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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

(1) personal interviews with the ward or respondent. Unless good
cause exists for the contrary, the first contact with the ward or
respondent shall be at least two weeks prior to the hearing.

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;

(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 any preference the ward may have.

(h) ~~(g)~~ 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

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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. ^{require A MEDICAL EXAMINATION}
_{if necessary} ↑ AND

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 psych-
23 tropic medication during the judicial proceeding determining capacity,
24 the trier of fact shall take that fact into consideration in making its
25 determination.

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

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

1 tionship;

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

4 (3) adopts a guardianship plan.

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

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

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

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

11 (A) the wishes of the ward;

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

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

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

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

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

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

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

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

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

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

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

6 (1) the court orders it;

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

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

11 (4) the guardianship is terminated; ~~or~~

12 (5) *the WARD requests ONE.*

(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; *AND the WARD'S OPINION OF*
17 *SUCH ARRANGEMENTS;*

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

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

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

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

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

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

29 Sec. 13.26.131. COSTS IN GUARDIANSHIP PROCEEDINGS. (a) ^{Subject to (d) of this section, the} The state
shall bear the costs of the visitor and expert appointed under AS 13.26.-
106(c). AND (d)

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

14
15 * Sec. 7. AS 13.26.120 is amended to read:

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

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

28 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR
29 TERMINATION OF GUARDIANSHIP [INCAPACITY]. (a) On petition of the ward,
30 the guardian, or any person interested in the ward's [HIS] welfare, the
31 court may (1) review and amend a decision of a guardian; or (2) if
32 alternatives which are less restrictive than guardianship or less re-
33 strictive than the existing guardianship plan would assist the ward in
34 meeting his essential requirements for physical health and safety,
35 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

Sec. 13.26.130 COURT RECORDS OF PROCEEDINGS; ACCESS; SEALING. (a) Notice of the filing of the petition, a summary of all formal proceedings, the dispositional orders and any modification or termination thereof regarding a proceeding under this chapter shall be available for public inspection. All other information contained in the court records shall be privileged and available only to the following persons:

- (1) the subject of the record, his attorney or guardian ad litem;
- (2) a person to whom the release of the information has been consented to by the subject of the record;
- (3) the subject's guardian or his attorney;
- (4) the subject's conservator or his attorney;
- (5) any party to the proceeding and his attorney;
- (6) the judge or judges hearing or reviewing the matter; and
- (7) a member of the clerical or administrative staff of the court when access is essential for authorized internal administrative purposes.

In all other cases such privileged information shall be available for inspection only upon court order for good cause shown.

(b) Upon finding that a petition was malicious, frivolous, or without just cause, the court may order all information contained in the court records be sealed, and that they be disclosed only upon court order for good cause shown.

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;

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Sec. 13.26.130

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 ~~or~~ (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~~ **or nonprofit corporation with a** 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 private nonprofit corporation} ~~an~~ 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;

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

(7) the public guardian.

1 (e) The priorities established in (d) of this section are not,
2 binding, and the court shall select the person, ^{or nonprofit corporation that} ~~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-
cipated minor child except that a guardian is not liable either for
the care and maintenance of the ward, or to third persons for acts
of the ward solely by reason of the guardianship.

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 restric'ive
27 setting consistent with the essential requirements for the ward's physi-
28 cal health and safety;

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

ward;

(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;

(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 educa-

tion of the ward; however, he may not apply the ward's money or property for his services or for room and board which he, his spouse, parent, or child have furnished the ward unless, prior to payment, the court finds that the ward is financially able to pay and that the charge is reasonable; notice, if possible, of a request for payment approval shall be provided to at least one next of kin of the ward; 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.

(d) A ~~fiduciary~~ 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

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;

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

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

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:

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, *excluding information identifying*
~~regarding a particular case;~~

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 *Either*
8 a person who requests the appointment of the public guardian as his
9 guardian or conservator, *a ward for whom* ~~or for whom~~ *has* a court is considering the appoint~~ed~~
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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Datt

Charlie

HB 572 file

TO: Representative Russ Meekins
House Finance Committee

DATE: April 18, 1980

FROM: Marsha Buck, Chairperson *Marsha Buck*
Governor's Council for the Handicapped and Gifted
600 University Avenue, Fairbanks, Alaska 99701
Phone: 479-6507

RECOMMENDATION REGARDING FISCAL
NOTE FOR CSHB 572

In addition to the \$122,000 for travel, contractual, and commodities approved by the House Judiciary Committee, funds for the following personnel need to be included:

ANCHORAGE

Attorney III		Range 22-A
	Salary	\$40,320
	Benefits	
	@ 25.5%	<u>10,281</u>
		\$50,601
Legal Secretary I or Accounting Clerk		Range 10-B
	Salary	\$15,564
	Benefits	
	@25.5%	<u>3,968</u>
		\$19,532
TOTAL		\$70,133

RATIONALE: Personnel are essential in the first year to develop guardianship policies and procedures, provide assistance to court administrators in all judicial districts serving as public guardians, and to serve as public guardian for the approximately 30 individuals already under the court's jurisdiction plus an additional 50 to 80 individuals for whom the court system will probably be appointed as public guardians in F 81. This initial staffing is consistent with other states which have similar public guardianship statutes. Without these additional personnel the court system will be unable to carry out the guardianship responsibilities required in the proposed CS HB 572.

CC: Representative Charlie Parr, Chairman
House Judiciary Committee

Dot To

file copy

TO: Representative Russ Meekins
House Finance Committee

DATE: April 18, 1980

FROM: Marsha Buck, Chairperson *Marsha Buck*
Governor's Council for the Handicapped and Gifted
600 University Avenue, Fairbanks, Alaska 99701
Phone: 479-6507

RECOMMENDATION REGARDING FISCAL
NOTE FOR CSHB 572

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CC: Representative Charlie Parr, Chairman
House Judiciary Committee

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LETTER OF INTENT

It is the intent of the House Judiciary Committee in passing out HB 572 that no additional personnel be authorized. Therefore, the Committee does not concur in the personal services section of the attached fiscal note.

