

ALASKA LEGISLATURE COMMITTEES 2019-2021

1657 SJ SB 3

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

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

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

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

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

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

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

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

### 3. Need for Guardianship Services

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

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

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

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

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

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

4. Funding Needed

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

## REFERENCES

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- INTERNATIONAL LEAGUE OF SOCIETIES FOR THE MENTALLY HANDICAPPED (ILSMH), SYMPOSIUM ON GUARDIANSHIP OF THE MENTALLY RETARDED, 11(1969).
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- 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)

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1981

SUBJECT: Section-by-section analysis of SB 3 relating to guardians and conservators (Work Order Number 12-0755)

TO: Senator Patrick M. Rodey, Chairman  
Senate Judiciary Committee

FROM: Bernie M. Tuggle AS7  
Legislative Legal Extern

You have asked me to prepare a section-by-section analysis of SB 3 for an Act entitled: "An Act relating to Guardians and conservators; and providing for an effective date". This bill makes numerous changes in AS 13.26, Protection of Persons under Disability and their Property.

Sec. 1 repeals and reenacts AS 13.26.055(1). Definitions and Use of Terms. Changes the definition of "incapacitated person" from one lacking the ability to make "responsible decisions concerning his person" to one lacking the ability to "provide for himself the essential requirements for his physical health or safety without court-ordered assistance".

Sec. 2 amends AS 13.26.005 by adding definitions for "essential requirements for physical health or safety"; "partial guardian"; "full guardian"; "visitor"; and "respondent".

Sec. 3 adds sec. 13.26.013, Court Records of Proceedings; Access; Sealing. Provides that the notice of the filing of a petition, a summary of all formal proceedings, and certain other court orders are open to public inspection. However, only certain persons have access to other information contained in the court records. If the court finds that a petition under this chapter was malicious, frivolous, or without just cause, then the court may seal all the records.

Sec. 4 adds sec. 13.26.090, Purpose and Basis for Guardianship. Provides that guardianship shall be used only to promote and protect the well-being of incapacitated persons; the incapacitated person retains all legal and civil rights, except those limited by court order.

Sec. 5 adds subsection 13.26.095(e). Provides that a testamentary appointment of a guardian by the parent or spouse of an incapacitated person may grant all those powers and duties held by the parent or spouse.

Sec. 6 repeals and reenacts AS 13.26.105, Procedure for Court Appointment of a Guardian of an Incapacitated Person. Deletes the requirement that a petition for a finding of incapacity must be made by the incapacitated person or "any person interested in his welfare" and allows the petition to be made by "any person"; lists what the petition for appointment of a guardian must contain and makes provisions for a temporary guardian.

Sec. 7 adds several new sections to AS 13.26.

Sec. 13.26.106, Initial Court Procedures. Provides for a hearing on the issue of incapacity and for court appointment of an attorney for the respondent (the person whose capacity is at issue). If the respondent is financially unable to obtain an attorney the court must appoint a visitor (a specially trained person with no interest in the proceedings) to interview and evaluate the respondent.

Sec. 13.26.107, Notice of Rights. Lists the procedures with which the visitor must comply, before he conducts a substantive interview with the respondent.

Sec. 13.26.108, Visitor's Report. Outlines what the visitor must include in his evaluation of the respondent. Responses to the visitor's evaluation may be filed within 10 days.

Sec. 13.26.109. Evaluation: Right to Remain Silent; Respondent's Attorney or Expert. Provides that while a respondent has the right to refuse to answer questions during an evaluation, he may be required to give answers to determine whether he lacks capacity. The respondent's statements during an evaluation are confidential. In

addition, the respondent has the right to be accompanied by an expert or an attorney during any evaluation interview. Upon request of the respondent, the court shall appoint an expert to examine the respondent and testify on his behalf.

Sec. 13.26.111, Duties and Powers of Respondent. "Zealous representation" is the standard of duty for an attorney representing a respondent in a proceeding under this chapter. Sets minimum requirements for zealous representation.

Sec. 13.26.112, Appointment of a Guardian Ad Litem. Provides that the court must appoint a guardian ad litem if the respondent cannot determine his own interests without assistance. If there is no conflict of interest and no other party is readily available the respondent's attorney may be the guardian ad litem.

Sec. 13.26.113, Hearing. Provides for the rights of the respondent at the initial hearing on capacity, the burden of proof, and the court's duties if the respondent is found partially or totally incapacitated.

Sec. 13.26.114, Psychotropic Medication Influencing Wards or Respondents at Judicial Hearings. Provides that a respondent has the right to participate to the maximum extent possible in all judicial proceedings concerning him and to be free from the influence of psychotropic medication during the proceedings. It is the responsibility of the attorney to determine if the respondent is under medication, and if he is medicated, the court may continue or suspend treatment during the hearing.

Sec. 13.26.116, Guardianship Order. Gives the requirements for the court order; requires a guardianship plan; and says that the guardianship plan may not be more restrictive of the liberty of the ward than is necessary to protect the ward from serious physical harm and to provide him with medical care and treatment.

Sec. 13.26.117, Guardianship Implementation Report. Describes the implementation report. Within 90 days after appointment as guardian, the guardian shall give

the court a report describing his program for implementing the guardianship plan.

Sec. 13.26.118, Reporting. Provides that a guardian's report shall be at least annual and if the guardian requests that a visitor be appointed to prepare a report, the visitor's report shall be made at least once every three years. This section also states what the report must contain and when an additional report must be submitted.

Sec. 13.26.131, Costs in Guardianship Proceedings. Provides for a division of costs in guardianship proceedings.

Sec. 8 amends AS 13.26.120, Termination of Guardianship for Incapacitated Persons. Under the amendment, guardianship expires at the end of the period specified by a court order as the duration of the guardianship. Makes clear that termination does not affect a guardian's obligation to account for assets of the ward over which he exercised control.

Sec. 9 amends AS 13.26.125, Removal or Resignation of Guardian; Change In or Termination of Guardianship. Provides for court review of a decision of the guardian, the guardianship plan or termination of the guardianship; deletes the one-year period during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave; allows for petitions that the ward is no longer as incapacitated as he was at the time of the last court order; also provides that a request by the ward to the guardian for a change in guardianship must be submitted to the court. Furthermore, the court may take whatever action is necessary to protect the ward, including dismissal of the guardian.

Sec. 10 amends AS 13.26.135, Notice in Guardianship Proceedings. Increases the number of persons who must be notified prior to a guardianship proceeding; describes the notice.

Sec. 11 repeals and reenacts AS 13.26.140, Temporary Guardians. Provides for a hearing on the appointment of a temporary guardian within 72 hours after the filing of the

petition for guardianship; provides that the rights of respondents in such hearings are the same as they are in a hearing on incapacity and changes the time at which a temporary guardian may be removed. Only when there is a life-threatening risk to the person apparently incapacitated is the requirement of a hearing dropped.

Sec. 12, adds sec. 13.26.141, Emergency Powers. Provides that a temporary guardian or guardian always has the right to authorize emergency life saving services.

Sec. 13 repeals and reenacts AS 13.26.145, Who May be a Guardian; Priorities. Provides that persons eligible for appointment as guardians may not have a conflict of interest with, be creditors of, or have substantial business or professional contacts with the incapacitated person. However, a close relative of the incapacitated person may be appointed guardian, if the potential conflict of interest is slight and the appointment would clearly be in the best interest of the incapacitated person. Makes clear that the priorities of appointment for guardian are not binding.

Sec. 14 repeals and reenacts AS 13.26.150, General Powers and Duties of Guardian. Provides that the guardian shall encourage the ward to participate in all decisions which affect him; adds that a partial guardian has only the powers and duties enumerated in the court order; lists those powers and duties which a guardian has in regards to his ward; and modifies current law by listing what a guardian may not do.

Sec. 15 adds a new subsection (d) to AS 13.26.195. Provides that a court may seek alternatives to the appointment of a conservator and the use of a special conservator.

Sec. 16 amends AS 13.26.205(c). If only certain powers need to be given to the conservator or the services of a conservator are needed only for a limited number of transactions, then a special conservator may be appointed.

Sec. 17 adds sec. 13.26.218, Public Bond. Provides that if the public guardian is appointed as a conservator, the court may not require a bond. If the court does require a bond, but the conservator is financially unable to pay for it, then the court may bear the cost.

Sec. 18 adds Article 6, Public Guardians.

Sec. 13.26.360, Purpose. This section states that many Alaskans need guardians or conservators, but cannot find anyone able and willing to serve. The legislature intends to establish the office of public guardian to furnish guardianship and conservatorship services.

Sec. 13.26.370, Public Guardian. Provides that the public administrator (AS 22.15.310) shall also act as the public guardian for the judicial district to which he is appointed. A court may order the public administrator to serve as full guardian, partial guardian, conservator, or special conservator.

Sec. 13.26.380, Powers and Duties of Public Guardian. Provides that the public guardian has the same powers and duties with respect to his wards and protected persons as a private guardian or conservator; lists the duties of the public guardian.

Sec. 13.26.090, Intervention. Under certain circumstances the public guardian may, on his own motion or at the request of the court, intervene in a guardianship or conservatorship proceeding.

Sec. 13.26.400, Delegation of Powers and Duties. Provides that while the public guardian may delegate his powers and duties to staff and volunteers, he retains responsibility for the proper performance of the delegated powers and duties.

Sec. 13.26.410, Allocation of Costs. Provides that the costs of appointing the public guardian may not be charged to the ward unless the court finds that the ward is financially able to pay the costs; details the method for determining the financial status of the ward; and provides that the reasonable value of the services rendered without cost to the ward or protected person shall be allowed as a claim against the estate when the ward dies.

Sec. 19 amends AS 22.15.310, Appointment. Provides for judicial appointment of public guardians.

Senator Patrick M. Rodey

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Sec. 20 amends AS 22.15.350, Duties. Provides that the duties of the public administrator include the duties of public guardian.

Sec. 21 repeals AS 13.26.110 and AS 13.26.130.

Sec. 22 provides for the transition of guardianships established prior to January 1, 1982.

Sec. 23 provides that this Act takes effect January 1, 1982.

BMT:ljb

TESTIMONY OF THE GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND  
GIFTED ON SENATE BILL 3.

MARCH 18, 1981

Hello, my name is John Nuttall. I am testifying in support of SB3 on behalf of the Governor's Council for the Handicapped and Gifted of which I am the Chairperson elect. The Council was established by the legislature as <sup>an</sup> advocate for the needs of our handicapped and gifted citizens. I was appointed to the Council as a parent of a Developmentally Disabled child. I am a teacher and have taught developmentally disabled children.

The Governor's Council for the Handicapped and Gifted supports SB3 because it provides for partial guardianship, public guardianship, efficiency and due process, and periodic review.

In the last ten years we have seen a decline in many archaic ways of dealing with Developmentally Disabled people. We have seen the advent of Public Law 94-142 which has changed our whole way of thinking in education. The law specifies that no longer may a person be categorized as either "normal" or "retarded". Our developmentally disabled students are no longer exiled, but now are placed in the least restrictive environment where they can succeed. Education is no longer an all or nothing approach. Along with our new ways of thinking, we have found that when given the chance to be evaluated and helped in specific deficiencies, many of our special education students do have the skills to function in our regular classroom and also in society.

So it is and should be with handicapped people who are in need of guardianship. Not everyone is in the all or nothing category. Many individuals could function in society with minimal guardianship. Thus increased independence would mean a great deal more personal dignity and self esteem.

Everyone should be afforded the opportunity to grow, learn and be treated as an individual with individual needs and capabilities.

Everyone's life is different, and no one's is so simple that important decisions will not arise. It is society's duty to prepare for those decisions for those people who do not have the capabilities to make those decisions. Someone who is knowledgeable of the person and cares must be there to make those decisions for them. The rights of these people must be protected. A careful and thorough evaluation of a person's needs must take place, and only in those areas where a person is found to be in need of help should the decision-making power be transferred from the individual to a guardian. Hence the need for not only full guardianship, but partial guardianship becomes evident.

Present statutes do not meet these individual needs. They require total dependence or total independence. The Council has investigated present statutes, guardianship reform legislation and the current need for guardianship. We have looked at individual cases and gathered information from service agencies. In drafting suggested legislation, we involved parents and friends of handicapped individuals who have gone through guardianship proceedings and have been confused and dismayed by unclear procedures, long delays, and have then been required to pay up to \$1,200 for their own attorney and their son or daughter's attorney.

We have become aware that in one community the administrator has been appointed guardian or conservator for about 25 individuals. Since appointment, the administrator has seen many of the wards at most once a year. In another community guardianship petitions are rarely filed unless a relative or friend seeks appointment as a guardian because no one has the resources or capability to fulfill the guardianship duties. Individuals in state-operated facilities who do not have relatives or friends willing to serve as guardian have been waiting three or four years and petitions have not even been

filed. This leaves the institution liable for handling the individual's funds and making decisions for their clientele. One severely handicapped young adult in Anchorage waited 3 1/2 years before hearings were held and a guardian appointed. In the meantime a guardian ad litem was appointed and served for three years. During that time the guardian ad litem only met the ward at the time of the full guardianship hearing. It took months for the agency serving the individual to have a guardian ad litem appointed and 1/2 hour prior to surgery for the ward the guardian ad litem was appointed and signed the necessary paperwork authorizing hospitalization and medical treatment. All this occurred although a foster parent had been initially identified as willing and able to be guardian.

