

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 25, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 9:00 a.m., Wednesday, March 25, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator William J. Raggio
Senator Jean Ford
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Iris Parraguirre, Committee Secretary

The following Bill Drafting Requests were presented and received for committee introduction:

BDR 14-827 (L. Ketzenberger) (S.B. 449)

Permits diversion of telephone lines in situations involving hostages and recording of conversations with permission of one party.

BDR 16-833 (L. Ketzenberger) (S.B. 451)

Amends provisions relating to county and city jails.

BDR 14-835 (L. Ketzenberger) (S.B. 450)

Eliminates requirement for corroboration of victim's testimony in cases involving abortion or prostitution if witness is a peace officer.

BDR 24-1284 (Senator Ford) (S.B. 454)

Transfers responsibility for preparing ballot questions and explanations for initiated and referred measures.

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BDR 38-1332 (Ace Martelle - Welfare) (S.B. 452)

Provides and increases penalties for fraudulently obtaining certain public assistance.

BDR C-1392 (S.J.R. 31)

Proposes to amend constitution to permit salaries of all justices of supreme court and district judges to be increased at same time.

BDR 13-1328 (Welfare) (S.B. 453)

Authorizes certain investment of surplus in trust fund for child welfare on behalf of child.

BDR 13-1344 (S.B. 446)

Authorizes certain trustees to make specified sales.

BDR 12-1345 (S.B. 448)

Reduces margin necessary for court to consider new sale of real property from estate of decedent.

BDR 12-1406 (S.B. 447)

Authorizes probate of will as muniment of title.

The following Bill Drafting Requests were rejected for committee introduction:

BDR 13-1346

BDR 14-1333

SENATE BILL NO. 407--Provides procedure for appointment of guardians of adults and establishes special guardianships for persons of limited capacity.

Mr. Hank Cavallera stated S. B. No. 407 requires some changes. The model bill put out by the American Bar Association is 36 pages long and is an elaborate measure which goes too far in the sense that it sets up a multi-disciplinary team to investigate the incapacities of a ward.

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Mr. Cavallera stated the essence of S. B. No. 407 is that there is a notice to the ward, there is a hearing, there are procedural safeguards with a provision for counsel, there is a disposition situation where the judge makes his order and then the bill provides for what the order can be and what the guardian can do. He said those are the essential things that are needed.

Chairman Close asked whether Section 2 appears in the model act. Mr. Cavallera replied they have a different definition because it has a limited guardian over the person but then it sets up a limited conservator.

In discussing a person of limited capacity as referred to on line 4 of Section 2, Senator Raggio quoted the definition of "partially disabled persons" from the model act, which is attached hereto as Exhibit C.

Chairman Close questioned what the basic rights of citizenship would refer to. Mr. Cavallera explained it could mean a decision to get married, have a family, vote and so forth. The only thing they are saying on line 5 is that a person of limited capacity is a person who is normal except that at some point in time he may have become a person of limited capacity as to some element of his ability to make a decision affecting himself. Chairman Close stated if the words "to exercise the basic rights of citizenship" were deleted, it would make sense.

With reference to Section 3, Chairman Close stated the requirements of what a petition must state should conform with the wording in S. B. 226 as amended. He also questioned under what circumstances a nonprofit corporation ever would petition the court for the appointment of a guardian. Mr. Cavallera stated later in the bill it sets up who should be appointed as a guardian, but a nonprofit organization is not included.

Senator Raggio explained that the Salvation Army could be a nonprofit corporation which might petition the court for a guardian for a person coming to their organization who has property. He could see no problem with leaving the reference to a nonprofit corporation in line 8, Section 3.

Senator Wagner stated the wards nominee listed on page 4, line 38 could be a nonprofit organization.

Chairman Close asked how a bank could be included in the bill. Mr. Cavallera replied that wording could be included, adding "or any banking association serving as trustee."

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Mr. Orvis E. Reil stated some provisions of guardianship protect the rights but at the same time, do not limit what a guardian has taken away. Some individuals are capable of making certain decisions on their own.

Chairman Close stated the bill does not describe the property the guardian will be administrating. Mr. Cavallera said he would like to see something like that included. Senator Ford suggested adding language to line 21 on page 1.

Chairman Close stated one of the purposes of the amendments is to provide for a guardian and a limited guardian. The limited guardian is going to have different requirements in the petition than the guardian. He felt the language should conform with S. B. 226. He explained that right now there is a general guardianship law, which is all or nothing. In his opinion, the general guardianship law should remain with another provision that other than having a general guardianship, the court would also have a special limited guardianship. The elements of a special guardianship would then be listed. The court would have a choice of a general guardianship or a limited guardianship.

Mr. Reil asked whether the general guardianship could not be eliminated. Chairman Close replied that would be left up to the court and the court could decide what was needed. There should be an option of a general guardian or a limited guardianship, which is covered on page 2, lines 19 through 26 of S. B. 407. See Exhibit D attached hereto.

Senator Raggio asked whether the intent of S. B. 407 is to do away with the present guardianship law. Mr. Cavallera replied that it would incorporate the law in order to have the option of a general guardianship or a limited guardianship. The petitioner would state a summary of the reasons why a guardian is needed and requests specific powers.

Chairman Close suggested deleting Section 4 and using the same language that appears in S. B. 226.

With regard to Section 5, Mr. Cavallera explained that just because there is an appointment of a guardian, there is not necessarily a determination of incompetency. He suggesting adding the words, "in need of a general guardian" after the word "incompetent" on line 21.

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Senator Don Ashworth suggested deleting "public defender" on line 30 on page two. It would require the county to pay for attorneys to represent any proposed ward. Senator Raggio stated he felt it was more important for the individual to have an attorney in a guardianship situation than if he was charged with a crime. When a guardian is appointed, the person is being deprived of liberty and rights to a varying degree. The petitioner could be someone who knows the individual has money and wants to get at it; therefore, the proposed ward must be protected.

Chairman Close stated line 30 would be amended to delete the line and state that the court may appoint an attorney.

Regarding Section 6, line 33, Senator Ford suggested deleting the word "shall" and adding "may" appoint an investigator. Chairman Close explained that under the present law, there is no investigation required. Mr. Cavallera suggested changing Section 6, paragraph 1 to read: "Upon filing of the petition, or at anytime thereafter, the court may appoint an investigator. The investigator shall be an employee of a social service agency and must have knowledge of support services..." The charge for the investigation could be against the estate or a charge to the petitioner; however, in most cases, there are no assets.

Chairman Close suggested conforming line 41, Section 6 on page 2 with the language in S. B. No. 226 regarding who should be notified.

Senator Ford suggested deleting the words, "Not less than 7 days before the hearing" in paragraph 3, line 48 on page 2.

Mr. Cavallera explained that under the language in the bill, the petition could be filed; if uncontested, the ward has to be there and if he made an indication to the court that he did not agree with the guardianship, the court could continue the matter and appoint an investigator. The investigator's job would be to go to the ward, do the investigation and report back to the court. The judge could then make a decision as to what was necessary.

Chairman Close stated he felt Section 7 on page 3 of the bill is too limited. It does not contain provisions for someone requiring medical care or carrying on a business.