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THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 572
Title An Act relating to guardians and Conservators
Requested by House Judiciary Date 3/26/80

II. FISCAL DETAIL

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

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

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		242.0	258.9	277.0	296.4	317.2
200 TRAVEL		20.0	22.0	24.2	26.6	29.3
300 CONTRACTUAL		90.0	99.0	108.9	119.8	131.8
400 COMMODITIES		4.0	4.4	5.0	5.5	6.0
500 EQUIPMENT		8.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		364.0	384.3	415.1	448.3	484.3

FUNDING (Thousands of Dollars)

GENERAL FUND		364.0	384.3	415.1	448.3	484.3
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		8	8	8	8	8
PART TIME						
TEMPORARY						

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

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

IV. DATE March 26, 1980 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

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FISCAL NOTE - HB 572

FY 81 BUDGET

	Salary 7/1-12/31/80	Salary 1/1-6/30/80	Total
Personal Services			
Anchorage:			
Guardians 2 @ Range 16	25,584	27,492	53,076
Acct. Clerk 1 @ Range 10	8,640	9,384	18,024
Fairbanks:			
Guardian 1 @ Range 16	14,790	15,840	30,630
Acct. Clerk 1 @ Range 10	9,768	10,566	20,334
Juneau:			
Guardian 1 @ Range 16	12,972	13,847	26,718
Acct. Clerk 1 @ Range 10	8,640	9,384	18,024
Ketchikan:			
Asst. Guardian 1 @ Range 14	11,100	11,970	<u>23,070</u>
			189,876
Benefits: 8 Employees: Health \$12,192, ASB \$11,582, Variable \$28,311			<u>52,085</u>
Total Personal Services			<u>241,961</u>
Travel: Quarterly visits to all incapacitated persons			20,000
Contractual: \$40,000 for contractual guardians & visitors. \$50,000 for Respondent Attorneys			90,000
Commodities & Equipment: 8 employees at \$1,500			<u>12,000</u>
	Total Cost		<u><u>\$363,961</u></u>

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 572
 Title An Act relating to guardians and conservators
 Requested by House Finance Committee Date 4/21/80

II. FISCAL DETAIL

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

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

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		0	0	0	0	0
200 TRAVEL		20.0	22.0	24.2	26.6	29.3
300 CONTRACTUAL		90.0	99.0	108.9	119.8	131.8
400 COMMODITIES		4.0	4.4	5.0	5.5	6.0
500 EQUIPMENT		8.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		122.0	125.4	138.1	151.9	167.1

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		122.0	125.4	138.1	151.9	167.1
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME		0	0	0	0	0
PART TIME						
TEMPORARY						

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

*Partial guardianships
 Least restrictive alt.
 Due process
 Guarantee of rights
 Conflict of interest²⁵
 Public guardian*

APPROVED:

Oral Freeman
 Oral Freeman, Vice-Chairman
 House Finance Committee

IV. DATE 4/21/80

PREPARED BY

Original: Legislative Finance
 cc: Budget, and Management
 Prime Sponsor (First Legislator Named)

AGENCY _____
 PHONE 465-3795

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 572
 Title Guardianship Bill
 Requested by House Judiciary Date February 9, 1980

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

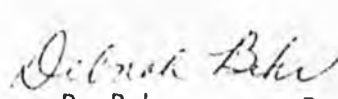
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) _____


 Prepared by: D. Behr Date: February 9, 1980
 Division/Office: Commissioner's PH: 465-3030
 Department of Health & Social Services

Analysis of

"An act relating to guardians of
incapacitated persons and creating
an office of public guardian."

Prepared by

Roger VanWagoner
Executive Director
December 17, 1979

Section 4 AS 13.26.095

(e) recommendation: Incorporate language where a testamentary guardian has to be confirmed by the court.

comment: Wills very often become outdated and circumstances change. As a matter of course it would be good practice to require confirmation of a testamentary guardianship.

Section 12.26.106INITIAL COURT PROCEDURES

(b) recommendation: Add provision so that if the alleged incapacitated person cannot afford an attorney, an attorney is appointed by the court, and those costs are paid for the alleged incapacitated person.

Section 13.25.109VISITOR'S REPORT

(c)(3), (4), (5)

recommendation

and comment: The kind of judgement and recommendations required in these three sections are probably beyond the professional skill of the visitor. Say, for example, a social worker were to play this role. It would be very easy for recommendations to be made regarding mental health treatment that the social worker did not understand and could not represent, even if a qualified psychologist or psychiatrist had evaluated the alleged incapacitated person. This information will ultimately be the basis for the court's finding. The visitor can certainly provide coordination to bringing the information to the court, but somehow, their sphere of influence or ability to make recommendations should relate specifically to their technical skill and training.

Section 13.26.109 (continued)

(c) (6)

recommendation: Include language that requires a written release from the alleged incapacitated person.

comment: At this point in the process the alleged incapacitated person is not a ward, but is still only alleged to be incapacitated. Unless we are willing to concede that anyone who is alleged to be incapacitated is summarily assumed to have such incapacity until it is proven, then there should be some safeguards for protecting very confidential information.

Section 13.26.110 EVALUATIONS

(b) recommendation: Add strength here to the requirement of confidentiality by making provision for sealing of records or some other means of protection.

comment: If these records are truly to be confidential, the best safeguard may be to simply order them sealed.

Section 13.26.111 DUTIES OF PROPOSED WARD'S ATTORNEY

(1) recommendation: Require that the first visit must have occurred at least 14 days before the hearing.

comment: Unless there is a requirement like this, it is so often the case where the attorney and the alleged incapacitated person meet at the door to the courtroom for the first time. This is not the kind of representation that we want but, in reality, it will on occasion result unless there is some type of requirement as suggested above.

Section 13.26.112APPOINTMENT OF A GUARDIAN AD LITEM

recommendation: This whole section needs further clarification.

comment: The role of a guardian ad litem is to represent and protect, using the best judgement of the guardian ad litem. On the other hand, an attorney is bound to represent the desires of the ward, regardless of whether the attorney agrees with the ward's viewpoint. Admittedly, there will be people who will not be capable of expressing any viewpoint whatsoever because of the severity of their disability. This section seems to be directed at meeting that need, providing a guardian ad litem to protect the rights of such a person. Unfortunately, the way this section is written, a guardian ad litem could be appointed for a person who can express their personal desires or points of view, but simply may need assistance in understanding all alternatives and sorting out the best alternative or alternatives. It would be unfortunate if this provision, really directed at more incapacitated people, were to trap them into not having the kind of unbiased representation that they have a right to. This section should be rewritten to narrow the circumstances under which it could be used. (c) provides that the guardian ad litem may also be the attorney. This is truly a contradiction of roles. It is not possible to expect an attorney, who must represent his client's point of view, to also be in the role of one who must interpret that point of view and in the final analysis use his own best judgement regardless of what the proposed ward might desire.

Section 13.26.113

HEARINGS

(h) recommendation: Include language that requires the court to give due regard or priority to a person the ward does or does not want to serve as guardian.

comment: Unless there is good cause shown, someone the ward does not want should not be appointed as guardian. Say, for example, the proposed ward does not get along with an adult brother or sister and does not want that person to serve as their guardian. The relationship between guardian and ward is extremely important and the court should be required to take these kinds of circumstances into account.

Section 13.26.115

PSYCHOTROPIC MEDICATION

(d) recommendation: Delete the word "may" following the phrase "the trier of fact" and insert the word "must" so that the phrase reads "the trier of fact must take into consideration in making its determination."

comment: There is legal precedent that requires this change. This kind of consideration is not optional but required. More information is available on this if requested.