In the case of a mentally ill individual who inherited a modest amount of money, great conflict and distrust arose between the individual and her mother when the mother was appointed as a conservator and attempted to set up a trust so the funds could provide a small income to the individual over a period of time. The mother finally gave the funds to her daughter and they were spent quickly leaving the daughter with no financial resources. Under the proposed bill, the mother could request appointment of the public guardian as special conservator to establish the trust and emotional scars would have been avoided and the money preserved.

This year the Commission on the Mentally Disabled of the American Bar Association has passed a resolution calling

" all states to assist persons of diminished mental capacity or under guardianship of conservatorship proceedings to live with maximum self-sufficiency in the general community, by enacting laws allowing court appointment of limited or partial guardians, where persons of diminished capacity need some, but not total assistance in making decisions concerning their personal affairs or estates;"

The concept of limited guardianship has received the endorsement of a number of national organizations: The President's Panel on Mental Retardation, 1962; The American Association on Mental Deficiency, 1973; The President's Commission on Mental Health, 1978; and the President's Committee on Mental Retardation, 1976.<sup>2</sup>

"Sixteen states explicitly permit the court to place some limitations on the powers of the guardian. Generally this is merely discretionary on the part of the court. Of these, twelve states have enacted formal 'limited guardianship' laws which requires a court to specify the legal disabilities and the restrictions to be placed on a limited guardian's powers. Limited guardianship bills are currently being considered in the legislatures of seven states."<sup>3</sup>

In a day when American society is becoming increasingly aware of the deterioration of the family unit, it is imperative that society provide guardianship to those individuals who are without family or friends willing to assume legal responsibility for decision making. The Office of the Public Guardian as specified in Senate Bill 3, would furnish guardianship and conservatorship services. Furthermore, it would provide assistance to guardians throughout the state in securing necessary service for their wards. It would also serve as an agency to advise families and friends on whether to seek guardianship and how to initiate proceedings. An important function of this office would also be seeking private guardians; and with this office as a resource, certainly more individuals would be willing to serve as guardians. At present no agency is assigned these responsibilities. Attorneys in the attorneys general office simply do not have the time to seek and locate friends and relatives. Social service agency personnel do not have the expertise in legal matters and often find themselves in a conflict of interest situation.

The Council also supports this bill because it provides clear procedures for guardianship proceedings. These assure procedural due process in order to protect the rights of individuals for whom guardianship is sought. They will also assist in making guardianship hearings more straight forward and efficient.

We feel that petitions for appointment of guardians should be heard within a reasonable length of time. The bill's provisions for a hearing on temporary guardianship within 72 hours and for a regular guardianship hearing within 120 days

are reasonable. These time limits guarantee that the respondent's needs will be considered in a timely fashion and assure petitioners that they will not be waiting for years for a hearing to be held. Yet they also allow the court and its appointees to conduct necessary investigations and evaluations.


The number of individuals expected to have a public guardian appointed is extremely limited. The American Bar Association estimates that in the six states they studied, guardianship petitions were initiated for less than one-tenth of one percent of the total population each year. This figure includes the cases of minors as well as the aging, the mentally ill and the handicapped. Alaska court records indicate approximately 564 guardianship petitions were filed in 1979. In Delaware, where a public guardian program has been operating for four years, the public guardian had only 43 wards as of May 1979. Of 600 perspective wards referred to the office of public guardian, only 10 percent ever became wards of the public guardian. This represents roughly 1/100th percent of the state's population.<sup>4</sup>

We do not feel that SB 3 is a costly bill. The number of individuals who will be served by the public guardian will be small. Because the public guardian will be available to provide help, the number of private individuals willing to be guardians is expected to increase. This is also true since the public guardian will be seeking private guardians on a routine basis. Under current statute, court costs are incurred for guardianship hearings, appointment of visitors and evaluation. These costs are expected to increase slightly because of the few additional cases which will be handled. The main cost, however, will be for the office of the public guardian. Various estimates of manpower and resources have been suggested. One estimate is for employment of one public guardian, clerical support, limited contract funds to utilize individuals in other areas of the state to provide services and a travel budget which will allow the guardian to visit wards and seek private guardians. The other estimate is for employment of a public guardian, two support staff, one clerical position and travel and overhead

costs for one office. Both estimates would cost between \$200,000 and \$250,000 depending on whether the office were attached to an existing state agency.

The Council supports these important revisions to current guardianship statutes and feels they have been carefully and thoughtfully prepared. We therefore support SB 3 and urge its enactment by the Alaska Legislature.

Thank you for this opportunity to testify on behalf of the Governor's Council for the Handicapped and Gifted.

  
Chairperson-elect

1. American Bar Association Report to the House of Delegates  
Commission on the Mentally Disabled, (See attached copy)
2. Ibid.
3. Ibid.
4. Exercising Judgement for the Disabled, American Bar Association  
Commission on the Mentally Disabled, Sept. 1979.

**LEGAL ISSUES IN STATE MENTAL HEALTH CARE:  
PROPOSALS FOR CHANGE**

**GUARDIANSHIP**

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## GUARDIANSHIP

### I. INTRODUCTION

Guardianship is generally intended to protect persons who are unable to care for themselves or manage their property. To this end, courts are authorized, under the *parens patriae* power of the state, to appoint guardians to direct the personal or financial affairs of the ward or both. This protection, however, infringes upon the liberty or personal autonomy of the ward to the extent that the guardian is empowered to make unilateral decisions. Moreover, formal adjudication of incompetence entails stigma comparable to that of civil commitment. Exercise of the guardianship authority, therefore, involves the same tension between civil-liberty interests and the desire of the state to protect the individual as exists in the area of civil commitment.<sup>1</sup>

Both *parens patriae* civil commitments and personal guardianships provide a form of coercive intervention to protect the personal well-being of those who are incapable of caring for their own physical needs but refuse psychiatric and other as-

sistance. Statutory revisions only in the area of *parens patriae* civil commitments might simply result in greater use of personal guardianship. The net result would be simply to shift problems and abuses from one area to another.

This chapter, therefore, examines personal guardianship statutes and practices and gives particular attention to their relationship to the civil commitment statute previously suggested. The recommendation is made that personal guardianship be authorized for persons suffering from serious mental disorder who, as a result thereof, are unable to care for themselves and to make informed decisions about their own welfare and would suffer serious physical consequences in the absence of intervention.

In addition, property guardianships are discussed. Although no complete property guardianship statute is proposed, a few recommendations are made with respect to procedures and criteria.

### II. PERSONAL GUARDIANSHIP

#### A. CURRENT LAWS AND PRACTICES

Problems previously discussed in the chapter on civil commitment which also appear in the guardianship area include various procedural deficiencies such as inadequate notice, the lack of provision for effective assistance of counsel, hearing procedures that do not produce careful fact-finding and undue judicial deference to the conclusions of medical personnel with respect to the conclusions of law. Substantive problems include very broad and vague criteria for the imposition of guardianships, the absence of appropriate time limits and a lack of standards for the mental health treatment of wards.<sup>2</sup>

<sup>1</sup> With regard to this tension in the civil commitment areas, see 2 MDLR 77-79.

<sup>2</sup> See Alexander & Lowin, *The Aged and the Need for Surrogate Management* (1972); Horstman, "Protective Services for the Elderly: The Limits of Parens Patriae," 40 Mo. L. Rev. 215 (1975); Pickering, "Limitations on Individual Rights in California Incompetency Proceedings," 7 U. Cal. Davis 457 (1974); Regan, "Protective Services for the Elderly: Commitment, Guardianship, and Alternatives," 13 Wm. & Mary L. Rev. 569 (1972); Comment, "North Carolina Guardianship Laws—The Need for Change," 54 N. Car. L. Rev. 389 (1970).

<sup>3</sup> Horstman, *supra* note 2, at 235-42.

A study of 1,010 guardianship and conservatorship cases in Los Angeles County during a one-year period in 1973 and 1974 illustrates the procedural deficiencies in this field.<sup>3</sup> The study showed that in only 7.8 percent of the cases did the proposed ward attend the judicial hearing and that in 84.2 percent of the cases the only persons present were the judge, the petitioner and the petitioner's attorney. Although medical evidence was required, this usually consisted of a physician's certificate. In only one case was an examining physician present to testify in court. In only 2.9 percent of the cases was the proposed ward represented by a lawyer or guardian *ad litem*.

Like the criteria for civil commitment, the statutory standards for guardianships frequently lack precise definition. For example, a guardian may be appointed for an "incompetent" in Illinois if, "because of insanity, mental illness, mental retardation, old age, physical incapacity, or imperfection or deterioration of mentality" the individual "is incapable of managing his person or estate. . . ."<sup>4</sup> In

<sup>4</sup> Ill. Ann. Stat. ch. 3, §112 (Smith-Hurd Supp. 1976).

California an "incompetent person" for purposes of guardianship means "any person, whether insane or not, who by reason of old age, disease, weakness of mind, or other cause is unable, unassisted, properly to manage and take care of himself or his property, and by reason thereof is likely to be deceived or imposed upon by artful and designing persons."<sup>32</sup>

In applying the standards, courts have often relied on conclusory medical opinions presented by the petitioner rather than insisting upon hearings where views may be challenged and the capabilities of the proposed ward considered in light of his recent behaviors. By default, therefore, real decision-making authority has been delegated to physicians who often are not even required to appear in court.<sup>33</sup>

As is the case under some civil commitment statutes, guardianship laws typically fail to provide for time limits. "Restoration to capacity is often a difficult undertaking and rarely occurs. It has been suggested that the order of appointment of guardian includes [sic] the phrase 'until death do you part.'"<sup>34</sup> Not all wards suffer from severe chronic disabilities which warrant long-term guardianships; but state guardianship statutes typically lack provisions for prompt restoration to capacity through periodic judicial review and a requirement that prompt and adequate treatment and rehabilitative services be made available.

Some problems in the guardianship area do not exist in civil commitment. One is the "all-or-nothing" nature of many guardianship statutes. Once a guardianship is imposed, the ward loses all his legal rights to determine his place of residence, to travel freely, to engage in financial transactions—such as signing and endorsing even small checks—and to consent to medical treatment. The ward also may lose such rights as the vote, a drivers' license and the opportunity to marry.<sup>4</sup> Such statutes ignore the fact that a person requiring a guardian for certain specific purposes may be capable of caring for himself or exercising his rights in other areas.

Another problem unique to guardianship concerns the lack of distinction between property and personal guardianships. In some states the imposition of guardianship to provide personal or medical care for the ward results in his automatic loss of control over his financial interests. Thus guardianship may be improperly sought as a means to gain control over the ward's estate for the benefit of the guardian.<sup>5</sup> A further problem in mixing personal and property considerations is the differing quali-

cations needed for a personal guardian—one who can provide for personal care, treatment and protection—and a property guardian—one who can wisely manage property and invest funds.

Substantial injustice results from the procedural deficiencies and vagueness of guardianship laws. These include the dubious institutionalization of elderly persons by prospective heirs anxious to gain control of their assets<sup>6</sup> and the appointment of state officials primarily to facilitate their access to the ward's estate to reimburse the state, not to protect assets for the individual's benefit.<sup>7</sup>

Yet there has been very little litigation challenging guardianship statutes. In *Schneider v. Radack*,<sup>8</sup> however, the South Dakota guardianship statute was held unconstitutional because of various procedural deficiencies, the lack of periodic review and the vagueness of the statute's criteria.

## B. SUGGESTED REFORMS

### 1. Procedures

Given the similarity of the issues and the stakes involved in civil commitment and personal guardianship proceedings, essentially the same procedural safeguards are warranted. Accordingly, the proposed statute provides for notice, the right to counsel, prompt, mandatory judicial proceedings and the right to jury trial.

However, some procedural aspects of personal guardianship proceedings require a different approach. The most significant variation is the requirement of multidisciplinary pre-hearing investigation and evaluation of the respondent's social and economic circumstances and mental and physical condition to consider the need for a personal guardianship and acceptable alternative arrangements, and to propose the most beneficial form of any needed guardianship. This evaluation report would be filed with the court but would not ordinarily be admissible as evidence. The proposed ward would have the opportunity to file a response to it.

### 2. Substantive Measures

#### a. Criteria

Although the purpose of any guardianship is to provide care, treatment or protection for an incapacitated person, such benign intentions cannot change the fact that guardianship represents the exercise of state power to impose unwanted measures on the individual. Moreover, a guardianship is a stigma. The reason for overriding the individual's wishes, therefore, should be manifest and the guardianship should hold out substantial benefit to the individual.

<sup>32</sup> Cal. Prob. Code §1460 (West Supp. 1976).

<sup>33</sup> See Horstman, *supra* note 2, at 226-30; Regan, *supra* note 2 at 603-04.

<sup>34</sup> Pickering, *supra* note 2, at 472.

<sup>4</sup> See, e.g., Horstman, *supra* note 2, at 211-32.

<sup>5</sup> Pickering, *supra* note 2, at 465.

<sup>6</sup> *Id.*

<sup>7</sup> Alexander & Lowin, *supra* note 2, at 67-75; Note, "The Disguised Oppression of Involuntary Guardianship: Have the Elderly Freedom to Spend?" 73 *Yale L.J.* 676 (1964).

<sup>8</sup> No. 74-50 (So. Dak., Yankton County Cir. Ct. July 30, 1974).

