

933

HJ

HB

572

933

PAGE 24 Continued

line 25 delete "to" after "or". (Lobosco)

PAGE 25

line 1-3 How does this fit with Article 4? (Van Duizend)

line 10 Question the use of "all". "If a conservator has been appointed, all of the ward's estate...in excess of those funds expended...must be paid to the conservator for management..." (Robison)

line 17-18 Would a limited guardian control custody and care? Does this imply that a conservator would control custody and care if no guardian were appointed? (Van Duizend)

line 21-23 strike "of the amounts...circumstances". (The sums to be agreed upon are previously characterized as "reasonable" in that sentence. Insert "that" after "guardian may request". Consider replacing "request" with "direct". (Lobosco)

PAGE 26

line 6-7 (RIGHT TO SERVICES) This should incorporate language from definition of "incapacitated person". (Van Duizend)

line 14-17 The duties of a guardian should have a cross reference to this provision. (Van Duizend)

line 18 May not apply to public agency first. If application refused, then go to court. (Van Duizend)

line 19 Sounds like an extra hearing. Should have been part of original hearing. (Robison)

General Comment (Subsection c) What is being proven? (Van Duizend)

PAGE 27

General Comment (Subsection b) AS 13.26.170(b) repeats 13.26.010 (Jacobs)

line 9-10 Only one "shall" necessary in first sentence. (Lobosco)

line 11 Why not one general bond for the public guardian? (Van Duizend)

Insert "to be" after "required" (Lobosco)

PAGE 27 Continued

Line 11 What is meant by the Public Bond section? At the October Council meeting, bonding was mentioned particularly in relationship to surrogate parents. (Buck)

PAGE 28

General Comments (Sec. 13.26.510 - OFFICE OF PUBLIC GUARDIAN) It is most important that this office work independently from the agency providing the direct services. (Carey)

There should be a professional office of Public Guardian. (Robison)

I would prefer to see an Office of Public Guardian in the court system which would avoid potential conflicts of interest which would arise within Office of the Governor. (Soskin)

line 1 Change "this" to "there". (Van Duizend)

line 10-11 (WHEN PUBLIC GUARDIAN APPOINTED) What if willing, but would bankrupt the ward? (Van Duizend)

"or private institution or agency is willing and qualified to act as guardian" - put in brackets. (Weed)

General Comments (Sec. 13.26.525 - INTERVENTION) What about F & A Office? (Van Duizend)

line 27 Can public guardian intervene to remove incapacitated person from state hospital? (Van Duizend)

PAGE 29

line 2 "subject to disproportionate waste" - what does this mean? (Carey)

line 23 (OTHER POWERS & DUTIES OF PUBLIC GUARDIAN) "regular visitation" - should make unannounced visits, also to check on what really is happening. (Carey)

"visits" substituted for "visitation" (has rather a mystical religious connotation, doesn't it?) (Lobosco)

line 28 The idea of paid volunteers is not a good alternative and we would not want to rely entirely on volunteers. The Guardianship Oversight Commission is not viable, especially with the use of volunteers. (Robison)

PAGE 30

line 17 "services" - pay expenses for NARC volunteer to come give workshop to volunteers on their role and what model residential and work facilities should be like. (Carey)

line 18-21 (ALLOCATION OF COSTS) How is this determined? (Weed)

PAGE 31

line 8 Replace "the" with "such an" before "appointment". End sentence with "appointment" - delete "of". Capitalize "the" on next line. (Van Duizend)

line 9 The whole paragraph appears to be one long run-on sentence. Perhaps in the middle of the fifth line a new sentence should begin. (Buck)

line 11 If ward is incapacitated, how can he/she execute a valid consent? (Van Duizend)

General Comments (Subsection: d) Third party payments of any sort be applied to cost of service or would they be included in estate of prson (i.e. savings of SSI, etc.?) (Aronson)

GENERAL COMMENTS ON FIRST GUARDIANSHIP DRAFT
November 29, 1978

I don't think the question of commitment procedures for wards was adequately addressed, ... particularly since there are no commitment procedures for mentally retarded or senile persons. (Senner)

Need to reduce the amount of court involvement required. (Senner)

Need to address the point - appointment of guardians may be slow because of the requirement that relatives be contacted and Max Gruenberg's point that guardianship procedures requires too many outside individuals. (Senner)

The substantive grounds for guardianship should be as narrowly drawn as possible and explicitly require a judgment finding that less restrictive non-guardianship alternatives are not suitable. (Herr)

