

HB

572

Introduced 4-10-80

Logged 4-24-80

Referred Judiciary
Comm. Meeting

Comm. action

5/15/80

Ret'd CS HB 572 X Senate Page

Rec'd Sam Rose

CS HB (31 pages)

29 pages in SB 339

Relates HB 339 in
S. Judiciary

CS HB 572
By: Judiciary Comm.

S.H.E.S. 14-80
"An Act relating to
guaranties and
conservators and
providing for effective
te".

(Original HB 572 & SB 339
identical)

CS HB 572 adds new sections

Original sponsor: Parr

Offered: 4/10/80
Referred: Rules

*Warrant
referred
& it is now
going to Judiciary*

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR 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 AS 13.26.005(1) is repealed and re-enacted to read: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, pastoral care, education, rehabilita-
28 tion, or social work, who is an officer, employee, or special appointee
29 of the court with no personal interest in the proceedings;

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

2 (10) "respondent" means a person who, in a guardianship pro-
3 ceeding under this chapter, is alleged to be incapacitated and for whom
4 the appointment of a guardian or alternative assistance is sought;

5 "respondent" includes a person seeking the appointment of a guardian or
6 alternative assistance for himself.

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

8 Sec. 13.26.013. COURT RECORDS OF PROCEEDINGS; ACCESS; SEALING.

9 (a) A notice of the filing of a petition, a summary of all formal
10 proceedings, and a dispositional order or modification or termination of
11 a dispositional order relating to a proceeding under this chapter shall
12 be available for public inspection. All other information contained in
13 the court records relating to a proceeding under this chapter is con-
14 fidential and available only upon court order for good cause shown or to
15 the following persons:

16 (1) the person who is the subject of the court record, his
17 attorney or guardian ad litem;

18 (2) a person designated by the person who is the subject of
19 the court record;

20 (3) the guardian of the person who is the subject of the
21 court record or the attorney of the guardian;

22 (4) the conservator of the estate of the person who is the
23 subject of the court record or the attorney of the conservator;

24 (5) a party to the proceeding and his attorney;

25 (6) the judge or judges hearing or reviewing the matter; and

26 (7) a member of the clerical or administrative staff of the
27 court if access is essential for authorized internal administrative
28 purposes.

29 (b) Upon finding that a petition under this chapter was malicious,

1 frivolous, or without just cause, the court may order that all informa-
2 tion contained in the court records relating to the proceeding be sealed
3 and that the information be disclosed only upon court order for good
4 cause shown.

5 * Sec. 4. AS 13.26 is amended by adding a new section to article 3 to
6 read:

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

17 * Sec. 5. AS 13.26.095 is amended by adding a new subsection to read:

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

23 * Sec. 6. AS 13.26.105 is repealed and re-enacted to read:

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

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

28 (1) the name, age, and address of the petitioner and his
29 relationship to the respondent;

- 1 (2) the name, age, and present address of the respondent;
- 2 (3) the name and address of the person or facility presently
- 3 having care, custody, guardianship, or conservatorship of the respon-
- 4 dent, if any, and the existence of any other restrictions on the legal
- 5 capacity of the respondent to act in his own behalf;
- 6 (4) the nature and degree of the alleged incapacity;
- 7 (5) the particular type and duration of appointment and the
- 8 protection and assistance being sought;
- 9 (6) the names and addresses, unless they are unknown and
- 10 cannot reasonably be ascertained, of the individuals most closely re-
- 11 lated to the respondent by blood or marriage;
- 12 (7) the facts supporting the allegations of incapacity and
- 13 the need for appointment of a guardian;
- 14 (8) the names and addresses of persons known to the peti-
- 15 tioner who have knowledge that might prove helpful in determining the
- 16 capacity and needs of the respondent.

17 (c) The petition may also nominate a guardian and include a re-

18 quest for temporary guardianship as provided in AS 13.26.140 if the

19 petitioner believes there is an imminent danger that the physical health

20 or safety of the respondent will be seriously impaired during the pen-

21 dency of the guardianship proceeding. A request for temporary guard-

22 ianship shall specify facts which cause the petitioner to believe that a

23 temporary guardian is necessary.