It should also be kept in mind that actively suicidal and self-destructive behaviors are dealt with under the proposed civil commitment law and the guardianship statute should not be redundant.

In light of those considerations, the suggested personal guardianship statute criteria require (a) a present inability, resulting from severe mental disorder, to meet one's personal requirements for nutrition, shelter, clothing, health or safety to the extent that serious physical illness, injury or disease are likely to result in the near future, (b) the lack of capacity to make reasoned decisions about proposed personal care or supervision or treatment, and (c) the availability of appropriate resources to provide needed protection or treatment. All three criteria must be satisfied before a guardianship may be ordered.

#### (I) Inability to Care for Oneself

The first requirement, an inability to care for oneself, is very similar to the criterion for conservatorship under California's Lanterman-Petris-Short Act.<sup>9</sup> The wording of the proposed statute is intended to identify the specific needs which warrant the imposition of a guardianship. The term "severe mental disorder" is defined in the same terms as it was for purposes of civil commitment.

In addition, the proposed statute demands that a finding of inability to care for oneself be supported by evidence of recent behavior that is clearly harmful or potentially dangerous. As in civil commitment, the proof of relevant behavior is to preclude intervention solely on the basis of clinical judgments regarding the individual's mental condition and expert predictions regarding future harmful behavior.

Also, this criterion calls for a finding that the specified harms will likely occur "in the near future." Here again the intention is to eliminate some of the vagueness by requiring the judge or jury to focus on the immediate consequences of imposing or not imposing guardianship.

#### (II) Inability to Make Informed Decisions About Proposed Care, Supervision or Treatment

The chapter on civil commitment points out that the inability to decide about proposed care or treatment may be a constitutional precondition to court-ordered intervention.<sup>10</sup> That discussion, together with the discussion of the appropriate standard for judging the individual's ability to make informed decisions, seems fully applicable to personal guardianship proceedings. In essence, the approach suggested in the civil commitment area is that involuntary forms of civil intervention are not warranted, at least under the *parens patriae* doctrine, if the individual is capable of understanding

the nature, purpose and potential benefit of the intervention. The reasoning is that actions taken pursuant to the *parens patriae* authority must be in the individual's best interest and, if the individual's comprehension is adequate, generally no one else should presume to make the decision for him.

The proposed personal guardianship statute incorporates the same basic standard for determining ability to make informed decisions as is contained in the suggested civil commitment law. However, it also incorporates the additional kinds of services that a personal guardianship might entail, e.g., personal-care services and medical treatment for physical ailments.

#### (iii) Availability of Appropriate Resources

The third criterion requires that the imposition of the guardianship will surely provide beneficial services. The essential point here is that the infringement upon personal autonomy or liberty inherent in any guardianship should not occur unless there is a corresponding benefit to the individual in the form of needed, helpful services.

#### (b) Individualized Guardianship Orders

As previously noted, a major fault in guardianship statutes is the guardian's unnecessarily broad authority and the ward's diminished legal ability to act for himself. Some states have recently adopted more balanced statutes. For example, a Minnesota statute directs the guardian to "exercise his supervisory authority over the ward in a manner which is least restrictive of the ward's personal freedom consistent with the need for supervision and protection."<sup>11</sup>

As a constitutional matter, it may be argued that the personal freedom of the ward should be infringed no further than necessary to accomplish the protection of the individual.<sup>12</sup> As a policy matter, guardianships should foster the ward's self-reliance rather than increase dependency.

Therefore, the proposed statute requires specific findings of fact to support each grant of authority to the guardian. It also requires the formulation and adoption of a guardian-ship plan which specifies how the authority is to be exercised, the ward's needs met, and services financed.

#### (c) Durational Limits

To prevent personal guardianships' outliving their usefulness, court appointments should be for limited periods, with reappointments or renewals based on full judicial rehearings identical to the initial hearings. Also, during the guardianship term, the ward and guardian should have the right jointly to petition the court for revocation of the appointment as no longer necessary, and the ward should have the right, upon presentation of documents

<sup>9</sup> Cal. Welf. & Inst'n Code, §55002(h), 5350 (West 1972).

<sup>10</sup> See 2 MDLR 89-93.

<sup>11</sup> Minn. Stat. Ann. §252A.11 (Cum. Supp. 1976).

<sup>12</sup> See the discussion of the least drastic means principle at 2 MDLR 114-117.

making out a *prima facie* case of restoration to capacity, to petition the court for revocation and obtain a hearing on the issue. The proposed statute incorporates these concepts.

#### (d) Right to Services

Each ward should have the right to adequate care, treatment and rehabilitative services to meet the guardianship mandate and to achieve self-reliance. It can be argued that due process principles require the recognition of such a right either as the *quid pro quo* for the loss of personal freedom and autonomy or as necessary to fulfill the legitimate state purposes under a guardianship law, *i.e.*, protecting the individual and restoring him to full capacity.<sup>13</sup>

Implementation of this right would mean, particularly in the case of a ward whose estate is inadequate to pay for needed services, public subsidy or quality public services. To minimize state and local costs, the ward's assistance program should take advantage of all available federal and insurance funding sources. To help assure full exploration of all financial resources, the guardianship plan must include a description of possible funding sources and the manner of financing services.

#### (e) Mental Health Treatment

To authorize a guardian to supervise mental health services, the proposed statute requires that the ward be found incapable of making his own informed decision about treatment. With respect to most forms of treatment, the guardian would be empowered to give substitute consent on behalf of the ward. When hospitalization or particularly harsh or hazardous forms of treatment are proposed, however, additional safeguards seem warranted. Therefore, the proposed statute requires Human Rights Committee review and approval of mental health inpatient care and similar forms of treatment needing committee approval under the proposed civil commitment statute, *i.e.*, electroconvulsive therapy, certain medication practices and behavior therapy involving the use of aversive stimuli or substantial deprivations.

### C. RELATIONSHIP TO CIVIL COMMITMENT STATUTE AND OTHER PERSONAL GUARDIANSHIP STATUTES

The proposed civil commitment statute does not

include inability to care for oneself among the grounds for commitment. It is recognized, however, that some civil commitment statutes expressly or implicitly include this standard.<sup>14</sup> The reasons for making such inability a ground for personal guardianship and not for civil commitment are founded purely on policy considerations. Most importantly, many people meeting this criterion have significant needs apart from mental health treatment, *e.g.*, noninstitutional housing, personal or medical care for physical ailments. Logically a guardian is better able to handle these matters than a mental health facility. In fact, the ward's condition may make no mental health treatment advisable. Under the recommended guardianship approach, the mental health services system would generally have no direct responsibilities beyond needed diagnostic and treatment services. In some cases, however, an untreatable ward might be placed in a community residence operated by mental health authorities if a structured environment or systematic observation is needed but not available elsewhere.

To the extent other existing guardianship statutes provide for personal care, treatment or supervision on the grounds of those mental disorders commonly regarded as "mental illness" it is recommended that they be repealed. The proposed personal guardianship is intended to provide the exclusive means for meeting such needs. If other guardianship statutes use "mental illness" as a criterion without the same procedural safeguards and substantive limitations, the reformist aims of the new statute will not be served. Likewise, statutes which would provide guardianship on grounds such as old age<sup>15</sup> should be reconsidered.

Finally, property guardianship statutes should be reassessed for strict adherence to their stated purpose. When a prospective ward is neither able to take care of his essential physical needs nor to manage substantial financial interests, separate personal and property guardianships can be established. But the need for property guardianship alone should never result in infringements upon the individual's personal freedom. Nor should the need for personal care alone result in the loss of significant control over financial or property interests unrelated to the costs of such care.

## III. PROPERTY GUARDIANSHIPS

Students of property guardianship statutes have found that they generally need extensive reform in

the same respects as civil commitment and personal guardianship laws.<sup>16</sup>

<sup>13</sup> *Cf. Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir. 1974). It could also be argued that treatment and other services aimed at restoring the individual's capability are mandated by least drastic means principles. Under the least-drastring means argument, treatment to restore the ward to capacity may, in many cases, be viewed as a less restrictive alternative for protection of the individual than a guardianship of indefinite or unnecessarily long duration. *Cf. Developments in the Law, "Civil Commitment of the Mentally Ill," 87 Harv. L. Rev. 1190, 1245-1253, (1974).*

<sup>14</sup> *E.g., Miss. Code Ann. §41-21-61(c)* (Supp. 1976); *Wash. Rev. Code Ann. §571.05.020(i), 71.05.280* (1975).

<sup>15</sup> *E.g., Cal. Prob. Code §1751* (Deering 1974); *Ill. Ann. Stat. ch. 3, §112* (Smith-Hurd Supp. 1976); *Minn. Stat. Ann. §525.54* (1975).

<sup>16</sup> *See generally Alexander & Lowin, supra note 2; Regno, supra note 2; Frachter, "Toward Uniform Guardianship Legislation," 64 Mich. L. Rev. 903* (1966).

In recent years, however, property guardianship law reforms have been developed and reference is made to those proposals<sup>17</sup> in lieu of suggesting a further model herein. However, a few suggestions seem appropriate. First, it is recommended that adequate procedures and provision for effective representation of the proposed ward by counsel are essential to implement the laws.

The criteria for property guardianship should focus on the ward's recent business and financial conduct. Thus a showing of gross mismanagement and manifest financial vulnerability should be required.

Property guardianships should also be tailored to the individual's needs. If at all capable of minor transactions, a ward should retain control over a reasonable amount to spend for his own comfort or enjoyment. Likewise, if only certain parts of his estate are of concern, e.g., a business enterprise or stock holdings, the guardianship should be so defined. And, if the ward needs assistance in such specific matters as maintaining adequate books, the guardianship should not infringe upon his other

activities. In all cases, the guardian should be required to consult with the ward with regard to major transactions affecting his interests.

The ward should be offered every treatment, counseling or rehabilitative service that would enhance his possibility of regaining capable management of his estate. Guardianships should be for fixed periods and renewable only after judicial review. In the same vein, the ward should be able to petition for removal of the guardianship upon presenting credible evidence of regained management ability.

Very importantly, persons with an adverse financial interest, such as state officials having claims against the proposed ward, should not be eligible for appointment as guardians.

Finally, public guardianship services should be considered for persons unable to afford private guardianship fees. Too often there are no competent guardianship services for persons with small estates or fees that would soon consume the estate.<sup>18</sup>

#### IV. PUBLIC GUARDIANSHIP AGENCIES

A public guardianship agency could provide personal and property guardianship services in the absence of other willing and capable stewards. In fact, if such an agency had a core staff capable of monitoring and coordinating personal-care and treatment services—e.g., social workers and small-estate managers—designating a staff member of this type of agency might often be preferable to persons traditionally named as guardians. This would be particularly true when the court determines a significant conflict exists between the interests of the prospective guardian and ward. In the cases of persons with small estates, such an agency would fill a frequently unmet need.

In addition to assuring competence and sufficient personnel to render its workload manageable, the key issue in designing such an agency is avoiding conflict of interests between the ward and agency personnel. A guardian must be free to serve as an advocate of the ward's interests. Therefore, the guardianship agency must be independent of health, mental health, welfare and other service-providing agencies. A model for such an agency was published a few years ago.<sup>19</sup> California has a fairly extensive system of public guardians.<sup>20</sup>

#### V. GUARDIANSHIP FEES

One of the more ironic aspects of the operation of guardianship laws is the begging of the ward for payment of the costs of the guardianship itself. While it is reasonable to expect the ward's estate to be responsible for the costs of maintenance, care and treatment services which benefit him, despite his non-assent, it is patently counterproductive to destroy the ward's financial means to support himself.

To avoid this, the suggested personal guardianship statute protects the ward's estate from being unduly exhausted by guardianship costs. A provision sets out guidelines for judicial determination regarding the extent to which the ward's estate may be used to pay for the guardian's fees and other

services. Rather than setting out numerical standards, those guidelines call for judicial discretion. A similar provision could be included in property guardianship statutes and in statutes establishing a public guardianship agency.

<sup>17</sup> See the Uniform Probate Code, Article V, which is reviewed by American Bar Association Committee on Problems Relating to Persons Under Disability in "Conservatorship: Present Practice and Uniform Code Compared," 5 *Real Prop., Prob. & Trust J.* 507 (1970) (hereinafter cited as *American Bar Association Committee*); Alexander & Lewin, *supra* note 2; Frachter, *supra* note 16.

<sup>18</sup> *American Bar Association Committee, supra* note 17, at 509.

<sup>19</sup> *Legal Research and Services for the Elderly and National Council of Senior Citizens, Legislative Approaches to the Problems of the Elderly: A Handbook of Model Statutes* 153-56 (1971).

<sup>20</sup> *Cal. Will. & Inst'n's Code* §8000 et seq. (West 1972).

**LEGAL ISSUES IN STATE MENTAL HEALTH CARE:  
PROPOSALS FOR CHANGE**

**SUGGESTED STATUTE  
ON GUARDIANSHIP**

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# SUGGESTED STATUTE ON GUARDIANSHIP

## §1. Definitions

For purposes of this act, the definitions set forth in [section 1 of the statute on civil commitment] shall apply, *provided* that all references to the "respondent" shall be deemed to be references to "ward" or "proposed ward"; and the following definitions shall also apply:

"Gravely disabled" means unable to meet essential requirements for one's physical health or safety as a result of severe mental disorder.