I think the ABA approach on the definitional issue is preferable; focusing the court's attention on the individual's functional abilities, rather than the "cause" of the disability, would reduce the likelihood that the court would operate on unconscious stereotypes (i.e. "a retarded person can't take care of himself", etc.). As between the terms "disabled" and "incapacitated", there seems little difference in either case. A separate category of "partial disability" or "partial incapacity" may be another useful signal to the court that disability/incapacity status is one of incremental gradations, and not merely binary. (Lobosco)

As to public guardianship, I doubt that a system dependent on recruiting many volunteers for the long-term involvement which a guardian should have would be successful. The conflict of interest issues regarding public guardianship are substantial, however, and need to be considered. One compromise might be to allow private agencies to contract with the state to provide such services. While the service would not be financially independent of the state, it would be in a better position to make noise about abuse/denial of services than a governmental agency would. A strong state ARC might work well in such a role. (Lobosco)

No provision for both parent's signatures. Always talk about one guardian. If there is a husband and wife guardian, are they considered one? What if the other parent disagrees? Would divorced couple need both parent's signatures? (Jacobs)

In reading the statute, it was somewhat unclear as to the guardian's power to commit the ward to an institution. The visitor's report in Sec. 13.26.109 (b)(vii) discusses why alternatives to hospitalization or guardianship were rejected thus leaving the implication that hospitalization may become part of the guardianship recommendation. However, reading Sec. 13.26.115(b)(iii), which limits commitment by the guardian to ten days, and Sec. 13.26.142(f), requiring commitment by a court to follow statutory involuntary commitment procedures, it appears that commitment is not a power of the guardian. This should be clarified and clearly stated as to prevent the guardianship statute being used for commitment purposes. In addition, the ten day temporary commitment (which may be to an institution) solely on the guardian's application must be viewed in light of Bartley v. Kremens, requiring a probable cause hearing within 72 hours subsequent to a substituted voluntary consent admission. (Soskin)

My review was done with particular attention to the issue of partial or limited guardians to serve as surrogate parents as required under state regulations and P.L. 94-142. Does this legislation adequately cover partial guardianship for educational purposes only, for appointment of a surrogate parent to oversee appropriate (special education placement in the least restrictive setting) alternative and appropriate services according to an Individualized Education Program? (Buck)

Throughout pages 8, 9, and 10 the requirements were too stringent for partial guardians or wards in a surrogate parent-student relationship. Again, I am thinking of lesser handicaps than complete incapacitation. (Buck)

The general focus has correctly moved to the adequacy and appropriateness of education programs. This should be reflected in the bill. (Bailey)

Is the guardian financially responsible for the ward like a parent is? This question is of great concern to parents and potential guardians. (Bailey)

In reference to the target population and definition. Might be better to use term "grave disability" and define it: "inability to provide self with food, clothing, or shelter". (Robison)

I have some problem with the length and complexity of the proposed legislation. Some of this problem stems from a dislike of over-regulation and denial of the discretionary function of the court which is implicit in the length and complexity...It is more difficult to get a long complex bill through the legislature intact. There is much more room for someone with an ax to grind or some personal hang-up to give vent, thereby possibly affecting the whole piece of legislation. (Tennant)

I have four general concerns regarding the proposed legislation. First, although the bill would provide for an alternative to plenary guardianship, it does not explicitly provide the court with less intrusive means of protecting the health and safety of a partially incapacitated person. While Sec. 13.26.109 (b)(vii) requires the visitor to document what other courses have been explored, there does not appear to be a provision requiring the visitor to explore alternatives or authorizing the court to order that alternatives be explored. Without such provisions, I fear that the need for guardianship will remain an implicit presumption whenever a petition is filed. (Van Duizend)

Second, I am disturbed by the pattern of linking guardianship and hospitalization. The misuse of guardianship as a means of circumventing civil commitment procedures has been documented by a number of commentators. While the draft does propose a number of safeguards, I fear that provision like 13.26.109(b)(ii) and 13.26.115 (b)(iii) will contribute to the assumption that individuals for whom a guardian has been appointed require hospitalization or placement in a supervised facility. (Van Duizend)

Third, as noted in the draft, I am unclear about the relationship between the provisions regarding personal guardianship and those already in the Alaska Code on conservatorship. The draft muddles the distinctions between guardianship and conservatorship duties and would establish different criteria and procedures for imposing restrictions on a person's legal capacity to act in non-financial areas from those applicable to imposing a conservatorship. This distinction, in my opinion, is not warranted. (Van Duizend)

