

SB

1900

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Senate Bill 190 Guardianships and Conservatorships

Senate Bill 190 is the product of a year-long review of the guardianship system in Alaska and many hours of consensus building discussions.

In 1998, the Alaska Mental Health Trust Authority funded a study to look proactively at the future of guardianship services in Alaska. The *Alaska Guardianship Study*, conducted by the McDowell Group of Juneau, found the Alaska guardianship system to be complex, fragmented, and confusing.

Also in 1998, the 12-member *Long-Term Care Task Force*, composed of legislators, state officials, and private citizens, recommended the Department of Administration give serious consideration to the formal recommendations of the *Alaska Guardianship Study* and propose any necessary statutory changes.

In June of 1999, the Division of Senior Services, Department of Administration, formed a stakeholder group to review the formal recommendations of the study and reach a consensus on the needed changes to the guardianship system. The stakeholders included representation from the Alaska Court System, court visitors, the Office of Public Advocacy, the Alaska Mental Health Trust Authority and other advocacy groups for the trust beneficiaries, for-profit guardian companies, and private guardians for Alaskans. Senate Bill 190 incorporates the statute changes as recommended by this stakeholder group as follows:

- Clarifies the role of an attorney who represents a ward or respondent
- Creates an interim guardian
- Allows the expanded use of private for-profit guardianship services
- Clarifies that a guardian may also serve as a conservator
- Requires a report on the availability of a private guardian or conservator be on an annual basis instead of every six months
- Clarifies that the Office of Public Advocacy may not use improper pressure to influence recommendations

I respectfully request your consideration and support for Senate Bill 190.

Home of the
University of Alaska

LTC **TASK FORCE**
Long-Term Care Task Force



FINAL REPORT
January 1999

Representative Con Bunde, Co-chairman
Senator Gary Wilken, Co-chairman

State Capitol Building
Juneau, Alaska 99801-1182

LTC Task Force

ALASKA GUARDIANSHIP SYSTEM

RECOMMENDATION

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The Task Force urges the Department of Administration and the Division of Senior Services give serious consideration to the formal recommendations outlined in the report, *The Alaska Guardianship System*, and notify the Legislature of any statutory changes necessary.

Three guardianship systems exist in Alaska, each providing a different mix of services; public guardians, private professional guardians; and private unpaid (usually family) guardians. Under each system, the guardian is legally in charge of the affairs of a minor or incapacitated person.

In September 1998 the McDowell Group, Inc. reviewed and assessed the guardianship system in Alaska and issued a report entitled, *The Alaska Guardianship System*. This review was funded by the Mental Health Trust Authority and is the result of the Trustees' desire to look proactively at the future of guardianship services in Alaska. Most clients served within Alaska's guardianship system are Trust beneficiaries.

"The Alaska Guardianship System is re-viewed."

The final product met two major objectives: 1) To describe and quantify the entire complex guardianship system; and 2) To identify and analyze major issues and provide clear recommendations for improving the quality of guardianship in Alaska.

This study included 70 in-depth interviews, a facilitated group discussion with the public guardian staff, and a sample telephone survey of 17 private guardians in Anchorage and Fairbanks. In addition, court data on open guardianship cases was analyzed and secondary research was conducted on other state's practices and standards.

The Alaska guardianship system was found to be complex, sophisticated, fragmented and confusing. Guardianship is a wide-ranging issue interconnecting Alaska courts, state agencies, the legislative branch, the legal profession, non-profit sector, many local, state and federal social service agencies, and private households.¹⁸

"The McDowell Group estimated that individuals suffering from Alzheimer's Disease account for approximately half of all guardianship cases."

As estimated by the McDowell Group, individuals suffering from Alzheimer's Disease and related dementia accounted for approximately half of all the guardianship cases and individuals experiencing developmental disabilities accounted for a quarter of all the cases. In other words, almost seventy-five percent of all clients receiving guidance and support from a guardian may also be receiving long-term care service.