Mr. Cavallera stated that in Section 7, page 3, lines 6 and 7, there should be language included making sure that any situation where there might be a need for medical help is covered. He stated Section 8 provides that if the proposed ward is in the state, he must attend the hearing. Section 9 on page 3 sets up safeguards about not having medication the day of the hearing.

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The judge would be in a better position to observe the proposed ward. Section 10 provides another safeguard for the proposed award in that the hearing is recorded. Subparagraph (h) on lines 17 and 18 on page 4 should be deleted. Section 11 just gives the court options on what to do. Mr. Cavallera stated he could see no reason to have Section 12 included in the bill. Senator Ford stated it should just be changed, providing five days after letters of guardianship are issued for notification. Mr. Cavallera suggested deleting the word "property" on line 40, page 5 in order to encompass more options.

SENATE BILL NO. 282--Establishes immunity from liability for certain persons and authorizes creation of centers for collection and distribution of donated foods.

Chairman Close discussed the amendments made to S. B. No. 282. Senator Ford explained that what was to be taken out was everything relating to the county and the only thing remaining was that the organization could not sell food. A section of law had to be found to provide for that condition. It was put into Chapter 81 which applies to the non-profit corporations. The original amendment said any charitable organization that takes donated food cannot sell it, which would prohibit church groups. Senator Ford stated the group in Las Vegas is incorporated under Section 81 and their permit from the Health Department is for salvage food distribution.

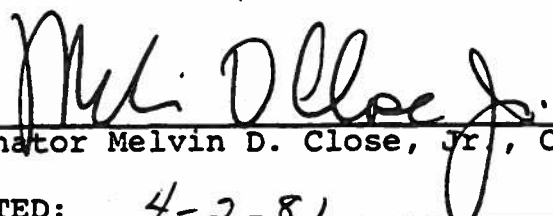
Senator Wagner suggested having S. B. No. 282 amended again and then having the committee review it.

There being no further business, the meeting was adjourned at 11:00 a.m.

Respectfully submitted by:


Iris B. Parraguirre, Secretary

APPROVED BY:


Senator Melvin D. Close, Jr., Chairman

DATED: 4-2-81

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on JUDICIARY, Room 213
 Day Tuesday, Date March 24, Time 8:30 a.m.

AMENDED MEETING SCHEDULE

S. B. No. 322--Revises grounds and procedures for termination of parental rights.

S. B. No. 376--Broadens prohibition against sexual assault by spouse.

S. B. No. 384--Prohibits prosecuting attorneys from bargaining for pleas in prosecutions for certain offenses.

* S. B. No. 407--Provides procedure for appointment of guardians of adults and establishes special guardianships for persons of limited capacity.

* A. B. No. 4--Increases fees for official reporters in district courts.

SENATE COMMITTEE ON JUDICIARY

EXHIBIT B

DATE: 3-25-81

* **PLEASE PRINT** | **PLEASE PRINT** | **PLEASE PRINT** | **PLEASE PRINT**

NAME	ORGANIZATION & ADDRESS	TELEPHONE
ORVIS E. Peir	NATHARP - Nevada Judicial State Academy - Reno, NV	782-1675
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Special Article Series

PREFACE

The model guardianship statute which follows is one statute in a series of Developmental Disabilities Model Legislation prepared under the auspices of the American Bar Association's Commission on the Mentally Disabled and funded by the Developmental Disabilities Bureau of the Department of Health, Education, and Welfare. In future issues the *Reporter* will also cover portions of other model statutes in the series. (See 2 MDLR 755 for more information on this series.)

The reader should understand that this article is only a portion of the guardianship and conservatorship materials prepared by Richard Van Duizend of the Model Legislation Project — the introduction and the short form of the model statute. The reader may order a copy of the complete text of the model statute and a 50-state review of guardianship legislation from the Developmental Disabilities State Legislative Project, ABA Commission on the Mentally Disabled, 1800 M Street, N.W., Washington, D.C. 20036, (202) 331-2246.

INTRODUCTION

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

II
The roots of guardianship are deeply embedded in both Roman and English law.¹

... [I]n Rome at the time of Cicero elaborate provisions were made for the protection of the property of the mentally disabled while none at all existed for the person. The pattern was

followed in England and also in colonial America. . . .²

In England, guardianship was part of first the feudal lords' and then the Crown's duty to look after their subjects. In this country, the doctrine of *parens patriae* — the state serving as the benevolent parent caring for his or her poor, sick or wayward children — provided not only the legal basis but also the dominant philosophy for guardianship. Although this permitted considerable flexibility in guardianship proceedings, it presented substantial problems as well.

The disadvantaged were the objects of care, they were to be done for. They did not require protection against the well-meaning parent, [or] rights to be exercised against the paternalistic state.³

As Lionel Trilling once commented: "Some paradox in our nature Isaac's is, once we have made our fellow men [or women] the objects of our enlightened interest, to go on to make them the objects of our pity, then of our wisdom, ultimately of our coercion."⁴ The criteria for establishing a guardianship are often broad and vague, permitting the imposition of restrictions on persons who are "different" as well as on those who

¹ BRAKEL & ROCK, *supra* note 1, at 250.

² 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 (1979).

⁴ *Id.* at 72.

¹ See S. BRAKEL & R. ROCK, *THE MENTALLY DISABLED AND THE LAW*, 250 (Rev. Ed. 1971); Regan, *Protective Services for the Elderly: Commitment, Guardianship, and Alternatives*, 13 WM. & MARY L. REV. 569, 570-573 (1972).

are disabled.⁵ The procedures often omit the safeguards we have come to expect when restrictions on liberty are imposed or fundamental rights threatened in other contexts. And perhaps most importantly, even today in many jurisdictions, guardianship orders and guardians have failed to recognize that individuals with disabilities are often capable of doing many things for themselves.

[A] ... serious difficulty arises because the law usually represents incompetence in simple black and white terms, with the result that most guardianships of the person are looked on as plenary guardianships. The effect is well expressed by the word *interdiction* (prohibition) which has until recently been in use in the statutes of many of the Latin countries. The person interdicted (declared incompetent) is deprived of the legal capacity to act in any way on his own behalf. Even though he [or she] may have a guardian appointed to exercise some of his [or her] rights, the emphasis usually is on the deprivation of rights rather than on implementing rights constructively through informed representation. Moreover, the idea that the person himself [or herself] can properly retain and exercise some personal and even property rights, selectively, according to his [or her] individual capacity, is not adequately expressed in most existing statutes pertaining to guardianship.⁶

Over the past two decades, a growing list of organizations and governmental commissions which have examined guardianship have called for correction of these problems.⁷ For example, in 1962, the President's Panel on Mental Retardation stated:

⁵ N. KITTRIE, *THE RIGHT TO BE DIFFERENT: DEVIANCE AND ENFORCED THERAPY* (1971).

⁶ INTERNATIONAL LEAGUE OF SOCIETIES FOR THE MENTALLY HANDICAPPED (ILSMH), *SYMPOSIUM ON GUARDIANSHIP OF THE MENTALLY RETARDED*, 11(1969).

⁷ 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, *supra* note 6; 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).