Finally, as I have indicated previously to Ms. Truran, a public guardianship agency has a high potential for becoming yet another overworked, understaffed and unresponsive social services department that can easily be subverted into becoming a rubber stamp for directors of residential facilities. Obviously this may be too bleak a portrait, and I am not familiar with Alaska's experience, but I urge you to consider other alternatives. The model act which this project is preparing provides for use of the funds which would have been allocated to the public guardian agency to compensate citizen volunteers appointed by the court. Recruitment of a pool of volunteers would be the duty of a state Guardianship/Conservatorship Oversight Commission. To diminish the likelihood that appointment as a guardian or conservator may become a patronage plum and to assure an individualized relationship between the volunteer and the partially disabled or disabled person whom the volunteer is serving, no individual may be appointed to serve as limited personal guardian, personal guardian, limited conservator or conservator for more than two persons, and no corporation may be appointed as volunteer public conservator or volunteer public trustee in more than 10 cases. In addition, the Oversight Commission would be responsible for assuring the fairness of the appointment process and for providing training programs for public and private guardians and conservators. (Van Duizend)

CONTRIBUTORS OF COMMENTS ON FIRST GUARDIANSHIP DRAFT

Aronson, Mary, Ad Hoc Member, Legislative Committee

Bailey, Helen, President, P.A.D.D., Inc.

Buck, Marsha, Director of Special Education, Ketchikan Gateway Borough School District, Council member

Carey, Carol & Omer, consumers, members of ASARC

Endicott, Marion, Council member, consumer

Herr, Stanley, visiting scholar, Harvard Law School

Jacobs, Ludy, P.A.D.D., Inc., Board of Directors

Lobosco, Gerard S., Director, Oregon Developmental Disabilities Advocacy Center

Robison, Mason, Superintendent, API

Senner, Pat, former Council staff, now of P.A.D.D., Inc., Board of Directors

Soskin, Ronald M., Staff Attorney, The National Center for Law and the Handicapped, Inc.

Tennant, Bruce, Assistant Attorney General

Van Brocklin, Thomas, Program Coordinator, Cordova Community Hospital

Van Duizend, Richard, Assistant Director, DD Legislative Project, American Bar Association

Weed, Roger O., Executive Director, Hope Cottages

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

February 9, 1979

Dorothy Truran
Governor's Council on the Handicapped
and Gifted
University Plaza Offices West
Suite C
600 University Avenue
Fairbanks, Alaska 99701

Re: Guardianship legislation

Dear Dorothy:

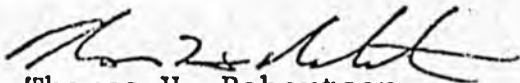
Attached is a series of comments on the final draft of the legislation that you have proposed relating to guardianships. The comments are largely technical in nature and do not address significant questions of policy in much detail.

The immediate problem with this draft is its obvious cost. I might add that the creation of a public guardian, in which we are most interested, could be effectively accomplished without many of the ancillary services provided in this draft.

I am sure we will be discussing this matter in the near future.

Very truly yours,

AVRJM M. GROSS
ATTORNEY GENERAL

By: 
Thomas H. Robertson
Assistant Attorney General

THR:vr

Attachment

Sec. 13.26.005(2): The language "more likely than not to occur. . ." would appear to prescribe a lesser burden of proof than the clear and convincing standard set forth later in the bill.

Sec. 13.26.005(8): The definition of visitor requires an individual with, perhaps, full-time expertise. See my comments at sec. 13.26.106.

Sec. 13.26.090: It is not clear to me why "adaptive" does not fall within "mental" or "physical" limitations.

Sec. 12.36.095(e): This language would appear to eliminate the possibility of appointing a partial guardian by will. The phrase "subject to the authority of the court to modify the scope of guardianship or to be removed . . ." lacks parallelism. *right -*

Sec. 13.26.105(a): Why not refer to "the person alleged to be incapacitated" rather than to the "alleged incapacitated person".