"Guardianship evaluation" means an interdisciplinary evaluation of a proposed ward's physical and mental health, living situation, and legal and financial affairs, available sources of assistance to meet his needs for medical and personal care, the proposed ward's willingness voluntarily to accept services essential to his physical well-being, and his ability to make informed decisions about such services and about treatment.

"Guardianship evaluation service" means that agency or organization designated by the [county or other appropriate political subdivision] to accomplish guardianship evaluations.

"Guardianship screening investigation" means the investigation and review by the Mental Health Review Officer of facts which have been alleged to warrant a personal guardianship, including interviews with the person making such allegations, any other significant witnesses who can readily be contacted for interview and the proposed ward. The purposes of any such interview with the respondent shall be to explain the situation to him and to provide him the opportunity to explain or rebut the allegations in the petition. If, during the interview with the proposed ward it seems advisable to the interviewer to do so, he may attempt to persuade the proposed ward to receive on a voluntary basis any evaluation, care, treatment or other services which may obviate the possible need for personal guardianship. Any witnesses identified by the respondent, or whose identity otherwise becomes known, who are reasonably accessible and purportedly have information which would contradict, rebut or discredit that

provided by the petitioner shall also be interviewed.

"Personal care services" means hygiene, homemaking, nutrition and similar services necessary to protect a ward from serious injury, illness or disease.

"Lack of capacity to make informed decisions about care and treatment services" means the inability, by reason of mental condition, to achieve a rudimentary understanding, after conscientious efforts at explanation, of the purpose, nature or possible significant benefits of care and treatment services to be provided under personal guardianship; *provided that* a person shall be deemed incapable of understanding such purpose if, due to impaired mental ability to perceive reality, he cannot realize that his recent behavior has caused, or has created a clear and substantial risk of serious physical injury, illness or disease to himself; and *provided further* that a person shall be deemed to lack the capacity to make informed decisions about care and treatment services if his reason for refusing the same is expressly based on either the belief that he is unworthy of assistance or the desire to harm or punish himself.

"Unable to meet essential requirements for one's physical health or safety" means unable, through one's own efforts and through acceptance of assistance from family, friends and other available private and public sources, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene and safety so that, in the absence of personal guardianship, serious physical injury, illness or disease is likely to occur in the near future. For purposes of this act, any such inability must be evidenced by recent behaviors causing such harm or creating a clear and substantial risk thereof and at least one incidence of such behavior must have occurred within twenty days of the filing of the petition for personal guardianship. The requirement of the preceding sentence shall not apply in the case of a petition for renewal of personal guardianship.

## §2. Petition

(i) A petition for personal guardianship may be executed by any adult person and must be filed with the Mental Health Review Officer for the county in which the proposed ward resides or is present. The petition must:

(i) state the name, age, present address of the petitioner and his relationship to the proposed ward;

(ii) state the name, age, county of residence and present address of the proposed ward;

(iii) allege that petitioner believes the proposed ward to be gravely disabled and specify the factual information on which such belief is based and the names and addresses of all persons known to the petitioner who have knowledge of such facts through personal observations; and

(iv) request the appointment of a guardian.

(b) The petition, or amendment thereto, may also nominate a guardian and include a request

for temporary guardianship in order to meet immediate, essential needs of the proposed ward which would otherwise create a clear and substantial risk of death, or serious physical injury, illness or disease during the pendency of the guardianship petition. A request for temporary guardianship must specify facts which cause the petitioner to believe that a temporary guardian is necessary.

### §3. Notice of Rights

(a) Upon receipt of a petition for guardianship, the Mental Health Review Officer shall promptly:

(i) interview the proposed ward as part of the guardianship screening investigation;

(ii) explain to the proposed ward, at the beginning of the interview, the purpose of the interview and possible consequences of the proceedings;

(iii) serve a copy of the petition on the proposed ward;

(iv) explain and provide to the proposed ward a written statement of the following:

(A) that he has a right to communicate immediately with an attorney, a physician, and a mental health professional;

(B) that a Mental Health Advocacy Service

attorney, whose name, address and telephone number are to be included in the statement, has been designated to advise and represent him prior to and at any judicial hearings, and that the attorney may arrange for an examination and consultation with a physician and mental health professional; and

(C) that he may, instead, employ an attorney, physician and mental examiner of his own choosing at his own expense; and

(v) offer assistance to the proposed ward in contacting an attorney.

(b) Designation of Mental Health Advocacy Service attorneys to represent proposed wards shall be accomplished in the same manner as provided at [subsection 2(g) of the proposed statute on civil commitment].

### §4. Evaluation

(a) Upon receipt of a petition for guardianship, the Mental Health Review Officer shall cause a screening investigation to be completed by the end of the third day after receipt of said petition. If upon completion of such investigation he finds reasonable grounds to believe that the proposed ward is gravely disabled, he shall direct the guardianship evaluation service to conduct a guardianship evaluation. That evaluation shall be completed within fourteen days of the date of the filing of the petition.

(b) The guardianship evaluation shall be conducted with minimum interference with the proposed ward's activities. Any interviews and examinations shall take place in the proposed ward's residence unless the proposed ward does not object to being examined or interviewed in a medical or mental health facility or, with the ap-

proval of the Mental Health Review Officer, it is deemed necessary to conduct certain interviews or examinations in a medical or mental health facility. In cases of such necessity, the Mental Health Review Officer may cause the respondent to be taken into custody and conveyed directly to and from a medical or mental health facility for purposes of examination or interview during the normal business hours of the facility.

(c) Persons conducting guardianship evaluations shall in all cases include at least (i) a psychiatrist, or a physician and a [licensed or certified] psychologist with a doctoral degree in an accredited clinical program, (ii) an attorney, and (iii) a social worker with a graduate degree in social work with field training in a psychiatric facility from an accredited program.

### §5. Evaluation Report

(a) An evaluation report shall be filed in court, together with the petition and proof of service of the report upon the proposed ward and his attor-

ney and the petitioner, within fourteen calendar days of the date on which the petition was filed with the Mental Health Review Officer.

(b) The evaluation report shall

(i) describe medical tests and examinations performed with regard to the proposed ward's physical condition and state and interpret the results thereof;

(ii) describe the proposed ward's mental and emotional condition and specify the data on which such description is based;

(iii) specify the particular services necessary to protect the proposed ward from serious physical injury, illness or disease in the near future;

(iv) specify whether the proposed ward is in need of mental health treatment and whether there is a substantial probability that available treatment will significantly improve his mental condition;

(v) describe the terms and manner in which necessary services were explained to the proposed ward and state whether the proposed ward wishes to accept or refuse such services, what his understanding is of the nature, purpose and benefits of such services, and what his express reasons for any refusal are;

(vi) specify the financial resources of the proposed ward and his entitlements to insurance benefits and publicly operated or sponsored health, mental health and welfare assistance which might be employed in the provision of services to him;

(vii) describe the alternative arrangements to personal guardianship and to hospitalization or

other supervised residence which were explored and, if relevant, why they are not considered to be feasible or in the proposed ward's best interest; and

(viii) if personal guardianship is recommended, propose a guardianship plan which includes recommendations as to:

(A) the proposed guardian and any possible alternatives;

(B) the services necessary and available to protect the proposed ward from serious injury, illness or disease and the means by which they may be financed;

(C) the specific, least restrictive authorities needed by the guardian to provide services necessary to protect the proposed ward from serious illness, injury or disease;

(D) the specific authorities needed by the guardian to control the assets and other financial interests of the proposed ward in order to pay for such necessary services; and

(E) the exemption of part or all of the proposed ward's estate and income from the fees and other costs incurred through guardianship so as to protect the proposed ward from hardship and his ability to sustain himself independent of governmental or other forms of assistance after the guardianship expires or is revoked.

(c) The petitioner and proposed ward shall have five judicial days to file responses to the evaluation report.

## §6. Evaluations: Right to Remain Silent and Silent Observers; Proposed Ward's Experts

(a) A proposed ward shall have the right not to respond to any questions in the course of examinations and evaluations for the purpose of determining whether he meets the criteria for temporary or personal guardianship, provided that, after full explanation of this section 6, he may be required to submit to interviews for the purpose of ascertaining whether he lacks the capacity to make informed decisions about care and treatment services and his failure to respond to questions relevant to that issue may be introduced as evidence of a lack of such capacity.

(b) Statements of proposed wards in the course of evaluations, examinations and treatment pursuant to this act shall be deemed privileged and confidential and, therefore, not admissible without the respondent's consent in any other civil or criminal proceedings other than proceedings pursuant to this act and [the statute on civil commitment]. Proposed wards shall at all times have the right to refuse to answer questions when the answers may tend to incriminate them.

(c) During any evaluative interview or testing conducted under this act, the respondent shall have the right to be accompanied by an attorney or other Mental Health Advocacy Service member, or any attorney or mental health professional of his own choosing; and the state's attorney may also attend. Said accompanying persons and state's attorney shall be present as observers only and shall not participate in such interviews or testing through the rendering of advice, making suggestions or other actions which would impede the conduct of the interview or test.

(d) The court shall, if requested by an indigent ward or proposed ward in preparation for and in connection with any hearing provided in this act, appoint a reasonably available psychiatrist, psychologist or physician designated by the ward or proposed ward to examine him and testify on his behalf. Requests for such appointments may be filed in court at any reasonable time prior to such hearings. Reasonable fees and expenses for such expert examiner shall be borne by the [court/county].

## §7. Expert Testimony

(a) Psychiatrists and psychologists testifying at hearings conducted pursuant to this act may, if appropriately qualified, give testimony:

(i) describing the present mental functioning of a ward or proposed ward whom the witness has personally examined;

(ii) stating an opinion as to what the prospects are that proposed and available treatment will improve the mental condition of the ward or proposed ward; and

(iii) stating an opinion whether the ward or proposed ward has a severe mental disorder, as

defined in section 1 of this act; *provided that* any witness so testifying shall be required to provide a detailed explanation as to how any such descriptions and opinions were reached and a specification of all behaviors and other factual information on which such descriptions and opinions are based.

(b) Such witnesses shall not be permitted to give opinion testimony stating the applicable diagnostic category unless the ward or proposed ward raises the issue through cross-examination or the presentation of evidence.

## §8. Psychotropic Medication Influencing Wards or Proposed Wards at Judicial Hearings

(a) It shall be the responsibility of the facility providing treatment to a ward or proposed ward to assure that he is not, without his consent, given any psychotropic medication on the day preceding, and on the day of, any judicial hearing under this act, nor given any medication with an expected effective duration of action extending into such days.

(b) Notwithstanding the provisions of subsection (a) of this section, the ward or proposed ward may be subjected to the influence of psychotropic medication on the day preceding and on the day of a judicial hearing upon the written order of a treatment facility physician who finds it necessary to protect the ward or proposed ward or others from serious bodily harm, and, if he is to be kept

under medication for a period exceeding twenty-four hours, the procedures described at [subsection 5(d) of the proposed statute on civil commitment] are followed.

(c) If, for any reason, the treating facility fails to comply with subsection (a) of this section 8, the ward or proposed ward shall be entitled to a postponement until compliance is attained.

(d) The ward or proposed ward shall be entitled, upon his request at any judicial hearing conducted pursuant to this act while he is under the influence of medication, to have the court and the jury, if any, informed regarding such medication and its effect on his actions, demeanor and participation at the hearing.

## §9. Hearing

(a) Upon the expiration of the period provided at subsection 5(c) of this act for the filing of responses to the evaluation report, the court shall either dismiss the petition on the grounds that no substantial grounds for a personal guardianship appear or order the matter to be scheduled for a hearing.

(b) A hearing pursuant to this section 9 shall be conducted within thirty-five days of the filing of the petition.

(c) At the hearing the proposed ward shall have the following rights:

(i) to be represented by a staff attorney from the Mental Health Advocacy Service or, if he prefers, an attorney of his own choosing;

(ii) to present evidence on his own behalf;

(iii) to cross-examine witnesses who testify against him;

(iv) to remain silent;

(v) to have the hearing open or closed to the public as he elects;

(vi) to be present unless the court determines that his conduct in the courtroom is so disruptive that the proceedings cannot reasonably continue with him present; and

(vii) to be proceeded against according to the rules of evidence applicable to civil judicial proceedings; and

(viii) to a trial by jury on the issue of whether he is gravely disabled.

(d) The hearing shall in all respects be in accord with constitutional guarantees of due process and the burden of proof by clear and convincing evidence shall be upon the petitioner.

(e) If the proposed ward is found by the jury or, if a jury trial has been waived, by the court to be

gravely disabled, the court shall promptly resume the hearing without a jury, for the purpose of determining any disputes regarding

- (i) content of the guardianship plan;
- (ii) who should be named guardian;
- (iii) the availability of services necessary to protect the proposed ward from serious injury, illness or disease;
- (iv) whether the proposed ward lacks the capacity to make informed decisions about care and treatment services which the guardian would provide; and

(v) what assets and sources of income of the proposed ward should be exempt from charges to pay the costs and fees involved in the guardianship.

(f) Petitioners, temporary and personal guardians and the guardianship evaluation service shall be represented at all hearings under this act by a state's attorney, *provided that* the state's attorney's office may agree with the petitioner or temporary or personal guardian for representation to be provided by another person licensed to practice law in this state.