For some, of course, a comprehensive guardianship will be needed. But we urge that, as far as possible, mentally retarded adults be allowed freedom — even freedom to make their own mistakes. We suggest the development of limited guardianships of the adult person, with the scope of the guardianship specified in the judicial order.⁸

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

The retarded adult should be permitted to act for himself [or herself] in those matters which he [or she] has competence. The limitations of legal capacity inherent in guardianship should not extend to these matters. It follows that a person whose mental retardation is characterized by impairments of social competence which are partial should enjoy a partial guardianship specifically adapted to his [or her] strengths and weaknesses.⁹

The 1975 edition of the Uniform Probate Code makes a clear distinction between guardianship of the person and conservatorship of the estate, and establishes a number of less restrictive alternatives for the protection of the property of a disabled individual (though not the person). It also provides for the execution of durable powers of attorney as a means of obviating the need for a guardianship or conservatorship.¹⁰ Finally, the 1976 Report of the President's Committee on Mental Retardation, urged that:

Statutes and court procedures bearing on competency should be clarified and revised (a) to recognize gradations of competence, (b) to recognize that areas of competency may be quite varied and therefore should be separable in law, (c) to assure full and explicit due process safeguards on any and all areas of competency, and that the scope of any judgment of incompetence is made fully explicit, and (d) to ensure that restrictions of competency be limited to a specific period of time or subject to periodic review.¹¹

⁸ PPMR, *supra* note 7, at 25.

⁹ ILSMH, *supra* note 6, at 18-19.

¹⁰ NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAW (NCCUSL), *UNIFORM PROBATE CODE* (U.P.C.) Article V (4th Ed. 1975).

¹¹ PCMR, *supra* note 7, at 65-66.

OPTIONAL SHORT FORM MODEL GUARDIANSHIP AND CONSERVATORSHIP ACT

INTRODUCTION

The complete text of the model guardianship and conservatorship bill is detailed and lengthy. Some states may favor a shorter statute. The following short form bill is offered where this is the case.

The short form bill lacks much of the administrative detail of the complete bill but retains the statement of purpose, definitions, organizational

structure, procedures, powers and rights of the longer version.

The comment and alternative portions of the complete text should be consulted for a discussion of the issues, options and rationales for choices made. They should also be useful in adapting the short form bill to a particular state's needs.

SHORT FORM MODEL STATUTE

A BILL FOR

AN ACT TO REVISE THE METHODS, CRITERIA AND PROCEDURES FOR PROTECTING PARTIALLY DISABLED AND DISABLED PERSONS AND MINORS AND THE PROPERTY OF SUCH PERSONS AND MINORS; TO ESTABLISH THE CRITERIA FOR APPOINTING LIMITED PERSONAL GUARDIANS, PERSONAL GUARDIANS, LIMITED CONSERVATORS AND CONSERVATORS AND THEIR RESPONSIBILITIES, DUTIES AND POWERS; AND TO SPECIFY THE RIGHTS OF INDIVIDUALS SUBJECT TO INTERVENTION PROCEEDINGS AND DISPOSITIONAL ORDERS.

CHAPTER 1 INTRODUCTORY PROVISIONS

Section 1. Title

This act shall be known as the Guardianship and Conservatorship Act.

Section 2. Purpose

Recognizing that every individual has unique needs and differing abilities, the (name of Legislature) declares that it is the purpose of this act to promote the general welfare of all citizens by establishing a system which permits partially disabled and disabled persons and minors to participate as fully as possible in all decisions which affect them; which assists such persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources, and developing or regaining their abilities to the maximum extent possible; and which accomplishes these objectives through the use of the least restrictive alternatives. This act shall be liberally construed to accomplish this purpose.

Section 3. Definitions

As used in this act:

(1) "Partially disabled persons" means adults whose ability to receive and evaluate information effectively and/or communicate decisions is impaired to the extent that they lack the capacity to manage at least some of their financial resources and/or meet at least some of the essential requirements for their physical health or safety without court-ordered assistance or appointment of a limited personal guardian or limited conservator.

(2) "Disabled persons" means adults whose ability to receive and evaluate information effectively and/or to communicate decisions is impaired to such an extent that they lack the capacity to manage their financial resources and/or to meet essential requirements for their physical health or safety even with court-ordered assistance or the appointment of a limited personal guardian or limited conservator.

- (3) "Manage financial resources" means those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits and income.
- (4) "Meet essential requirements for physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is more likely than not to occur.
- (5) "Court-ordered assistance" means dispositional alternatives available under section 10 of this act other than appointment of a limited personal guardian, personal guardian, limited conservator and/or conservator.
- (6) "Minor" means an individual [age seventeen (17) or less/under the age of majority].
- (7) "Respondent" means an individual alleged to be a partially disabled or disabled person.
- (8) "Subject of an intervention proceeding" means the respondent, a minor for whom a proceeding has been initiated under chapter 3 of this act, or an adult or minor for whom a limited personal guardian, personal guardian, limited conservator or conservator has been appointed.
- (9) "Parties" means the individual or entity filing a petition, application, motion, acceptance of a testamentary designation, or objection; the subject of an intervention proceeding; and the limited personal guardian, personal guardian, limited conservator or conservator, if any.
- (10) "Intervention proceeding" means any proceeding under this act.
- (11) "Limited conservator" means an individual or a corporation with general power to serve as trustee, appointed by the court to assist in managing the financial resources of a partially disabled person or of a minor.
- (12) "Conservator" means an individual or a corporation with general power to serve as trustee, appointed by the court to manage the financial resources of a disabled person or a minor.
- (13) "Conservatorship" includes appointment of a limited conservator or a conservator.
- (14) "Limited personal guardian" means an individual appointed by the court to assist a partially disabled person or a minor in meeting the essential requirements for the partially disabled person's or the minor's physical health and safety.
- (15) "Personal guardian" means an individual appointed by the court to act on behalf of a disabled person or a minor to assure that the essential requirements for the health and safety of the disabled person or minor are met.
- (16) "Guardianship" includes appointment of a limited personal guardian or a personal guardian.
- (17) "Volunteer public guardian;" "volunteer public conservator," and "volunteer public trustee," mean an individual appointed pursuant to section 33 to serve as a limited personal guardian or personal guardian, or an individual or corporation appointed to serve as a limited conservator, conservator or trustee for a partially disabled or disabled person or minor who require establishment of a guardianship or conservatorship and who has no one able and willing to serve in that capacity or is unable to afford the cost of a guardianship, conservatorship and/or trust.
- (18) "Guardians *ad litem*" means individuals appointed by the court to assist the subject of an intervention proceeding to determine his or her interests in regard to the intervention proceeding, or to make that determination if the subject of the intervention proceeding is unconscious or otherwise wholly incapable of determining his or her interests in that proceeding even with assistance.
- (19) "Counsel" means an attorney admitted to the practice of law in this state.
- (20) "Restrictions on the legal capacity of a person to act in his or her own behalf" means powers of a partially disabled or disabled person or a minor which are assigned to a limited personal guardian, personal guardian, limited conservator or conservator.
- (21) "Disabilities resource officers" means employees of the (name of state/local agency responsible for providing services to partially disabled and disabled persons) who are assigned the duties set forth in section 4 of this act.
- (22) "Multidisciplinary evaluation team" means a group of at least three (3) individuals which is appointed by the court from a panel of experts approved by the (state name) Guardianship/Conservatorship Oversight Commission, to evaluate the subject of an intervention proceeding pursuant to chapter 2 of this act.
- (23) "Evaluation" means an assessment of the ability of an individual to receive and evaluate information effectively and/or to communicate decisions and the impact of any impairment of these skills on the individual's capacity to meet the essential requirements for his or her physical health or safety, and/or manage his or her financial resources.
- (24) "Least restrictive dispositional alternative" means the form of assistance that least interferes with the legal capacity of a respondent to act in his or her own behalf.
- (25) "Developmental disability" means a chronic disability of a person which:

(a) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(b) Is likely to continue indefinitely;

(c) Results in substantial functional limitations in two (2) or more of the following areas of major life activity:

- (i) Self-care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction;
- (vi) Capacity for independent living; or
- (vii) Economic self-sufficiency; and

(d) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated.