Sec. 13.26.105(b): Why require the age of the petitioner in subsection (1)? Subsections (3) and (6) might be combined. The reference to "protection and assistance" is addressed at AS 13.26.160(b). Is subsection (a) intended to mandate the listing of all persons who might be helpful? *no problem* *useful*

Sec. 13.26.105(c): The present wording of this subsection implies that a temporary guardian may not be sought by motion. The reference to amendment of the petition seems unnecessary at this point. Perhaps another provision should state the general rule that petitions may be amended as a matter of course. *changed* *not needed*

Sec. 13.26.106: This section leaves me somewhat confused about the roles of the various appointed persons; the attorney (sec. 13.26.106(b)), the visitor (sec. 13.26.106(c)), and the guardian ad litem (sec. 13.26.113). In the past the positions of guardian ad litem and visitor have often been combined. This would no longer be possible. The visitor is given what appears to be inappropriate authority to consent to examination in a medical facility. This should be the responsibility of the guardian ad litem whose job it is to represent the best interests of the proposed ward. It should also be recognized that the visitor will have to be a qualified medical practitioner in order to give the opinion testimony referred to in subsecs. 13.26.109(c)(5) & (7). *changed*

Sec. 13.26.108(a): Subsection (a)(1) appears to largely restate sec. 13.26.106(d). What does "immediately" mean in sec. 13.26.108(a)(4)(A)? Is sec. 13.26.108(a)(4)(B) intended to require the naming of an attorney whenever the visitor is not aware of representation? *ok*

*deleted
160*

Sec. 13.26.108(b): My immediate reaction is to ask why the visitor cannot be trusted. The reference to subsection one should be to subsection (a)(4).

of deleted

Sec. 13.26.109(a): The visitor's report must be filed within 45 days from the filing of the petition yet sec. 13.26.106 does not set forth any time limitation within which the court must appoint the visitor. Even 45 days may be inadequate given the necessity to schedule, conduct, and prepare the reports required by the proposed bill.

changed to 90 days

Sec. 13.26.109(c): I am a little unsure of who has consented to the various tests referred to in subsection (c)(1). This subsection appears to demand a great measure of professionalism. Subsection (c)(12) gives rise the question of what are the "costs incurred through guardianships"?

who does now? expert to examine if that's a problem & refer to have tests

no diff. from probate { questions answered on an ad hoc basis

Sec. 13.26.110(b): It might be helpful to further describe this privilege. Might it be waived by the court in, for example, children's proceedings relating to the wards child. Such proceedings are also confidential.

Sec. 13.26.110(c): What is an "evaluative" interview? I would think any interview by the visitor would be evaluative. I would also think this modifier could be stricken if the right is to be conferred.

deleted evaluative

Sec. 13.26.110(d): Such requests should be required, say, five days before the hearing to obviate the scheduling difficulties associated with professional witnesses.

changed

Sec. 13.26.111. This section merely restates the common law of evidence and is therefore unnecessary. The (a) does not appear to be needed.

deleted

Sec. 13.26.112: The duties of an attorney are, in my view, adequately addressed in the Code of Professional Responsibility. If it is necessary to tell an attorney in a statute what his duties are toward his client then the profession is indeed in a sorry state. This section creates confusion, moreover, by dictating that the attorney must pursue the proposed wards "interests" since the "best interests" of the proposed ward as opposed to his wishes, would ordinarily be represented by the guardian ad litem.

Sec. 13.26.113(a): It is not clear who, other than the attorney, may request a guardian ad litem.

Sec. 13.26.113(b): The requirement that the guardian ad litem "advise counsel accordingly" should, perhaps, be changed to require advice of the situation to the court and counsel of all of the parties.

changed

Sec. 13.26.113(c): If this section does not create a conflict of interest for the attorney than why do we need a separate guardian ad litem at all? Since an attorney shall be appointed pursuant to sec. 13.26.106(b), why not leave it up to the attorney to act as guardian ad litem until he, the court, or some other party determines that a conflict exists.

Don't want this all the time but if necessary & if operation that way to be

Sec. 13.26.114(a). This subsection should be changed to add ". . . unless the time is extended by the court for good cause shown." When you consider that the visitor has 45 days, and the petitioner and ward have 10 days, 3 days each for mailing equals 61 days. Also the possibility of more than 10 days to respond per sec. 13.26.109(d) may take the time past 60 days.

agree

Sec. 13.26.114(b)(7): If this means that the Rules of Civil Procedure shall apply then it should say so. Otherwise it is difficult to understand what it means or why it was included.

ok

Sec. 13.26.114(b)(8): I have not, frankly, researched the question of whether a jury trial is constitutionally mandated. If it is not then many would prefer these cases to be decided by the court.

all handling more authorities 40% so leave it

Sec. 13.26.114(c): The reference to constitutional guarantees is unnecessary surplusage. The clause relating to the burden of proof may be in conflict with sec. 13.26.005(2).

ok

Sec. 13.26.114(d): The proposed statute should be more specific as to which determinations are to be made by the jury, and which are to be made by the court if sec. 13.26.114(b)(8) is to be retained. This subsection places authority in the judge and begs the question of what authority remains with the jury.

laid out + clear in 8-only issue of incapacity doesn't beg question

Sec. 13.26.115(b): What happens if the court is informed at the time of the hearing?

so what does what's necessary

Sec. 13.26.115(c): Should the court talk to the treating physician on an ex parte basis?