## §10. Guardianship Order

(a) If, pursuant to section 9 of this act, it is determined that the proposed ward is gravely disabled, and lacks the capacity to make informed decisions about proposed care and treatment services and that necessary services are available to protect the proposed ward from serious injury, illness or disease, the court shall enter an order which

- (i) names the guardian and establishes a guardian-ward relationship;
- (ii) makes findings of fact on the basis of clear and convincing evidence which support each grant of authority to the guardian;
- (iii) exempts from charges for the costs and fees of the guardianship so much of the estate and income of the ward as is necessary to prevent hardship and to ensure that the guardianship will not cause the ward to become financially dependent upon any governmental agencies or private agencies or persons; and
- (iv) adopts a guardianship plan.

(b) The guardianship plan shall specify those authorities which the guardian will have with regard to

- (i) medical care for the ward's physical condition;
- (ii) mental health treatment which the guardian may deem to be in the ward's best interests; *provided that* [sections 39 and 40 of the proposed statute on civil commitment] shall govern with respect to those forms of treatment for which Human Rights Committee approval is required in the case of civilly committed persons;
- (iii) deciding where the ward shall live and

placing the ward in a hospital or other supervised residential facility; *provided that* the ward shall not be placed in a hospital or other supervised residential facility for any period exceeding ten days unless the Human Rights Committee, following a review hearing conforming to [section 39 of the proposed statute on civil commitment] approves such placement as being in the ward's best interest and in accordance with least drastic means principles;

(iv) personal care services necessary for the physical welfare of the ward;

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

(vi) physical and mental examinations as necessary to determine the ward's medical and mental health treatment needs; and

(vii) the estate and income of the ward, consistent with subsection (a)(iii) of this section 10, necessary to pay for the cost of services which the guardian is authorized to obtain on behalf of the ward.

(b) The guardianship plan shall be no more restrictive upon the liberty of the ward than is reasonably necessary to protect the ward from serious physical injury, illness or disease and to provide him with medical care and mental health treatment for his physical and mental health.

(c) An initial guardianship order shall be for no longer than six months and any renewals thereof pursuant to section 13 of this act shall be for no longer than one year.

## §11. Temporary Guardianship

(a) If during the pendency of an initial petition for guardianship it appears that services are needed immediately to prevent serious injury, ill-

ness, or disease, the petitioner or guardianship evaluation service may request the appointment of a temporary guardian to authorize such ser-

ances. Such request shall state the reasons and factual basis for the request and shall immediately be filed with the court and copies immediately served on the proposed ward and his attorney.

A hearing shall be conducted within seventy-two hours of the filing.

(b) At the temporary guardianship hearing, the proposed ward shall have the rights set forth at subsections 9(c)(i) through (vii) of this act.

(c) The burden of proof at the hearing shall be by a preponderance of the evidence and shall be upon the party requesting that a temporary guardian be appointed.

(d) If the court determines that a temporary guardian should be appointed, it shall make the appointment and grant authorities that are least

restrictive upon the liberty of the proposed ward consistent with ensuring that emergency services necessary to protect the proposed ward from serious injury, illness or disease.

(e) The temporary guardianship shall expire at the time of the appointment of a guardian under section 7 of this act or upon the dismissal of the petition for guardianship.

(f) If emergency life-saving services are needed during the pendency of a request for temporary guardianship, the Mental Health Review Officer may authorize them if, after assessing the situation and, if possible, providing the proposed ward and his attorney the opportunity to present a rebuttal, he determines that the services are necessary and that a delay until the temporary guardianship hearing would entail a life-threatening risk to the proposed ward.

## §12. Revocation and Modification of Guardianship Orders

(a) At any time the guardian and ward may jointly petition the court for revocation or modification of the guardianship. A copy of such petition must be served upon the guardianship evaluation service, which shall have ten days to file a response thereto, together with proof of service thereof upon the guardian, the ward and the ward's attorney. If the service files a response not objecting to the modification or revocation or fails to file a response within ten days, the court shall order the modification or revocation. Any response by the service objecting to the proposed modification or revocation, or any part thereof, shall specify the reasons and factual bases for objection. Upon receipt of such an objection from the service, the court shall determine whether it raises a substantial issue as to whether the modification or revocation is in the ward's best interest. If the court determines that no substantial issue has been raised, it shall order the modification or revocation. If, however, the court determines that the service response raises a substantial issue, it shall immediately cause to be served upon the service, the guardian, the ward and the ward's attorney notice of a hearing to be conducted within five to fifteen judicial days from the date of such notice.

(b) If at any time the guardian deems it necessary to seek a modification of the guardianship order to increase his authorities, he may file with the court, together with proof of service upon the guardianship evaluation service, the ward and the ward's attorney a petition specifying the requested modification and the supporting reasons and factual bases. The service and the ward shall have five judicial days to file a response thereto, together with proof of service upon the guardian. In the absence of a response, the court may order

any requested modification which it finds supported by the petition. If, upon receipt of a response, the court finds that there is clearly no substantial basis for a modification, it may dismiss the petition. Otherwise, the court shall cause to be served upon the service, the guardian, the ward and the ward's attorney notice of a hearing to be conducted within five to fifteen judicial days from the date of such notice. The hearing shall be in accordance with subsection 9(c) of this act except that the right to a jury shall not apply and the burden of proof by clear and convincing evidence shall be upon the guardian.

(c) The ward may file a petition for modification or revocation together with proof of service upon the guardian and guardianship evaluation service, no more than once during any ninety-day period and no later than sixty days prior to the expiration date of the guardianship order. Such petition must state the supporting reasons and factual bases and shall include as attachments summaries of the expected testimony of persons who testify for the ward. The service and guardian shall have ten judicial days to file a response, together with proof of service upon the ward, the ward's attorney, and the service or guardian. Thereafter, the court shall determine whether any substantial disputed factual issues exist and, if none exists, the court may dismiss the petition, or modify or revoke the guardianship, as warranted. If such issues do exist, the court shall cause to be served upon the service, the guardian, the ward and the ward's attorney notice of a hearing to be conducted within five to fifteen days after such notice. At the hearing, the ward shall have the burden of going forward with the evidence, but, if the ward presents a *prima facie* case for modification or revocation of the guardianship, the burden

of proof by clear and convincing evidence shall be upon the party or parties opposing the modification or revocation. Otherwise, the hearing shall be

In accordance with subsection 9(c) of this act except the right to a jury shall not apply.

### §13. Expiration and Renewal of Guardianship Orders

(a) An initial guardianship order shall expire six months from the date of the order unless the guardian files a petition for renewal, together with proof of service upon the guardianship evaluation service, the ward and the ward's attorney, twenty or more days prior to the expiration date.

(b) If a renewal petition is filed in a timely manner, the then current period of guardianship shall not expire until the court takes final action thereon. Upon receipt of a petition for renewal, the court shall direct a guardianship evaluation and report to be accomplished in accordance with subsections 4(b) and (c) and 5(b) and (c) of this act. The evaluation report shall be filed, together with proof of service thereof upon the guardian, the ward and his attorney within fourteen days of the

date on which the renewal petition was filed with the court. Hearings on renewal petitions shall comply with section 9 of this act.

(c) The first renewal of guardianship shall be for a period of one year from the date on which the initial order would have expired in the absence of a timely petition for renewal. All subsequent renewal periods shall be for no longer than one year from the date on which the preceding renewal would have expired in the absence of a timely petition for renewal.

(d) Second and subsequent petitions for renewal must be filed twenty or more days prior to the expiration date of the then current period of guardianship.

### §14. Emergency Powers

(a) Notwithstanding the limits of any temporary guardianship or guardianship order, temporary guardians and guardians shall at all times have the right to authorize the provision of emergency life-saving services. This shall include the power to authorize hospitalization without advance court approval.

(b) In the event of the exercise of emergency powers under subsection (a) of this section 14, the

temporary guardian or guardian shall provide immediate notice thereof to the court, the ward and the ward's attorney. If hospitalization is involved, the court shall, upon receipt of such notice, schedule a hearing on the continuing need for and appropriateness of hospitalization within seventy-two hours unless it clearly appears that the ward is to be discharged from the hospital within seven days of admission.

### §15. Right to Services

(a) Each ward shall have the right to prompt and adequate personal and medical care, treatment and rehabilitative services for the purposes both of meeting his needs for protection from physical injury, illness or disease and restoring him to the abilities to care for himself and to make his own informed decisions about care and treatment services.

(b) In the event that the guardian is unable to provide such services out of funds available from the ward's estate and income and other private and governmental benefits to which the ward is entitled, the guardian or ward may petition the court for an order requiring the [state and/or county] to provide such funds as are necessary to provide services that would implement the ward's right to services. Such petition shall provide complete details with regard to funds and other benefits at the guardian's disposal and justification

for the necessity and appropriateness of the services for which finances are unavailable. Upon receipt of the petition, the court shall schedule the matter for a hearing within twenty days and cause the petition and notice of the hearing to be served upon the guardian, the ward and the ward's attorney, the guardianship evaluation service and [appropriate state and/or local officials]. In preparation for the hearing, the guardianship evaluation service and [appropriate state and/or local officials] shall have access to relevant care and treatment records of the ward.

(c) At the hearing conducted pursuant to subsection (b) of this section 15, the burden of proof by a preponderance of the evidence shall be upon the petitioning party. Otherwise the hearing shall be in accordance with subsection 9 of this act except that the right to a jury shall not apply.

(d) At the conclusion of the hearing, the court

shall enter an order dismissing the petition or requiring the [state and/or county] to provide the necessary funds for any services to which the

ward has a right under subsection (a) of this section 15 and as to which there is at least a substantial probability of significant benefit to the ward.

## §16. Persons Eligible for Appointment as Guardians; Priorities

(a) The court may appoint an individual or [a protective services or public guardianship agency]. No person providing substantial services to the proposed ward in a professional or business capacity and no creditor of the proposed ward may be appointed. Also, no person may be appointed who is in the employ of any person, agency or corporation providing service to the proposed ward in a professional or business capacity or likely to provide the same during the guardianship period, except that a person so employed may be appointed if he is the spouse, adult child, parent or sibling of the proposed ward and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest. The following priorities shall guide the court in the selection of a guardian:

(i) any person [or agency] nominated by the proposed ward prior to the filing of the guardianship petition if at the time of the nomination the proposed ward was sixteen or more years of age

and had the capacity to make a reasonably intelligent choice;

(ii) the spouse of the proposed ward;

(iii) an adult child or parent of the proposed ward;

(iv) any relative of the proposed ward with whom he has resided for more than six months during the year prior to the filing of the petition;

(v) any other relative or friend who has evidenced a sincere, long-standing interest in the welfare of the proposed ward;

(vi) a protective services or public guardianship agency.

(b) The foregoing priorities shall not be binding, and the court shall select that person [or agency] who is best qualified and willing to serve. The court shall also give due consideration to any nomination by persons in priorities (ii), and (iii) of this section 16 and to any nomination in the will of a deceased parent of the proposed ward.

## ADMINISTRATIVE PROVISIONS

For guidance in the drafting of various administrative provisions, e.g., death, resignation or removal of the guardian, sureties and accounting, reference is made to the *Uniform Probate Code*. In adapting provisions of the *Code* for purposes of personal guardianship, however, care should be

taken to note that the personal guardian's authority over the estate and income of the ward is limited to include only that which is necessary to meet the care and treatment needs of the ward. See pp. 444-447, *supra*.



# Legislative Teleconference Network

## TELECONFERENCE CONFIRMATION

PLEASE RETURN THIS FORM, COMPLETED, TO:  
Juneau Teleconference Office  
Room 30, Capitol  
WITHIN 24 HOURS OF RECEIPT. IF YOU WISH  
YOUR TELECONFERENCE TO BE A SUCCESS PLEASE  
RETURN THIS PROMPTLY.

SECTION I. Place a check mark in the box if information is correct.   
Contact Teleconference Office if there are any discrepancies.

TELECONFERENCE DATE 4/11/81 TIME 1:30pm PST 11:30am AST  
COMMITTEE SENATE JUDICIARY PHONE 465-3717  
CHAIR/LEGISLATOR SEN. RODEY  
CHAIR SITE JUNEAU - BUTRO Rm MODE:  Audio  Video  
TOPIC SB3

SITES: All Alaskan Haines Anchorage Bethel Fairbanks  
WASH. D.C. Juneau Wasilla Dillingham Delta Junction  
Sitka Homer Kodiak Kotzebue  
Ketchikan Soldotna Sand Point Nome  
LIO Seward Barrow  
Sen. Stevens Valdez  
Sen. Murkowski  
Office Governor

SECTION II. Please provide explanatory material as indicated.

TELECONFERENCE OBJECTIVE/GOAL: What is the purpose of this t/c? What do you hope to accomplish? obtain public testimony on pros & cons of legislation

Do you expect any particular speakers/agencies or special interest groups? If so, please list names and phone numbers.

GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED 476-6507  
NAKOHIA HEALTH CARE CENTER 276-7203 RICK BERGER - ALASKA COURT SYSTEM 264-0545  
JOYCE WILLIAMS/HAWAII CHIEFS 452-8251 #280  
DONNA STEPHENS 276-4044 #127 ~~276-4044~~ NORMA LUNDY 264-6862  
BOB KNOX O.P.A.G. - 276-1059

..continue on reverse side of this sheet....