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

25 Sec. 13.26.106. INITIAL COURT PROCEDURES. (a) Upon the filing of

26 a petition, the court shall schedule a hearing on the issue of incapac-

27 ity. The hearing shall be conducted within 120 days from the filing of

28 the petition unless the court postpones the hearing for cause.

29 (b) The respondent is entitled to be represented by an attorney in

1 the proceedings. If the respondent is financially unable to employ an
2 attorney to assist him, the court shall appoint an attorney to represent
3 the respondent in the proceedings.

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

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

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

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

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

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

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

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

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

1 (A) he may communicate with an attorney or an expert in
2 the alleged incapacity before proceeding with the interview;

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

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

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

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

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

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

26 (c) The evaluation report shall include

27 (1) the results and analyses of medical and other tests and
28 examinations performed which describe the respondent's mental, emo-
29 tional, physical, and educational condition, adaptive behavior and

1 social skills, and which specify the data on which the description is
2 based;

3 (2) recommendations regarding the types and extent of assis-
4 tance, if any, necessary to meet the essential requirements for the
5 physical health and safety of the respondent;

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

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

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

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

18 (7) a summary of the information which

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

21 (B) supports the conclusions of the report;

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

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

1 (10) a specification of the financial resources of the respon-
2 dent and his entitlements to insurance benefits and publicly operated or
3 sponsored health, mental health, and welfare assistance which might be
4 employed in the provision of services to him.

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

8 (1) potential guardians;

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

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

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

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

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

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

1 proceedings under AS 13.26.090 - 13.26.155. A ward or respondent at all
2 times has the right to refuse to answer questions if the answers may
3 tend to incriminate him.

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

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

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

18 (1) personal interviews with the ward or respondent; unless
19 good cause exists, the first contact with the ward or respondent shall
20 be at least two weeks before the hearing;

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

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

28 (b) To the maximum extent possible, the ward or respondent shall
29 remain responsible for determining his interests. However, his attorney

1 may seek appointment of a guardian ad litem if the circumstances of
2 AS 13.26.112 apply.

3 Sec. 13.26.112. APPOINTMENT OF A GUARDIAN AD LITEM. (a) Upon the
4 request of a ward or respondent or his attorney, the court shall appoint
5 a guardian ad litem to protect the rights of the ward or respondent in
6 proceedings under AS 13.26.090 - 13.26.155 if the court is satisfied
7 that because of impaired ability to effectively receive and evaluate
8 information regarding the proceedings or because of impaired ability to
9 communicate decisions regarding the proceedings, the ward or respondent
10 cannot determine his own interests without assistance, and

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

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

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

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

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

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

3 (1) present evidence on his own behalf;
4 (2) cross-examine witnesses who testify against him;
5 (3) remain silent;
6 (4) have the hearing open or closed to the public as he
7 elects;

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

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

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

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

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

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

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

1 guardian.

2 (g) If it is necessary to appoint a guardian, the court shall
3 consider the ward's preference.

4 (h) At the time a guardian is appointed, the court shall make a
5 reasonable effort to acquaint the ward with his right to request, at a
6 later time, his guardian's dismissal or a modification of the guardian-
7 ship order. The court shall provide a written statement to the ward,
8 explaining his rights and specifying the procedures to be followed in
9 petitioning the court.

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

15 (b) It is the responsibility of the attorney for the ward or
16 respondent to determine if the ward or respondent is being treated with
17 psychotropic medication the effects of which would continue during the
18 judicial proceedings and, if so, to inform the court in writing a
19 reasonable time before the hearing.

20 (c) The court, upon receipt of the information provided under (b)
21 of this section, shall require a medical examination of the ward or
22 respondent, if the court determines that the medical examination is
23 necessary, and shall determine the advisability of continuation or
24 suspension of the treatment for the duration of the judicial proceedings.
25 The court may make any appropriate order it considers necessary. The
26 court in making its determination shall balance the interest of maximum
27 participation of the ward or respondent in the hearings against the
28 medical and rehabilitative needs of the ward or respondent.