(26) "Identifiable information" means information which is indexed or able to be retrieved by name, identifying code or number, address or other personal characteristic.

Section 4. Appointment of Disabilities Resources Officers

(1) The head of the (state/local agency responsible for providing services to partially disabled or disabled persons) shall employ individuals on a full-time or part-time basis to serve as disabilities resources officers (in accordance with citation to state Civil Service Act or statute, if any, authorizing local jurisdictions to hire personnel). The number of individuals hired to be or assigned the duties of disabilities resources officers shall be commensurate with the volume of intervention proceedings initiated and the number of guardianships and conservatorships for partially disabled or disabled persons established in the [state/county/parish/city], but shall be sufficient to permit access for those individuals requiring the services of a disabilities resources officer.

(2) (a) Disabilities resources officers shall:

(i) Develop and maintain a current knowledge of the full range of public and private medical, mental health, social, advocacy, educational, rehabilitative, counseling, therapeutic, homemaking, recreational and financial services and programs available to assist partially disabled and disabled persons and their families;

(ii) Discuss personally with individuals seeking to file a petition pursuant to section 6 of the act or an application pursuant to section 32(1), the matters which the individual wishes to allege in the petition or application, the effects of the appointment of a limited personal guardian,

personal guardian, limited conservator and/or conservator, and the less restrictive alternatives which are available;

(iii) Assist partially disabled and disabled persons, and individuals appointed to serve as a limited personal guardian, personal guardian, limited conservator, and/or conservator to develop and update individual guardianship and individual conservatorship plans;

(iv) Provide information, guidance, counseling and referral services to individuals regarding the alternatives which are available to assist persons with developmental and/or other disabilities;

(v) Exercise such other duties and powers as are prescribed by this act.

Section 5. Establishment of the (state name) Guardianship/Conservatorship Oversight Commission

(1) There is hereby established the (state name) Guardianship/Conservatorship Oversight Commission (hereinafter referred to as the Oversight Commission) which shall be independent of all other government agencies, boards, and commissions.

(2) (a) The Oversight Commission shall consist of five (5) individuals appointed by the Governor, with the advice and consent of the Senate to three (3) year terms, except that of the first appointments, two (2) shall be for two (2) year terms, and one (1) shall be for a one (1) year term. A member of the Oversight Commission shall not serve more than two (2) consecutive terms. Vacancies shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term are for the remainder of the unexpired term. Commission members whose term has expired shall continue to serve until a new appointment has been made and confirmed.

(b) At least one (1) member of the Oversight Commission shall have previously been the subject of a guardianship or conservatorship; at least one (1) member shall have served or shall be serving as a limited personal guardian, personal guardian, limited conservator, and/or conservator; and at least one (1) member shall be an attorney who regularly represents individuals with developmental disabilities, individuals who are mentally ill, individuals over age sixty-five (65), or individuals under age eighteen (18).

(3) The Oversight Commission shall meet at least six (6) times per year. Members of the Oversight Commission not employed by the state government shall receive compensation at a rate not to exceed \$ _____ for each day, including travel time, they are engaged in the performance of their duties as members of the Oversight Commission. In addition, all members of the

Oversight Commission shall be entitled to reimbursement for travel, subsistence and other reasonable expenses incurred by them in carrying out their duties.

(4) The Oversight Commission shall:

(a) (i) Establish and annually publish the procedures and criteria for identifying individuals who are qualified to serve on multidisciplinary evaluation teams;

(ii) Prepare and publish, annually, a list of individuals from all sections of the state who are qualified and willing to serve on multidisciplinary evaluation teams; and

(iii) Establish and annually publish the procedures and criteria for removing individuals from the list who prove to be unqualified to serve on multidisciplinary evaluation teams.

(b) (i) Establish programs to encourage individuals to serve as volunteer public guardians, and individuals and corporations to serve as volunteer conservators or volunteer public trustees;

(ii) Prepare and publish, annually, a list of individuals from all sections of the state who are willing to serve as volunteer public guardians, and a list of individuals and corporations from all sections of the state who are willing to serve as volunteer public conservators and volunteer public trustees;

(iii) Establish procedures to assure that volunteer public guardians, volunteer public conservators, and volunteer public trustees are selected for appointment and compensated in a lawful, equitable and consistent manner;

(c) Establish and maintain training programs which will provide instruction on the general and specific duties of limited personal guardians, personal guardians, limited conservators, and conservators, the nature and extent of the disabilities which most commonly result in establishment of a guardianship or conservatorship, and the programs, services and techniques available to assist and protect partially disabled and disabled persons and minors;

(d) Conduct investigations and hearings regarding the operation of the volunteer public guardian/conservator/trustee program and the selection, appointment, compensation and removal of volunteer public guardians, volunteer public conservators and volunteer public trustees;

CHAPTER 2 INTERVENTION PROCEEDINGS FOR PARTIALLY DISABLED AND DISABLED PERSONS

Section 6. Initiation of Intervention Proceedings

(a) An intervention proceeding shall be initiated by the filing of a petition with the court by a partially disabled person, an adult interested in the welfare of a partially disabled or disabled

(e) Testify before the (name of the Legislature) on matters related to the provision of services for and the guardianship and conservatorship of partially disabled persons, disabled persons and minors;

(f) Advise the Governor and other state and local officials and agencies on matters related to the provision of services for and the guardianship and conservatorship of partially disabled persons, disabled persons, and minors;

(g) Promulgate such additional policies, rules, regulations and procedures as are necessary for the effective operation of the Oversight Commission;

(h) Employ, in accordance with the (citation to the state civil service code) and the appropriations provided, an Administrative Director and such professional, technical, clerical and administrative personnel as may be necessary to carry out the duties and powers set forth in this act;

(i) Contract with individuals, businesses, whether for profit or not-for-profit, and other public and private organizations or agencies to carry out the duties and powers set forth in this act; and

(j) Perform such additional duties and exercise such powers as are prescribed by law or as are necessary for the effective management and operation of the Oversight Commission in accordance with the purpose of this act.

(5) The Oversight Commission shall not have supervisory power over individual intervention proceedings nor shall it manage or operate residential facilities or directly provide services other than those specified in this act for partially disabled or disabled persons or minors.

(6) The Oversight Commission shall submit an annual report to the Governor, the (name of the Legislature), the Chief Justice of (name of the highest court of civil appeals), the (head of the state agencies responsible for providing services to partially disabled and disabled persons and minors) and the (head of the state Developmental Disabilities Advocacy Office). Copies of the report shall be made available to the public and shall be sent to each court which can hear intervention proceedings.

person, or by a limited personal guardian, personal guardian, limited conservator or conservator of such a person.