SECTION II, continued

PUBLICITY

- ~~1.~~ Please attach a copy of your Public Service Announcement (PSA).
- ~~2.~~ Make initial contact with media sources of your choice.
3. Local LTN moderators will make back-up calls upon receipt of this to ensure that your PSA has been received.

BACK-UP MATERIAL

Please provide Juneau LTN with copies of:

Legislation to be discussed (list here) \_\_\_\_\_

Summaries

Other special documents (list here) \_\_\_\_\_

\_\_\_\_\_

SECTION III

Please add any comments here that you think will be helpful to our moderators and will add to the success of your teleconference.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UPON RECEIPT OF THIS COMPLETED FORM, ALL SITES WILL BE NOTIFIED .

Please date and sign before returning to the Juneau Legislative Teleconference Network. Thank you very much for your assistance.

Deborah Hagaway  
Juneau LTN

3/24/81  
date

[Signature]  
your signature



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

## PUBLIC SERVICE ANNOUNCEMENT

THE SENATE JUDICIARY COMMITTEE WILL BE CONDUCTING TELECONFERENCE HEARINGS WITH ANCHORAGE AND FAIRBANKS REGARDING SENATE BILL 3 ON WEDNESDAY, APRIL 1, AT 1:30 P.M. PACIFIC STANDARD TIME.

THE BILL IS A COMPREHENSIVE REVISION OF STATUTES RELATING TO GUARDIANS AND CONSERVATORS FOR INCAPACITATED PERSONS.

THE COMMITTEE IS INTERESTED IN GENERAL TESTIMONY FROM INDIVIDUALS OR ORGANIZATIONS INTERESTED IN THE BILL.

FURTHER INFORMATION MAY BE OBTAINED BY CONTACTING THE SENATE JUDICIARY COMMITTEE, SENATOR PATRICK RODEY, CHAIRMAN, OR YOUR LOCAL LEGISLATIVE INFORMATION OFFICE.

ANCHORAGE AREA RADIO STATIONS

KRKN (FM)  
338 Denali Street  
Anchorage, AK 99501  
(276-5102) (277-2655)

Gen. Mgr., Marilyn Davidson  
News Dir., Jay Noble

AK Public Radio Network  
400 Gambell, Rm 302  
Anchorage, AK 99501  
(277-9944)

Gen. Mgr., NA  
News Dir., NA

KANC  
8845 Jewel Lake Rd.  
Anchorage, AK 99502  
(243-1300) (272-5423)

Gen. Mgr., J. Lindauer  
News Dir., Mike Sheperd

ALASKA RADIO NETWORK  
8845 Jewel Lake Rd.  
Anchorage, AK 99502  
(248-2404)  
*278-3591 - Don Byron*

Gen. Mgr., John Lindauer  
News Dir., Don Byron

KHAR-AM, KKLV-FM (APRN)  
3900 Seward HWY  
Anchorage, AK 99503  
(272-9594) (272-9591)

Gen. Mgr., Ken Flynn  
News Dir., Jerry Ritter

KHVN (AP)  
2550 Denali, #1305  
Anchorage, AK 99503  
(278-4631)

Gen. Mgr., Jerry Nichols  
News Dir., NA

KSKA (NPR)  
AK. Pacific Univ.  
Anchorage, AK 99504  
(276-3000)

Gen. Mgr., Bill Brooks  
News Dir., Barbara Hayr

AK FORCES RADIO NETWORK  
Elmendorf AFB  
AK 99506  
(752-5488) (752-3926)

Gen. Mgr., MTR. Whipple  
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MSGT. Bailey

KFQD  
9200 Lake Otis Pkwy  
Anchorage, AK 99507  
(344-7013) (344-9622)

Gen. Mgr., Roy Robinson  
News Dir., Bob Dorn

KYAK-AM, KGOT-FM  
2800 E. Dowling Rd.  
Anchorage, AK 99507  
(344-2550) (344-2525)

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ANCHORAGE AREA RADIO STATIONS

KBYR (CBS)  
P.O. Box 2200  
Anchorage, AK 99510  
(277-4133)(272-3456)

Gen. Mgr., Ron Moore  
News Dir., Dave Woodson

KENI (ARC)  
P.O. Box 1160  
Anchorage, AK 99510  
(272-7461)

Gen. Mgr., Charlie Gray  
News Dir., P. T. Gentry

KNIK (FM)  
P.O. Box 2200  
Anchorage, AK 99510  
(272-3456)

Gen. Mgr., NA  
News Dir., Dave Woodson

FAIRBANKS & CENTRAL ALASKA RADIO STATIONS

KFRB (CBS)  
P.O. Box 950  
Fairbanks, AK 99701  
(452-5121)

Gen. Mgr., NA  
News Dir., Anne Spink

KUAC (FM, APRN)  
University of Alaska  
Fairbanks, AK 99701  
(497-7491)

Gen. Mgr., Paula Schiller  
News Dir., NA

KJNP  
North Pole, AK 99705  
(488-2216)

Gen. Mgr., Don Nelson  
News Dir., NA

KFAR  
P.O. Box 910  
Fairbanks, AK 99707  
(452-5118)

Gen. Mgr., NA  
News Dir., Julie Scott  
Scott Yates

KIAK (MUTUAL)  
P.O. Box 73410  
Fairbanks, AK 99707  
(452-1931)

Gen. Mgr., NA  
News Dir., Pete Van North



CURRENT NEED FOR GUARDIANS

Facility	# without Guardian	# which do not need Guardian	# needing Guardian	# needing Private Guardian	# needing Public Guardian
<b>Southcentral Region</b>					
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
<b>Northern Region</b>					
Careage North	65	38	27	21	6
Hope Center	19	4	15	12	3
<b>Southeast Region</b>					
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
<b>TOTALS</b>	<b>540</b>	<b>330</b>	<b>210</b>	<b>95</b>	<b>115</b>
<b>Percent of Total Facility Population</b>	<b>81%</b>	<b>50%</b>	<b>32%</b>	<b>14%</b>	<b>17%</b>

CURRENT STATUS OF GUARDIANSHIPS

Facility	# Patients	# with Guardians	# with Private Guardians	# with Public or Disint. Guardians
<b>Southcentral Region</b>				
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
<b>Northern Region</b>				
Careage North	73	8	6	2
Hope Center	25	6	5	1
<b>Southeast Region</b>				
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
<b>TOTALS</b>	<b>665</b>	<b>125</b>	<b>89</b>	<b>36</b>
<b>Percent of Total Facility Population</b>		<b>19%</b>	<b>13%</b>	<b>5%</b>

PROJECTED NEED FOR GUARDIANSHIPS

Facility	Admissions (Approx. per yr.)	# needing Guardian	# needing Private Guardian	# needing Public Guardian
<b>Southcentral Region</b>				
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
<b>Northern Region</b>				
Careage North	236	40	30	10
Hope Center	4	3	3	0
<b>Southeast Region</b>				
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
<b>TOTALS</b>	<b>463</b>	<b>152</b>	<b>87</b>	<b>65</b>
Percent of Total Admissions		33%	19%	14%

TOTAL UTILIZATION OF GUARDIANS

<u>Facility</u>	<u>Total # of Guardians who could be in use now</u>	<u># Private Guardians</u>	<u># Public Guardians</u>
Southcentral Region			
Harborview	52	37	15
Hope Cottages	15	7	8
Valley	3	2	1
Wesleyan	58	35	23
Glenmore	77	7	70
Careage House	6	4	2
Northern Region			
Careage North	35	27	8
Hope Center	21	17	4
Southeast Region			
Island View Manor	43	43	0
Wrangell General (long-term care)	11	2	9
Gateway	5	2	3
St. Ann's	9	1	8
<b>TOTALS</b>	<b>335</b>	<b>184</b>	<b>151</b>
Percent of Total Facility Population	50%	28%	23%

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

PERSONAL SERVICES

\$54,218

Admin Officer II (Rg 19) \$2243/mo	\$26,916
Legal Secretary I (Rg 10) \$1192/mo	14,328
	<u>41,244</u>
FICA-.0613% x \$37,228	2,282
PERS- 17.70%	7,300
Health Ins- 24 mm x \$141.32	3,392
	<u>\$54,218</u>

TRAVEL

\$24,300

Quarterly visits to wards and visitor inquiries estimated at 5 trips per month- 60 annually

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

Assumptions made:

- (1) Quarterly visitation requirement would be delegated to Public Administrator at 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 to wards could not be fully complied with in initial year.

CONTRACTUAL SERVICES

\$151,055

Basic telephone & long distance \$600/month	\$ 7,200
Postage- Routine correspondence \$300/month	540
Certified estimated 15/mo @ \$1.25	225
Copy machine-USAGE ONLY 10,000 copies @ \$.25	2,500
Printing- Lettersets, envelopes	1,200
Forms requirements	2,500
Typewriter rental \$365/mo	4,380
	<u>\$18,545</u>

Professional fees & services- 210 current backlog of cases

Court system estimates on 188 cases in first 4 months of FY 79 reflects average cost of \$525 per case. This provided approximately 14 hours attorney time and 2 hours of hearing time before a Standing Master

\$110,250

Expert testimony- Rules of Court specifications \$50/hr  
Assumption: 2 hours per case.

\$ 21,000

CONTRACTUAL SERVICES: continued

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

\$ 1,260

\$151,055

COMMODITIES

\$ 1,200

EQUIPMENT

\$ 2,450

Desk, Executive \$ 280.96  
Desk, Secy 345.16  
Bookcase 3 shelf 81.85  
Legal files  
(2 4 dwr) 349.54  
Chair, Exec 141.01  
Chair, Secy 92.72  
Calculator 218.47  
Transcriber 464.86  
Dictating unit 464.86  
\$2,439.43

TOTAL PROJECTED FY 80 BUDGET REQUEST

\$233,212

ANTICIPATES 100% federal funding through existing programs.

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 Serv	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 federal funds passed through interagency 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.)

Possible federal funds identified are:

Governor's Council Handicapped & Gifted \$50,000

While it is not feasible to identify other specific amounts it is reasonable to assume certain programs would be appropriately billed for such costs, ie.

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

Foster Care- under protection & advocacy

Other social services programs

file copy

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.						
<b>TOTAL</b>		<b>364.0</b>	<b>384.3</b>	<b>415.1</b>	<b>448.3</b>	<b>484.3</b>

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.

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FISCAL NOTE - HB 572

FY 81 BUDGET

	Salary 7/1-12/31/80	Salary 1/1-6/30/80	Total
<b>Personal Services</b>			
<b>Anchorage:</b>			
Guardians 2 @ Range 16	25,584	27,492	53,076
Acct. Clerk 1 @ Range 10	8,640	9,384	18,024
<b>Fairbanks:</b>			
Guardian 1 @ Range 16	14,790	15,840	30,630
Acct. Clerk 1 @ Range 10	9,768	10,566	20,334
<b>Juneau:</b>			
Guardian 1 @ Range 16	12,972	13,847	26,718
Acct. Clerk 1 @ Range 10	8,640	9,384	18,024
<b>Ketchikan:</b>			
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>
<b>Total Personal Services</b>			<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>
	<b>Total Cost</b>		<u>\$363,961</u>

full copy

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.

Dad T.

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

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

## 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

Fig 250 <sup>000</sup>

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)	14,323	
	<u>41,244</u>	
FICA-.0613% x 37,228	2,282	
PERS .70%	7,300	
Health Ins.-24m.x 141.32	<u>3,392</u>	
	54,218	

TRAVEL		24,300
--------	--	--------

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
----------------------	--	---------

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	21,000
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
-------------	--	-------

EQUIPMENT		2,400
-----------	--	-------

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
--------------------------------------	--	-----------



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 20, 1981

Ms. Louise Rude, Director  
Independent Quality of Living  
Center  
120 E. 3rd Avenue  
Anchorage, Alaska 99501

Dear Ms. Rude: *LOUISE*

Thank you for your telegram regarding SB 3.

I agree with your comments on the extremely high fiscal note attached to the bill. The Judiciary Committee has referred the bill to the Finance Committee and has requested that committee to evaluate the fiscal request.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey  
Chairman

PMR/ods

272-4486  
120 E. 3RD

# TELEGRAM

ALASKA  
PHONE: 555-0412  
JUNEAU, AK 99802

## RECEIVED

APR 16 1981

APR 14 PM 9 05

#

02196 NL ANCHORAGE ALASKA 75 04-14 0402P AST

PMS SEN PAT RODEY

JUN 1245

THE INDEPENDENT QUALITY OF LIVING CENTER IS A NEW AGENCY WITH THE IDEALISTIC GOAL OF ADVOCATING FOR SERVICES WHICH WILL PROVIDE A MAXIMUM INDEPENDENT QUALITY OF LIFE FOR SEVERELY DISABLED AND ELDERLY PERSONS. SB3 APPEARS TO US TO BEAR AN UNUSUALLY HIGH PRICE TAG FOR A SIX MONTH PROGRAM. WE RECOGNIZED THE NEED FOR GUARDIANS FOR THOSE IDENTIFIED NUMBERS WHO ARE IN NEED OF THIS SERVICE BUT FEEL THE COST SHOULD BE REVISED DOWNWARD.

LOUISE RUDE, DIRECTOR

IQLC



Official Business

# Alaska State Legislature

## Senate

### Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### M E M O R A N D U M

TO: Senator Don Bennett  
Senator Ed Dankworth  
Co-Chairmen, Finance Committee

FROM: Senator Pat Rodey  
Chairman, Judiciary Committee *PMR*

DATE: April 13, 1981

SUBJECT: SB 3 "An Act relating to guardians and conservators."