29 (d) If the ward or respondent is under the influence of psycho-

1 tropic medication during the judicial proceeding determining capacity,
2 the trier of fact shall take that fact into consideration in making its
3 determination.

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

7 (1) names the guardian and establishes a guardian-ward rela-
8 tionship;

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

11 (3) adopts a guardianship plan.

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

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

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

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

18 (A) the wishes of the ward;

19 (B) the preferability of allowing the ward to retain
20 local community ties; and

21 (C) the requirement for services to be provided in the
22 least restrictive setting;

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

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

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

3 (7) control of the estate and income of the ward to pay for
4 the cost of services which the guardian is authorized to obtain on
5 behalf of the ward.

6 (c) The guardianship plan may not be more restrictive of the
7 liberty of the ward than is reasonably necessary to protect the ward
8 from serious physical injury, illness or disease and to provide him with
9 medical care and mental health treatment for his physical and mental
10 health. The guardianship plan shall be designed to encourage a ward to
11 participate in all decisions which affect him and to act on his own
12 behalf to the maximum extent possible. The court may not assign a duty
13 or power to a guardian unless the need for it has been proven to the
14 satisfaction of the court and no less restrictive alternative or combi-
15 nation of alternatives is sufficient to satisfy the need.

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

20 Sec. 13.26.117. GUARDIANSHIP IMPLEMENTATION REPORT. Within 90
21 days after appointment as guardian, the guardian shall submit to the
22 court a report. The report shall describe the guardian's program for
23 implementing the guardianship plan. The primary goal of the program
24 described in the report shall be, to the maximum extent possible, to
25 develop or regain the ward's abilities to handle his own affairs. The
26 report shall consider housing, medical care, and educational and voca-
27 tional needs and resources. In developing the report, the guardian
28 shall consult with his ward to the maximum extent possible. The office
29 of public guardian shall contact the guardian to offer assistance in

1 preparing the report. The report shall specify the services which are
2 necessary to meet the essential requirements for the ward's physical
3 health or safety and the means for obtaining the services. The report
4 shall specify the manner in which the guardian will exercise and share
5 decision-making authority and other items which will assist in fulfill-
6 ing the needs of the ward, the terms of the guardianship order, and the
7 duties of the guardian.

8 Sec. 13.26.118. REPORTING. (a) A guardian shall submit a report
9 to the court or request that a visitor be appointed to prepare and
10 submit a report at least annually. A court-appointed visitor shall
11 prepare the report at least once in each three-year period. The guard-
12 ian shall submit an additional report to the court when

13 (1) the court orders it;

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

17 (3) the guardian resigns or is removed;

18 (4) the guardianship is terminated; or

19 (5) the ward requests it.

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

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

23 (2) the ward's present mental, physical, and social condi-
24 tions and present living arrangements and the ward's opinion of these
25 arrangements;

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

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

29 (5) the significant actions taken by the guardian during the

1 reporting period in regard to his ward;

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

4 (7) a list of the number and nature of the contacts between
5 the guardian and ward if the ward does not reside with the guardian;

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

8 Sec. 13.26.131. COSTS IN GUARDIANSHIP PROCEEDINGS. (a) Subject
9 to (d) of this section, the state shall bear the costs of the visitor
10 and expert appointed under AS 13.26.106(c).

11 (b) Subject to (c) and (d) of this section, the respondent shall
12 bear the costs of the attorney appointed under AS 13.26.106(b), of the
13 expert appointed under AS 13.26.109(d), of the guardian ad litem
14 appointed under AS 13.26.112, and of other court and guardianship costs
15 incurred under this chapter.

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

20 (d) The court may require the petitioner to pay all or some of the
21 costs described in (a) and (b) of this section if the court finds that
22 the petitioner initiated a proceeding under this chapter that was
23 malicious, frivolous, or without just cause.

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

25 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED
26 PERSON. The authority and responsibility of a guardian for an incapa-
27 citated person terminates upon the death of the guardian or ward, the
28 determination of incapacity of the guardian, the [OR UPON] removal or
29 resignation of the guardian as provided in AS 13.26.125, or upon the

1 expiration of the period specified by court order as the duration of the
2 guardianship. Testamentary appointment under an informally probated
3 will terminates if the will is later denied probate in a formal proceed-
4 ing. Termination does not affect a guardian's [HIS] liability for prior
5 acts nor his obligation to account for [FUNDS AND] assets of the [HIS]
6 ward over which he exercised control.