Section 13.26.116

GUARDIANSHIP ORDER

(d) recommendation: Add to this section the requirement that there must be a review hearing at least every two years.

comment: This provides the checks and balances to minimally ensure that the guardianship/ward relationship is viable and working. The court should take a proactive role in ensuring this rather than just reacting if someone raises a problem.

Section 13.26.118REPORTING

(a)(5)

recommendation: Add a fifth subpart to (a) that states "if the ward requests one."

comment: The ward, being the subject of this entire process, ought to have the opportunity to request that his or her guardian report to the court or even request that a visitor do so.

(b)(2)

recommendation: Add the phrase to the end of that sentence "and the ward's opinion about such living arrangements."

comment: It is obvious that the ward's opinion in such a matter as where he lives can be extremely important to the court.

(b)(8)

recommendation: Add an eighth subsection to (b) that requires the guardian to list the number and nature of all actual contacts with the ward.

comment: For any successful guardian/ward relationship the court must be aware of the quantity and quality of interaction. If a guardian is not actively and dynamically involved with the ward, the court should be in a position to find this out.

Section 13.26.130COST IN GUARDIANSHIP PROCEEDINGS

recommendation: Add language whereby if the alleged incapacitated person wins, and is not found to be incapacitated (the petition is not sustained) the petitioner should have to pay all costs.

Section 13.26.130COST IN GUARDIANSHIP PROCEEDINGS (continued)

comment: If an alleged incapacitated person is dragged into court and forced to go through evaluations, and subject to the official proceedings of the court and then the petition is denied (not sustained by the court) there is no justification for requiring that person to pay for something he did not invite upon himself in the first place. The petitioner must bear the responsibility under such circumstances. This may, in fact, cause some potential petitioners to think twice and make sure there are good grounds before going to court.

Section 13.26.140TEMPORARY GUARDIANS

(a) recommendation: Add a limitation here so that a temporary guardian cannot serve in such capacity for more than six months.

comment: It is entirely possible that a person seeking to be guardian might decide that the court would not appoint them as a regular guardian and circumvent or seek to circumvent that eventuality by becoming appointed a temporary guardian. There does need to be some limitation of time for a person to serve as a temporary guardian.

Section 13.26.145WHO MAY BE GUARDIAN: PRIORITIES

(c)(1)

recommendation: Delete the word "intelligent" in the first sentence and change the word "reasonably" to "reasonable."

comment: Some judges may construe the word intelligent too strictly. What is necessary is that the proposed ward be able to make a "reasonable choice." Judges should not be trying to determine what intelligence is when it comes to making choices.

Section 13.26.145

(c)(i) comment: (continued)

Somewhere in this section the ward should have the opportunity to tell the court who he or she does or does not want as a guardian. This is the same concern as expressed in Section 13.26.113(h).

Section 13.26.150

GENERAL POWERS AND DUTIES OF A GUARDIAN

(c) recommendation: Include explicit provision whereby a guardian is not financially responsible for the ward out of his own financial assets.

comment: The way this is written, the guardian would be responsible out of his own personal assets for the needs of the ward. If this were the case, it would be even more difficult to get guardians than what it ordinarily is.

(c)(4)

recommendation: Add to the end of this sentence following the word "entitled" "but in the event that such action arises out of a conflict of interest between the ward and guardian, the ward may, with court approval, contract with an attorney to represent him in such action."

comment: With the full meaning and authority behind the principle of guardianship, it is not practical to expect in situations where a conflict arises between a ward and a guardian that the guardian is the best person to ensure that the ward enjoys personal, civil, and human rights. The necessity for this provision is obvious.

ction 13.26.150 (continued)

c) (6) (A)

recommendation: Following the word "duty at the end of the sentence, add the phrase "out of the ward's estate."

comment: It needs to be clarified here that the guardian is not liable out of his own assets.

e) (7)

recommendation: Add the word "vote".

comment: Reason obvious.

f) (8)

recommendation: Add the phrase "get a driver's license".

comment: Reason obvious

General Comment

In the whole, this proposed guardianship statute is extremely well developed. There are a number of technical suggestions for change and a few rather major changes, but the writer of this analysis is extremely pleased by the results of what must have been considerable effort put forth in the authorship of this statute. There is one other comment that must be made. There is no provision within this proposed statute for involuntary guardianship or conservatorship. It seems necessary and appropriate to have a procedure that does not require an adjudication of incompetency. Say, for example, a retarded person is having difficulty in dealing with their personal finances (in balancing their checkbook) and they know it and they ask for help. They should be in a position where they could choose someone they know they can work with and ask the court to appoint them to help in that capacity. If for some reason they reach the point where they don't get along with that person it would simply be a matter of firing them. This kind of flexibility would be very good for cases where the disability is mild or borderline.



GOVERNORS COUNCIL FOR THE HANDICAPPED AND GIFTED

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

POSITION PAPER
GUARDIANSHIP
January 1980

THE GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED SUPPORTS THE PASSAGE OF HB 572/SB 339.

A. RATIONALE

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

1. HB 472/SB 339 bases a determination of incapacity on an individual's functional limitations rather than on a "blanket classification" on the basis of medical diagnosis or existence of a disability (such as mental retardation).
2. HB 572/SB 339 provides strengthened due process protections to individuals thought to be incapacitated.

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

3. HB 572/SB 339 provides for partial or limited guardianship as well as full or plenary guardianship so that an individual's rights are modified only in those areas of incapacity.

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

4. HB 572/SB 339 strengthens court procedures and provides for a guardianship order and plan which specifically enumerates the responsibilities and powers of the guardian.

The Council feels that strengthening court procedures, providing for very specific guardianship orders, and requiring individualized plans are strong points of HB 572/SB 339. These requirements serve as additional protections to the individual who receives guardianship services as well as provide guidelines for all parties involved in guardianship hearings and providing guardianship services.

5. HB 572/SB 339 provides for an "office of public guardian" which has the responsibility to 1) serve as public guardian and 2) be a primary resource to locate private guardians and assist them in the performance of their duties.