No what does Rick think? ex parte no - not as a rule

Sec. 13.26.116(a)(2): The quantum of proof is redundant if the second clause of sec. 13.26.114(c) remains in the statute.

ok

Sec. 13.26.118: The requirements of this section will prove burdensome to many potential guardians, and will make it more difficult to gain their services. Perhaps the court could be given discretion to impose those controls which seem most appropriate under the circumstances.

shortened and streamlined

Sec. 13.26.125: The word contempt is misspelled on line 12.

corrected

Sec. 13.26.130: Which agency of the state is to bear these costs?

not specified

Sec. 13.26.135(c): Is this intended to require a listing of all rights of the various parties?

no

Sec. 13.26.145(b): At line 15 "service" should be modified by "substantial" to conform to line 12.

ok changed

Sec. 13.26.150(c)(2), (3), & (4): Are these sections intended to impose liability if the guardian fails to "assure" comfort, maximum possible growth, and other rights. Perhaps the guardian should be required to diligently pursue these goals.

no

Sec. 13.26.150(c)(b)(6): At line 24 "incompetant" should be changed to "incapacitated" to conform to Sec. 13.26.090.

ok
languages
same as existing
statute

Sec. 13.26.150(d): The section concerning the reasonableness of expenditures is redundant.

Sec. 13.26.160: This section obviously involves a significant policy decision. It seems to create a section of state government devoted to adult rehabilitative services. If this does not now exist, the requirement that these services be provided is meaningless. Are there good reasons for limiting the right to services to persons committed under this section? What about others in similar circumstances for whom court intervention proved unnecessary?

section
deleted

Sec. 13.26.195(d): At line 3, "special guardian" should be, I believe, "special conservator."

ok
changed

Sec. 13.26.200(b): The first clause of this subsection is largely unintelligible.

Sec. 13.26.218: Why not look to the ward's estate for payment of the bond. It would make little sense in many cases to look first to the state.

no protection
at all if you
do this?

Sec. 13.26.505: This section goes beyond what is immediately necessary in the State of Alaska. The assistance referred to in this section would be necessary, however, if the remainder of this proposal is enacted. The problem here is financial. The word "guardianship" is misspelled on line 15.

streamlined
and deleted
some of the
responsibilities

Sec. 13.25.510: The Alaska Court System, of course, opposes this section. It is doing its best to divert itself of comperable responsibilities.

until it does
this is appropriate
placement

Sec. 13.26.535(1): If this is a reference to the power to adopt regulations under AS 44.62 then that grant of authority should be stated. If the reference is to the adoption of internal operating procedures than the section is unnecessary.

deleted(1)

Alaska State Legislature

HB 572 file

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901



Senate

CHAIRMAN
SENATE JUDICIARY COMMITTEE
IMMEDIATE PAST CHAIRMAN
WESTERN CONFERENCE - COUNCIL OF
STATE GOVERNMENTS

VICE CHAIRMAN
SENATE RULES COMMITTEE

MEMBER
SENATE STATE AFFAIRS COMMITTEE
SENATE COMMITTEE ON COMMITTEES
LEGISLATIVE COUNCIL
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

POUCH V
JUNEAU, ALASKA 99811

February 22, 1980

Ms. Joyce Rolloff
Code Revision Commission
Pouch Y
Juneau, Alaska 99811

Re: SB 54 and SB 58

Dear Ms. Rolloff:

Notwithstanding the Chairman's lack of enthusiasm for the captioned bills, they will nonetheless be called up for a hearing on Tuesday, March 4, at 1:30 in the Beltz Committee Room.

The limited guardianship bills (SB 339 and HB 572) are great in terms of concept but lousy in terms of form. I had suggested to Representative Parr that he could save his Judiciary Committee and himself one helluva lot of work were we to enlist the aid of the Code Revision Commission ab initio. He feels he is committed to bringing out a bill this year. Therefore, at such time as he has done his homework, I think, if your commission is willing, that I'll ask you to get into the act prior to the time Senate Judiciary goes to work on the bill.

