psychosurgery, or removal of bodily organs except when necessary to preserve the life or prevent serious impairment of the physical health of the ward;

(3) consent on behalf of the ward to the withholding of life-saving medical procedures;

(4) consent on behalf of the ward to the performance of an experimental medical procedure or to participation in a medical experiment not intended to preserve the life or prevent serious impairment of the physical health of the ward;

(5) prohibit the marriage or divorce of the ward;

(6) consent on behalf of the ward to termination of the ward's parental rights.

* Sec. 14. AS 13.26.195 is amended by adding a new subsection to read:

(d) The court shall investigate alternatives to a conservator and the use of a special conservator as provided in AS 13.26.205(c). A conservator may be appointed only if a less restrictive protective order or the services of a special conservator are not adequate to protect the estate of the protected person. The court shall, to the extent possible, consult with the protected person in determining what action should be taken.

* Sec. 15. AS 13.26.205(c) is amended to read:

1 (c) Before approving a protective arrangement or other transaction
2 under this section, the court shall consider the interests of creditors
3 and dependents of the protected person and, in view of his disability,
4 whether the protected person needs the continuing protection of a con-
5 servator. If only certain powers need be given to the conservator or
6 the services of a conservator are needed only for a limited number of
7 transactions, a special conservator may be appointed. The court may
8 appoint a special conservator to assist in the accomplishment of any
9 protective arrangement or other transaction authorized under this sec-
10 tion who shall have the authority conferred by the order and serve until
11 discharged by order after report to the court of all matters carried out
12 under [DONE PURSUANT TO] the order of appointment.

13 * Sec. 16. AS 13.26 is amended by adding a new section to read:

14 Sec. 13.26.218. PUBLIC BOND. (a) If the public guardian is
15 appointed as a conservator, the court may not require a bond other than
16 the bond required in AS 13.26.410.

17 (b) If the court requires a conservator, other than the public
18 guardian, to provide a bond under AS 13.26.215 and the conservator is
19 financially unable to provide the bond, the court may order the cost of
20 the bond to be paid from court funds.

21 * Sec. 17. AS 13.26 is amended by adding new sections to read:

22 ARTICLE 6. PUBLIC GUARDIANS.

23 Sec. 13.26.360. PURPOSE. The legislature recognizes that many
24 Alaskans, for reasons of incapacity or minority, are in need of a
25 guardian or conservator. Often these persons cannot find a person able
26 and willing to serve as guardian or conservator. The legislature in-
27 tends through AS 13.26.360 - 13.26.420 to establish the office of public
28 guardian for the purpose of furnishing guardianship and conservatorship
29 services. It further intends by establishing this office to provide

1 assistance to guardians throughout the state in securing necessary
2 services for their wards and to assist the courts, attorneys, visitors,
3 proposed guardians, and respondents in the orderly and expeditious
4 handling of guardianship proceedings.

5 Sec. 13.26.370. PUBLIC GUARDIAN. (a) The public administrator
6 (AS 22.15.310) shall also act as the public guardian for the judicial
7 district for which he is appointed.

8 (b) A court may order the public guardian to act as full guardian,
9 partial guardian, conservator, or special conservator for a person who
10 is determined under this chapter to be in need of guardianship or con-
11 servatorship service if no person or private guardianship association is
12 willing and qualified to perform the function.

13 Sec. 13.26.380. POWERS AND DUTIES OF PUBLIC GUARDIAN. (a) The
14 public guardian has the same powers and duties with respect to his wards
15 and protected persons as a private guardian or conservator.

16 (b) The public guardian, when appointed as guardian or conserva-
17 tor, shall endeavor, for as long as practical, to find a suitable pri-
18 vate guardian or conservator for his ward or protected person. For each
19 ward and protected person, the public guardian shall report to the court
20 having jurisdiction of the ward or protected person, at least once every
21 six months, his efforts to find a private guardian or conservator.