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

6. HB 572/SB 339 sets priorities for appointment of private guardians (Sec. 13.26.145(d)).

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

7. HB 572/SB 339 locates the office of public guardian in the office of public administrator.

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

8. HB 572/SB 339 includes time limits within which guardianship hearings must be held.

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

9. HB 572/SB 339 requires that annual reports be submitted by the guardian to the court.

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

B. BACKGROUND INFORMATION

1. Guardianship Practices and Implications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Need for Guardianship Services

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

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

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

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

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

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

4. Funding Needed

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

REFERENCES

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

CURRENT STATUS OF GUARDIANSHIPS

Facility	# Patients	# with Guardians	# with Private Guardians	# with Public or Distnt. Guardians
Southcentral Region				
Harborview	90	37	26	11
Hope Cottages	126	3	1	2
Valley	6	2	2	0
Wesleyan	61	2	0	2
Glenmore	158	16	4	12
Careage House	43	1	0	1
Northern Region				
Careage North	73	8	6	2
Hope Center	25	6	5	1
Southeast Region				
Island View Manor	43	43	43	0
Wrangell General (long-term care)	14	4	0	4
Gateway	5	1	1	0
St. Ann's	21	2	1	1
TOTALS	665	125	89	36
Percent of Total Facility Population		19%	13%	6%

B

CURRENT NEED FOR GUARDIANS

Facility	# without Guardian	# which do not need Guardian	# needing Guardian	# needing Private Guardian	# needing Public Guardian
Southcentral Region					
Harborview	53	38	15	11	4
Hope Cottages	123	111	12	6	6
Valley	4	3	1	0	1
Wesleyan	59	3	56	35	21
Glenmore	142	81	61	3	58
Careage House	42	37	5	4	1
Northern Region					
Careage North	65	38	27	21	6
Hope Center	19	4	15	12	3
Southeast Region					
Island View Manor	0	0	0	0	0
Wrangell General (long-term care)	10	3	7	2	5
Gateway	4	0	4	1	3
St. Ann's	19	12	7	0	7
TOTALS	540	330	210	95	115
Percent of Total Facility Population	81%	50%	32%	14%	17%

PROJECTED NEED FOR GUARDIANSHIPS

Facility	Admissions (Approx. per yr.)	# needing Guardian	# needing Private Guardian	# needing Public Guardian
Southcentral Region				
Harborview	7	4	3	1
Hope Cottages	32	4	2	2
Valley	8	5	4	1
Wesleyan	38	36	22	14
Glenmore	36	17	1	16
Careage House	36	3	2	1
Northern Region				
Careage North	236	40	30	10
Hope Center	4	3	3	0
Southeast Region				
Island View Manor	17	17	17	0
Wrangell General (long-term care)	4	4	1	3
Gateway	0	0	0	0
St. Ann's	45	19	2	17
TOTALS	463	152	87	65
Percent of Total Admissions		33%	19%	14%

COURT INFORMATION ON GUARDIANSHIPS

District	1976*		1977*		1978**	
	Guardianships	Protective Proceedings	Guardianships	Protective Proceedings	Guardianships	Protective Proceedings
#1 (Juneau, Ketchikan, Sitka)	7	7	11	14	7	6
#2 (Nome)	1	2	1	1	1	2
#3 (Kodiak, Anchorage, Kenai)	10	100	5	88	2	83
#4 (Fairbanks, Barrow, Bethel)	0	16	2	23	0	15
TOTALS	18	125	19	126	10	106

* Calendar year

** First nine months

FISCAL IMPACT-GUARDIANSHIP

Alternatives for staffing and operations of Office of Public Guardian

	A	B	C
Personal Services	Attorney III (R 22) Social Worker III (R 16) or Admin. Assist. (R 16) Legal Secretary (R 10 or 11)	Attorney III Legal Secy	Admin. Officer II (R19) Legal Secy
Travel	quarterly visits to wards visitors location of private guardians	x x x	o x x
Contractual	office operations	x	x attorney fees
Materials/Supplies	office supplies, printing	x	x
Equipment	office equipment	x	x

Consideration needs to be given to the advantages and cost-savings resulting from utilization of an attorney to head the office of public guardian. An attorney could prepare legal forms and develop procedures, file petitions, and handle court appearances. Otherwise contracts with private attorneys will be required. Attorney fees range from \$75 to \$100 per hour. More time would be required for private attorneys to do preparation work than in one attorney was employed who specialized in guardianship matters.

FISCAL IMPACT-GUARDIANSHIP

Preliminary Analysis-1979

PERSONAL SERVICES		54,218
Admin. Officer II (R 19)	26,916	
Legal Secretary I (R 10)	<u>14,328</u>	
	41,244	
FICA-.0613% x 37,228	2,282	
PERS-17.70%	7,300	
Health Ins.-24m.x 141.32	<u>3,392</u>	
	54,218	

TRAVEL		24,300
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Quarterly visits to wards, visitor inquiries estimated @ 5 trips/month

Transportation-225/trip	13,500
Per Diem-60/day x 3 cays/trip	<u>10,800</u>
	24,300

Assumptions made:

- (1) Quarterly visitation requirement would be delegated to public administrator at the judicial district level.
- (2) Length of trip provides concurrent visitation with several wards.
- (3) No distinction is made in cost for visitor requirements as it is presumed quarterly visitation could not be fully complied with initially.

CONTRACTUAL SERVICES		151,055
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Telephone and tolls	7,200
Postage-correspondence	540
certified mail @ 15/mo @ 1.25	225
Copy machine	2,500
Printing-letterset, forms, pamphlets	3,700
Typewriter rental	4,380

Professional fees and services if current backlog of cases (210) were processed by public guardian office using private attorneys. (Court system estimates on 188 cases in first 4 months of FY 79 reflect average cost of \$525 per case: @14 hours attorney time, 2 hours hearing time before a Standing Master.)

	110,250
Expert testimony-Rules of Court specifications @ \$50/hour @ 2 hours/case	<u>21,000</u>

Psychiatric or other evaluative testing is arbitrarily estimated at 2 % of total caseload. Current costs vary from \$180-300 per case

	<u>1,260</u>
	151,055

COMMODITIES		1,200
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EQUIPMENT		2,400
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Exec. Desk,300; Secy desk,345; bookcase,81; legal files (2 4dr) 350; Exec. chair 141; Secy chair, 93; calculator, 220; transcriber, 465; dictating unit,465.

TOTAL PROJECTED FY 80 BUDGET REQUEST		\$233,212
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FISCAL IMPACT GUARDIANSHIP

As the present caseload in the courts for all guardianship cases is averaging 45-50 cases per month statewide, it is reasonable to assume the current backlog would more likely be dealt with over a two year period.

The budgeting alternative would be to provide funding as follows:

	<u>FY 80 A</u>	<u>FY 80 B</u>	<u>FY 81 (2)</u>
Personal Services	\$ 54,218	\$ 54,218	\$ 58,013(1)
Travel	24,300	24,300	26,730
Contractual Services	151,055	85,430	136,961(3)
Commodities	1,200	1,200	1,320
Equipment	<u>2,439</u>	<u>2,439</u>	<u> </u>
Total	\$233,212	\$167,587	\$223,024

Funding would be general funds allocated to the Court System.

- (1) FY 81 increase assumes maximum 7% increase in keeping with the President's guidelines.
- (2) Basic inflation 10% all other costs.
- (3) Assumes 170 cases (50% current backlog plus 65 projected additional).

While it is not feasible to identify specific amounts of federal funds which could be utilized to defray state costs, it is reasonable to assume certain programs would be appropriately billed for such costs, i.e.

Office of Ageing -- under requirements for advocacy and legal services to those over 60.

