

COMMITTEE REPORT
SENATE

4/6/81

FURTHER: None

Date: May 22, 1981

Mr. President:

The Committee on FINANCE has had SB 3

guardians and conservators

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 3 (Finance) same title
 new title
- and recommends DO PASS
- AND attaches a ~~Letter of Intent~~ New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

William Sturgis
Joseph P. ...
...
John ...

MEMBERS HAVING
OTHER RECOMMENDATIONS:

John ...
 CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SE 3

Title An Act Relating to Guardians and Conservators

Requested by Senate Finance

Date 5/20/81

II. FISCAL DETAIL

Agency Affected Alaska Court System

Program Category Affected Administration of Justice

BRU, Program, or Subprogram(s) Affected Alaska Court System

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		75.8	151.6	162.2	173.5	185.6
200 TRAVEL		15.0	30.0	32.1	34.3	36.7
300 CONTRACTUAL		45.0	90.0	95.4	102.0	109.1
400 COMMODITIES		1.0	2.0	2.1	2.2	2.3
500 EQUIPMENT		4.0	8.0	8.5	9.1	9.7
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		140.8	281.6	300.3	321.1	343.4

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		140.8	281.6	300.3	321.1	343.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		4.0	4.0	4.0	4.0	4.0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The funds will allow the guardians and conservators program to function at an efficient level with six month funding. The six month funding is necessary to allow for recruitment and placement of the program personnel. In addition, the time will be utilized to develop the program's administrative and functional capacities.

IV. DATE 5/20/81

PREPARED BY *[Signature]*

AGENCY Legislature

PHONE 465-4923

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Bradley
5/20/81*Delivered*
9:35 am 5/22

Original sponsors: Ziegler and Fahrenkamp

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 3 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST 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 reenacted to read:

10 (1) "incapacitated person" means a person whose ability to
11 receive and evaluate information or to communicate decisions is im-
12 paired for reasons other than minority to the extent that he lacks the
13 ability to provide for himself the essential requirements for his phy-
14 sical 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
11 of a dispositional order relating to a proceeding under this chapter
12 shall be available for public inspection. All other information con-
13 tained in the court records relating to a proceeding under this chapter
14 is confidential and available only upon court order for good cause
15 shown or to the following persons:

16 (1) the person who is the subject of the court record, his
17 attorney, or his 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 mali-

1 cious, frivolous, or without just cause, the court may order that all
2 information contained in the court records relating to the proceeding
3 be sealed and that the information be disclosed only upon court order
4 for good 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 reenacted 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
20 health or safety of the respondent will be seriously impaired during
21 the pendency of the guardianship proceeding. A request for temporary
22 guardianship shall specify facts which cause the petitioner to believe
23 that a temporary guardian is necessary.

24 (d) If the petition seeks the appointment of a guardian for an
25 incapacitated person who is a veteran or a minor entitled to the
26 payment of money from the federal Veterans' Administration, the peti-
27 tioner shall give notice of the petition to the administrator of the
28 federal Veterans' Administration.

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

1 Sec. 13.26.106. INITIAL COURT PROCEDURES. (a) Upon the filing
2 of a petition, the court shall schedule a hearing on the issue of
3 incapacity. The hearing shall be conducted within 120 days from the
4 filing of the petition unless the court postpones the hearing for
5 cause.

6 (b) The respondent is entitled to be represented by an attorney
7 in the proceedings. If the respondent is financially unable to employ
8 an attorney to assist him, the court shall appoint an attorney to
9 represent the respondent in the proceedings.

10 (c) The court shall appoint a visitor as defined in AS 13.26.-
11 005(8). The visitor shall arrange for evaluations to be performed and
12 prepare a written report to be filed with the court. The court shall
13 also appoint an expert who has expertise in regard to the alleged or
14 admitted incapacity to investigate the issue of incapacity.

15 (d) The visitor shall interview the respondent and the person
16 seeking appointment as guardian, if any. The visitor shall conduct the
17 interviews and investigations necessary to prepare his report and shall
18 arrange for the respondent to be examined by the expert appointed under
19 (c) of this section. The expert's written report shall be attached to
20 the visitor's report.

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

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

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

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

29 (1) explain to the respondent, in a language or communica-

1 tion system he can understand, the purpose of the interview and pos-
2 sible consequences of the proceedings;

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

5 (3) explain and provide to the respondent a written state-
6 ment of the following rights:

7 (A) he may communicate with an attorney or an expert in
8 the field of the alleged incapacity before proceeding with the
9 interview;

10 (B) if he does not have an attorney, an attorney, whose
11 name, address, and telephone number shall be included in the
12 statement, will be designated to advise and represent him before
13 and at any judicial hearings, and the attorney may arrange for an
14 examination and consultation with an expert; and

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

17 (4) offer assistance to the respondent in contacting an
18 attorney.

19 (b) A substantive interview of the respondent or other investi-
20 gation may not be conducted until the provisions of (a) of this section
21 have been satisfied.

22 Sec. 13.26.108. VISITOR'S REPORT. (a) The visitor shall file
23 with the court his evaluation report, proof of service of the petition
24 upon the respondent, and proof of service of his report upon the
25 respondent, his attorney, and the petitioner, within 90 days after the
26 date on which the petition was filed.

27 (b) The visitor shall, as part of the evaluation report, explain
28 alternatives to guardianship and recommend any which will safeguard the
29 respondent's essential requirements for physical health and safety.

1 The evaluation report may recommend personal guardianship only if the
2 visitor determines that the needs of the respondent cannot be met by
3 other alternatives.

4 (c) The evaluation report shall include

5 (1) the results and analyses of medical and other tests and
6 examinations performed which describe the respondent's mental, emo-
7 tional, physical, and educational condition, adaptive behavior and
8 social skills, and which specify the data on which the description is
9 based;

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

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

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

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

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

25 (7) a summary of the information which

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

28 (B) supports the conclusions of the report;

29 (8) a description of the alternatives to guardianship which

1 were considered and not recommended and an explanation of why they are
2 not feasible to meet the respondent's needs;

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

8 (10) a specification of the financial resources of the
9 respondent, his entitlements to insurance benefits, and publicly oper-
10 ated or sponsored health, mental health, and welfare assistance which
11 might be employed in the provision of services to him.

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

15 (1) potential guardians;

16 (2) the specific services necessary and available to protect
17 the respondent from serious injury, illness, or disease and, to the
18 extent possible, to return the respondent to full capacity in handling
19 his own affairs;

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

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

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

27 Sec. 13.26.109. EVALUATIONS: RIGHT TO REMAIN SILENT; RESPON-
28 DENT'S ATTORNEY OR EXPERT. (a) A ward or respondent has the right to
29 refuse to respond to questions in the course of examinations and eval-

1 uations. However, he may be required to submit to interviews for the
 2 purpose of ascertaining whether he lacks the capacity to make informed
 3 decisions about care and treatment services.

4 (b) Statements of a ward or respondent in the course of evalua-
 5 tions, examinations, and treatment under AS 13.26.090 - 13.26.155 are
 6 privileged, confidential, and not admissible without the ward's or
 7 respondent's consent in any civil or criminal proceeding other than
 8 proceedings under AS 13.26.090 - 13.26.155. A ward or respondent at
 9 all times has the right to refuse to answer questions if the answers
 10 may tend to incriminate him.

11 (c) During any interview or testing conducted under AS 13.26.-
 12 090 - 13.26.155, a ward or respondent has the right to be accompanied
 13 by an attorney or expert of his own choosing.

14 (d) The court, if requested by a ward or respondent in prepara-
 15 tion for and in connection with a hearing held under AS 13.26.090 -
 16 13.26.155, shall appoint an expert having expertise in regard to the
 17 alleged or admitted incapacity to examine the respondent and testify on
 18 his behalf. The request shall be filed in court at least five days
 19 before the hearing. An expert appointed under this subsection may be
 20 the same expert appointed under AS 13.26.106(c).

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

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

28 (2) explaining, if possible, to the ward or respondent in
 29 terms which the ward or respondent can understand, the nature and

1 possible consequences of the proceeding, the alternatives which are
2 available, and the rights to which he is entitled;

3 (3) securing and presenting evidence and testimony and
4 offering arguments which would tend to protect the ward's or respon-
5 dent's rights and which would tend to further his interests.

6 (b) To the maximum extent possible, the ward or respondent shall
7 remain responsible for determining his interests. However, his attor-
8 ney may seek appointment of a guardian ad litem if the circumstances of
9 AS 13.26.112 apply.

10 Sec. 13.26.112. APPOINTMENT OF A GUARDIAN AD LITEM. (a) Upon
11 the request of a ward, a respondent, or the attorney of a ward or
12 respondent, the court shall appoint a guardian ad litem to protect the
13 rights of the ward or respondent in proceedings under AS 13.26.090 -
14 13.26.155 if the court is satisfied that because of impaired ability
15 effectively to receive and evaluate information regarding the proceed-
16 ings or because of impaired ability to communicate decisions regarding
17 the proceedings, the ward or respondent cannot determine his own inter-
18 ests without assistance, and

19 (1) a guardian has not been appointed;
20 (2) his interests and those of his guardian conflict; or
21 (3) the appointment is otherwise in the interests of
22 justice.