The Task Force applauds the foresight of the Mental Health Trust Planning Board in initiating this review and urges serious consideration and discussion of the formal recommendations outlined in the report. In addition, the Task Force recommends that the President of the Senate and the Speaker of the House be notified by March 31, 1999 of any statutory changes necessary to implement the report's recommendations. ❖

The Alaska Guardianship System

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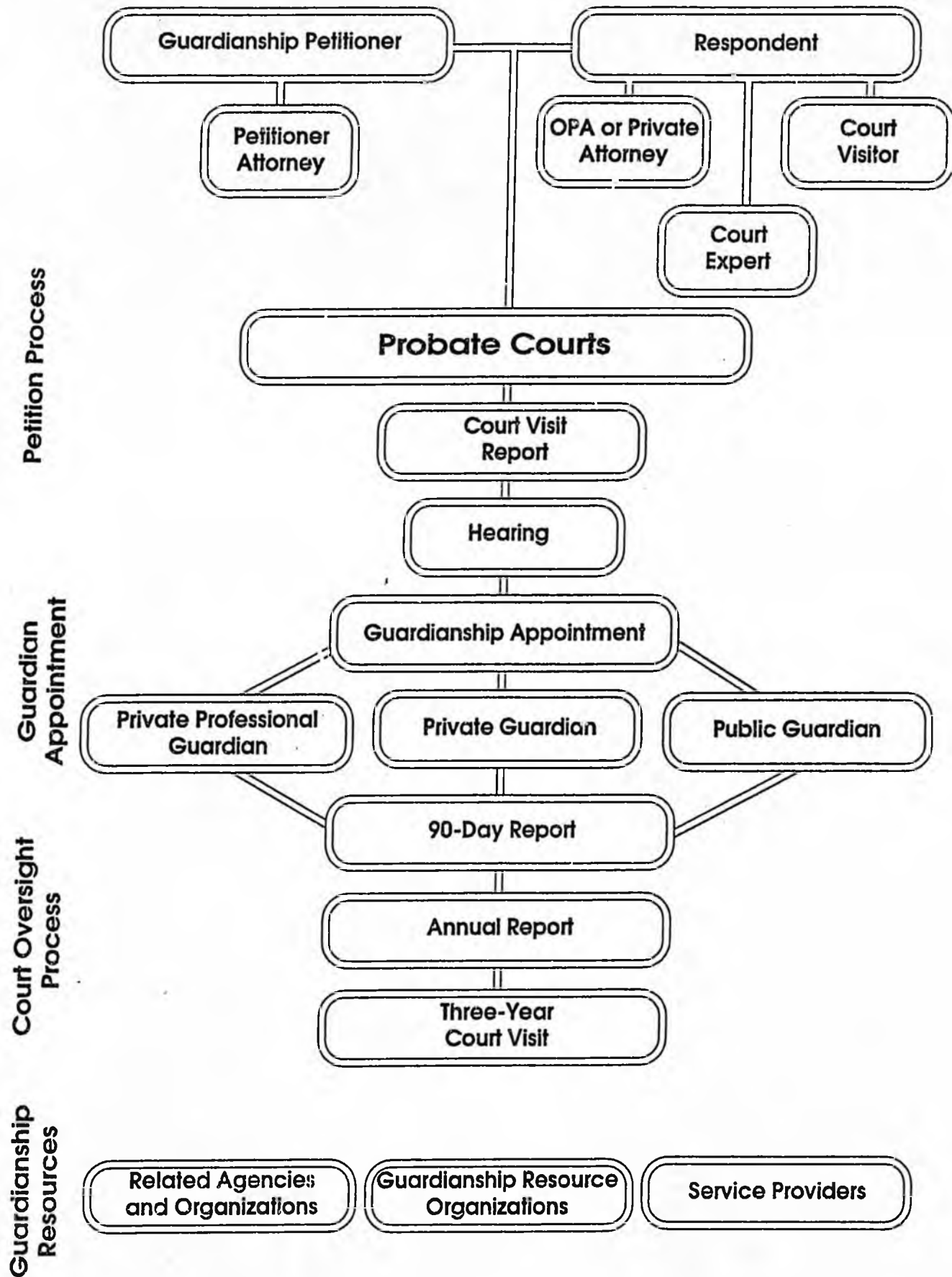
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McDowell Study

The Alaska Guardianship System



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A Sectional Analysis Senate Bill 190 – Guardianships and Conservatorships

Section 1: Deletes “and that would tend to further the interests of the ward or respondent.”