Social Services - under protective care.

Other social services programs.



ALASKA STATE HOSPITAL ASSOCIATION INC.

5401 CORDOVA STREET
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ANCHORAGE, ALASKA 99503

February 12, 1980

Representative Charles Parr
Chairman, House Judiciary Committee
Room 124 - Capitol
Alaska State Legislature
Pouch II
Juneau, Alaska 99811

re: Testimony for Committee Hearings/
teleconference 2/13/80.
HB 572 "An Act relating to
guardians and conservators"

Dear Representative Parr;

We hereby submit written testimony to the joint judiciary committee hearings to be held in Juneau and via teleconference on February 13. Our membership is very aware of existing guardianship problems, and the need for legislation such as proposed in HB 572. We have carefully reviewed this bill and would like to recommend some language modifications. We believe that these modifications will improve the effectiveness of this piece of legislation.

The accompanying enclosure (Exhibit "A") is our marked up copy for your committee's consideration. We have underlined the language changes recommended and bracketed the language being replaced. Most of the reasoning and background for these recommendations are adequately covered in Mr. Van Wagoner's analysis dated 12/17/79 (Attachment "B"). You will note that he is the Executive Director of Hope Cottages, a facility which deals with the guardianship issue on a frequent basis.

Thank you for the opportunity to comment, and if you have questions concerning any of our recommendations please make them known to me.

Sincerely,


Max F. Kersbergen
Executive Director

Alaska State Legislature

REPRESENTATIVE
FRED F. ZHAROFF
P.O. Box 405
KODIAK, ALASKA 99615
(907) 486-3254



WHILE IN JUNEAU
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465-4951

House of Representatives

February 11, 1980

MEMORANDUM

DISTRICT 14:

BELLSFLATS
CHINIAK
KODIAK
OUZINKIE

To: Representative Charlie Parr, Chairman
House Judiciary Committee

From: Representative Fred F. Zharoff *Fz*

Re: SB 333 and HB 572

I have received telephone calls and letters asking that I support legislation pertaining to guardianship. I wish to inform you and the Judiciary Committee that I am receiving positive requests for support of SB 333 and HB 572. At this time I do not wish to testify on these bills. My main concern is that you be informed that my constituents appear to favor these two items of legislation.

COMMENTS ON HOUSE BILL No. 572 AND THE SENATE COUNTERPART MEASURE
"AN ACT RELATING TO GUARDIANS AND CONSERVATORS..."

My name is John A. Sandor of 3311 Foster Avenue, Juneau, Alaska, 99802. I am offering comments on House Bill No. 572 and the Senate counterpart proposal "An Act Relating to Guardians and Conservators...". These written comments are offered for House and Senate consideration as I will not be in Juneau at the time of Committee hearings on these bills.

These observations are based on my own situation and experience in dealing with incapacitation of family members. An act of this type is definitely needed to deal with existing situations and the likelihood of the increasing number of partial incapacitation problems that can be expected as Alaska develops a larger population of the elderly who can be expected to suffer strokes and similar disabling afflictions.

As the father of a child born in Ketchikan, Alaska in 1957, who subsequently learned of the child's brain damage that is resulting in as yet an unclearly defined degree of incapacitation - the subject of House Bill 572 is of special interest. Although completing High School, this child - now an adult age 22 - apparently sustained brain damage which limits some abilities, results in some incapacitation and makes the person more vulnerable to exploitation.

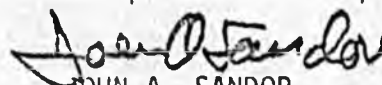
As the son of a parent who suffered a partially disabling stroke, I am also keenly aware of the special problems that can be associated with incapacitation from such afflictions.

I believe the bill under consideration by the House and Senate would clearly be of help in dealing with the situations I have noted. The provisions for partial guardianship would be helpful in assisting and protection such individuals and doing so - hopefully - without restricting the civil and legal rights of such persons. Because of the importance of assuring full protection of the civil and legal rights of these people, and to recognize different degrees of incapacitation, I suggest adding another definition "partially incapacitated person" meaning a person whose ability to receive and evaluate information or to communicate decisions is partially impaired for reasons other than minority to the extent that he or she lacks the ability to completely provide for the essential requirements without court-ordered assistance. An alternative to that suggestions is to modify the definition of an incapacitated person to one that lacks the ability to "fully or partially provide the essential requirements" etc.

The point being that in many of the situations we are dealing with, the individual needs partial assistance and protection without the assumption of total incapacitation as the present definition seems to imply.

I also favor strengthening and reinforcing the protection and legal rights of such persons. This can be done in several ways. For example in Sec. 13, 7 (e), I would add: A guardian may not (7) prevent the ward from voting in elections (8) prohibit the ward from acquiring property (9) restrict any civil or legal right as a citizen of the United States and Alaska without an expressed order of the court including the opportunity for nearest relative of the ward as well as the guardian to participate in such deliberations and decisions.

Again, I believe the bill under consideration will be helpful, and commend those who are attempting to alleviate existing guardianship-conservator problems. Thank you for the opportunity to comment.


JOHN A. SANDOR
February 10, 1980

members packets
HB 572

TELEGRAM

ALASCOM, INC.

PHONE: 586-6442

JUNEAU, AK 99802

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PMS REP CHARLES PARR

2036

JUNEAU

I SUPPPORT HOUSE BILL 572. THE BILL SHOULD PROVIDE NECESSARY ASSISTANCE TO HANDICAPPED INDIVIDUALS TO MAKE LIFE STYLE DECISIONS FOR HIMSELF. FURTHERMORE IT APPEARS TO PROVIDE AMPLE ASSURANCE THAT THE GUARDIANSHIP CONCEPT WILL NOT BE ABUSED IN A MANNER WHICH WOULD PROHIBIT AN INDIVIDUAL FROM PURSUING HIS NATUR AL RIGHTS

FRANCES MAIURI

ROY ANDERSON, COORDINATOR ALASKA RESOURCES FOR THE MODERATELY/SEVERELY IMPARED

Insu Contact Lucille O'igney
789-2464

I attended meeting Sam Jan. 23 in
Room 510 At. Office Bldg.

present were Dot Truman
Lucille O'igney
? Liz McTeran
Rebbie Bear
Dr Dave Spencer

decided to hold H. Ind. hearings
M. Feb 11 3pm
W Feb 13 3pm
+ Feb 13 7pm } checked with
Charlie &
called

Alaska State Legislature

REPRESENTATIVE
FRED F. ZHAROFF
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WHILE IN JUNEAU
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House of Representatives

February 11, 1980

MEMORANDUM

DISTRICT 14:

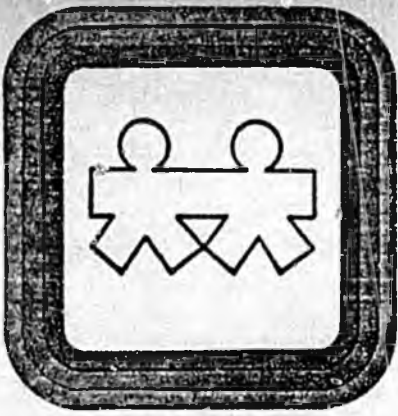
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To: Representative Charlie Parr, Chairman
House Judiciary Committee

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Re: SB 333 and HB 572

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Central Peninsula Mental Health Center

P. O. Box 247 • Kenai, Alaska 99611 • (907) 283-7501

February 26, 1980

Representative Charles Parr
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Daer Representative Parr:

I am writing you in support of House Bill 572 and the identical bill, Senate Bill 339 as they are important improvements. Particularly important are the establishment of an office of public guardian and a due process protections for individuals who are thought to need a guardian. I urge passage of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Paul Turner/pe".