The Judiciary Committee passed SB 3 out on April 3, 1981, after two hearings on the bill. Without exception, public testimony was very supportive of the intent of this measure.

Unfortunately, the committee was unable to ascertain whether the fiscal note from the Court System accurately reflected the costs associated with implementation of this legislation. Therefore, as requested by the committee, I am asking the Finance Committee to actively investigate the fiscal note attached to Senate Bill 3 to determine whether these costs are necessary.

Thank you for your consideration.

PMR/ods



# Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 31, 1981

Paul E. Turner, Ph.D.  
Clinical Psychologist  
Director, Clinical Program  
Central Peninsula Mental Health  
Center  
P.O. Box 247  
Kenai, Alaska 99611

Dear Dr. Turner:

Thank you for your comments on SB 3.

The Senate Judiciary Committee has held hearings on this proposed legislation, and will be conducting a teleconference on Wednesday, April 1. I expect to pass this bill from the committee soon, and will certainly support it on the floor.

Thank you again for your support of this much-needed legislation.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods

*We'll pass  
S.B. 3 out of  
committee in a  
few days.*



## Central Peninsula Mental Health Center

P. O. Box 247 • KENAI, ALASKA 99611 • (907) 283-7501

March 26, 1981

RECEIVED

MAR 30 1981

Senator Pat Rodey, Chairman  
Member of the Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Rodey:

This letter is written in support of Senate Bill 3. I would like to make several comments on this proposed guardianship legislation.

I am strongly in favor of the partial guardianship option this bill affords. Our current state statutes are so broad and ambiguous, the rights of an individual thought to be incapacitated could be easily violated. By providing for the partial guardianship option, an individual with a handicap (be it physical or psychological) is able to maintain certain control over his/her life. I would like to inquire as to who will be responsible for determining how much an individual can or cannot do for himself/herself. Will the determination of an individual's capabilities be made by a physician, the Department of Social Services or the wishes of the petitioning guardian? I would hope the decision involves the incapacitated person.

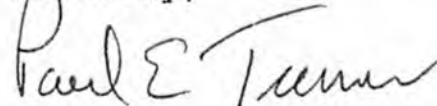
The public administrator's office is the most logical placement for a public guardian. I would support appropriate in-depth training involving current public administrators in the event this office were to be responsible for processing guardianships.

An important aspect of Senate Bill 3 concerns strengthening court procedures. If the courts were required to schedule guardianship hearings within a specific time frame, long waiting periods could be alleviated. I feel it is equally important for the court to review active guardianship cases on an on-going basis. One basic reason I see for the requirement of the guardian to file an annual report is to terminate guardianship appointments if and when they are no longer necessary. Guardianship orders have proven to be vague in the past and the concept of partial guardianship appointments to be made more specific is similar to a special power of attorney. There would be no questions as to a guardian's authority responsibility.

Judiciary Committee  
March 26, 1981  
Page Two

Once again, I would like to express my support for Senate Bill 3. This type of legislation has been overdue.

Sincerely,

A handwritten signature in cursive script that reads "Paul E. Turner". The signature is written in dark ink and is positioned above the typed name.

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

PET/vrf

SELECT A SUBJECT AND PRESS ENTER

<  
FROM TERMINAL LJ28 ON PRINTER LJH8; DATE=81091; TIME=135617

MSG 81-00010616 PRTT 1 04/01/81 13:56:00 ORIG: LF01 IN= 0006 OUT= 0003  
FROM: ANNIE IN FAIRBANKS TO: JACK/JUNEAU T/C  
TARGET: LJ28 SUBJ: PAGE 0001

MORE PARTICIPANTS FOR THE T/C

- 11. RAY FUNK, 950 COWLES, RM 106, FAIRBANKS 99701 452-1621 WILL TESTIFY
- MARSHA SCHNEIDER, REPRESENTING N.A.S.W, BOX 80546, FAIRBANKS 99708  
PHONE 456-5914 WILL TESTIFY

-----  
NXT MSG U/R/S -- PREV MSG U/R/S -- RESEND -- CANCEL --

Speeding to Moore Business Forms, Inc.

FROM TERMINAL LJ28 ON PRINTER LJH8; DATE=81091; TIME=132656

MSG 81-00010605 PRTY 1 04/01/81 13:19:05 ORIG: LA00 IN# 0007 OUT# 0001  
FROM: MICKI IN ANCHORAGE TO: JUNEAU TELECONFERENCE  
TARGET: LJ28 SUBJ: S. JUD. TELECONFERENCE 4/1 PAGE 0001

1. BILLIE MUNDORFF, HOPE COTTAGES  
2805 BERING, ANCH. 99503, 274-158L

WILL PROBABLY HAVE

NXT MSG U/R/S \_ PREV MSG U/R/S \_ RESEND \_ CANCEL \_

0838

*Ray*  
*Junk*

FROM TERMINAL LJ28 ON PRINTER LJH8; DATE=81091; TIME=133153

MSG 81-00010609 PRTY 1 04/01/81 13:29:50 ORIG: LF01 IN= 0005 OUT= 0002  
FROM: TAMMY TO: JACK PAGE 0001  
TARGET: LJ28 SUBJ: PART LIST

LURISSE ULEN, 1037 PEDRO, 99701, PH 456-2712 REP. GOV. COUNCIL FOR THE *WISHES TO TESTIFY LAST*  
HANDICAPPED & GIFTED  
CAROL DAVIS, 604 BARNETTE ST., RM 304, 99701 PH 452-1554, REP. AK COURT  
SYSTEM

alaska  
state  
hospital  
association

319 Seward St., Juneau, Alaska 99801 (907) 586-1790  
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

President  
Sister Barbara Haase  
Ketchikan General Hospital  
Ketchikan

March 20, 1981

President Elect  
Tom Mingen  
Fairbanks Memorial Hospital  
Fairbanks

RECEIVED

MAR 25 1981

Secretary/Treasurer  
Ron Pavellas  
Alaska Hospital & Medical  
Center  
Anchorage

The Honorable Robert Ziegler  
Alaska State Senate  
Pouch V, State Capitol Building  
Juneau, Alaska 99811

Immediate Past President  
Al Camosso  
Providence Hospital  
Anchorage

Dear Senator Ziegler:

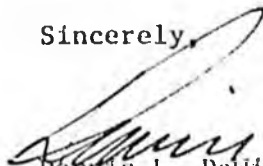
Executive Director  
Dennis L. DeWitt  
Juneau

The Alaska State Hospital Association wishes to take this opportunity to indicate its support for Senate Bill 3 relating to guardians and conservators. The need for the revision of the law pertaining to guardians and conservators is well documented. Our Association, as well as others, has been before the legislature in recent years advocating this measure. We hope that success will be achieved this year.

While we support SB 3, we believe one change should be made which, we feel, would further protect the rights of a respondent. We would suggest that under Section 13.26.140 (e) Temporary Guardians, the duration of a temporary guardianship be limited to 6 months. This would preclude the possibility of an extended guardianship under a temporary guise solely because permanent appointment of a guardian was not pursued.

Thank you for your consideration in this matter.

Sincerely,

  
Dennis L. DeWitt  
Executive Director

DLD/b

cc: Judiciary Committee Members

March 24, 1981

RECEIVED

MAR 30 1981

Senator Patrick Rodey  
Pouch V  
Juneau, Alaska 99811

SUBJECT: SB-3

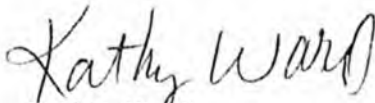
Dear Senator Rodey:

This is a letter of support for Senate Bill 3. We feel that this bill will help protect the individual rights of older Alaskans.

Thank you for this opportunity to comment.

Sincerely,

Bristol Bay Native Association, Inc.



Kathy Ward  
Project Director  
Bristol Bay Senior Citizens Program



Official Business

# Alaska State Legislature

## Senate

### Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### PUBLIC SERVICE ANNOUNCEMENT

THE SENATE JUDICIARY COMMITTEE WILL BE CONDUCTING TELECONFERENCE HEARINGS WITH ANCHORAGE AND FAIRBANKS REGARDING SENATE BILL 3 ON WEDNESDAY, APRIL 1, AT 1:30 P.M. PACIFIC STANDARD TIME.

THE BILL IS A COMPREHENSIVE REVISION OF STATUTES RELATING TO GUARDIANS AND CONSERVATORS FOR INCAPACITATED PERSONS.

THE COMMITTEE IS INTERESTED IN GENERAL TESTIMONY FROM INDIVIDUALS OR ORGANIZATIONS INTERESTED IN THE BILL.

FURTHER INFORMATION MAY BE OBTAINED BY CONTACTING THE SENATE JUDICIARY COMMITTEE, SENATOR PATRICK RODEY, CHAIRMAN, OR YOUR LOCAL LEGISLATIVE INFORMATION OFFICE.



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

## PUBLIC SERVICE ANNOUNCEMENT

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Official Business

# Alaska State Legislature

Senate

Committee on Judiciary

SB 3  
Pouch V  
State Capitol  
Juneau, Alaska 99811

March 17, 1981

National Association of Social  
Workers, Inc. - Alaska Chapter  
Box 81079  
Fairbanks, Alaska 99708

Attention: Marsha Schneider, Chairperson  
Social Action Committee


Dear Ms. Schneider:

Thank you for your letter of March 9, 1981 concerning guardianship.

The Judiciary Committee will be holding hearings on SB 3, "An Act relating to guardians and conservators; and providing for an effective date.", on Wednesday, March 18, at 1:30 p.m. in the Butrovich Committee Room.

I will include your letter in each committee member's file as testimony.

Sincerely,

  
Patrick M. Rodey  
Chairman

PMR/ods



ALASKA CHAPTER  
NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.  
Box 81079 Fairbanks, Ak. 99708

Senator Pat Rodey  
Chairman  
Senate Judiciary Committee  
Pouch V  
Juneau, Ak. 99811

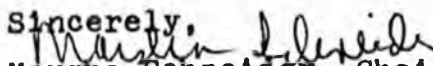
March 9, 1981

Dear Senator Rodey:

The Alaska Chapter of the National Association of Social Workers recognizes the need for revision of Alaska's current guardianship statute. There are currently many persons institutionalized at Alaska Psychiatric Institute, Harborview, and nursing home facilities as well as persons living outside these residences who need legal guardians to assist them with making decisions concerning personal and financial matters.

NASW supports legislation which provides the following:

- (1) definitions of persons who are incapacitated and who would be in need of guardianship services.
- (2) establishes limits on the powers and duties that a guardian has over his ward.
- (3) establishes different levels of guardianship that take into account the ward's own abilities for decision making.
- (4) limits the number of wards that an individual or agency can act as guardian for.
- (5) allows due process rights and outlines procedures for same, including the right to counsel, subpoena of witnesses, be present at the hearing, etc.
- (6) encourages the ward to make decisions for himself/herself in whatever area he/she has the capacity to do so.
- (7) establishes a guardianship office with the purpose of
  - (a) recruitment of guardians
  - (b) distributing information on guardianship
  - (c) providing incentives for guardians
  - (d) assisting guardians in the carrying out of their appointments
  - (e) acts as a guardian in those cases where private guardians cannot be found.

Sincerely,  
  
Marsha Schneider, Chairperson  
Social Action Committee

# Fairbanks Rehabilitation Association, Inc.

805 AIRPORT ROAD — FAIRBANKS, ALASKA 99701

TELEPHONE (907) 456-8901

HOPE CENTER

HOPE INDUSTRIES

March 11, 1981

William J. Repicci  
Executive Director

Ivan Fosheim, President  
Barbara Hochschild, Vice President  
Tom Bartlett, Treasurer  
Dessa Dimbat, Secretary

Senator Patrick Rodey  
Pouch V  
Juneau Alaska 99811

RECEIVED

MAR 13 1981

Dear Senator Rodey:

I am writing to state my support for SB 3, the guardianship bill which is being reviewed by the Alaska State legislature this session. As the Executive Director of the Fairbanks Rehabilitation Association which provides a variety of direct services to the substantially handicapped. I am very aware of the need for this bill to improve the quality of life of many handicapped persons.

The bill which bases incapacity on functional limitations for self care and allows for partial guardianship is clearly a further step toward acknowledging and strengthening the individual rights of these persons. As a result persons can receive the protection and guidance needed without being forced to sacrifice other rights which they are perfectly capable of expressing themselves.

In light of this I urge you to support SB 3.

Sincerely,



William J. Repicci  
Executive Director

WJR/njm

CC: Senator Don Bennett  
Senator Charles Parr  
Senator George Hohman  
Senator Bill Ray  
Governor's Council on the  
Gifted and Handicapped



Official Business

# Alaska State Legislature

Senate

Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 17, 1981

Ms. Mary Aronson  
3080 Glacierwood Drive  
Juneau, Alaska 99801

Dear Ms. Aronson:

Thank you for your letter of March 14 in support of Senate Bill 3.

The Senate Judiciary Committee has scheduled a hearing on SB 3 for Wednesday, March 18, at 1:30 p.m. Copies of your letter will be furnished to all committee members for their consideration of this proposed legislation.

Should you have additional comments or require further information, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Rodey".