23 (b) The guardian ad litem shall assist the ward or respondent in
24 determining his interests in regard to the legal proceedings in which
25 he is involved. If the ward or respondent is entirely incapable of
26 determining his own interests, the guardian ad litem shall make that
27 determination and advise the court and counsel for all parties accord-
28 ingly. The guardian ad litem shall

29 (1) inquire thoroughly into all the circumstances that a

1 prudent individual in the position of the ward or respondent would
2 consider in determining his own interests in the proceedings; and

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

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

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

12 (1) present evidence on his own behalf;

13 (2) cross-examine witnesses who testify against him;

14 (3) remain silent;

15 (4) have the hearing open or closed to the public as he
16 elects;

17 (5) be present unless the court determines that his conduct
18 in the courtroom is so disruptive that the proceedings cannot reason-
19 ably continue with him present;

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

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

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

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

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

6 (f) If it is found that the respondent is totally without capa-
7 city to care for himself and that a combination of alternatives to
8 guardianship and the appointment of a partial guardian is not feasible
9 or adequate to meet the needs of the respondent, the court may appoint
10 a full guardian.

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

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

19 Sec. 13.26.114. PSYCHOTROPIC MEDICATION INFLUENCING WARDS OR
20 RESPONDENTS AT JUDICIAL HEARINGS. (a) A ward or respondent has a
21 right to participate to the maximum extent possible in all judicial
22 proceedings concerning him and to be free from the influence of psycho-
23 tropic medication during the proceedings.

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

29 (c) The court, upon receipt of the information provided under (b)

1 of this section, shall require a medical examination of the ward or
 2 respondent, if the court determines that the medical examination is
 3 necessary, and shall determine the advisability of continuation or
 4 suspension of the treatment for the duration of the judicial proceed-
 5 ings. The court may make any appropriate order it considers necessary.
 6 The court in making its determination shall balance the interest of
 7 maximum participation of the ward or respondent in the hearings against
 8 the medical and rehabilitative needs of the ward or respondent.

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

13 Sec. 13.26.116. GUARDIANSHIP ORDER. (a) If the court or jury
 14 determines that a person is incapacitated and the services of a guardi-
 15 an are necessary, the court shall enter an order which

- 16 (1) names the guardian and establishes a guardian-ward rela-
 17 tionship;
- 18 (2) includes findings of fact which support each grant of
 19 authority to the guardian;
- 20 (3) adopts a guardianship plan.

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

- 23 (1) medical care for the ward's physical condition;
- 24 (2) mental health treatment which the guardian considers to
 25 be in the ward's best interests;
- 26 (3) housing for the ward with consideration of the follow-
 27 ing:
 - 28 (A) the wishes of the ward;
 - 29 (B) the preferability of allowing the ward to retain

1 local community ties; and

2 (C) the requirement for services to be provided in the
3 least restrictive setting;

4 (4) personal care, educational and vocational services
5 necessary for the physical and mental welfare of the ward and to return
6 the ward to full capacity;

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

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

13 (7) control of the estate and income of the ward to pay for
14 the cost of services which the guardian is authorized to obtain on
15 behalf of the ward.

16 (c) The guardianship plan may not be more restrictive of the
17 liberty of the ward than is reasonably necessary to protect the ward
18 from serious physical injury, illness or disease and to provide him
19 with medical care and mental health treatment for his physical and
20 mental health. The guardianship plan shall be designed to encourage a
21 ward to participate in all decisions which affect him and to act on his
22 own behalf to the maximum extent possible. The court may not assign a
23 duty or power to a guardian unless the need for it has been proven to
24 the satisfaction of the court and no less restrictive alternative or
25 combination of alternatives is sufficient to satisfy the need.

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

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

18 Sec. 13.26.118. REPORTING. (a) A guardian shall submit a report
19 to the court or request that a visitor be appointed to prepare and
20 submit a report at least annually. A court-appointed visitor shall
21 prepare the report at least once in each three-year period. The guard-
22 ian shall submit an additional report to the court when

23 (1) the court orders it;

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

27 (3) the guardian resigns or is removed;

28 (4) the guardianship is terminated; or

29 (5) the ward requests it.

1 (b) The report shall contain, but is not limited to, the follow-
2 ing information:

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

4 (2) the ward's present mental, physical, and social condi-
5 tions and present living arrangements and the ward's opinion of these
6 arrangements;

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

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

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

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

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

16 (8) any other information requested by the court or neces-
17 sary or desirable in the opinion of the guardian or visitor.

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

21 (b) Subject to (c) and (d) of this section, the respondent shall
22 bear the costs of the attorney appointed under AS 13.26.106(b), of the
23 expert appointed under AS 13.26.109(d), of the guardian ad litem ap-
24 pointed under AS 13.26.112, and of other court and guardianship costs
25 incurred under this chapter.

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

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

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

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

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

18 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR
19 TERMINATION OF GUARDIANSHIP [INCAPACITY]. (a) On petition of the
20 ward, the guardian, or any person interested in the ward's [HIS] wel-
21 fare, the court may (1) review and amend a decision of a guardian;
22 or (2) if alternatives which are less restrictive than guardianship
23 or less restrictive than the existing guardianship plan would assist
24 the ward in meeting his essential requirements for physical health
25 and safety, modify the provisions of its order to (A) amend the
26 guardianship plan or the responsibilities of the guardian; (B) remove a
27 guardian and appoint a successor; or (C) terminate the guardianship [IF
28 IN THE BEST INTERESTS OF THE WARD]. On petition of the guardian, the
29 court may accept his resignation and make any other order which may be

1 appropriate.

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

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

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

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

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

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

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

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

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

24 (4) the spouse, parents, and adult children of the ward or
25 respondent;

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

28 (6) the ward's or respondent's attorney;

29 (7) the ward's or respondent's guardian ad litem if one

1 has been appointed; and

2 (8) the administrator of the federal Veterans' Administra-
3 tion if the administrator was given notice under AS 13.26.105(d).

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. 11. AS 13.26.140 is repealed and reenacted 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(a).

1 (c) The burden of proof at the hearing shall be by clear and con-
2 vincing 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 authority that is least restrictive upon the liberty of the respon-
6 dent and which enables the temporary guardian to provide the emergency
7 services necessary to protect the respondent from serious injury, ill-
8 ness, 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. 12. AS 13.26 is amended by adding a new section to read:

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

23 * Sec. 13. AS 13.26.145 is repealed and reenacted 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 or nonprofit corporation with a guardianship program for inca-
27 pacitated 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 guardian-
2 ship period, substantial services to the incapacitated person in a
3 professional or business capacity, other than in his capacity as
4 guardian;

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

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

11 (4) is employed by a person who would be disqualified under
12 (1) - (3) of this subsection.

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

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

21 (1) a person, association, or private nonprofit corporation
22 nominated by the incapacitated person, if at the time of the nomination
23 the incapacitated person had the capacity to make a reasonably intel-
24 ligent choice;

25 (2) the spouse of the incapacitated person;

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

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

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

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

5 (7) the public guardian.

6 (e) The priorities established in (d) of this section are not
7 binding, and the court shall select the person, association, or non-
8 profit corporation that is best qualified and willing to serve. The
9 court shall also give consideration to a nomination by a person
10 described in (d) of this section and to a nomination in the will of a
11 deceased parent or spouse of the incapacitated person.

12 * Sec. 14. AS 13.26.150 is repealed and reenacted to read:

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

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

24 (c) A full guardian of an incapacitated person has the same
25 powers and duties respecting his ward that a parent has respecting his
26 unemancipated minor child except that the guardian is not liable for
27 the care and maintenance of the ward and is not liable, solely by
28 reason of the guardianship, to a person who is harmed by acts of the
29 ward. Except as modified by order of the court, a full guardian's

1 powers and duties include, but are not limited to, the following:

2 (1) he is entitled to custody of the person of his ward and
3 shall assure that the ward has a place of abode in the least restric-
4 tive setting consistent with the essential requirements for the ward's
5 physical health and safety;

6 (2) he shall assure the care, comfort, and maintenance of
7 the ward;

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

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

15 (5) he may give consents or approvals necessary to enable
16 the ward to receive medical or other professional care, counsel, treat-
17 ment, or services except as otherwise limited by (e) of this section;

18 (6) if a conservator for the estate of the ward has not been
19 appointed, the guardian may receive money and property deliverable to
20 the ward and apply the money and property for support, care, and educa-
21 tion of the ward; however, the guardian may not apply the ward's money
22 or property for his services as guardian or for room and board which
23 he, his spouse, parent, or child have furnished the ward unless, before
24 payment, the court finds that the ward is financially able to pay and
25 that the charge is reasonable; notice of a request for payment approval
26 shall be provided to at least one relative of the ward if possible; the
27 guardian shall exercise care to conserve any excess money or property
28 for the ward's needs;

29 (7) if a conservator of the estate of the ward has been

1 appointed, the guardian shall pay all of the ward's estate received by
2 the guardian in excess of the money expended to meet current expenses
3 for support, care, and education of the ward, to the conservator for
4 management as provided in AS 13.26.165 - 13.26.315, and the guardian
5 shall account to the conservator for money expended.