(b) The petition shall be verified under oath and shall specify:

(i) The names and addresses of the individuals and entities entitled to notice pursuant to section 29(1)(a) of this act;

(ii) The nature and degree of the alleged disability;

(iii) The relief requested and the facts and reasons supporting the need for such relief; and

(iv) A statement that the petitioner has discussed with the disabilities resources officer the facts alleged in the petition, the effect of the appointment of a limited personal guardian, personal guardian, limited conservator or conservator, and the alternative services and procedures which are available, and an explanation why the requested protection and assistance is the least restrictive dispositional alternative which will meet the needs of the respondent.

(2) A parent, spouse, or child of a partially disabled or disabled person who is serving as limited personal guardian, personal guardian, limited conservator or conservator may, by will, designate an individual to serve in that capacity upon the death of the testator. Such a designation shall not become effective if another person is serving as the limited personal guardian, personal guardian, limited conservator and/or conservator at the time of death, nor until the will has been filed for probate and the court has appointed the designee following a hearing pursuant to section 15 of this act. Pending such appointment, the designee may file for appointment on an emergency basis pursuant to section 32(1) of this act.

Section 7. Motion to Dismiss

A motion to dismiss may be filed by any party when it appears that the ability of the respondent to receive and evaluate information and/or to communicate decisions is not impaired or when it appears that the respondent does not require court-ordered assistance or the appointment of a limited personal guardian, personal guardian, limited conservator, and/or conservator.

Section 8. Evaluation

(1) The court shall appoint a multidisciplinary evaluation team from the list published by the Guardianship/Conservatorship Oversight Commission to evaluate the respondent. Each party may submit names drawn from this list for the court's consideration.

(2) The evaluation shall be conducted so as to minimize interference with the respondent's activities and intrusion into the respondent's privacy.

(3) The report of the multidisciplinary evaluation team shall include:

(a) A description of the nature and extent of the respondent's disabilities, if any;

(b) A description of the respondent's mental, emotional, physical, and educational condition, adaptive behavior and social skills;

(c) A description of the services, if any, being used by the respondent to meet the essential requirements for his or her physical health or safety, and/or manage his or her financial resources, and/or develop or regain his or her abilities;

(d) An opinion regarding the type(s) and extent of assistance, if any, required by the respondent, and why no less restrictive alternative would be appropriate;

(e) An opinion regarding the probability that the extent of the respondent's disabilities, if any, may significantly lessen, and the type of services or treatment which will facilitate improvement in the respondent's condition, behavior or skills;

(f) A description of the techniques or tests used;

(g) The names and addresses of all individuals who examined, interviewed or investigated the respondent in conjunction with the evaluation;

(h) The signatures of each member of the multidisciplinary evaluation team together with a statement of concurrence or nonconcurrence with the evaluation findings; and

(i) Any dissenting opinions or other comments by members of the multidisciplinary evaluation team.

Section 9. Hearing

Within the time limit prescribed in section 27(1)(b) of this act, the court shall hold a hearing to determine:

(1) The essential requirements for the respondent's physical health and safety and/or the type and amount of the respondent's financial resources;

(2) The skills and knowledge necessary to meet those needs and/or manage those resources;

(3) The nature and extent of the respondent's disabilities, if any; and

(4) Whether the respondent is a partially disabled or disabled person.

Section 10. Dispositional Alternatives

(1) If a respondent is found not to be a partially disabled or disabled person the petition shall be dismissed.

(2) Among the dispositional alternatives available to the court following a finding that the respondent is a partially disabled or disabled person, are:

(a) Directing the provision of necessary services to the respondent on a noncustodial basis;

(b) Authorizing or ratifying a contract or transaction entered into by a partially disabled or disabled person;

(c) Directing establishment of a trust of which the respondent and any individuals legally dependent on the respondent are the beneficiaries;

(d) Directing the provision of residential services to the respondent in a small, licensed, community-based residential home;

(e) Appointing a limited conservator or conservator; and

(f) Appointing a limited personal guardian or personal guardian.

Section 11. Dispositional Hearing, and Dispositional Principles and Criteria

(1) Following a finding that the respondent is a partially disabled or disabled person, the parties shall have an opportunity within the time limits prescribed in section 27(1)(c) of this act, to present evidence and testimony regarding the types of assistance and protection required, the services available for consideration by the court in making the dispositional decision, and the selection, if any, of a limited personal guardian, personal guardian, limited conservator or conservator.

(2) The court shall impose the least restrictive dispositional alternative which will assist the respondent to:

(a) Meet the essential requirements for his or her physical health or safety; and/or

(b) Manage his or her financial resources; and

(c) Develop or regain to the maximum extent possible the skills needed to perform the functions listed in paragraphs (2)(a)-(2)(b) of this section without court-ordered assistance.

Dispositions shall be designed to encourage respondents to participate in all decisions which affect them and to act on their own behalf to the maximum extent possible.

(3) In selecting among the available dispositional alternatives the court shall not:

(a) Order that a non-custodial service be provided unless the respondent's need for that particular service has been proven;

(b) Authorize or ratify a contract or transaction unless the need for authorization or ratification has been proven;

(c) Order the provision of residential services or the establishment of a trust or a guardianship or conservatorship unless the need therefor has been proven and no less restrictive dispositional alternative or combination of alternatives will be sufficient to satisfy that need.

(d) Assign a duty or power to a limited per-

sonal guardian, personal guardian, limited conservator, or conservator appointed in accordance with paragraph 3(c) of this section, unless the need therefor has been proven and no less restrictive dispositional alternative or combination of alternatives will be sufficient to satisfy that need.

Section 12. Selection of a Limited Personal Guardian, Personal Guardian, Limited Conservator or Conservator

(1) (a) The court may appoint any non-disabled adult to serve as a limited personal guardian or personal guardian, and any non-disabled adult or any corporation with general power to serve as trustee, to serve as a limited conservator or conservator unless that individual or corporation:

(i) Is providing or is responsible for providing some treatment or service other than a guardianship or conservatorship service for the respondent; or

(ii) Has interests which may otherwise conflict with those of the respondent.

(b) Nothing in this provision shall exclude the appointment of the respondent's parent, spouse, child or sibling when the conflict of interest is determined to be insubstantial and such an appointment would clearly be the most beneficial to the respondent.

(2) (a) The following priorities shall guide the court's selection of a limited personal guardian, personal guardian, limited conservator, or conservator from among those eligible:

(i) The individual or corporation nominated by the respondent;

(ii) The current limited personal guardian, personal guardian, limited conservator, or conservator appointed or recognized by the appropriate court of any other jurisdiction in which the respondent resides;

(iii) The respondent's spouse;

(iv) An adult child of the respondent;

(v) A parent of the respondent;

(vi) An individual or corporation nominated by the will of a deceased parent;

(vii) Any individual with whom the respondent has been living for more than six (6) months prior to the filing of the petition;

(viii) A sibling of the respondent;

(ix) A volunteer public guardian and/or a volunteer public conservator.

(b) The court may select the individual or corporation best qualified and most willing to serve from among those of equal priority. The court may pass over a person or corporation having priority and appoint a person having less

priority or no priority when it is demonstrated that the selection will be of greater benefit to the partially disabled person or disabled person. Appointments of volunteer public guardians and volunteer public conservators shall be in accordance with section 33.