This is one of those bills that needs all the help it can get.

Thank you for lunch.

Here is a copy of the International Will Act letter (SB 54), which I spoke about the other day.

Regards,

BLZ

Robert H. Ziegler, Sr.

RHZ:lk

cc: Senator Rodey
Representative Parr

Farr

"An act related to Guardians and Conservators and providing for an effective date."

Public Need

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. HB 572 would be effective in improving the availability of guardianship services for handicapped individuals. This is particularly relevant for persons for whom a partial guardian is most appropriate so that an individual's rights are limited only in areas of incapacity. This is consistent with the Department's overall goal of providing human services support to Alaskans who have long-term dependency needs.

Suggestions for Improvement

Page 1: On line 28, the addition of "pastoral care" would enable the court to appoint a minister to serve as a visitor. This would be especially useful with regard to rural Alaska.

Page 11: On line 18, after determination add "shall consult with appropriate medical experts and". This addition will assure that the health aspects are adequately considered with regard to psychotropic medications.

Page 19: Removal of the word "solely" from line 26 would increase the number of private associations that could be appointed as guardian.

Page 20: Adding on line 28 a new priority "(5) a private association with an active guardianship program" would enable fraternal organizations or churches to take on a guardianship responsibility. "Public guardians" would become priority (7).

Other Discussions

1) COMPENSATION The concept of compensation for day to day expenses of a private guardian for his/her services should be addressed. Such compensation is addressed on page 22 for a "full guardian for whom a conservator has also been appointed" and is addressed on page 28 for the "public guardian". It seems this issue should be addressed for the private guardian in other circumstances as well.

2) INFORMATION AND REFERRAL The task on page 26, lines 12-16 is an information and referral service. A statewide service of this type is needed by many aspects of Alaska's service network. If the responsibility for this were assigned to and funded through a more generic agency, the public guardian, as well as dozens of other agencies, could take advantage of it. Removal of "develop and" from line 12 would seem appropriate.

The Department supports passage of this bill.

Approved by: *Alan J. Beind*
Commissioner
Department of Health and Social Services

Date: *2/5/80*

Introduced: 1/18/80
Referred: Judiciary

1 IN THE HOUSE

BY PARR

2 HOUSE BILL NO. 572

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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 article 3 to
8 read:

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

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

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

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

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

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

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

1 relationship to the respondent;

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

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

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

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

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

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

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

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

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

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

and complete

7

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

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

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

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

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

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

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

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

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

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

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

1 the alleged incapacity before proceeding with the interview;

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

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

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

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

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

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

25 (c) The evaluation report shall include

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

1 based;

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

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

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

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

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

17 (7) a summary of the information which

18 *add*
19 (A) was supplied by the persons described in (6) of this
subsubsection; and

20 (B) supports the conclusions of the report;

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

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

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

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

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

7 (1) potential guardians;

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

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

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

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

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

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

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

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

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

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

- 17 *Amend* (1) personal interviews with the ward or respondent;
18 (2) explaining, if possible, to the ward or respondent in
19 terms which the ward or respondent can understand, the nature and
20 possible consequences of the proceeding, the alternatives which are
21 available, and the rights to which he is entitled;
22 (3) securing and presenting evidence and testimony and offer-
23 ing arguments to protect the ward's or respondent's rights and to
24 further his interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 tionship;

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

4 (3) adopts a guardianship plan.

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

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

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

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

(A) the wishes of the ward;

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

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

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

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

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

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

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

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

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

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

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

6 (1) the court orders it;

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

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

11 (4) the guardianship is terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) the spouse of the incapacitated person;

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

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

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

29 (6) the public guardian.

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

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

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

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

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

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

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

1 ward;

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

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

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

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

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

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

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

4 (e) A guardian may not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ARTICLE 6. PUBLIC GUARDIANS.

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

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

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

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

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

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

22 (c) The public guardian shall

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

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

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

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

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

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

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

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

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

17 (d) The public guardian may

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 in AS 13.26.360 - 13.26.420.

2 * Sec. 20. AS 13.26.110 and 13.26.130 are repealed.

3 * Sec. 21. TRANSITION. No later than July 1, 1983, all guardianships for
4 incapacitated persons established before July 1, 1980, and in effect on
5 July 1, 1980 shall be reviewed by the court. Until the review, a guardian
6 appointed before July 1, 1980, whose guardianship is still in effect on
7 July 1, 1980, shall retain the powers assigned to him, unless a petition for
8 modification under AS 13.26.125 amended by sec. 8 of this Act is granted.
9 Before the review, the guardian shall submit one report in the form pre-
10 scribed in AS 13.26.118 added by sec. 6 of this Act.