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

12 (e) A guardian may not

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

16 (2) consent on behalf of the ward to an abortion, steriliza-
17 tion, psychosurgery, or removal of bodily organs except when necessary
18 to preserve the life or prevent serious impairment of the physical
19 health of the ward;

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

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

26 (5) consent on behalf of the ward to termination of the
27 ward's parental rights;

28 (6) prohibit the ward from registering to vote or from
29 casting a ballot at public election;

1 (7) prohibit the ward from applying for and obtaining a
 2 driver's license;

3 (8) prohibit the marriage or divorce of the ward.

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

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

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

13 (c) Before approving a protective arrangement or other trans-
 14 action under this section, the court shall consider the interests of
 15 creditors and dependents of the protected person and, in view of his
 16 disability, whether the protected person needs the continuing protec-
 17 tion of a conservator. If only certain powers need be given to the
 18 conservator or the services of a conservator are needed only for a
 19 limited number of transactions, a special conservator may be appointed.
 20 The court may appoint a special conservator to assist in the accomp-
 21 lishment of any protective arrangement or other transaction authorized
 22 under this section who shall have the authority conferred by the order
 23 and serve until discharged by order after report to the court of all
 24 matters carried out under [DONE PURSUANT TO] the order of appointment.

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

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

29 (b) If the court requires a conservator to provide a bond under

1 AS 13.26.215 and the conservator is financially unable to provide the
2 bond, the court may order the cost of the bond to be paid from court
3 funds.

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

5 ARTICLE 6. PUBLIC GUARDIANS.

6 Sec. 13.26.360. PURPOSE. The legislature recognizes that many
7 Alaskans, for reasons of incapacity or minority, are in need of a
8 guardian or conservator. Often these persons cannot find a person able
9 and willing to serve as guardian or conservator. The legislature in-
10 tends through AS 13.26.360 - 13.26.410 to establish the office of
11 public guardian for the purpose of furnishing guardianship and conser-
12 vatorship services. It further intends by establishing this office to
13 provide assistance to guardians throughout the state in securing neces-
14 sary services for their wards and to assist the courts, attorneys,
15 visitors, respondents, and proposed guardians in the orderly and
16 expeditious handling of guardianship proceedings.

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

20 (b) A court may order the public guardian to act as full
21 guardian, partial guardian, conservator, or special conservator for a
22 person who is determined under this chapter to be in need of guardian-
23 ship or conservatorship service if no person or private guardianship
24 association is willing and qualified to perform the function.

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

28 (b) The public guardian, when appointed as guardian or conserva-
29 tor, shall endeavor, for as long as practical, to find a suitable pri-

1 vate guardian or conservator for his ward or protected person. For
 2 each ward and protected person, the public guardian shall report to the
 3 court having jurisdiction of the ward or protected person, at least
 4 once every six months, his efforts to find a private guardian or con-
 5 servator.

6 (c) The public guardian shall

7 (1) establish and maintain relationships with governmental,
 8 public, and private agencies, institutions, and organizations to assure
 9 the most effective guardianship or conservatorship program for each
 10 ward and protected person;

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

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

16 (4) provide information and referrals to the public regard-
 17 ing guardianship and conservatorship proceedings, but not information
 18 which would identify a particular case;

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

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

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

26 (8) develop and maintain a current listing of public and
 27 private medical, mental health, social advocacy, educational, rehabili-
 28 tative, counseling, therapeutic, homemaking, recreational, and finan-
 29 cial services and programs available to assist wards and protected

1 persons and their families.

2 (d) The public guardian may

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

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

7 Sec. 13.26.390. INTERVENTION. The public guardian may, on his
8 own motion or at the request of the court, intervene in a guardianship
9 or conservatorship proceeding if he or the court considers the inter-
10 vention to be justified because

11 (1) an appointed guardian or conservator is not fulfilling
12 his duties;

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

15 (3) a willing and qualified guardian or conservator is not
16 available; or

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

20 Sec. 13.26.400. DELEGATION OF POWERS AND DUTIES. The public
21 guardian may employ staff and delegate to members of his staff or to
22 volunteers his powers and duties as guardian or conservator and other
23 powers and duties under this chapter. However, the public guardian
24 retains responsibility for the proper performance of the delegated
25 powers and duties. All delegations shall be to persons who meet the
26 eligibility requirements of AS 13.26.145.

27 Sec. 13.26.410. ALLOCATION OF COSTS. (a) If a public guardian
28 is appointed guardian or conservator, the administrative costs of his
29 services and the costs incurred in the appointment procedure may not be

1 charged against the income or the estate of the ward or protected
 2 person unless the court determines that the ward or protected person is
 3 financially able to pay all or part of the costs.

4 (b) The court shall determine the ability of the ward or pro-
 5 tected person to pay for administrative costs of a public guardian or
 6 costs incurred in the appointment procedure by determining the finan-
 7 cial ability of the ward or protected person to pay a private guardian
 8 or conservator, considering the nature, extent, and liquidity of assets
 9 of the ward or protected person, the disposable net income of the ward
 10 or protected person, the nature of the guardianship or conservatorship,
 11 the type, duration and complexity of the services required, and any
 12 other foreseeable expenses.

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

17 (d) The public guardian may require a person described in (c) of
 18 this section to execute and deliver written requests or authorizations
 19 necessary under law to provide the public guardian with access to
 20 records of public or private sources, otherwise confidential, needed to
 21 evaluate the person's financial eligibility. The public guardian may,
 22 upon request and without payment of fees otherwise required by law,
 23 obtain information from any office of the state or of a political sub-
 24 division or agency of the state which possesses public records.

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

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

29 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme

1 court, the presiding judge in each judicial district shall appoint a
2 person to act as public administrator of the estates of deceased per-
3 sons, [AND] as coroner, and as public guardian.

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

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

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

10 * Sec. 22. TRANSITION. No later than July 1, 1984, all guardianships
11 for incapacitated persons established before January 1, 1982, and in effect
12 on January 1, 1982, shall be reviewed by the court. Until the review, a
13 guardian appointed before January 1, 1982, whose guardianship is still in
14 effect on January 1, 1982, shall retain the powers assigned to him, unless a
15 petition for modification under AS 13.26.125 amended by sec. 9 of this Act
16 is granted. Before the review, the guardian shall submit one report in the
17 form prescribed in AS 13.26.118 added by sec. 7 of this Act.

18 * Sec. 23. This Act takes effect January 1, 1982.
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5/20/81

Delivered to Legis. Aff.

10:30 a.m.

AMENDMENT

OFFERED IN THE SENATE:

By: Judiciary

To: CS SENATE BILL No. 3 (fin)

HOUSE BILL No. _____

PAGE: -25: 26

LINE: -16,17 2,3

Line ²16: Delete "." and insert ";" in its place

Line ³17: Insert " (8) prohibit the marriage or divorce of the ward." before Section 15.

Bradley
5/20/81

Original sponsors: Ziegler and Fahrenkamp

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 3 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST 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 reenacted to read:

10 (1) "incapacitated person" means a person whose ability to
11 receive and evaluate information or to communicate decisions is im-
12 paired for reasons other than minority to the extent that he lacks the
13 ability to provide for himself the essential requirements for his phy-
14 sical 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
11 of a dispositional order relating to a proceeding under this chapter
12 shall be available for public inspection. All other information con-
13 tained in the court records relating to a proceeding under this chapter
14 is confidential and available only upon court order for good cause
15 shown or to the following persons:

16 (1) the person who is the subject of the court record, his
17 attorney, or his 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 mali-

1 cious, frivolous, or without just cause, the court may order that all
2 information contained in the court records relating to the proceeding
3 be sealed and that the information be disclosed only upon court order
4 for good 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 reenacted 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
20 health or safety of the respondent will be seriously impaired during
21 the pendency of the guardianship proceeding. A request for temporary
22 guardianship shall specify facts which cause the petitioner to believe
23 that a temporary guardian is necessary.

24 ~~(d) If the petition seeks the appointment of a guardian for an~~
25 ~~incapacitated person who is a veteran or a minor entitled to the~~
26 ~~payment of money from the federal Veterans' Administration, the peti-~~
27 ~~tioner shall give notice of the petition to the administrator of the~~
28 ~~federal Veterans' Administration.~~

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

1 Sec. 13.26.106. INITIAL COURT PROCEDURES. (a) Upon the filing
2 of a petition, the court shall schedule a hearing on the issue of
3 incapacity. The hearing shall be conducted within 120 days from the
4 filing of the petition unless the court postpones the hearing for
5 cause.

6 (b) The respondent is entitled to be represented by an attorney
7 in the proceedings. If the respondent is financially unable to employ
8 an attorney to assist him, the court shall appoint an attorney to
9 represent the respondent in the proceedings.

10 (c) The court shall appoint a visitor as defined in AS 13.26.-
11 005(8). The visitor shall arrange for evaluations to be performed and
12 prepare a written report to be filed with the court. The court shall
13 also appoint an expert who has expertise in regard to the alleged or
14 admitted incapacity to investigate the issue of incapacity.

15 (d) The visitor shall interview the respondent and the person
16 seeking appointment as guardian, if any. The visitor shall conduct the
17 interviews and investigations necessary to prepare his report and shall
18 arrange for the respondent to be examined by the expert appointed under
19 (c) of this section. The expert's written report shall be attached to
20 the visitor's report.