Section 13. Dispositional Order

(1) The dispositional order shall set forth:

(a) The specific terms or conditions of the disposition;

(b) The name and address of the individual, if any, appointed to serve as the limited personal guardian or personal guardian and/or the individual or corporation, if any, appointed to serve as limited conservator or conservator;

(c) The duties and powers of the limited personal guardian, personal guardian, limited conservator and/or conservator, if any; and

(d) The date of the initial review hearing.

(2) The court shall explain on the record the terms and conditions contained in the dispositional order, the facts and reasons which support the decision not to impose any less restrictive alternative, and if a guardianship or conservatorship has been established, the facts and reasons supporting the selection of the individual and/or corporation appointed. The court shall also explain to the respondent the procedures set forth in section 15 for terminating or modifying the dispositional order.

Section 14. Periodic Review

(1) (a) The court shall hold a review hearing following the appointment of a limited personal guardian and/or limited conservator within the time limit prescribed in section 27(1)(d) of this act.

(b) The court shall hold a review hearing following the appointment of a personal guardian and/or conservator within the time limits prescribed in section 27(1)(e) of this act.

(2) At a review hearing the court shall:

(a) Determine why the appointment should not be terminated or why no less restrictive alternative will be sufficient to assist the respondent to meet the essential requirements for his or her physical health or safety and/or manage his or her financial resources;

(b) Approve the payment of compensation and reimbursement of expenses, if any, from the financial resources of the partially disabled or to the limited personal guardian, personal guardian, limited conservator and/or conservator; and

(c) Resolve any other relevant matters which the parties raise.

(3) In conjunction with a review hearing, the

court may order an evaluation of the partially disabled or disabled person.

(4) At the conclusion of a review hearing the court may:

(a) Terminate a guardianship or conservatorship;

(b) Modify any or all duties and powers assigned to a limited personal guardian, personal guardian, limited conservator or conservator;

(c) Discharge and/or appoint individuals to serve as the limited personal guardian, personal guardian, limited conservator and/or conservator;

(d) Modify the individual guardianship and/or conservatorship plans; and

(e) Continue the current restrictions upon legal capacity and continue the guardianship and/or conservatorship appointments until the next review hearing.

Section 15. Modification and Termination

(1) In addition to the review procedures prescribed under section 14 of this act, a partially disabled or disabled person, the limited personal guardian, personal guardian, limited conservator, and/or conservator of that person, or any other interested individual may apply to the court for:

(a) Termination or modification of the dispositional order;

(b) Approval or disapproval of the compensation or reimbursement for expenses requested by the limited personal guardian, personal guardian, limited conservator or conservator;

(c) Replacement of the limited personal guardian, personal guardian, limited conservator or conservator; or

(d) Resolution of a dispute over the individual guardianship plan or individual conservatorship plan.

(2) (a) An application from a partially disabled or disabled person may be communicated to the court by any means, including but not limited to oral communication or informal letter. Upon receipt of such an informal request, the court shall contact the partially disabled or disabled person's attorney of record or appoint new counsel to prepare a formal application.

(b) Applications not filed by a partially disabled or disabled person and formal applications filed pursuant to paragraph (2)(a) of this section shall set forth:

(i) The names and addresses of the individuals and entities entitled to notice;

(ii) The relief requested; and

(iii) The facts and reasons supporting the request.

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(3) Any party may object to the relief requested in an application.

(4) (a) The court shall hold a hearing on all applications:

(i) Which are filed pursuant to section 32 of this act;

(ii) Which request imposition of additional restrictions upon the legal capacity of a partially disabled or disabled person to act on his or her own behalf; or

(iii) To which an objection has been filed.

(b) All other applications may be granted or denied without a hearing.

(5) At the request of any party, the court shall order an evaluation of the partially disabled or disabled person identified in the application.

(6) After notice, the court may join the issues raised in separate applications and/or separate objections for determination at a single hearing, unless joinder would be prejudicial to the interests of the partially disabled or disabled person.

(7) The principles, criteria and priorities set forth in sections 11 and 12 of this act and the form and procedures prescribed in section 13 shall apply to dispositional orders issued following submission of an application under this section.

Section 16. Duties and Powers of Limited Personal Guardians and Personal Guardians

(1) It is the general duty of individuals appointed to serve as a limited personal guardian or personal guardian to carry out diligently and in good faith the specific duties and powers assigned by the court. In carrying out these duties and powers, such individuals shall:

(a) Assure that the personal, civil, and human rights of the partially disabled or disabled persons whom they are serving are protected; and

(b) Encourage those persons to:

(i) Participate to the maximum extent of their abilities in all decisions which affect them;

(ii) Act on their own behalf on all matters in which they are able to do so; and

(iii) Develop or regain, to the maximum extent possible, their capacity to meet the essential requirements for their physical health or safety, and/or to manage their financial resources.

(2) Within thirty (30) days of appointment, a limited personal guardian or personal guardian shall submit to the court an individual guardianship plan developed together with the disability resources officers, the limited conservator or conservator if any, and, to the maximum extent possible, the partially disabled or disabled person. The plan shall specify:

(a) The services which are necessary to meet the essential requirements for the partially disabled or disabled person's physical health or safety;

(b) The means for obtaining these services;

(c) The manner in which the limited personal guardian or personal guardian, the partially disabled or disabled person, and the limited conservator or conservator, if a corporation or another individual has been appointed to serve in that capacity, will exercise and share decision-making authority; and

(d) Such other items as will assist in fulfilling the needs of the partially disabled or disabled person, the terms of the dispositional order, and the duties of the limited personal guardian or personal guardian.

(3) (a) The court may assign to a limited personal guardian any portion of the duties and powers listed in subparagraphs (4)(a)(ii)-(vi) of this section for those particular areas in which the partially disabled person lacks the capacity to meet the essential requirements for his or her physical health or safety.

(b) A limited personal guardian may also be assigned the duty to assist the partially disabled person in those particular areas in which that person's capacity to meet the essential requirements for his or her physical health or safety, and/or to protect his or her rights, and/or to obtain necessary services, and/or to fulfill his or her civil duties is impaired, as well as in other ways not specifically prohibited by subsection (5) of this section.

(4) (a) The court shall assign to a personal guardian the duty and/or power to:

(i) Take custody of the disabled person;

(ii) Assure that the disabled person has a place of abode in the least restrictive, most normal setting consistent with the essential requirements for his or her physical health or safety;

(iii) Assure the care and comfort of the disabled person;

(iv) Assure that the disabled person receives the services necessary to meet the essential requirements for that person's physical health and safety and necessary to develop or regain, to the maximum extent possible, the capacity to meet the essential requirements for his or her physical health or safety;

(v) Provide any required consents or approvals on behalf of the disabled person; and

(vi) Expend sums from the financial resources of the disabled person to cover the reasonable costs incurred on behalf of that person subject to the procedures and policies estab-

lished by the limited conservator or conservator, if any.

(b) A personal guardian may also be assigned the duty to assist the disabled person to fulfill that person's civil duties and in other ways not specifically prohibited by subsection (5) of this section.