Paul E. Turner, Ph.D.
Clinical Psychologist
Director, Clinical Services

PET/ym1

2146 Belair Dr.
Anchorage, Ak. 99503

February 7, 1980

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

RE: HOUSE BILL 572

Dear Representative,

I am writing to you in support of the passage of House Bill 572 which was introduced by Rep. Charles Parr and was referred to the House Judiciary Committee.

It is important that a judgment of "incapacity" be based on functional limitations for self-care rather than a categorical disability.

It is important that partial guardianship is established so that an individual's rights are limited only in areas of incapacity.

Due process protections for the person thought to be incapacitated need to be strengthened.

Priorities of persons to be considered by the court for appointment as partial or full guardians should be spelled out.

An Office of Public Guardian should be established which will act as a resource to private guardians, help find friends and relatives of the incapacitated person who might serve as guardians, and serve as guardian if a private guardian cannot be found.

Please support this bill and try to see that it is passed this session.

Sincerely,

Betty Halsey

Betty S. Halsey
Chairperson, REACH (An organization for families of the mentally ill.)
Treasurer, Alaska Mental Health Association

check into on HB 572
X



J.A.R.C.

P.O. Box 1495
JUNEAU, ALASKA
99802

Juneau Association for Retarded Citizens

"Retarded Children CAN Be Helped"

February 14, 1980

To: House Judiciary Committee
Charles Parr
Nels Anderson
Fred Brown
Thelma Buchholdt
Hugh Malone
Ramona Barnes
Terry Martin
Patrick O'Connell
Randy Phillips

Re: House Bill 572

As President of the Juneau Association for Retarded Citizens, I wish to express my support (personally) and collectively for the parent group of mentally retarded adults and children in this community. We studied the bill at length and find it most considerate of the rights of the ward and are especially impressed with the timeliness for the expediency of process.

I did sit in on two of the hearing here in Juneau and was favorably impressed with the many areas of concern voiced by the committee. Your task as our representatives is indeed a responsible one - and I would like to say thank you for the many hours of service you render.

Sincerely,

Sister Patrick Mary
Sister Patrick Mary, President

7
3908 Lois Drive
Anchorage, AK 99503
February 1, 1980

The Honorable Charles Parr
House Judiciary Committee
Pouch V
Juneau, AK 99811

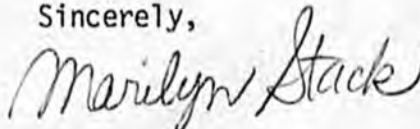
Dear Mr. Parr:

I'm writing this letter in regards to H.B. 572. As a concerned individual for the rights of the handicapped, I feel strongly that this bill should be passed this year by the legislature.

The bill speaks to issues which are crucial for handicapped individuals, and paramount to their basic constitutional rights as human beings.

I support a YES vote.

Sincerely,



Marilyn Stack

5330 Tudortop Circle
Anchorage, AK 99507
February 1, 1980

The Honorable Charles Parr
Chairman, House Judiciary
Committee
Pouch V
Juneau, AK 99811

Dear Sir:

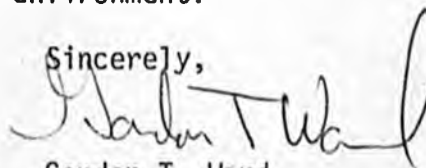
I am writing to encourage you to vote for House Bill
Number 572 concerning Limited Guardianship.

Approval of this bill will indicate to the public a
legislative awareness of the needs of all people in the State
of Alaska.

Further, it provides individuals requiring limited guardian-
ship an opportunity to exercise their legal rights in those areas
in which they are competent.

Moreover, the passing of this bill will help keep Alaska
parallel with the national trend of providing services to indi-
viduals in the "least restrictive environment."

Sincerely,

A handwritten signature in cursive script, appearing to read "Gordon T. Ward".

Gordon T. Ward

members packets
HB 572

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

1980 FEB 12 PM 10 01

02015 NL ANCHORAGE ALASKA 50 02-12 215P AST
PMS REP CHARLES PARR
JUNEAU 2036

I SUPPOT HOUSE BILL 572. THE BILL SHOULD PROVIDE NECESSARY ASSISTANCE TO HANDICAPPED INDIVIDUALS TO MAKE LIFE STYLE DECISIONS FOR HIMSELF. FURTHERMORE IT APPEARS TO PROVIDE AMPLE ASSURANCE THAT THE GUARDIANSHIP CONCEPT WILL NOT BE ABUSED IN A MANNER WHICH WOULD PROHIBIT AN INDIVIDUAL FROM PURSUING HIS NATURAL RIGHTS

FRANCES MAIURI
ROY ANDERSON, COORDINATOR ALASKA RESOURCES FOR THE MODERATELY/SEVERELY IMPAIRED

Employment & Training Center of Alaska
2330 Nichols Street
Anchorage, Alaska 99504
February 8, 1980



Southcentral
Regional Resource
Center

An Educational
Service Agency

Representative Charles Parr, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Monte K McBride, PhD.
Director

Dear Chairman:

I am writing to express my support for House Bill 572,
the guardianship legislation. I think it is an extremely
important piece of legislation and endorse its passage.

1111 E. Dowling Road
Anchorage, AK 99502
Phone: (907) 344-9646

I strongly endorse the following major aspects of the
bill:

Partial guardianship, restricting the legal duties and powers of
the guardian to court enumerated items.

The careful protection of the ward or respondents rights.

The creation of an office of public guardians to serve as a public
guardian for individuals without a private guardian.

However, I feel that sections of the bill need clarification. For
example, in Section 13.26.131 it is not clear who will ultimately
bear the financial burden for the guardianship proceedings.

I also think Section 13.26.135, "Notices In Guardianship Proceedings,"
needs to include a specific time limitation for the filing of the
notice for identification of potential guardians.

Overall, I support the bill as written and hope to see it passed in
both the House and the Senate!