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

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

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

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

29 (1) explain to the respondent, in a language or communica-

1 tion system he can understand, the purpose of the interview and pos-
2 sible consequences of the proceedings;

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

5 (3) explain and provide to the respondent a written state-
6 ment of the following rights:

7 (A) he may communicate with an attorney or an expert in
8 the field of the alleged incapacity before proceeding with the
9 interview;

10 (B) if he does not have an attorney, an attorney, whose
11 name, address, and telephone number shall be included in the
12 statement, will be designated to advise and represent him before
13 and at any judicial hearings, and the attorney may arrange for an
14 examination and consultation with an expert; and

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

17 (4) offer assistance to the respondent in contacting an
18 attorney.

19 (b) A substantive interview of the respondent or other investi-
20 gation may not be conducted until the provisions of (a) of this section
21 have been satisfied.

22 Sec. 13.26.108. VISITOR'S REPORT. (a) The visitor shall file
23 with the court his evaluation report, proof of service of the petition
24 upon the respondent, and proof of service of his report upon the
25 respondent, his attorney, and the petitioner, within 90 days after the
26 date on which the petition was filed.

27 (b) The visitor shall, as part of the evaluation report, explain
28 alternatives to guardianship and recommend any which will safeguard the
29 respondent's essential requirements for physical health and safety.

1 The evaluation report may recommend personal guardianship only if the
2 visitor determines that the needs of the respondent cannot be met by
3 other alternatives.

4 (c) The evaluation report shall include

5 (1) the results and analyses of medical and other tests and
6 examinations performed which describe the respondent's mental, emo-
7 tional, physical, and educational condition, adaptive behavior and
8 social skills, and which specify the data on which the description is
9 based;

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

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

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

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

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

25 (7) a summary of the information which

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

28 (B) supports the conclusions of the report;

29 (8) a description of the alternatives to guardianship which

1 were considered and not recommended and an explanation of why they are
2 not feasible to meet the respondent's needs;

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

8 (10) a specification of the financial resources of the
9 respondent, his entitlements to insurance benefits, and publicly oper-
10 ated or sponsored health, mental health, and welfare assistance which
11 might be employed in the provision of services to him.

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

15 (1) potential guardians;

16 (2) the specific services necessary and available to protect
17 the respondent from serious injury, illness, or disease and, to the
18 extent possible, to return the respondent to full capacity in handling
19 his own affairs;

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

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

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

27 Sec. 13.26.109. EVALUATIONS: RIGHT TO REMAIN SILENT; RESPON-
28 DENT'S ATTORNEY OR EXPERT. (a) A ward or respondent has the right to
29 refuse to respond to questions in the course of examinations and eval-

1 uations. However, he may be required to submit to interviews for the
2 purpose of ascertaining whether he lacks the capacity to make informed
3 decisions about care and treatment services.

4 (b) Statements of a ward or respondent in the course of evalua-
5 tions, examinations, and treatment under AS 13.26.090 - 13.26.155 are
6 privileged, confidential, and not admissible without the ward's or
7 respondent's consent in any civil or criminal proceeding other than
8 proceedings under AS 13.26.090 - 13.26.155. A ward or respondent at
9 all times has the right to refuse to answer questions if the answers
10 may tend to incriminate him.

11 (c) During any interview or testing conducted under AS 13.26.-
12 090 - 13.26.155, a ward or respondent has the right to be accompanied
13 by an attorney or expert of his own choosing.

14 (d) The court, if requested by a ward or respondent in prepara-
15 tion for and in connection with a hearing held under AS 13.26.090 -
16 13.26.155, shall appoint an expert having expertise in regard to the
17 alleged or admitted incapacity to examine the respondent and testify on
18 his behalf. The request shall be filed in court at least five days
19 before the hearing. An expert appointed under this subsection may be
20 the same expert appointed under AS 13.26.106(c).

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

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

28 (2) explaining, if possible, to the ward or respondent in
29 terms which the ward or respondent can understand, the nature and

1 possible consequences of the proceeding, the alternatives which are
2 available, and the rights to which he is entitled;

3 (3) securing and presenting evidence and testimony and
4 offering arguments which would tend to protect the ward's or respon-
5 dent's rights and which would tend to further his interests.

6 (b) To the maximum extent possible, the ward or respondent shall
7 remain responsible for determining his interests. However, his attor-
8 ney may seek appointment of a guardian ad litem if the circumstances of
9 AS 13.26.112 apply.

10 Sec. 13.26.112. APPOINTMENT OF A GUARDIAN AD LITEM. (a) Upon
11 the request of a ward, a respondent, or the attorney of a ward or
12 respondent, the court shall appoint a guardian ad litem to protect the
13 rights of the ward or respondent in proceedings under AS 13.26.090 -
14 13.26.155 if the court is satisfied that because of impaired ability
15 effectively to receive and evaluate information regarding the proceed-
16 ings or because of impaired ability to communicate decisions regarding
17 the proceedings, the ward or respondent cannot determine his own inter-
18 ests without assistance, and

- 19 (1) a guardian has not been appointed;
20 (2) his interests and those of his guardian conflict; or
21 (3) the appointment is otherwise in the interests of
22 justice.

23 (b) The guardian ad litem shall assist the ward or respondent in
24 determining his interests in regard to the legal proceedings in which
25 he is involved. If the ward or respondent is entirely incapable of
26 determining his own interests, the guardian ad litem shall make that
27 determination and advise the court and counsel for all parties accord-
28 ingly. The guardian ad litem shall

- 29 (1) inquire thoroughly into all the circumstances that a

1 prudent individual in the position of the ward or respondent would
2 consider in determining his own interests in the proceedings; and

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

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

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

- 12 (1) present evidence on his own behalf;
13 (2) cross-examine witnesses who testify against him;
14 (3) remain silent;
15 (4) have the hearing open or closed to the public as he
16 elects;
17 (5) be present unless the court determines that his conduct
18 in the courtroom is so disruptive that the proceedings cannot reason-
19 ably continue with him present;

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

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

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

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

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

6 (f) If it is found that the respondent is totally without capa-
7 city to care for himself and that a combination of alternatives to
8 guardianship and the appointment of a partial guardian is not feasible
9 or adequate to meet the needs of the respondent, the court may appoint
10 a full guardian.

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

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

19 Sec. 13.26.114. PSYCHOTROPIC MEDICATION INFLUENCING WARDS OR
20 RESPONDENTS AT JUDICIAL HEARINGS. (a) A ward or respondent has a
21 right to participate to the maximum extent possible in all judicial
22 proceedings concerning him and to be free from the influence of psycho-
23 tropic medication during the proceedings.

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

29 (c) The court, upon receipt of the information provided under (b)

1 of this section, shall require a medical examination of the ward or
2 respondent, if the court determines that the medical examination is
3 necessary, and shall determine the advisability of continuation or
4 suspension of the treatment for the duration of the judicial proceed-
5 ings. The court may make any appropriate order it considers necessary.
6 The court in making its determination shall balance the interest of
7 maximum participation of the ward or respondent in the hearings against
8 the medical and rehabilitative needs of the ward or respondent.

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

13 Sec. 13.26.116. GUARDIANSHIP ORDER. (a) If the court or jury
14 determines that a person is incapacitated and the services of a guard-
15 ian are necessary, the court shall enter an order which

16 (1) names the guardian and establishes a guardian-ward rela-
17 tionship;

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

20 (3) adopts a guardianship plan.

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

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

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

26 (3) housing for the ward with consideration of the follow-
27 ing:

28 (A) the wishes of the ward;

29 (B) the preferability of allowing the ward to retain

1 local community ties; and

2 (C) the requirement for services to be provided in the
3 least restrictive setting;

4 (4) personal care, educational and vocational services
5 necessary for the physical and mental welfare of the ward and to return
6 the ward to full capacity;

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

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

13 (7) control of the estate and income of the ward to pay for
14 the cost of services which the guardian is authorized to obtain on
15 behalf of the ward.

16 (c) The guardianship plan may not be more restrictive of the
17 liberty of the ward than is reasonably necessary to protect the ward
18 from serious physical injury, illness or disease and to provide him
19 with medical care and mental health treatment for his physical and
20 mental health. The guardianship plan shall be designed to encourage a
21 ward to participate in all decisions which affect him and to act on his
22 own behalf to the maximum extent possible. The court may not assign a
23 duty or power to a guardian unless the need for it has been proven to
24 the satisfaction of the court and no less restrictive alternative or
25 combination of alternatives is sufficient to satisfy the need.

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

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

18 Sec. 13.26.118. REPORTING. (a) A guardian shall submit a report
19 to the court or request that a visitor be appointed to prepare and
20 submit a report at least annually. A court-appointed visitor shall
21 prepare the report at least once in each three-year period. The guard-
22 ian shall submit an additional report to the court when

23 (1) the court orders it;

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

27 (3) the guardian resigns or is removed;

28 (4) the guardianship is terminated; or

29 (5) the ward requests it.

1 (b) The report shall contain, but is not limited to, the follow-
2 ing information:

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

4 (2) the ward's present mental, physical, and social condi-
5 tions and present living arrangements and the ward's opinion of these
6 arrangements;

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

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

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

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

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

16 (8) any other information requested by the court or neces-
17 sary or desirable in the opinion of the guardian or visitor.