The protection of a ward’s best interest is the primary role of a guardian ad litem and not the role of the counsel representing a ward or respondent. The attorney’s responsibilities is to follow the client’s wishes and protect the ward’s or respondent’s rights irrespective of whether the attorney believes the desired course of action will ultimately protect the best interests of the client.

Sections 2 – 5: Establishes an interim guardianship

Current practice allows the appointment of a “temporary” guardian to protect a respondent from serious injury, illness or disease, with hearings held within 72 hours. A temporary guardian is to be restricted to those cases involving an emergency, but the practice has been expanded to include cases in which action is necessary on an expedited, but not urgent, basis. The interim guardianship will allow those cases to be handled within three weeks if failure to do so “would likely result in substantial harm to the respondent’s health, safety, or welfare.”

Sections 6 - 7 : Adds “a for-profit corporation” to the list of qualified persons that have priority for an appointment as a guardian

This section clarifies that “a for-profit corporation” is to be considered for an appointment as a guardian.

Section 8: Clarifies that a guardian has the powers and duties of a conservator if a conservator for the estate of the ward has not been appointed

Some financial institutions are hesitant to recognize a guardian who has powers and duties of a conservator as this relationship is not specifically defined in state law. This section, which is true under current law although not specifically stated, will clarify any confusion.

Section 9: Clarifies that a lawyer appointed to represent a ward or respondent may not also serve as a guardian ad litem and deletes the following: "The visitor may be a guardian ad litem or an officer or employee of the court."

Under the Rules of Professional Conduct, an attorney may not perform both the duties of counsel and a guardian ad litem. The deletion of the confusing language in Section 9 removes any confusion.

Current statute places few restrictions on who may be appointed as a court visitor. It is not necessary to identify specifically who may be appointed. A person who acts as a guardian ad litem in one situation, as in Child in Need of Aid cases, may serve as a court visitor in another circumstance. The deleted language neither adds nor subtracts from this practice.

Officers or employees of the court do not currently serve as visitors, but the deletion of this language does not preclude such appointments.

Section 10: Requires the report on the availability of a private guardian or conservator be on an annual basis instead of every six months

Currently state law requires a public guardian to report to the court every six months on the efforts to find a private guardian or conservator; however, this statute is routinely violated. Section 10 still requires a report on the availability of private guardians or conservators, but the report will be on an annual basis instead of every six months.

Section 11: Clarifies that the Office of Public Advocacy may not use improper pressure to influence recommendations

Section 12: Makes it permissive for the court to appoint a visitor to investigate the issue of whether a patient has the capacity to give informed consent to the administration of psychotropic medication.

The current state law requires the Office of Public Advocacy to provide a visitor in every case involving the administration of psychotropic medication within 48 hours – a practical impossibility. The statutory change in Section 12 allows the court full discretion to appoint a visitor whenever appropriate under the circumstances of a particular case.

Section 13: Repeals AS 13.26.112(c)

The following subsection is repealed: "The attorney for the ward or respondent may also be the guardian ad litem for the ward or respondent if there no other party readily available and able to serve as a guardian ad litem and whose interests would not conflict with those of the ward or respondent."

Section 14: Changes to Rule 77, Alaska Rules of Civil Procedure

Section 5 has the effect of changing Rule 77, Alaska Rules of Civil Procedure, by requiring that a court conduct a hearing on the appointment of an interim guardian, by establishing when the hearing must be conducted, and by requiring that reasonable notice be given to the respondent and certain other persons.

Section 15: Clarifies applicability of Senate Bill 190

This Act applies to all proceedings and actions in a guardianship or conservatorship begun on or after the effective date of this Act.

Section 16: Highlights a conditional effect regarding the approval of Sec. 14

AS 13.26.140(h), added by Section 5 may only take effect if the required two-thirds majority approves Section 14 of this Act.

Section 17: Immediate effective date