Sincerely,

Constance E. Rawlings
Project Coordinator
Satellite Home Program

CER/sa

Marilyn Houser
3207 Raspberry Rd. # 4
Anchorage, AK 99502
February 4, 1980

House Judiciary Committee
Charles Parr, Chair person
Pouch V
Juneau, AK 99811

Dear Mr. Parr,

As a concerned citizen and one who works on a daily basis with handicapped individuals, I support House Bill 572. Alaska is in need of amending its guardianship laws. Partial guardianship is necessary as some individuals need assistance in some areas but can function independently in others. The handicapped should not be denied their human rights either because no one wants to assume the responsibility for full guardianship when it is unnecessary or because someone looking out for a person's best interests has complete guardianship when he or she is perfectly capable of partially meet his or her own needs. Each case needs to be treated individually and Alaska needs to adopt the provisions to do so.

Sincerely,
Marilyn Houser

Please excuse the handwritten letter. My typewriter is not functioning properly.

February 6, 1980

Representative Charles Parr
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Ak 99811

Dear Representative Parr:

I am writing to request your serious consideration of Senate Bill 339/ House Bill 572, establishing Guardianship Procedures - for developmentally disabled citizens. As a special education teacher and concerned citizen, I urge your support of this most important bill. Guardianship is a real issue for these people + their families; we need to ensure that all care is taken to provide for due process, partial guardianship and an office of Public Guardianship.

Thank you for your time and attention to this matter.

Sincerely,

Mary Aronson



ALASKA STATE HOSPITAL ASSOCIATION INC.

5401 CORDOVA STREET
PHONE: 277-1633

ANCHORAGE, ALASKA 99503

February 12, 1980

Representative Charles Parr
Chairman, House Judiciary Committee
Room 124 - Capitol
Alaska State Legislature
Pouch 11
Juneau, Alaska 99811

re: Testimony for Committee Hearings/
teleconference 2/13/80.
HB 572 "An Act relating to
guardians and conservators"

Dear Representative Parr:

We hereby submit written testimony to the joint judiciary committee hearings to be held in Juneau and via teleconference on February 13. Our membership is very aware of existing guardianship problems, and the need for legislation such as proposed in HB 572. We have carefully reviewed this bill and would like to recommend some language modifications. We believe that these modifications will improve the effectiveness of this piece of legislation.

The accompanying enclosure(Exhibit "A") is our marked up copy for your committees consideration. We have underlined the language changes recommended and bracketed the language being replaced. Most of the reasoning and back ground for these recommendations are adequately covered in Mr. Van Wagoner's analysis dated 12/17/79 (Attachment "B"). You will note that he is the Executive Director of Hope Cottages, a facility which deals with the guardianship issue on a frequent basis.

Thank you for the opportunity to comment, and if you have questions concerning any of our recommendations please make them known to me.

Sincerely,

Max F. Kersbergen
Executive Director



Residential Educational Alternatives in the Community for the Handicapped
P.O. Box 1266 • Juneau, Alaska • 99802
Phone: (907) 586-2360

March 17, 1980

Representative Charles Parr
Room 124, Capitol Building
Juneau, Alaska 99801

Dear Representative Parr:

The Board of Directors, the staff and the clients of REACH, Inc. encourage your support of House Bill 572.

It is our feeling that this Bill will do much to rectify the inequities in the current laws, and will provide for a degree of guardianship that will allow individuals to actively participate to the best of their abilities in the conduct of their own lives. It is our feeling that this Bill will go far toward allowing handicapped individuals to lead more normal lives in Alaska by giving them an opportunity to be involved in the decisions that will affect their lives.

In addition, HB 572 seeks to protect the rights of individuals in the process of establishing guardianship. The addition of the public guardian will also provide for needed protection for handicapped individuals.

HB 572 deserves consideration as a much needed improvement in the present Alaska guardianship law, and we encourage your support for this measure.

Sincerely,

Dan K. Hutson

Dan Hutson
President, Board of Directors
REACH, Inc.

DH/lh

Sandra - are you working on this? yes
S.

~~Peggy:~~

Bob Gregovich, Program Administrator for Developmental Disabilities, called and asked me to give you the following information:

He met with Randy Phillips and Terry Martin and they raised the following questions for him to find answers:

Under the general powers and duties of the guardian: Subsection (e) which refers to the "guardian may not place a ward in an institution...", he was asked to give a better term for "mentally ill" and this won't be possible as the term is used throughout the statutes.

On page 26 of the original HB 572, under powers and duties of public guardian, "(4) to provide information of referrals... proceedings", he said they (Phillips and Martin) had some concern about confidentiality. Gregovich said that the meaning is supposed to be general so they should therefore consider doing it this way: "provide information to the public regarding guardianship and conservatorship", striking the words "and referrals" and "proceedings".

* He does not have the answer for the section on allocation of costs on page 28 of the original bill. Either he or a Dorothy Truan will call back on this one.

Vi took
message
from B9.
Mon. Mar 17

* Dot Truran called $\frac{3}{18}$ - 5:30pm.

She stated "paragraph C is merely a means of implementing paragraph B - para c could be deleted in its entirety with no major effect on the bill" (message taken by Sandra)

check in HB 572
X

2146 Belair Dr.
Anchorage, Ak. 99503

February 7, 1980

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

RE: HOUSE BILL 572

Dear Representative,

I am writing to you in support of the passage of House Bill 572 which was introduced by Rep. Charles Farr and was referred to the House Judiciary Committee.

It is important that a judgment of "incapacity" be based on functional limitations for self-care rather than a categorical disability.

It is important that partial guardianship is established so that an individual's rights are limited only in areas of incapacity.

Due process protections for the person thought to be incapacitated need to be strengthened.

Priorities of persons to be considered by the court for appointment as partial or full guardians should be spelled out.

An Office of Public Guardian should be established which will act as a resource to private guardians, help find friends and relatives of the incapacitated person who might serve as guardians, and serve as guardian if a private guardian cannot be found.

Please support this bill and try to see that it is passed this session.

Sincerely,

Betty Halsey

Betty S. Halsey
Chairperson, REACH (An organization for families of the mentally ill.)
Treasurer, Alaska Mental Health Association

COMMENTS ON HOUSE BILL No. 572 AND THE SENATE COUNTERPART MEASURE
"AN ACT RELATING TO GUARDIANS AND CONSERVATORS..."

My name is John A. Sandor of 3311 Foster Avenue, Juneau, Alaska, 99802. I am offering comments on House Bill No. 572 and the Senate counterpart proposal "An Act Relating to Guardians and Conservators...". These written comments are offered for House and Senate consideration as I will not be in Juneau at the time of Committee hearings on these bills.

These observations are based on my own situation and experience in dealing with incapacitation of family members. An act of this type is definitely needed to deal with existing situations and the likelihood of the increasing number of partial incapacitation problems that can be expected as Alaska develops a larger population of the elderly who can be expected to suffer strokes and similar disabling afflictions.