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

21 (b) Subject to (c) and (d) of this section, the respondent shall
22 bear the costs of the attorney appointed under AS 13.26.106(b), of the
23 expert appointed under AS 13.26.109(d), of the guardian ad litem ap-
24 pointed under AS 13.26.112, and of other court and guardianship costs
25 incurred under this chapter.

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

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

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

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

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

18 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR
19 TERMINATION OF GUARDIANSHIP [INCAPACITY]. (a) On petition of the
20 ward, the guardian, or any person interested in the ward's [HIS] wel-
21 fare, the court may (1) review and amend a decision of a guardian;
22 or (2) if alternatives which are less restrictive than guardianship
23 or less restrictive than the existing guardianship plan would assist
24 the ward in meeting his essential requirements for physical health
25 and safety, modify the provisions of his order to (A) amend the
26 guardianship plan or the responsibilities of the guardian; (b) remove a
27 guardian and appoint a successor; or (C) terminate the guardianship [IF
28 IN THE BEST INTERESTS OF THE WARD]. On petition of the guardian, the
29 court may accept his resignation and make any other order which may be

1 appropriate.

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

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

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

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

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

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

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

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

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

24 (4) the spouse, parents, and adult children of the ward or
25 respondent;

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

28 (6) the ward's or respondent's attorney;

29 (7) the ward's or respondent's guardian ad litem if one

1 has been appointed; and

2 ~~AD LITEM~~ ^{DISREGARD BRACKETS}
3 (8) the administrator of the federal Veterans' Administra-

4 tion if the administrator was given notice under AS 13.26.105(d).

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

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

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

18 * Sec. 11. AS 13.26.140 is repealed and reenacted to read:

19 Sec. 13.26.140. TEMPORARY GUARDIANS. (a) If during the pendency
20 of an initial petition for guardianship it appears that the respondent
21 is in need of immediate services to protect him against serious injury,
22 illness, or disease and the respondent is not capable of procuring the
23 necessary services, the petitioner may request the appointment of a
24 temporary guardian to authorize the services. The request shall state
25 the reasons and factual basis for the request. The petitioner shall
26 immediately file the request with the court and serve copies on the
27 respondent and his attorney. The court shall conduct a hearing within
28 72 hours after the filing.

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

1 (c) The burden of proof at the hearing shall be by clear and con-
2 vincing 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 authority that is least restrictive upon the liberty of the respon-
6 dent and which enables the temporary guardian to provide the emergency
7 services necessary to protect the respondent from serious injury, ill-
8 ness, 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. 12. AS 13.26 is amended by adding a new section to read:

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

23 * Sec. 13. AS 13.26.145 is repealed and reenacted 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 or nonprofit corporation with a guardianship program for inca-
27 pacitated 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 guardian-
2 ship period, substantial services to the incapacitated person in a
3 professional or business capacity, other than in his capacity as
4 guardian;

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

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

11 (4) is employed by a person who would be disqualified under
12 (1) - (3) of this subsection.

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

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

21 (1) a person, association, or private nonprofit corporation
22 nominated by the incapacitated person, if at the time of the nomination
23 the incapacitated person had the capacity to make a reasonably intel-
24 ligent choice;

25 (2) the spouse of the incapacitated person;

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

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

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

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

5 (7) the public guardian.

6 (e) The priorities established in (d) of this section are not
7 binding, and the court shall select the person, association, or non-
8 profit corporation that is best qualified and willing to serve. The
9 court shall also give consideration to a nomination by a person
10 described in (d) of this section and to a nomination in the will of a
11 deceased parent or spouse of the incapacitated person.

12 * Sec. 14. AS 13.26.150 is repealed and reenacted to read:

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

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

24 (c) A full guardian of an incapacitated person has the same
25 powers and duties respecting his ward that a parent has respecting his
26 unemancipated minor child except that the guardian is not liable for
27 the care and maintenance of the ward and is not liable, solely by
28 reason of the guardianship, to a person who is harmed by acts of the
29 ward. Except as modified by order of the court, a full guardian's

1 powers and duties include, but are not limited to, the following:

2 (1) he is entitled to custody of the person of his ward and
3 shall assure that the ward has a place of abode in the least restric-
4 tive setting consistent with the essential requirements for the ward's
5 physical health and safety;

6 (2) he shall assure the care, comfort, and maintenance of
7 the ward;

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

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

15 (5) he may give consents or approvals necessary to enable
16 the ward to receive medical or other professional care, counsel, treat-
17 ment, or services except as otherwise limited by (e) of this section;

18 (6) if a conservator for the estate of the ward has not been
19 appointed, the guardian may receive money and property deliverable to
20 the ward and apply the money and property for support, care, and educa-
21 tion of the ward; however, the guardian may not apply the ward's money
22 or property for his services as guardian or for room and board which
23 he, his spouse, parent, or child have furnished the ward unless, before
24 payment, the court finds that the ward is financially able to pay and
25 that the charge is reasonable; notice of a request for payment approval
26 shall be provided to at least one relative of the ward if possible; the
27 guardian shall exercise care to conserve any excess money or property
28 for the ward's needs;

29 (7) if a conservator of the estate of the ward has been

1 appointed, the guardian shall pay all of the ward's estate received by
2 the guardian in excess of the money expended to meet current expenses
3 for support, care, and education of the ward, to the conservator for
4 management as provided in AS 13.26.165 - 13.26.315, and the guardian
5 shall account to the conservator for money expended.

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

12 (e) A guardian may not

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

16 (2) consent on behalf of the ward to an abortion, steriliza-
17 tion, psychosurgery, or removal of bodily organs except when necessary
18 to preserve the life or prevent serious impairment of the physical
19 health of the ward;

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

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

26 (5) consent on behalf of the ward to termination of the
27 ward's parental rights;

28 (6) prohibit the ward from registering to vote or from
29 casting a ballot at public election;

1 (7) prohibit the ward from applying for and obtaining a
2 driver's license.

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

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

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

12 (c) Before approving a protective arrangement or other trans-
13 action under this section, the court shall consider the interests of
14 creditors and dependents of the protected person and, in view of his
15 disability, whether the protected person needs the continuing protec-
16 tion of a conservator. If only certain powers need be given to the
17 conservator or the services of a conservator are needed only for a
18 limited number of transactions, a special conservator may be appointed.
19 The court may appoint a special conservator to assist in the accomp-
20 lishment of any protective arrangement or other transaction authorized
21 under this section who shall have the authority conferred by the order
22 and serve until discharged by order after report to the court of all
23 matters carried out under [DONE PURSUANT TO] the order of appointment.

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

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

28 (b) If the court requires a conservator to provide a bond under
29 AS 13.26.215 and the conservator is financially unable to provide the

1 bond, the court may order the cost of the bond to be paid from court
2 funds.

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

4 ARTICLE 6. PUBLIC GUARDIANS.

5 Sec. 13.26.360. PURPOSE. The legislature recognizes that many
6 Alaskans, for reasons of incapacity or minority, are in need of a
7 guardian or conservator. Often these persons cannot find a person able
8 and willing to serve as guardian or conservator. The legislature in-
9 tends through AS 13.26.360 - 13.26.410 to establish the office of
10 public guardian for the purpose of furnishing guardianship and conser-
11 vatorship services. It further intends by establishing this office to
12 provide assistance to guardians throughout the state in securing neces-
13 sary services for their wards and to assist the courts, attorneys,
14 visitors, respondents, and proposed guardians in the orderly and
15 expeditious handling of guardianship proceedings.

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

19 (b) A court may order the public guardian to act as full
20 guardian, partial guardian, conservator, or special conservator for a
21 person who is determined under this chapter to be in need of guardian-
22 ship or conservatorship service if no person or private guardianship
23 association is willing and qualified to perform the function.

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

27 (b) The public guardian, when appointed as guardian or conserva-
28 tor, shall endeavor, for as long as practical, to find a suitable pri-
29 vate guardian or conservator for his ward or protected person. For

1 each ward and protected person, the public guardian shall report to the
2 court having jurisdiction of the ward or protected person, at least
3 once every six months, his efforts to find a private guardian or con-
4 servator.

5 (c) The public guardian shall

6 (1) establish and maintain relationships with governmental,
7 public, and private agencies, institutions, and organizations to assure
8 the most effective guardianship or conservatorship program for each
9 ward and protected person;

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

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

15 (4) provide information and referrals to the public regard-
16 ing guardianship and conservatorship proceedings, but not information
17 which would identify a particular case;

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

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

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

25 (8) develop and maintain a current listing of public and
26 private medical, mental health, social advocacy, educational, rehabili-
27 tative, counseling, therapeutic, homemaking, recreational, and finan-
28 cial services and programs available to assist wards and protected
29 persons and their families.

1 (d) The public guardian may

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

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

6 Sec. 13.26.390. INTERVENTION. The public guardian may, on his
7 own motion or at the request of the court, intervene in a guardianship
8 or conservatorship proceeding if he or the court considers the inter-
9 vention to be justified because

10 (1) an appointed guardian or conservator is not fulfilling
11 his duties;

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

14 (3) a willing and qualified guardian or conservator is not
15 available; or

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

19 Sec. 13.26.400. DELEGATION OF POWERS AND DUTIES. The public
20 guardian may employ staff and delegate to members of his staff or to
21 volunteers his powers and duties as guardian or conservator and other
22 powers and duties under this chapter. However, the public guardian
23 retains responsibility for the proper performance of the delegated
24 powers and duties. All delegations shall be to persons who meet the
25 eligibility requirements of AS 13.26.145.