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

8 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR
9 TERMINATION OF GUARDIANSHIP [INCAPACITY]. (a) On petition of the ward,
10 the guardian, or any person interested in the ward's [HIS] welfare, the
11 court may (1) review and amend a decision of a guardian; or (2) if
12 alternatives which are less restrictive than guardianship or less re-
13 strictive than the existing guardianship plan would assist the ward in
14 meeting his essential requirements for physical health and safety,
15 modify the provisions of its order to (A) amend the guardianship plan
16 or the responsibilities of the guardian; (B) remove a guardian and
17 appoint a successor; or (C) terminate the guardianship [IF IN THE BEST
18 INTERESTS OF THE WARD]. On petition of the guardian, the court may
19 accept his resignation and make any other order which may be appropriate.

20 (b) The [AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM
21 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDI-
22 CATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT
23 SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE] ward, the guardian, or
24 any person interested in the ward's [HIS] welfare may petition for an
25 order that the ward [HE] is no longer incapacitated or no longer incapa-
26 citated to the same extent as he was when the original guardianship
27 order was made or when the court last amended the guardianship order,
28 and for removal or resignation of the guardian, termination of the guard-
29 ianship, or a change in the responsibilities of the guardian. A request

1 for this order may be made by informal letter to the court or judge and
2 any person who knowingly interferes with transmission of this kind of
3 request to the court or judge may be held in [ADJUDGED GUILTY OF] con-
4 tempt of court.

5 (c) Before removing a guardian, changing his responsibilities,
6 accepting the resignation of a guardian, or ordering that a ward's
7 guardianship be changed or [INCAPACITY HAS] terminated, the court,
8 following the same procedures to safeguard the rights of the ward as
9 apply to a petition for appointment of a guardian and applying the least
10 restrictive alternative necessary to meet the needs of the ward after
11 consideration of alternatives to guardianship services, may send a
12 visitor to the residence of the present guardian and to the place where
13 the ward resides or is detained, to observe conditions and report in
14 writing to the court.

15 (d) If at any time the ward requests or indicates to his guardian
16 or to the agency responsible for his care or its employee that he
17 desires a change in guardianship, the guardian or the agency providing
18 care shall inform the court of the request or indication.

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

26 * Sec. 10. AS 13.26.135 is amended to read:

27 Sec. 13.26.135. NOTICES IN GUARDIANSHIP PROCEEDINGS. (a) In a
28 proceeding for the appointment, change in responsibilities, [OR] removal
29 of a guardian, or termination of guardianship, [OF AN INCAPACITATED

1 PERSON] other than the appointment of a temporary guardian or temporary
2 suspension of a guardian, notice of hearing shall be given to each of
3 the following:

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

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

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

12 (4) the spouse, parents, and adult children of the ward or
13 respondent;

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

16 (6) the ward's or respondent's attorney; and

17 (7) the ward's or respondent's guardian ad litem if one
18 has been appointed.

19 (b) Notice shall be served personally on the ward's or respon-
20 dent's [ALLEGED INCAPACITATED PERSON, AND HIS] spouse and parents if
21 they can be found within the state. Except as provided in (a)(1) of
22 this section, notice [NOTICE] to the spouse and parents, if they cannot
23 be found within the state, and to all other persons [EXCEPT THE ALLEGED
24 INCAPACITATED PERSON] shall be given as provided in AS 13.06.110.

25 [WAIVER OF NOTICE BY THE PERSON ALLEGED TO BE INCAPACITATED IS NOT
26 EFFECTIVE UNLESS HE ATTENDS THE HEARING OR HIS WAIVER OF NOTICE IS
27 CONFIRMED IN AN INTERVIEW WITH THE VISITOR. REPRESENTATION OF THE
28 ALLEGED INCAPACITATED PERSON BY A GUARDIAN AD LITEM IS NOT NECESSARY.]