(5) A limited personal guardian or a personal guardian shall not have the power:

(a) To place a partially disabled or disabled person in a facility or institution to which an individual without a guardian would have to be committed under (citation to the applicable state civil commitment laws), other than through a formal commitment proceeding in which the partially disabled or disabled person has independent counsel and a separate guardian *ad litem*;

(b) To consent on behalf of a partially disabled or disabled person to an abortion, sterilization, psychosurgery, or removal of a bodily organ, except as provided in (citation to Model Personal and Civil Rights Act) or when necessary to preserve the life or prevent serious impairment of the physical health of that person;

(c) To consent on behalf of the partially disabled or disabled person to the withholding of non-herolic life-saving medical procedures;

(d) To consent on behalf of a partially disabled or disabled person to the performance of any experimental biomedical or behavioral procedure or participation in any biomedical or behavioral experiment unless:

(i) It is intended to preserve the life or prevent serious impairment of the physical health of the partially disabled or disabled person; or

(ii) It is intended to assist the partially disabled or disabled person to develop or regain his or her abilities and has been approved for that person by the court;

(e) To prohibit the marriage or divorce of a partially disabled or disabled person; and

(f) To consent on behalf of a partially disabled or disabled person to the termination of that person's parental rights.

(6) (a) A limited personal guardian or personal guardian shall submit a report to the court at least ten (10) days before the initial review hearing and:

(i) Annually thereafter;

(ii) When the court orders additional reports to be filed;

(iii) When there is a significant change in the capacity of the partially disabled or disabled person to meet the essential requirements for his or her physical health or safety;

(iv) When the limited personal guardian or personal guardian resigns or is removed; and

(v) When the guardianship is terminated.

(b) Such reports shall set forth:

(i) The name and address of the partially disabled or disabled person, and of the limited personal guardian or personal guardian;

(ii) Significant changes in the capacity of a partially disabled or disabled person to meet the essential requirements for his or her physical health or safety;

(iii) The services being provided to the partially disabled or disabled person and the relationship of those services to the individual guardianship plan;

(iv) The significant actions taken by the limited personal guardian or personal guardian during the reporting period;

(v) The compensation requested and reasonable and necessary expenses incurred by the limited personal guardian or personal guardian;

(vi) Any significant problems relating to the guardianship which have arisen during the reporting period; and

(vii) The reasons, if any, why the appointment should not be terminated or why no less restrictive alternative will permit the partially disabled or disabled person to meet the essential requirements for his or her physical health or safety.

Attached to the report shall be an accounting of any expenditures made by the limited personal guardian or personal guardian, and an update of the individual guardianship plan developed by the limited personal guardian or personal guardian, the limited conservator or conservator if any, the disabilities resources officer, and to the maximum extent possible, the partially disabled or disabled person.

Section 17. Duties and Powers of Limited Conservators and Conservators

(1) It is the general duty of an individual or corporation appointed to serve as a limited conservator or conservator for a partially disabled or disabled person to carry out, diligently and in good faith, the specific duties and powers assigned by the court. In carrying out these duties and powers such individuals or corporations shall:

(a) Manage or assist in managing those financial resources placed under their supervision and/or control, as would a prudent person manage his or her own financial resources; and

(b) Encourage the disabled or partially disabled persons whom they are serving to:

(i) Participate, to the maximum extent of their abilities, in all decisions which affect them;

(ii) Act on their own behalf on all matters in which they are able to do so; and

(iii) Develop or regain, to the maximum extent possible, their capacity to manage their financial resources and, if impaired, their capacity to meet the essential requirements for their physical health or safety.

(2) (a) Within sixty (60) days of appointment, a limited conservator or conservator shall submit to the court an individual conservatorship plan, developed together with the limited personal guardian or personal guardian if any, and the disabilities resources officer and, to the maximum extent possible, the partially disabled or disabled person. The plan shall specify:

(i) The services which are necessary to manage the financial resources designated by the court in the dispositional order;

(ii) The means through which those services will be provided;

(iii) The manner in which the limited conservator or conservator of the partially disabled or disabled person and the limited personal guardian or personal guardian, if another individual has been appointed to serve in that capacity, will exercise and share their decision-making authority;

(iv) The policies and procedures governing the expenditure of funds; and

(v) Such other items as will assist in the management of the designated financial resources, and in fulfilling the needs of the partially disabled or disabled person, the terms of the dispositional order, and the duties of the limited conservator or conservator.

(b) Attached to the individual conservatorship plan shall be a complete inventory of the designated financial resources. The inventory shall include an oath or affirmation that, to the best of the limited conservator's or conservator's knowledge, it is complete and accurate.

(3) (a) A limited conservator or conservator shall expend or distribute, and/or authorize the expenditure or distribution of, and/or assist in the expenditure or distribution of, the principle of or income from the financial resources placed under his, her, or its supervision and control to assure that:

(i) The essential requirements for the physical health or safety of the partially disabled or disabled person are met;

(ii) The rights of that person are protected;

(iii) The financial resources of that person which are subject to the conservatorship are prudently managed;

(iv) The partially disabled or disabled person has the opportunity to develop or regain the

capacity to perform the functions listed in subparagraphs (3)(a)(i)-(iii) of this section; and

(v) The limited personal guardian or personal guardian for that person is able to carry out the duties and powers assigned by the court.

(b) In so doing, the limited conservator or conservator shall consider:

(i) The size of the financial resources under the limited conservator's or conservator's supervision or control;

(ii) The probable duration of the conservatorship;

(iii) The likelihood that the partially disabled or disabled person may be able to manage the financial resources in the future; and

(iv) The accustomed standard of living of the partially disabled or disabled person and the individuals legally dependent on that person.

In addition, limited conservators shall consider the size of the financial resources of a partially disabled or disabled person which have not been placed under their supervision or control.

(c) Funds under this paragraph may be paid by a limited conservator or conservator to any person, including the partially disabled or disabled person.

(4) (a) In addition to the duties and powers prescribed in subsection (3) of this section, the court may assign to a limited conservator any of the duties and powers listed in paragraphs (5)(a) which the partially disabled person lacks the capacity to perform, and/or the power to void particular types of contracts, conveyances or dispositions made by the partially disabled person as long as action is taken to void such contracts, conveyances, and dispositions within fifteen (15) days of the transaction. Such assignments shall specify the financial resources and/or the types of transactions to which they apply.

(b) The court may assign to a limited conservator the duty of assisting a partially disabled person to perform any of the functions listed in paragraph (5)(a) of this section with regard to any financial resource of the partially disabled person.

(c) Upon the death of a partially disabled person, the limited conservator for that person shall have the duties and powers prescribed in paragraph (5)(b) of this section.

(5) (a) In addition to the duties and powers prescribed in subsection (3) of this section, the court shall assign to a conservator the duty and/or power to:

(i) Acquire, collect, hold, deposit, retain, operate, develop, repair, improve, insure, subdivide, exchange, partition, alter, lease, convert or dispose of the financial resources of the disabled person;

(II) Pay, contest, settle or release claims against the disabled person or the financial resources of the disabled person;

(III) Pay taxes, assessments, compensation and other reasonable expenses incurred in the management of the financial resources of the disabled person;

(iv) Employ persons to perform, advise, or assist in particular aspects of the management of the financial resources of the disabled person;

(v) Borrow money to be repaid from the financial resources of the disabled person;

(vi) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of the financial resources of the disabled person and of the conservator in the performance of the conservatorship duties;

(vii) Allocate items of income or expense to either principal or income as provided by law, including the creation of reserves out of income for depreciation, obsolescence, amortization, or depletion of mineral or timber resources;

(viii) Vote a security in person, or by general or limited proxy;

(ix) Establish revocable or irrevocable trusts;

(x) Exercise options;

(xi) Exercise or release powers of appointment of which the disabled person is donor;

(xii) Renounce interests and make gifts;

(xiii) Change beneficiaries under insurance and annuity policies; and

(xiv) Enter into contracts and execute and deliver all instruments which will accomplish or facilitate the exercise of the assigned duties and powers.