26 Sec. 13.26.410. ALLOCATION OF COSTS. (a) If a public guardian
27 is appointed guardian or conservator, the administrative costs of his
28 services and the costs incurred in the appointment procedure may not be
29 charged against the income or the estate of the ward or protected

1 person unless the court determines that the ward or protected person is
2 financially able to pay all or part of the costs.

3 (b) The court shall determine the ability of the ward or pro-
4 tected person to pay for administrative costs of a public guardian or
5 costs incurred in the appointment procedure by determining the finan-
6 cial ability of the ward or protected person to pay a private guardian
7 or conservator, considering the nature, extent, and liquidity of assets
8 of the ward or protected person, the disposable net income of the ward
9 or protected person, the nature of the guardianship or conservatorship,
10 the type, duration and complexity of the services required, and any
11 other foreseeable expenses.

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

16 (d) The public guardian may require a person described in (c) of
17 this section to execute and deliver written requests or authorizations
18 necessary under law to provide the public guardian with access to
19 records of public or private sources, otherwise confidential, needed to
20 evaluate the person's financial eligibility. The public guardian may,
21 upon request and without payment of fees otherwise required by law,
22 obtain information from any office of the state or of a political sub-
23 division or agency of the state which possesses public records.

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

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

28 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme
29 court, the presiding judge in each judicial district shall appoint a

1 person to act as public administrator of the estates of deceased per-
2 sons, [AND] as coroner, and as public guardian.

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

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

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

9 * Sec. 22. TRANSITION. No later than July 1, 1984, all guardianships
10 for incapacitated persons established before January 1, 1982, and in effect
11 on January 1, 1982, shall be reviewed by the court. Until the review, a
12 guardian appointed before January 1, 1982, whose guardianship is still in
13 effect on January 1, 1982, shall retain the powers assigned to him, unless a
14 petition for modification under AS 13.26.125 amended by sec. 9 of this Act
15 is granted. Before the review, the guardian shall submit one report in the
16 form prescribed in AS 13.26.118 added by sec. 7 of this Act.

17 * Sec. 23. This Act takes effect January 1, 1982.

Introduced: 1/13/81
Referred: Judiciary

1 IN THE SENATE

BY ZIEGLER AND FAHRENKAMP

2 SENATE BILL NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST 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 his 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 person,
20 may grant all guardianship powers and duties which the deceased parent
21 or spouse held, subject to modification by the court under AS 13.26.125.

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

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

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

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

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

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

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

6 (5) the particular type and duration of appointment and the
7 protection and assistance being sought;

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

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

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

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

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

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

28 (b) The respondent is entitled to be represented by an attorney in
29 the proceedings. If the respondent is financially unable to employ an

1 attorney to assist him, the court shall appoint an attorney to represent
2 the respondent in the proceedings.

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 attached to
13 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 field of the alleged incapacity before proceeding with the
2 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 the provisions of (a) of this section
14 have been satisfied.

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 visitor
24 determines that the needs of the respondent cannot be met by other
25 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, 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, to return the respondent to full capacity in handling
12 his 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, 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 any 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 which would tend to protect the ward's or respondent's
27 rights and which would tend to 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, a respondent, or the attorney of a ward or respondent,
5 the court shall appoint a guardian ad litem to protect the rights of the
6 ward or respondent in proceedings under AS 13.26.090 - 13.26.155 if the
7 court is satisfied that because of impaired ability effectively to
8 receive and evaluate information regarding the proceedings or because of
9 impaired ability to communicate decisions regarding the proceedings, the
10 ward or respondent cannot determine his own interests without assistance,
11 and

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

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

- 21 (1) inquire thoroughly into all the circumstances that a
22 prudent individual in the position of the ward or respondent would
23 consider in determining his own interests in the proceedings; and
- 24 (2) encourage the ward or respondent to participate, to the
25 maximum extent of his capability, in all decisions and to act on his own
26 behalf on all matters in which he is able.

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

1 those of the ward or respondent.

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

- 4 (1) present evidence on his own behalf;
5 (2) cross-examine witnesses who testify against him;
6 (3) remain silent;
7 (4) have the hearing open or closed to the public as he
8 elects;
9 (5) be present unless the court determines that his conduct
10 in the courtroom is so disruptive that the proceedings cannot reasonably
11 continue with him present;
12 (6) be tried by jury on the issue of incapacity.

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

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

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

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

27 (f) If it is found that the respondent is totally without capacity
28 to care for himself and that a combination of alternatives to guardian-
29 ship and the appointment of a partial guardian is not feasible or ade-

1 quate to meet the needs of the respondent, the court may appoint a full
2 guardian.

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

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

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

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

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

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

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

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

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

12 (3) adopts a guardianship plan.

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

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

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

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

19 (A) the wishes of the ward;

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

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

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

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

1 services provided to the ward;

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

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

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

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

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

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

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

14 (1) the court orders it;

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

18 (3) the guardian resigns or is removed;

19 (4) the guardianship is terminated; or

20 (5) the ward requests it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 resignation of the guardian as provided in AS 13.26.125, or upon the
2 expiration of the period specified by court order as the duration of the
3 guardianship. Testamentary appointment under an informally probated
4 will terminates if the will is later denied probate in a formal proceed-
5 ing. Termination does not affect a guardian's [HIS] liability for prior
6 acts nor his obligation to account for [FUNDS AND] assets of the [HIS]
7 ward over which he exercised control.

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

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

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

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

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

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

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

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

28 Sec. 13.26.135. NOTICES IN GUARDIANSHIP PROCEEDINGS. (a) In a
29 proceeding for the appointment, change in responsibilities, [OR] removal

1 of a guardian, or termination of guardianship, [OF AN INCAPACITATED
2 PERSON] other than the appointment of a temporary guardian or temporary
3 suspension of a guardian, notice of hearing shall be given to each of
4 the following:

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

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

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

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

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

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

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

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

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

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

5 Sec. 13.26.140. TEMPORARY GUARDIANS. (a) If during the pendency
6 of an initial petition for guardianship it appears that the respondent
7 is in need of immediate services to protect him against serious injury,
8 illness, or disease and the respondent is not capable of procuring the
9 necessary services, the petitioner may request the appointment of a
10 temporary guardian to authorize the services. The request shall state
11 the reasons and factual basis for the request. The petitioner shall
12 immediately file the request with the court and serve copies on the
13 respondent and his attorney. The court shall conduct a hearing within
14 72 hours after the filing.

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

17 (c) The burden of proof at the hearing shall be by clear and con-
18 vincing evidence and shall be upon the petitioner.

19 (d) If the court determines that a temporary guardian should be
20 appointed, it shall make the appointment and grant to the guardian only
21 the authority that is least restrictive upon the liberty of the respon-
22 dent and which enables the temporary guardian to provide the emergency
23 services necessary to protect the respondent from serious injury, ill-
24 ness, or disease.

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

28 (f) If no guardianship petition is pending but the court is in-
29 formed of a person who is apparently incapacitated and in need of emer-

1 agency life-saving services, the court may authorize the services upon
2 determining that delay until a guardianship hearing can be held would
3 entail a life-threatening risk to the person.

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

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

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

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

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

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

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

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

25 (4) is employed by a person who would be disqualified under
26 (1) - (3) of this subsection.

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

1 and the court determines that the potential conflict of interest is
2 insubstantial and that the appointment would clearly be in the best
3 interests of the incapacitated person.

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

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

10 (2) the spouse of the incapacitated person;

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

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

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

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

19 (7) the public guardian.

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

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

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

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

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

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

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

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

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

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

29 (5) he may give consents or approvals necessary to enable the

1 ward to receive medical or other professional care, counsel, treatment,
2 or services except as otherwise limited by (e) of this section;

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

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

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

26 (e) A guardian may not

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

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

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

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

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

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

15 (7) 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 guard-
21 ian or conservator. Often these persons cannot find a person able and
22 willing to serve as guardian or conservator. The legislature intends
23 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 respondents, and proposed guardians 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 records
3 of public or private sources, otherwise confidential, needed to evaluate
4 the person's financial eligibility. The public guardian may, upon
5 request and without payment of fees otherwise required by law, obtain
6 information from any office of the state or of a political subdivision
7 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, 1984, all guardianships for
23 incapacitated persons established before January 1, 1982, and in effect on
24 January 1, 1982, shall be reviewed by the court. Until the review, a guard-
25 ian appointed before January 1, 1982, whose guardianship is still in effect
26 on January 1, 1982, shall retain the powers assigned to him, unless a petition
27 for 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.

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* Sec. 23. This Act takes effect January 1, 1982.

411
5/19/81
from Sen.
Eliason

Proposed Amendments for S.B. 3

Add Section 13.26.105 (d)

If the petition seeks the appointment of a guardian for an incapacitated person who is a veteran or a minor entitled to the payment of money from the federal Veterans' Administration, the petitioner shall give notice of the petition to the administrator of the federal Veterans' Administration.

Add Section 13.26.135 (8)

the administrator of the federal Veterans' Administration if the administrator was given notice under AS 13.26.105 (d).

The intent of these is simply to provide for notification to the Veterans' Administration where applicable.