29 (c) The notice shall set out the date, time, place, purpose and

1 possible consequences of the hearing and the rights of the ward or
2 respondent and any other parties to the proceedings.

3 * Sec. 11. AS 13.26.140 is repealed and re-enacted to read:

4 Sec. 13.26.140. TEMPORARY GUARDIANS. (a) If during the pendency
5 of an initial petition for guardianship it appears that the respondent
6 is in need of immediate services to protect him against serious injury,
7 illness or disease and the respondent is not capable of procuring the
8 necessary services, the petitioner may request the appointment of a
9 temporary guardian to authorize the services. The request shall state
10 the reasons and factual basis for the request. The petitioner shall
11 immediately file the request with the court and serve copies on the
12 respondent and his attorney. The court shall conduct a hearing within
13 72 hours after the filing.

14 (b) At the temporary guardianship hearing, the respondent shall
15 have the rights set out in AS 13.26.113(a).

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

18 (d) If the court determines that a temporary guardian should be
19 appointed, it shall make the appointment and grant to the guardian only
20 the authorities that are least restrictive upon the liberty of the
21 respondent and which enable the temporary guardian to provide the emer-
22 gency services necessary to protect the respondent from serious injury,
23 illness or disease.

24 (e) The temporary guardianship shall expire at the time of the
25 appointment of a full or partial guardian or upon the dismissal of the
26 petition for guardianship.

27 (f) If no guardianship petition is pending but the court is in-
28 formed of a person who is apparently incapacitated and in need of emer-
29 gency life-saving services, the court may authorize the services upon

1 determining that delay until a guardianship hearing can be held would
2 entail a life-threatening risk to the person.

3 * Sec. 12. AS 13.26 is amended by adding a new section to read:

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

9 * Sec. 13. AS 13.26.145 is repealed and re-enacted to read:

10 Sec. 13.26.145. WHO MAY BE GUARDIAN; PRIORITIES. (a) The court
11 may appoint a competent person, the public guardian, or a private asso-
12 ciatio or nonprofit corporation with a guardianship program for
13 incapacitated persons, as guardian of an incapacitated person.

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

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

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

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

24 (4) is employed by a person who would be disqualified under
25 (1) - (3) of this subsection.

26 (c) A person may be appointed as the guardian of an incapacitated
27 person notwithstanding the provisions of (b) of this section if he is
28 the spouse, adult child, parent, or sibling of the incapacitated person
29 and the court determines that the potential conflict of interest is

1 insubstantial and that the appointment would clearly be in the best
2 interests of the incapacitated person.

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

5 (1) a person, association, or private nonprofit corporation
6 nominated by the incapacitated person, if at the time of the nomination
7 the incapacitated person had the capacity to make a reasonably intel-
8 ligent choice;

9 (2) the spouse of the incapacitated person;

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

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

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

16 (6) a private association or nonprofit corporation with a
17 guardianship program for incapacitated persons;

18 (7) the public guardian.

19 (e) The priorities established in (d) of this section are not
20 binding, and the court shall select the person, association, or non-
21 profit corporation that is best qualified and willing to serve. The
22 court shall also give consideration to a nomination by a person
23 described in (d) of this section and to a nomination in the will of a
24 deceased parent or spouse of the incapacitated person.

25 * Sec. 14. AS 13.26.150 is repealed and re-enacted to read:

26 Sec. 13.26.150. GENERAL POWERS AND DUTIES OF GUARDIAN. (a) A
27 guardian shall diligently and in good faith carry out the specific
28 duties and powers assigned by the court. In carrying out his duties and
29 powers, the guardian shall encourage the ward to participate to the

1 maximum extent of his capacity in all decisions which affect him, to act
2 on his own behalf in all matters in which he is able, and to develop or
3 regain, to the maximum extent possible, his capacity to meet the essen-
4 tial requirements for his physical health or safety, to protect his
5 rights, and to manage his financial resources.