11 * Sec. 22. This Act takes effect July 1, 1980.

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Introduced: 1/18/80
Referred: Judiciary

Revisions

1 IN THE HOUSE

S.B. 339-4-50
HOUSE BILL NO. 572

BY PARR

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 relationship to the respondent;

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

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

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

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

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

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

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

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

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

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

(b) If the respondent does not have or can not afford an attorney of his own choice, the court shall appoint and compensate an attorney to represent him in the proceedings.

(c) The court shall appoint a visitor as defined in AS 13.26.005(8). The visitor shall arrange for evaluations to be performed and prepare a written report to be filed with the court. The court shall also appoint an expert who has expertise in regard to the alleged or admitted incapacity to investigate the issue of incapacity.

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

(e) Interviews and examinations shall take place in the respondent's usual residence unless

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

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

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

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

(2) serve a copy of the petition on the respondent in accordance with the procedure described in AS 13.06.110;

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

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

the alleged incapacity before proceeding with the interview:

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

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

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

(b) A substantive interview of the respondent or other investigation may not be conducted until (a) of this section has been satisfied.

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

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

(c) The evaluation report shall include:

(1) a release statement from the respondent for each evaluation before the evaluation is conducted.

(2) the results and analyses of medical and other tests and examinations performed which describe the respondent's mental, emotional, physical, and educational condition, adaptive behavior and social skills, and which specify the data on which the description is

based;

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

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

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

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

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

(8) a summary of the information which

(A) was supplied by the persons described in (7) of this subsection;

and copies of all reports prepared by qualified professionals conducting evaluations described of (4), (5), and (6) of this subsection; and

(B) supports the conclusions of the reports;

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

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

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

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

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

(1) potential guardianship;

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

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

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

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

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

(b) Statements of a ward or respondent in the course of evaluations, examinations, and treatment under AS 13.26.090. - 13.26.155 are privileged, (and) confidential, and shall be sealed and not admissible without the ward's or respondent's consent in any civil or criminal proceedings other than proceedings under AS 13.26.090 - 13.26.155. A ward or respondent at all

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

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

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

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

(1) personal interviews with the ward or respondent, the first contact with the respondent shall be at least two weeks prior to the hearings;

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

(3) securing and presenting evidence and testimony and offering arguments to protect the ward's or respondent's rights and to further his interests.

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

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

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

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

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

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

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

(c) The attorney may not (also) be the guardian ad litem for the ward or respondent. (If there is 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.)

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

- (1) present evidence on his own behalf:

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

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

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

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

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

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

(g) If it is necessary to appoint a partial or full guardian, the court shall take into consideration and give priority to any preference the respondent may have.

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

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

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

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

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

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

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

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

1 tionship;

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

4 (3) adopts a guardianship plan.

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

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

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

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

11 (A) the wishes of the ward;

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

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

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

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

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

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

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

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

(d) The duration of the term of guardianship shall be determined by the court order. Upon receipt of a report or other information that requires further consideration, the court may order a review hearing if it determines that the hearing is in the best interests of the ward. In any case the court shall review the guardianship plan and relationship every two years.

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

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

- (1) the court orders it;
- (2) there is a significant change in the capacity of the ward to meet the essential requirements for his health and safety or to protect his rights;
- (3) the guardian resigns or is removed; or
- (4) the guardianship is terminated.
- (5) the ward requests one.

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

- (1) the name and address of the ward and the guardian;
- (2) the ward's present mental, physical, and social conditions and present living arrangements, and the ward's opinion of such arrangements.
- (3) changes in the capacity of the ward to meet essential requirements for his physical health and safety;
- (4) the services being provided to the ward;
- (5) the significant actions taken by the guardian during the reporting period in regard to his ward;
- (6) a financial accounting of the estate which has been subject to the possession or control of the guardian;
- (7) a list of the number and nature of all contacts between the guardian and ward.

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

Sec. 13.26.131. COSTS IN GUARDIANSHIP PROCEEDINGS. (a) The state shall bear the costs of the visitor and expert appointed under AS 13.26.106(c).

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

costs of the attorney appointed under AS 13.26.106(b), of the expert appointed under AS 13.26.112, and of other court and guardianship costs incurred under this chapter.