HFC

POSITION PAPER

SENATE BILL NO. 3

"An Act relating to guardians and conservators; and providing for an effective date."

The Department currently has a significant number of clients in institutions or in other custodial care arrangements for whom guardians are needed, but cannot be found. Senate Bill No. 3 would effectively improve the availability of guardianship services for handicapped individuals. This is particularly relevant for persons for whom a partial guardian is most appropriate, thus limiting an individual's rights only in areas of incapacity. This bill is consistent with the Department's overall goal of providing human services support to Alaskans who have long term dependency needs.

We recommend the following: Add at approximately line 16 "(8) prohibit the marriage or divorce of the ward." This right to marry or divorce should rest with the court to make such a determination and not in the power of a guardian.

The Department strongly supports passage of this bill amended as recommended above.

Recommended by:

David Bruce
David Bruce,
Deputy Director,
Division of Public
Health

Date:

January 27, 1981

Approved by:

Helen D. Beirne
Helen D. Beirne
Commissioner

Date:

Feb 1, 81

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL NO. 3
 Title "An Act providing for guardian and conservators...."
 Requested by Commissioner's Office Date January 22, 1981

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
 Program Category Affected Health/Division of Public Health
 BRU, Program, or Subprogram(s) Affected Family Health
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

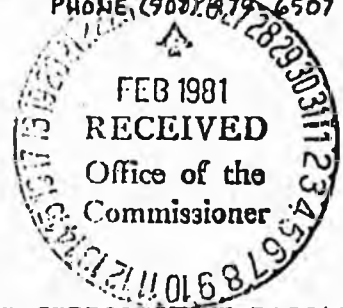
IV. DATE January 22, 1981 PREPARED BY David Spence
 AGENCY Family Health/Division of Public Health
 PHONE 465-3100
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)



SB3

GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED

UNIVERSITY PLAZA OFFICES WEST SUITE C • 600 UNIVERSITY AVENUE • FAIRBANKS, ALASKA 99701
PHONE (907) 479-6507



POSITION PAPER
GUARDIANSHIP
February 1981

THE GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED SUPPORTS THE PASSAGE OF SENATE BILL 3 "AN ACT RELATING TO GUARDIANS AND CONSERVATORS"

RATIONALE

The Council takes this supportive position for the following reasons (background information follows in more detail):

1. SB 3 bases a determination of incapacity on an individual's functional limitations rather than on a "blanket classification" on the basis of medical diagnosis or existence of a disability (such as mental retardation).
2. SB 3 provides strengthened due process protections to individuals thought to be incapacitated.

The Council feels that strong due process provisions are critical in legislation that deals with persons thought to be incapacitated because of the right of all persons, regardless of handicapping condition, to enjoy full constitutional protection of individual rights.

3. SB 3 provides for partial or limited guardianship as well as full or plenary guardianship so that an individual's rights are modified only in those areas of incapacity.

The Council feels that guardianship orders should only limit the rights of an individual in those areas of functioning where he/she cannot exercise individual choice, and, more importantly, should preserve the right of an individual to exercise free choice in those areas where his/her limitations are not in question. Present state statutes do not allow this "partial guardianship" option.

4. SB 3 strengthens court procedures and provides for a guardianship order and plan which specifically enumerates the responsibilities and powers of the guardian.

The Council feels that strengthening court procedures, providing for very specific guardianship orders, and requiring individualized plans are strong points of SB 3. These requirements serve as additional protections to the individual who receives guardianship services as well as provide guidelines for all parties involved in guardianship hearings and providing guardianship services.

5. SB 3 provides for an "office of public guardian" which has the responsibility to 1) serve as public guardian and 2) be a primary resource to locate private guardians and assist them in the performance of their duties.

028

The Council believes that the establishment of an "office of public guardian" (not currently existing in the State of Alaska) is important because such an office is needed to be public guardian for individuals who do not have family or friends available to be guardians. The Council further feels that the "office of public guardian's" responsibility to seek out and work with private sector guardians will serve to encourage family/concerned party involvement, and thus limit the caseload for which this office will be responsible in its role as public guardian.

6. SB 3 sets priorities for appointment of private guardians (Sec. 13.25.145(d)).

The Council believes that such a prioritization is necessary and beneficial in four (4) respects: a) it directs the court as to individuals to be sought for appointment as guardians, b) it serves as notice to private parties concerning the order in which they will be considered as potential guardians, c) it allows as much choice as possible by the person determined incapacitated, and d) it lists the public guardian as the last to be considered after all other possible persons have been contacted.

7. SB 3 locates the office of public guardian in the office of public administrator.

The Council feels that this is a good placement because the functions and expertise required of a public guardian are similar to those required of a public administrator. Further, the Council feels that such placement would ensure that there would be no possibility of conflict of interest which could arise if a social service agency providing care to an incapacitated person were acting as the person's guardian.

8. SB 3 includes time limits within which guardianship hearings must be held.

The Council believes that both the petitioner and the respondent should have assurance that hearings will be scheduled and held within a reasonable period of time. For petitions for temporary guardianship there is a need to have the court hearing within a few days so that legal transactions can be finalized and medical services obtained. Regular guardianship hearings should be able to be held within four months of the filing of petition.

9. SB 3 requires that annual reports be submitted by the guardian to the court.

This provides a mechanism for the court to monitor the guardian's discharge of his duties and may alert the court to a need for a change in the guardianship order or a termination in guardianship.

BACKGROUND INFORMATION ON NEED FOR A REVISED GUARDIANSHIP LAW IN ALASKA
(AS PROPOSED IN SB 3)

1. Guardianship Practices and Implications

(Excerpts taken from Guardianship & Conservatorship: Statutory Survey and Model Statute, American Bar Association, 1979.)

"Guardianship is a legal relationship which authorizes one individual to become a substitute decision-maker for another. Its most common form is the "natural guardianship" relationship between parents and their minor children. A guardianship is established by court order when because of age, illness, or disability, a person is determined to be incapable of managing some or all of his or her personal and/or financial affairs. A guardian may be given partial or total authority to determine whether the disabled person will live in the community or an institution, and what type of medical, mental health and other services the disabled person will receive (personal guardianship), and/or partial or total power to manage and control that person's property and income (conservatorship). Correspondingly, the individuals for whom a guardianship has been established may lose the right to decide whether to remain in their own home, to make contracts for goods and services, to go to court to enforce their rights, to hold or convey property, and in some instances to marry, to have children, to vote and to make a will.

The criteria for establishing a guardianship are often broad and vague, permitting the imposition of restrictions on persons who are "different" as well as on those who are disabled. Current procedures often omit the safeguards we have come to expect when restrictions on liberty are imposed or fundamental rights threatened in other contexts. And perhaps most importantly, even today in many jurisdictions, guardianship orders and guardians have failed to recognize that individuals with disabilities are often capable of doing many things for themselves.

(A)...serious difficulty arises because the law usually represents incompetence in simple black and white terms, with the result that most guardianships of the person are looked on as plenary guardianships. The person declared incompetent is deprived of the legal capacity to act in any way on his own behalf. Even though he (or she) may have a guardian appointed to exercise some of his (or her) rights, the emphasis usually is on the deprivation of rights rather than on implementing rights constructively through informed representation. Moreover, the idea that the person himself (or herself) can properly retain and exercise some personal and even property rights, selectively, according to his (or her) individual capacity, is not adequately expressed in most existing statutes pertaining to guardianship.

Over the past two decades, a growing list of organizations and governmental commissions which have examined guardianship have called for

correction of these problems. For example, in 1962, the President's Panel on Mental Retardation stated:

For some, of course, a comprehensive guardianship will be needed. But we urge that, as far as possible, mentally retarded adults be allowed freedom--even freedom to make their mistakes. We suggest the development of limited guardianships of the adult person, with the scope of the guardianship specified in the judicial order.

The 1969 Report of the International League of Societies for the Mentally Handicapped recommended:

The retarded adult should be permitted to act for himself [or herself] in those matters which he [or she] has competence. The limitations of legal capacity inherent in guardianship should not extend to these matters. It follows that a person whose mental retardation is characterized by impairments of social competence which are partial should enjoy a partial guardianship specifically adapted to his [or her] strengths and weaknesses.

The 1975 edition of the Uniform Probate Code makes a clear distinction between guardianship of the person and conservatorship of the estate, and establishes a number of less restrictive alternatives for the protection of the property of a disabled individual (though not the person). It also provides for the execution of durable powers of attorney as a means of obviating the need for a guardianship or conservatorship. Finally, the 1976 Report of the President's Committee on Mental Retardation, urged that:

Statutes and court procedures bearing on competency should be clarified and revised (a) to recognize gradations of competence, (b) to recognize that areas of competency may be quite varied and therefore should be separable in law, (c) to assure full and explicit due process safeguards on any and all areas of competency, and that the scope of any judgment of incompetence is made fully explicit, and (d) to ensure that restrictions of competency be limited to a specific period of time or subject to periodic review."

2. Commentary on Changes Needed in Alaska's Guardianship Laws

Existing state law does not provide for partial guardianship, does not provide sufficient due process protections, and does not tie appointment of a guardian or provision of guardianship services to the specific needs of the incapacitated person, nor does it provide for persons for whom no private guardian can be obtained.