As the father of a child born in Ketchikan, Alaska in 1957, who subsequently learned of the child's brain damage that is resulting in as yet an unclearly defined degree of incapacitation - the subject of House Bill 572 is of special interest. Although completing High School, this child - now an adult age 22 - apparently sustained brain damage which limits some abilities, results in some incapacitation and makes the person more vulnerable to exploitation.

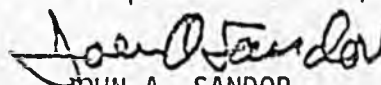
As the son of a parent who suffered a partially disabling stroke, I am also keenly aware of the special problems that can be associated with incapacitation from such afflictions.

I believe the bill under consideration by the House and Senate would clearly be of help in dealing with the situations I have noted. The provisions for partial guardianship would be helpful in assisting and protection such individuals and doing so - hopefully - without restricting the civil and legal rights of such persons. Because of the importance of assuring full protection of the civil and legal rights of these people, and to recognize different degrees of incapacitation, I suggest adding another definition "partially incapacitated person" meaning a person whose ability to receive and evaluate information or to communicate decisions is partially impaired for reasons other than minority to the extent that he or she lacks the ability to completely provide for the essential requirements without court-ordered assistance. An alternative to that suggestions is to modify the definition of an incapacitated person to one that lacks the ability to "fully or partially provide ; the essential requirements" etc.

The point being that in many of the situations we are dealing with, the individual needs partial assistance and protection without the assumption of total incapacitation as the present definition seems to imply.

I also favor strengthening and reinforcing the protection and legal rights of such persons. This can be done in several ways. For example in Sec. 13, 7 (e), I would add: A guardian may not (7) prevent the ward from voting in elections (8) prohibit the ward from acquiring property (9) restrict any civil or legal right as a citizen of the United States and Alaska without an expressed order of the court including the opportunity for nearest relative of the ward as well as the guardian to participate in such deliberations and decisions.

Again, I believe the bill under consideration will be helpful, and commend those who are attempting to alleviate existing guardianship-conservator problems. Thank you for the opportunity to comment.


JOHN A. SANDOR
February 10, 1980

Alaska State Legislature

REPRESENTATIVE
FRED F. ZHAROFF
P.O. BOX 405
KODIAK, ALASKA 99615
(907) 486-5254



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
(907) 465-4886
465-4851

House of Representatives

February 11, 1980

MEMORANDUM

DISTRICT 14:

BELLSFLATS
CHINIAK
KODIAK
OUZINKIE

To: Representative Charlie Parr, Chairman
House Judiciary Committee

From: Representative Fred F. Zharoff *FZ*

Re: SB 333 and HB 572

I have received telephone calls and letters asking that I support legislation pertaining to guardianship. I wish to inform you and the Judiciary Committee that I am receiving positive requests for support of SB 333 and HB 572. At this time I do not wish to testify on these bills. My main concern is that you be informed that my constituents appear to favor these two items of legislation.

TELECONFERENCE HEARINGS



DATE 2/5/80

CONFIRMATION OF TELECONFERENCE

TO SANDRA STRINGER

FROM DEBORAH GAZAWAY

SCHEDULED DATE OF TELECONFERENCE 2/13/80

LOCATIONS JNO

(Site, ANCH
Room, Fbx
etc.)

TIME 3:30 PM

SUBJECT GUARDIANSHIP BILL - HB537

CHAIRMAN _____

NOTES _____

If any of the above information is incorrect or has changed since our last contact with you, please call the Juneau Teleconference Office ASAP.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

**DIVISION OF PUBLIC HEALTH
SECTION OF FAMILY HEALTH**

JAY S. HAMMOND, GOVERNOR

POUCH H 06B - JUNEAU 99811

January 15, 1980

Honorable Charles H. Parr
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

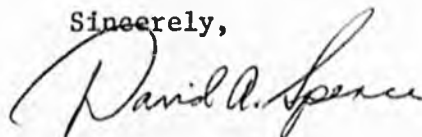
Dear Mr. Parr:

This is a note to confirm our phone conversation regarding the next meeting of the legislative committee of the Governor's Council on Handicapped and Gifted. It will be held in Room 510 of the Alaska Office Building from 8 to 10 a.m. on Wednesday, January 23, 1980.

The prime topic of discussion will be guardianship legislation. Other items to be discussed will be bills that affect special education.

We are looking forward to your attendance as we hope to effectively organize support for this guardianship legislation.

Sincerely,



David A. Spence, M.D., M.P.H.
Chief, Section of Family Health
(Chairman, Legislative Committee
Governor's Council)

Enclosure

TESTIMONY OF RICHARD VAN DUIZEND

on H.B. 572

FEBRUARY 13, 1980

Mr. Chairman, Members of the Committee:

I am honored to appear before you today as you discuss a topic of vital importance to an increasing number of people. So there is no misunderstanding, let me make clear, at the outset that I am here as an individual who has had the opportunity to investigate and study the subject of guardianship in depth over the past year and a half, but not as a spokesperson for either the American Bar Association or its Commission on the Mentally Disabled.

As the Committee is aware, guardianship is the legal procedure through which one person is authorized to make decisions on behalf of another. The usual analogy for the guardian-ward relationship is that of the loving-parent to a child. However, one of the problems that must be addressed in a guardianship bill is that not every proposed ward is or remains a child and not every petitioner or guardian is a loving parent. Thus, as well as assuring that guardianship services can be provided as quickly and smoothly as possible in emergency situations, a guardianship law must guard against having adults unnecessarily stripped of their rights by being reduced to the legal status of a child -- unable to choose where to live; unable to marry or dispose of property without permission; and subject to hospitalization without consent.

I believe that H.B. 572 when taken as a whole, goes a long way toward achieving that balance, and if enacted will help to alleviate the problems which have long troubled

the guardianship process. To illustrate this point, I will briefly highlight 5 problem areas and indicate how H.B. 572 addresses them. Following that, I would like to point out a few areas of ambiguity in the current bill and suggest possible changes which would enhance its clarity and further its stated purposes.

PROBLEM AREAS OF GUARDIANSHIP:

1. The first problem with most current guardianship legislation is that it fails to deal with disabled persons as individuals. Just as each member of the Committee has unique abilities, likes and dislikes, as well as characteristics which other members may share, so too, do persons with a developmental disability, age-related infirmity or mental illness have unique abilities and disabilities as well as a shared characteristics. Yet guardianship is treated as an all-or-nothing proposition without intermediate levels or alternatives. While Alaska's current law provides a range of services and alternatives short of conservatorship for persons unable to handle their financial affairs, it fails to recognize a similar series of gradations where health and safety rather than property is involved.

As Delaware's Manual for Guardians suggests:

Guardianship should be a last resort, when all other means for dealing with a situation have been exhausted. Guardianship has serious legal and emotional consequences for the client, more so than any other service. It is an official