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

8 (c) A full guardian of an incapacitated person has the same powers
9 and duties respecting his ward that a parent has respecting his uneman-
10 cipated minor child except that the guardian is not liable for the care
11 and maintenance of the ward, or to third persons for acts of the ward
12 solely by reason of guardianship. Except as modified by order of the
13 court, a full guardian's powers and duties include, but are not limited
14 to, the following:

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

19 (2) he shall assure the care, comfort, and maintenance of the
20 ward;

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

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

28 (5) he may give consents or approvals necessary to enable the
29 ward to receive medical or other professional care, counsel, treatment

1 or services except as otherwise limited by (e) of this section;

2 (6) if a conservator for the estate of the ward has not been
3 appointed, the guardian may receive money and property deliverable to
4 the ward and apply the money and property for support, care, and educa-
5 tion of the ward; however, the guardian may not apply the ward's money
6 or property for his services as guardian or for room and board which he,
7 his spouse, parent, or child have furnished the ward unless, before
8 payment, the court finds that the ward is financially able to pay and
9 that the charge is reasonable; notice of a request for payment approval
10 shall be provided to at least one relative of the ward if possible; the
11 guardian shall exercise care to conserve any excess money or property
12 for the ward's needs;

13 (7) if a conservator of the estate of the ward has been
14 appointed, the guardian shall pay all of the ward's estate received by
15 the guardian in excess of the money expended to meet current expenses
16 for support, care, and education of the ward, to the conservator for
17 management as provided in AS 13.26.165 - 13.26.315, and the guardian
18 shall account to the conservator for money expended.

19 (d) A guardian of a ward, for whom a conservator has also been
20 appointed, shall have the custody and care of the ward and is entitled
21 to receive reasonable sums for his services and for room and board
22 furnished to the ward as agreed upon between the guardian and the con-
23 servator. The guardian may request the conservator to expend the ward's
24 estate for the ward's care and maintenance.

25 (e) A guardian may not

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

29 (2) consent on behalf of the ward to an abortion, steriliza-

1 tion, psychosurgery, or removal of bodily organs except when necessary
2 to preserve the life or prevent serious impairment of the physical
3 health of the ward;

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

6 (4) consent on behalf of the ward to the performance of an
7 experimental medical procedure or to participation in a medical experi-
8 ment not intended to preserve the life or prevent serious impairment of
9 the physical health of the ward;

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

11 (6) consent on behalf of the ward to termination of the
12 ward's parental rights;

13 (7) prohibit the ward from registering to vote or from
14 casting a ballot at public election;

15 (8) prohibit the ward from applying for and obtaining a
16 driver's license.

17 * Sec. 15. AS 13.26.195 is amended by adding a new subsection to read:

18 (d) The court shall investigate alternatives to a conservator and
19 the use of a special conservator as provided in AS 13.26.205(c). A con-
20 servator may be appointed only if a less restrictive protective order or
21 the services of a special conservator are not adequate to protect the
22 estate of the protected person. The court shall, to the extent pos-
23 sible, consult with the protected person in determining what action
24 should be taken.

25 * Sec. 16. AS 13.26.205(c) is amended to read:

26 (c) Before approving a protective arrangement or other transaction
27 under this section, the court shall consider the interests of creditors
28 and dependents of the protected person and, in view of his disability,
29 whether the protected person needs the continuing protection of a con-

1 servator. If only certain powers need be given to the conservator or
2 the services of a conservator are needed only for a limited number of
3 transactions, a special conservator may be appointed. The court may
4 appoint a special conservator to assist in the accomplishment of any
5 protective arrangement or other transaction authorized under this sec-
6 tion who shall have the authority conferred by the order and serve until
7 discharged by order after report to the court of all matters carried out
8 under [DONE PURSUANT TO] the order of appointment.

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

10 Sec. 13.26.218. PUBLIC BOND. (a) If the public guardian is
11 appointed as a conservator, the court may not require a bond under
12 AS 13.26.215.

13 (b) If the court requires a conservator to provide a bond under
14 AS 13.26.215 and the conservator is financially unable to provide the
15 bond, the court may order the cost of the bond to be paid from court
16 funds.