Legislation is needed to correct these problems. It should require a determination of incapacity to be based on the individual's ability to provide for his [her] physical health and safety without focussing on the medical diagnosis of the disability. It should provide for

partial guardianship for those individuals who can meet some but not all of their own needs. Due process protections should be strengthened and ensure that the only legal rights a ward loses when a guardian is ordered are those specifically included in the court's guardianship order. A guardianship plan should be required which will make clear what the guardian's responsibilities and authorities are and thus provide clear direction for the guardian and help the court monitor the guardianship order. By prioritizing who can be a guardian, guidance can be given to those seeking guardians to help ensure that appropriate individuals are routinely contacted to be guardians.

Guardianship and conservatorship are closely tied and provisions need to be made to make conservatorship procedures consistent with guardianship procedures. The special conservator's role should be expanded to make it equivalent to that of a limited guardian.

An office of public guardian is needed. This is extremely important to ensure that individuals are not denied guardians or guardianship services simply because private guardians cannot be found. Guardianship petitions have not been filed for many individuals because there is no agency charged to actively seek out private guardians. In addition to serving as a public guardian, this office should be given the responsibility to seek private guardians. The public guardian should be required to seek other guardians before the court appoints it to be the guardian. This would also ensure that an office of public guardian would not have a burgeoning caseload. Recent experience in the state of Delaware, where such a provision is included in state statute has shown that the public guardian is able to locate private guardians thus reducing the public guardian's caseload and reducing court work which would be required to change guardians.

The public guardian should act as a special resource to the court, social service agencies, the Attorney's General office and to private guardians in guardianship matters. If these guardianship support services are not included in the public guardian's duties, the current problems will continue with the result that the public guardian will be required to serve as the guardian for significantly more individuals than would otherwise be necessary. The current problems are failure to process cases, slow processing of cases, reluctance of individuals to serve as guardians because they are unsure of their duties, unfamiliar with preparing reports, and because they feel they have no readily available agency specializing in guardianship to advise them.

If an office of public guardian as described above is created, the number of persons who will be willing to act as private guardians is expected to increase since the public guardian will continually be searching for private persons to serve as guardians and will provide advice and assistance to lighten the burden anyone serving as a guardian may feel.

The placement of the public guardian office within the state government has been a subject of much discussion. As a result of meetings in October 1978 and a review of the efforts of the Attorney General

in this area in regards to HB 63 of the Tenth Legislature, two possible locations were proposed: the Office of the Governor or the Court System in connection with the Public Administrator Office. These options were chosen because no other bodies of state government seemed appropriate. HB 63's amendment placed the office in the Department of Health and Social Services. The possible conflicts of interest that could arise resulting from the department being often the main provider of care to incapacitated persons requires that it be placed elsewhere.

The best option in many ways seems to be that the office be combined with that of the public administrator. The public administrator acts both as coroner and administrator of the estates of deceased persons. It is an appointive position for each judicial district, "when authorized by the Supreme Court". AS 22.15.310. The administration of estates is already an area of expertise required by a public administrator and would suggest that the public administrator is the appropriate person to act as a public conservator. Further, at present, the public administrator is already acting as an ad hoc public guardian for several clients at Harborview and individuals at other nursing care facilities. Given this ad hoc procedure, the public guardian office would legitimize this role and provide for a budget that allows the public guardian to truly provide adequate guardianship services.

3. Need for Guardianship Services

The number of individuals expected to require guardianship services equals about half the total number of persons in nursing homes and other residential care facilities. This totals about 335 people. Of these about 28% have private guardians. With active assistance from an office of public guardian, it is estimated that private guardians could be found for 10 to 15 percent of these people. This would result in the public guardian serving as guardian for about 10% or 35 people. Based on annual admission rates of these facilities and if a public guardian were to be needed for 10% of the cases, an additional 50 cases would be generated.

Because many of those in need of guardians are ill or aging the continuing caseload of a public guardian is estimated at between 50 and 90 individuals. Based on figures provided by the agencies it is estimated that 100 individuals will need the assistance of the public guardian to locate private guardians because of the current backlog of cases.

On an annual basis the caseload of the office of public guardian is expected to be:

50-90	public guardianship
100	guardianship resource services
50	location of private guardians

(See attached information gathered from a Council survey of agencies in 1979.)

Recent figures obtained on the Delaware public guardian office show 150 referrals per year to that office with only 10% or 15 becoming wards of the public guardian (Delaware population @ 600,000). The American Bar Association estimates 1/100th of one percent of Delaware's population is served by a public guardian.

4. Funding Needed

Based on court and associated costs and the time currently required for agencies to provide guardianship services, the annual cost of the bill is approximately \$250,000. (See attached fiscal impact information.)

REFERENCES

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- N. KITTRIE, THE RIGHT TO BE DIFFERENT: DEVIANCE AND ENFORCED THERAPY (1971).
- INTERNATIONAL LEAGUE OF SOCIETIES FOR THE MENTALLY HANDICAPPED (ILSMH), SYMPOSIUM ON GUARDIANSHIP OF THE MENTALLY RETARDED, 11 (1969).
- NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAW (NCCUSL), UNIFORM PROBATE CODE (U.P.C.) Article V (4th Ed. 1975).
- ROTHMAN, THE STATE AS PARENT: SOCIAL POLICY IN THE PROGRESSIVE ERA, IN W. GAYLIN, I. GLASSER, S. MARCUS, & D. ROTHMAN, DOING GOOD: THE LIMITS OF BENEVOLENCE, 67, 70 (1978).
- E.g., THE PRESIDENT'S PANEL ON MENTAL RETARDATION (PPMR), REPORT OF THE TASK FORCE ON LAW (1963); PRESIDENT'S COMMITTEE ON MENTAL RETARDATION (PCMR), REPORT TO THE PRESIDENT -- MENTAL RETARDATION: CENTURY OF DECISION (1976); THE PRESIDENT'S COMMISSION ON MENTAL HEALTH (PCMH), REPORT TO THE PRESIDENT (1978); ILSMH (above); COUNCIL OF THE AMERICAN ASSOCIATION ON MENTAL DEFICIENCY (AAMD), POSITION PAPER ON GUARDIANSHIP FOR MENTALLY RETARDED PERSONS (1973); NATIONAL CENTER FOR SENIOR CITIZENS, MODEL GUARDIANSHIP, CONSERVATORSHIP AND POWER OF ATTORNEY LEGISLATION, IN U.S. SENATE SPECIAL COMMITTEE ON AGING, PROTECTIVE SERVICES FOR THE ELDERLY: A WORKING PAPER, 75-110 (1977); GOVERNOR'S COMMISSION FOR REVISION OF THE MENTAL HEALTH CODE OF ILLINOIS, REPORT (1976).
- AMERICAN BAR ASSOCIATION COMMISSION ON THE MENTALLY DISABLED: EXERCISING JUDGEMENT FOR THE DISABLED, REPORT OF AN INQUIRY INTO LIMITED GUARDIANSHIP, PUBLIC GUARDIANSHIP, AND ADULT PROTECTIVE SERVICES IN SIX STATES. (September 1979)

HFC

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 3
 Title An Act Relating to Guardians and Conservators
 Requested by House Judiciary Date 3/31/81

II. FISCAL DETAIL

Agency Affected Alaska Court System
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Alaska Court System

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		149.7	320.4	342.8	366.8	392.5
200 TRAVEL		20.0	44.0	48.4	53.2	58.6
300 CONTRACTUAL		45.0	99.0	108.9	119.8	131.8
400 COMMODITIES		2.3	5.0	5.4	6.0	6.6
500 EQUIPMENT		9.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		226.0	468.4	505.5	545.8	589.6

FUNDING (Thousands of Dollars)

GENERAL FUND		226.0	468.4	505.5	545.8	589.6
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		9	9	9	9	9
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The attached budget was developed at a meeting of all coroner/public administrators in the state. It is based on estimates of the number of guardianship appointments in each location. These estimates were derived in part by the Department of Health and Social Services and in part by court personnel.

IV. DATE March 31, 1981 PREPARED BY *Richard G. Sam*
 AGENCY Alaska Court System
 PHONE 264-0545
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

PERSONNEL SERVICES:

FULL YEAR
YEAR

Salaries

Anchorage:

Guardians - 3 @ Range 16 \$ 85,608
Accounting Clerk - 1 @ Range 10 19,356

Fairbanks:

Guardian - 1 @ Range 16 32,832
Accounting Clerk - 1 @ Range 10 21,768

Juneau:

Guardian 1 - @ Range 16 28,536
Accounting Clerk - 1 @ Range 10 19,356

Ketchikan:

Asst. Guardian - 1 @ Range 14 24,756

232,212

Benefits

9 Employees - Health 16,200
SBS 14,235
Variable 36,782

67,217

Total

\$299,429

TRAVEL: Quarterly visits to all
incapacitated persons.

40,000

CONTRACTUAL: \$40,000 for contractual
guardians and visitors
\$50,000 for respondent
attorneys.

90,000

COMMODITIES: 9 employees @ \$500

4,500

EQUIPMENT: 9 employees @ \$1,000

9,000

TOTAL FULL YEAR COST

\$442,929

Proration due to effective date of 1/1/82
($\frac{1}{2}$ of full year cost less one time equip-
ment costs)

(216,964)

COST (1/1/82 to 6/30/82)

\$225,965