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

(d) If the respondent is found incapacitated the petitioner shall pay all costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) If the court determines that a temporary guardian should be appointed, it shall make the appointment for a period of not more than six months and not renewable and grant to the guardian only the authorities that are least restrictive upon the liberty of the respondent and which enable the temporary guardian to provide the emergency services necessary to protect the respondent from serious injury, illness, or disease.

(e) The temporary guardianship shall expire at the time of the appointment of a full or partial guardian or upon the dismissal of the petition for guardianship or at the end of six months, whichever is first.

(f) If no guardianship petition is pending but the court is informed of a person who is apparently incapacitated and in need of emergency life-saving services, the court may authorize the services upon determining the delay until a guardianship hearing can be held would entail a life-threatening risk to the person.

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) the spouse of the incapacitated person;

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

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

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

29 (6) the public guardian.

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

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

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

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

(c) A full guardian of an incapacitated person has the same powers and duties respecting his ward that a parent has respecting his unemancipated minor child except that the guardian shall not be financed for the ward from his or her personal assets, is not liable to third persons for acts of the ward solely by reason of the parental relationship. Except as modified by order of the court, a full guardian's powers and duties include, but are not limited to, the following:

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

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

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

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

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

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

(c) A full guardian of an incapacitated person has the same powers and duties respecting his ward that a parent has respecting his unemancipated minor child except that the guardian shall not be financed for the ward from his or her personal assets, is not liable to third persons for acts of the ward solely by reason of the parental relationship. Except as modified by order of the court, a full guardian's powers and duties include, but are not limited to, the following:

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

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

ward;

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

(4) he shall assure through the initiation of court action and other means that the ward enjoys all personal, civil, and human rights to which the ward is entitled, but in the event that such action arrives out of conflict of interest between the ward and guardian the ward may, with the court approval contract with an attorney to represent him in such action.

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

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

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

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

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

(e) A guardian may not

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

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

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

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

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

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

(7) prohibit the ward to register or cast ballot at public election

(8) prohibit the ward from applying for and obtaining a drivers license

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

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

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

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

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

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

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

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

22 ARTICLE 6. PUBLIC GUARDIANS.

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

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

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

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

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

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

22 (c) The public guardian shall

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

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

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

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

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

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

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

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

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

17 (d) The public guardian may

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 in AS 13.26.360 - 13.26.420.

2 * Sec. 20. AS 13.26.110 and 13.26.130 are repealed.

3 * Sec. 21. TRANSITION. No later than July 1, 1983, all guardianships for
4 incapacitated persons established before July 1, 1980, and in effect on
5 July 1, 1980 shall be reviewed by the court. Until the review, a guardian
6 appointed before July 1, 1980, whose guardianship is still in effect on
7 July 1, 1980, shall retain the powers assigned to him, unless a petition for
8 modification under AS 13.26.125 amended by sec. 8 of this Act is granted.
9 Before the review, the guardian shall submit one report in the form pre-
10 scribed in AS 13.26.118 added by sec. 6 of this Act.

11 * Sec. 22. This Act takes effect July 1, 1980.

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page 4, line 13 delete

Introduced: 1/18/80
Referred: Judiciary

*page 17A, (6) - typos
page 22, line 17+18 typos*

1 IN THE HOUSE

2 CS for HOUSE BILL NO. 572

~~BY FARR~~
By House
Judiciary

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

*page 28, line 9
has appointed*

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

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

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

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

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

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

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

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

26 (8) "visitor" means a person trained or experienced in law,
27 medical care, mental health care, education, rehabilitation, ~~or~~ social
28 work, ^{or PASTORAL CARE} who is an officer, employee, or special appointee of the court with
29 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 article 3 to
8 read:

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

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

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

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

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

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

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

1 relationship to the respondent;

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

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

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

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

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

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

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

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

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

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

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

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8 (c) The court shall appoint a visitor as defined in AS 13.26.-
9 005(8). The visitor shall arrange for evaluations to be performed and
10 prepare a written report to be filed with the court. The court shall
11 also appoint an expert who has expertise in regard to the alleged or
12 admitted incapacity to investigate the issue of incapacity.

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

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

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

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

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

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

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

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

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

1 the alleged incapacity before proceeding with the interview;

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

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

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

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

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

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

25 (c) The evaluation report shall include

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

1 based;

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

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

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

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

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

17 (7) a summary of the information which

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

20 (B) supports the conclusions of the report;

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

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

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

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

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

7 (1) potential guardians;

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

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

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

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

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

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