17 * Sec. 18. AS 13.26 is amended by adding new sections to read:

18 ARTICLE 6. PUBLIC GUARDIANS.

19 Sec. 13.26.360. PURPOSE. The legislature recognizes that many
20 Alaskans, for reasons of incapacity or minority, are in need of a
21 guardian or conservator. Often these persons cannot find a person able
22 and willing to serve as guardian or conservator. The legislature in-
23 tends through AS 13.26.360 - 13.26.410 to establish the office of public
24 guardian for the purpose of furnishing guardianship and conservatorship
25 services. It further intends by establishing this office to provide
26 assistance to guardians throughout the state in securing necessary
27 services for their wards and to assist the courts, attorneys, visitors,
28 proposed guardians, and respondents in the orderly and expeditious
29 handling of guardianship proceedings.

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

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

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

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

18 (c) The public guardian shall

19 (1) establish and maintain relationships with governmental,
20 public, and private agencies, institutions, and organizations to assure
21 the most effective guardianship or conservatorship program for each ward
22 and protected person;

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

25 (3) keep and maintain financial and statistical records of
26 all cases in which the public guardian provides guardianship or conser-
27 vatorship services;

28 (4) provide information and referrals to the public regarding
29 guardianship and conservatorship proceedings, but not information which

1 would identify a particular case;

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

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

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

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

14 (d) The public guardian may

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

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

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

23 (1) an appointed guardian or conservator is not fulfilling
24 his duties;

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

27 (3) a willing and qualified guardian or conservator is not
28 available; or

29 (4) the best interests of the ward, respondent, protected

1 person, or person who is the subject of a conservatorship proceeding
2 require the intervention.

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

10 Sec. 13.26.410. ALLOCATION OF COSTS. (a) If a public guardian is
11 appointed guardian or conservator, the administrative costs of his
12 services and the costs incurred in the appointment procedure may not be
13 charged against the income or the estate of the ward or protected person
14 unless the court determines that the ward or protected person is finan-
15 cially able to pay all or part of the costs.

16 (b) The court shall determine the ability of the ward or protected
17 person to pay for administrative costs of a public guardian or costs
18 incurred in the appointment procedure by determining the financial
19 ability of the ward or protected person to pay a private guardian or
20 conservator, considering the nature, extent, and liquidity of assets of
21 the ward or protected person, the disposable net income of the ward or
22 protected person, the nature of the guardianship or conservatorship, the
23 type, duration and complexity of the services required, and any other
24 foreseeable expenses.

25 (c) The public guardian shall investigate the financial status of
26 (1) a person who requests the appointment of the public guardian as his
27 guardian or conservator; and (2) a ward for whom a court has appointed
28 the public guardian.

29 (d) The public guardian may require a person described in (c) of

1 this section to execute and deliver written requests or authorizations
2 necessary under law to provide the public guardian with access to
3 records of public or private sources, otherwise confidential, needed to
4 evaluate the person's financial eligibility. The public guardian may,
5 upon request and without payment of fees otherwise required by law,
6 obtain information from any office of the state or of a political sub-
7 division or agency of the state which possesses public records.

8 (e) The reasonable value of the services rendered without cost to
9 the ward or protected person shall be allowed as a claim against the
10 estate upon the death of the ward or protected person.

11 * Sec. 19. AS 22.15.310 is amended to read:

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

16 * Sec. 20. AS 22.15.350 is amended to read:

17 Sec. 22.15.350. DUTIES [AS CORONER]. In addition to his other
18 duties, a public administrator shall perform the duties set out in
19 AS 22.15.110 and shall perform the duties of public guardian as set out
20 in AS 13.26.360 - 13.26.410.

21 * Sec. 21. AS 13.26.110 and 13.26.130 are repealed.

22 * Sec. 22. TRANSITION. No later than July 1, 1983, all guardianships for
23 incapacitated persons established before July 1, 1980, and in effect on
24 July 1, 1980 shall be reviewed by the court. Until the review, a guardian
25 appointed before July 1, 1980, whose guardianship is still in effect on
26 July 1, 1980, shall retain the powers assigned to him, unless a petition for
27 modification under AS 13.26.125 amended by sec. 8 of this Act is granted.
28 Before the review, the guardian shall submit one report in the form pre-
29 scribed in AS 13.26.118 added by sec. 6 of this Act.

1 * Sec. 23. This Act takes effect July 1, 1980.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29