22 (c) The public guardian shall

23 (1) establish and maintain relationships with governmental,
24 public, and private agencies, institutions, and organizations to assure
25 the most effective guardianship or conservatorship program for each ward
26 and protected person;

27 (2) visit each of his wards and protected persons at least
28 once every quarter to monitor their welfare;

29 (3) keep and maintain financial and statistical records of

1 all cases in which the public guardian provides guardianship or conser-
2 vatorship services;

3 (4) provide information and referrals to the public regarding
4 guardianship and conservatorship proceedings;

5 (5) assist guardians and court-appointed visitors of wards
6 and respondents in the preparation and revision of guardianship plans
7 and reports;

8 (6) assist guardians to understand the disabilities of wards
9 and to foster the increased independence of wards;

10 (7) assist guardians in securing the rights, benefits, and
11 services to which their wards are entitled;

12 (8) develop and maintain a current listing of public and
13 private medical, mental health, social advocacy, educational, rehabili-
14 tative, counseling, therapeutic, homemaking, recreational, and financial
15 services and programs available to assist wards and protected persons
16 and their families.

17 (d) The public guardian may

18 (1) contract for services necessary to carry out the duties
19 of his office;

20 (2) accept the services of volunteer workers or consultants
21 and reimburse them for their necessary expenses.

22 Sec. 13.26.390. INTERVENTION. The public guardian may, on his own
23 motion or at the request of the court, intervene in a guardianship or
24 conservatorship proceeding if he or the court considers the intervention
25 to be justified because

26 (1) an appointed guardian or conservator is not fulfilling
27 his duties;

28 (2) the estate is subject to waste as a result of the costs
29 of the guardianship or conservatorship;

1 (3) a willing and qualified guardian or conservator is not
2 available; or

3 (4) the best interests of the ward, respondent, protected
4 person, or person who is the subject of a conservatorship proceeding
5 require the intervention.

6 Sec. 13.26.400. DELEGATION OF POWERS AND DUTIES. The public
7 guardian may employ staff and delegate to members of his staff or to
8 volunteers his powers and duties as guardian or conservator and other
9 powers and duties under this chapter. However, the public guardian
10 retains responsibility for the proper performance of the delegated
11 powers and duties. All delegations shall be to persons who meet the
12 eligibility requirements of AS 13.26.145.

13 Sec. 13.26.410. BOND. The administrative director of the Alaska
14 Court System shall provide for one public bond to be held to cover all
15 the conservatorship duties of the public guardian. The amount of the
16 bond depends on the value of the estates in the control of the public
17 guardian. Every six months the public guardian shall submit to the
18 administrative director a report stating the value of the estates under
19 his control. On receipt of the report, the administrative director
20 shall adjust the public bond to the present value of the estates.

21 Sec. 13.26.420. ALLOCATION OF COSTS. (a) If a public guardian is
22 appointed guardian or conservator, the administrative costs of his
23 services and the costs incurred in the appointment procedure may not be
24 charged against the income or the estate of the ward or protected person
25 unless the court determines that the ward or protected person is finan-
26 cially able to pay all or part of the costs.

27 (b) The court shall determine the ability of the ward or protected
28 person to pay for administrative costs of a public guardian or costs
29 incurred in the appointment procedure by determining the financial

1 ability of the ward or protected person to pay a private guardian or
2 conservator, considering the nature, extent, and liquidity of assets of
3 the ward or protected person, the disposable net income of the ward or
4 protected person, the nature of the guardianship or conservatorship, the
5 type, duration and complexity of the services required, and any other
6 foreseeable expenses.

7 (c) The public guardian shall investigate the financial status of
8 a person who requests the appointment of the public guardian as his
9 guardian or conservator or for whom a court is considering the appoint-
10 ment of the public guardian. The public guardian may require the person
11 to execute and deliver written requests or authorizations necessary
12 under law to provide the public guardian with access to records of
13 public or private sources, otherwise confidential, needed to evaluate
14 financial eligibility. The public guardian may obtain information from
15 any public record office of the state or of a subdivision or agency of
16 the state upon request and without payment of fees ordinarily required
17 by law.

18 (d) The reasonable value of the services rendered without cost to
19 the ward or protected person shall be allowed as a claim against the
20 estate upon the death of the ward or protected person.

21 * Sec. 18. AS 22.15.310 is amended to read:

22 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme
23 court, the presiding judge in each judicial district shall appoint a
24 person to act as public administrator of the estates of deceased per-
25 sons, [AND] as coroner, and as public guardian.

26 * Sec. 19. AS 22.15.350 is amended to read:

27 Sec. 22.15.350. DUTIES [AS CORONER]. In addition to his other
28 duties, a public administrator shall perform the duties set out in
29 AS 22.15.110 and shall perform the duties of public guardian as set out