Patrick M. Rodey  
Chairman

PMR/ods

*I hope to move  
SB 3 out in less  
than a week.*

Mar 14, 1981

Pat Rodey, Chairman  
Senate Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

MAK . 7 1981

Dear Senator Rodey and fellow members of  
the Senate Judiciary Committee:

I urge you to support passage of SB 3-  
Guardianship Legislation. As a special educa-  
tion teacher, I have worked with mentally  
retarded young adults and their families  
and feel that this bill is most important.

1) Many parents do not realize that they need  
to file for guardianship once their handicapped  
child reaches the age of majority. And, even if  
they do, the information and resources needed  
to complete this process are not readily  
available.

2) The "partial guardianship" concept within  
this bill is also critical to preserving  
the rights of these handicapped citizens.

3) It can also be very difficult for residents in state institutions / residential programs to obtain guardianship services. Often these people have no family or relatives to serve as guardians. They can experience long delays in receiving medical treatment, supplemental benefits, etc. while awaiting authorization for services. The Public Guardian could do much to facilitate the delivery of services by either acting as guardian or providing volunteer guardians.

The Governor's Council for the Handicapped and Gifted has worked long and hard with the legislature on this particular bill. I feel it is a most appropriate bill that addresses a wide variety of issues. The time has come to enact this legislation.

Thank you for your consideration of this bill.

Sincerely,

Mary Oranson  
30801 Glenwood Dr.  
Juneau, AK. 99801



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 23, 1981

Ms. Marsha Schneider  
Box 81079  
Fairbanks, Alaska 99701

Dear Ms. Schneider:

Thank you for your message concerning SB 3.

The Committee has held one hearing on the bill, and I expect to pass it from Committee within the next few weeks.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick M. Rodey".

Patrick M. Rodey  
Chairman

PMR/ods

MSG 81-00008794 PRY 1 03/18/81 14:17:35 ORIG: LF00 IN= 0011 OUT= 0054  
FROM: TAMMY TO: JUNEAD INFO  
TARGET: LHM2 SUBJ: POM PAGE 0001

TO: SEN. RODEY, BENNETT, HOHMAN, FARR, RAY  
FR: MARSHA SCHNEIDER, BOX 81079, PH 456-5914 REP. ANSW AK. CH.

RE: SB 3  
ANSW STRONGLY SUPPORTS PASSAGE OF SB 3.

MAR 19 1981



Official Business

# Alaska State Legislature

Senate

Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 17, 1981

Mr. Roy Anderson  
Coordinator  
Alaska Resources for the  
Moderately/Severely Impaired  
1111 East Dowling Road  
Anchorage, Alaska 99502

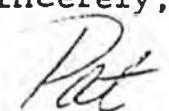
Dear Mr. Anderson:

Thank you for your comments concerning Senate Bill 3, "An Act relating to guardians and conservators; and providing for an effective date."

The Senate Judiciary Committee will be holding hearings on SB 3 on Wednesday, March 18, and your letter of support will be included in each committee member's file, and will be made a part of our permanent file.

Please feel free to contact my office should you have additional comments or require further information.

Sincerely,

  
Patrick M. Rodey  
Chairman

*I hope to move SB 3  
in a week or less*

PMR/ods

RECEIVED

# ALASKA RESOURCES FOR THE MODERATELY / SEVERELY IMPAIRED

MAR 15 1981

1111 EAST DOWLING ROAD—ANCHORAGE, ALASKA 99502—PHONE (907) 349-2547

Roy Anderson  
Coordinator

March 13, 1981

Senator Patrick Rodey  
Pouch V  
Juneau, Alaska 99811

Dear Senator Rodey:

I would like to offer my support for the passage of Senate Bill #3.

Alaska Resources represents a group of individuals who have been providing technical assistance and training services to personnel working with moderately and severely disabled Alaskans for approximately ten years. During that time we have encountered several individuals whose quality of living could have been greatly enhanced if a guardianship law had been available.


Senate Bill #3 establishes a logical sequence of procedures for the appointment of a guardian for incapacitated individuals. The types of guardianship, and the limitations of the authority of the individual guardian are clearly defined so as to protect the rights of, and encourage the independent participation of the incapacitated person to the best of his or her ability.

Enacting the procedures which define who can serve as guardian and the priorities for their selection, as well as establishing the office of public guardian should assure the availability of competent services within a reasonable period of time.

The bill also does a good job of defining the guardian/ward relationship. The guardian is responsible for seeing that services to the ward are effective in meeting his or her needs, and that the services are provided in the least restrictive environment.

Senate Bill #3 is a vitally needed piece of legislation. I endorse the bill, and hope the legislative body will take this opportunity to improve the quality of living for disabled Alaskans by expeditiously enacting Senate Bill #3.

Sincerely,



Roy Anderson  
Coordinator

RA:pm

# NAKOYLA HEALTH CARE CENTER

*A Division of Health Care Services - Alaska, Inc.* 276-7203

POUCH 6617 4895 CORDOVA ST. ANCHORAGE, ALASKA 99502

March 16, 1981

Senator Pat Rodey, Chairman  
Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Rodey:

I would like to express to you the great need for guardianship legislation, Senate Bill 3 (SB 3). Nakoyia Health Care Center, a 216-bed skilled and intermediate care facility in Anchorage, currently has approximately 100 patients who are incapable of understanding their rights and are unable to handle their own personal and financial matters, but who do not have court-appointed guardians. Obtaining guardianships for these patients has proven to be an extremely lengthy and complicated process, currently without adequate controls to protect the individual.

SB 3 has several elements which are particularly advantageous in the long-term-care setting:

1. A lack of persons willing to act as guardians has been the major reason for the lack of guardians. SB 3 provides for an "Office of Public Guardian". Approximately 70 of the 100 patients at Nakoyia in need of guardianship services have no one willing to be a guardian. The majority of these patients are Medicaid recipients.
2. Frequently, guardianship proceedings take several months under the current process. This is a particular problem in a health care facility when authorization is needed for medical care or surgery. SB 3 includes time limits so that temporary guardianship hearings will be held promptly.

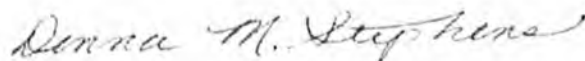
Senator Rodey:  
March 16, 1981  
Page Two

3. Location and interest of the guardian in their ward has been a frequent problem. SB 3 would help to alleviate these problems through requiring that a guardian submit an annual report to the court for monitoring purposes. SB 3 also places the "Office of Public Guardian" in the Public Administrator's office. This allows for the guardian to be fairly close to those whom s/he might serve and also alleviates the possibility of conflict of interest.

Thank you for your attention. I would greatly appreciate your support for quick passage of SB 3. If you need further information, please do not hesitate to contact me.

Sincerely yours,

NAKOYIA HEALTH CARE CENTER



Donna M. Stephens  
Administrator / Vice-President

DMS:mlc

Copies to Senator Bill Ray  
Senator George Hohman  
Senator Charlie Parr  
Senator Don Bennett, Vice Chairman



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 23, 1981

Ms. Geri Newton-Alrick  
Program Coordinator  
Employment and Training  
Center of Alaska  
2330 Nichols Street  
Anchorage, Alaska 99504

Dear Ms. Newton-Alrick:

Thank you for your letter of March 13 in support of SB 3.

The Judiciary Committee had held one hearing on SB 3, and I expect to pass that bill from the Committee within the next few weeks.

I shall provide each committee member with a copy of your letter, and will make it a part of the committee's permanent file.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat", written over a circular stamp or mark.

Patrick M. Rodey  
Chairman

PMR/ods

EMPLOYMENT & TRAINING CENTER OF ALASKA

2330 Nichols St.

Anchorage, Alaska 99504

Phone (907)279-6617



EMPLOYMENT &  
TRAINING  
CENTER OF  
ALASKA  
A REHABILITATION INDUSTRY

SOUTHCENTRAL REGIONAL RESOURCE CENTER

March 13, 1981

CLYDE FARRINGTON

Director

Senator Pat Rhody  
Pouch V  
Juneau, AK 99811

RECEIVED

MAR 20 1981

Dear Senator Rhody,

I would like to urge your support of Senate Bill 3. There has been a tremendous amount of effort over the past few years that will hopefully culminate in the passage of this bill. Your support and consideration is greatly appreciated.

Sincerely,

Geri Newton-Alrick  
Program Coordinator

c.c. Senator Don Bennett  
Senator Charlie Parr  
Senator George Holman  
Senator Bill Ray  
Laurie Goggins - The Governors Council

Phone: (907) 424-3237  
or 424-3238

# CITY OF CORDOVA

Box 1210 602 Railroad Ave.

CORDOVA, ALASKA 99574

*"The Friendly City"*

Reply to:

March 19, 1981

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MAR 23 1981

Senator Pat Rodey  
Pouch V  
Juneau, AK 99574

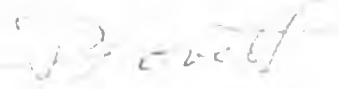
RE: Guardianship Legislation - SB-3

Dear Senator Rodey:

The Cordova Senior Citizen Committee and myself as Project Director give our support to the SB-3 Guardianship Legislature.

We would appreciate your support of this bill.

Very truly yours,

  
Perry D. Lovett  
City Manager

cc: Doris Anderson

RECEIVED

MAR 18 1981

MSG 81-00008616 PRTY 1 03/17/81 14:57:44 ORIG: LA00 IN= 0024 OUT= 0049  
 FROM: MARCIE, ANC INFO TO: JUNEAU INFO PAGE 0001  
 TARGET: LJH2 SUBJ: REQUEST

TO: SENATOR PAT RODEY  
 CHAIRMAN, SENATE JUDICIARY COMMITTEE

FROM: FUDGE KLEINKAUF, 4201 MACINNES, ANC 99504  
 (WK 263-1725)

PLEASE SEND ME A COPY OF THE FISCAL NOTE FOR SENATE BILL 3.  
 THANK YOU.



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 24, 1981

Ms. Pudge Kleinkauf  
4201 MacInnes  
Anchorage, Alaska 99504

Dear Pudge:

The fiscal note from the Department of Health and Social Services is zero. I'll forward the court system's fiscal note when it is submitted next week.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin K. Bruce".

Kevin K. Bruce  
Committee Aide

KKB/ods

WE WILL HOLD TELECONFERENCE HEARINGS ON  
SB 3 ON APRIL 1, WITH ANCHORAGE AND  
FAIRBANKS. TIME WILL BE 1:30 PM  
PACIFIC STANDARD. I HOPE YOU CAN  
TESTIFY.

MAR 18 1981

RECEIVED

MSG 01-00008662 PRY 1 03/17/81 17:52:19 ORIG: LA00 IN= 0034 OUT= 0064  
FROM: LOU TO: JNU INFO  
TARGET: LJH2 SUBJ: FOM

PAGE 0001

TO: SENATORS RODEY, BENNETT, HOHMAN, FARR AND RAY  
FROM: CECILIA "PUDGE" KLEINKAUF, 4201 MC INNES, ANC.99504 279-4824 W.263-1725

I STRONGLY SUPPORT SENATE BILL 3 AND URGE THAT YOU VOTE DO-PASS ON IT.  
GUARDIANSHIP LAWS FOR INCAPACITATED ADULTS ARE BADLY IN NEED OF REVISION.  
SENATE BILL 3 ADDRESSES MANY OF THE CURRENT PROBLEMS VERY WELL. PLEASE SUPPORT  
SB-3.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF MENTAL HEALTH  
HARBORVIEW DEVELOPMENTAL CENTER

P. O. BOX 487  
VALDEZ 99686  
835-4344

March 9, 1981

# RECEIVED

MAR 12 1981

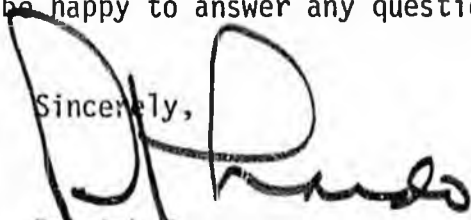
Honorable Senator Patrick Rodey  
Alaska State Legislature  
Pouch "V" - Mail Stop 3100  
Juneau, Alaska 99811

Re: Senate Bill #3 - Guardianship

Dear Sir:

This is a letter to support positive action on the Senate Bill #3 regarding guardianship for handicapped people. I feel, that I can speak with much authority on this matter in that I have been dealing with it quite directly at Harborview Developmental Center, the State facility for the Developmentally Disabled. Currently, over a third of our population at the facility do not have permanent legal guardians, and this has been a long standing problem. This has immediate implications in terms of the legality of their institutionalization and it has been surprising that the State has not been sued for violating the rights of those individuals. In the recent past months, there has been at least two (2) examples where the lack of a legal guardian did have impact on the quality of care for two (2) individuals, who did not have interested or responsible family members who could assume guardianship. Non-emergency surgery was not performed because there was no provision for legally authorizing such surgical procedures. The provision for the establishment of public guardians in the State would be of great help to our clientele at the facility in that we have approximately ten (10) individuals who have no interested or responsible family members. In lieu of supportive legislation, we have solicited citizens from the City of Valdez to assume such responsibility, however, realistically looking at the long term expectation of such an arrangement, a public guardian will be necessary to meet the need of these special people. In that I have worked with this matter quite closely for the past nine (9) years, I would be happy to answer any questions and/or to provide any assistance.

Sincerely,

  
Patrick J. Londo  
Superintendent  
Harborview Developmental Center

plh