(b) Upon the death of a disabled person:

(i) The conservator shall deliver to the (name of court having probate jurisdiction) any will of the deceased of which the conservator has possession and/or advise that court of the whereabouts of any other will of which the conservator is aware;

(ii) Inform the [executor/personal representative/administrator] or a named beneficiary of the actions taken; and

(iii) Retain those portions of the estate over which the conservator has control for delivery to a duly appointed [executor/personal representative/administrator] of the deceased or the individuals entitled thereto.

The conservator may seek appointment as [executor/personal representative/administrator] of the estate of the disabled person in the manner prescribed in (citation to relevant sections of the probate code).

(6) (a) A limited conservator or conservator shall not have the authority to exercise or release powers of appointment of which the partially disabled or disabled person is donee, to renounce interests or to make gifts exceeding twenty (20) percent of any year's income from the financial resources placed under the control of the limited conservator or conservator, nor to change beneficiaries under insurance or annuity policies without the approval of the court. No approval shall be granted unless it is demonstrated at a hearing that the proposed action is consistent with subsections (1) and (3) of this section and that the partially disabled or disabled person has consented or is unable to provide an informed, voluntary consent.

(b) Any sale or encumbrance to a limited conservator or conservator, his or her spouse, agent or attorney, or any corporation or trust in which the limited conservator or conservator has a substantial beneficial interest is voidable unless the transaction is approved by the court after a hearing.

(c) Title to all the designated financial resources of a partially disabled person or disabled person shall remain in that person subject to the possession of the limited conservator or conservator and to the control of the court, unless the court orders otherwise. The provision of title to a limited conservator or conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the partially disabled or disabled person of a right or interest. If title is provided to a limited conservator or conservator, the dispositional order shall be evidence of transfer of all designated financial resources. An order terminating a conservatorship or modifying the scope or powers thereof, shall be evidence of transfer of the designated financial resources to the partially disabled or disabled person, the successor of that person, or to a new limited conservator or conservator. A dispositional order and order terminating or modifying a conservatorship shall be [filed/recorded] to give record notice of title in accordance with (citation to state governing the filing/recording of documents to land or other property).

(7) (a) A limited conservator or conservator shall submit a report to the court ten (10) days before the initial review hearing and:

(i) At least annually thereafter;

(ii) When the court orders additional reports to be filed;

(iii) When there is a significant change in the capacity of the partially disabled or disabled person to manage his or her financial resources;

(iv) When the limited conservator or conservator resigns or is removed; and

(v) When the conservatorship is terminated.

(b) Such reports shall set forth:

(i) The name and address of the partially disabled or disabled person and of the limited conservator or conservator;

(ii) Significant changes in the capacity of the partially disabled or disabled person to manage his or her financial resources;

(iii) A complete financial statement of the financial resources under the control and/or supervision of the limited conservator or conservator;

(iv) The services being provided to the partially disabled or disabled person and the relationship of those services to the individual conservatorship plan;

(v) The significant actions taken by the limited conservator or conservator during the reporting period;

(vi) The compensation requested and the

reasonable and necessary expenses incurred by the limited conservator or conservator;

(vii) Any significant problems relating to the conservatorship which have arisen during the reporting period; and

(viii) The reasons, if any, why the conservatorship should not be terminated, or why no less restrictive alternative would permit the disabled or partially disabled person to manage his or her financial resources.

Attached to the report shall be an updated individual conservatorship plan developed by the limited conservator or conservator, the limited personal guardian or personal guardian if any, the disabilities resources officer and, to the maximum extent possible, the partially disabled or disabled person.

(c) Following submission of a report or in conjunction with a review hearing held pursuant to section 14 or a proceeding initiated under section 15, a limited conservator or conservator shall submit to a physical check of the financial resources placed under his, her or its control, in the manner specified by the court.

CHAPTER 3 INTERVENTION PROCEEDINGS FOR MINORS

Section 18. Initiation of Intervention Proceedings

(1) (a) An intervention proceeding for a minor may be initiated separately or in conjunction with another proceeding by the filing of a petition with the court by a parent of the minor, the limited personal guardian, personal guardian, limited conservator or conservator for the minor, a person interested in the welfare of the minor, or the director of (the agency required to provide services to children), if there is reason to believe that:

(i) The parents of the minor are dead;

(ii) Their parental rights have been terminated or suspended by order of the court; or

(iii) The minor has or is entitled to financial resources which may be jeopardized because of the minor's age or which cannot otherwise be protected from damage or dissipation.

Intervention proceedings involving minor siblings may be initiated by a single petition.

(b) The petition shall be verified under oath and shall specify:

(i) The names and addresses of the individuals entitled to notice;

(ii) The relief requested; and

(iii) The facts and reasons supporting the requested relief.

(2) (a) A parent of a minor may designate, by will, an individual to serve as limited personal guardian, personal guardian, limited conservator

and/or conservator upon the testator's death. A designation of a limited personal guardian, personal guardian, limited conservator and/or conservator for a minor shall become effective upon the filing of a written acceptance if no objection is filed pursuant to section 19 of this act and if:

(i) Both parents are dead; or

(ii) One parent is dead and the parental rights of the surviving parent have been suspended or terminated in accordance with (citation to the statute(s) on termination of parental rights);

If both parents are dead, an effective appointment by the parent who died later has priority.

(b) The acceptance shall be filed in the court in which the will is probated within the time limit prescribed in section 27(2)(a). It shall include the name, age, and address of the minor and the names and addresses of other individuals entitled to notice, as well as a statement, verified under oath, that the designee understands and is able and willing to undertake the responsibilities, duties and powers of a limited personal guardian, personal guardian, limited conservator and/or conservator for a minor.

(c) This state shall recognize a testamentary appointment for which an acceptance has been filed under a will probated in another state which was the testator's domicile.

Section 19. Objections to Testamentary Designations

(1) A minor may file an objection to a testamentary designation before it is accepted or within the time limit prescribed in section 27(2)(b), and propose a person qualified under section 21(4) of this act for appointment as the limited personal guardian, personal guardian, limited conservator and/or conservator.

(2) An individual interested in the welfare of a minor for whom a testamentary designation has been made, may file an objection to that designation within the time limit prescribed in section 27(2)(b). Such an objection shall specify:

(a) The facts and reasons why:

(i) The individual and/or corporation designated in the will would not be eligible under section 21(4) of this act to serve as limited personal guardian, personal guardian, limited conservator and/or conservator of the minor;

(ii) The appointment of that individual and/or corporation would not assure that the duties and powers set forth in section 25 and/or section 26 will be exercised diligently and in good faith; or

(iii) The appointment of another individual and/or corporation would be of greater benefit to the minor;

(b) The name, address, qualifications, and relationship to the minor of the individual proposed for appointment as the limited personal guardian or personal guardian for the minor and/or the individual or corporation proposed for appointment as the limited conservator or conservator for the minor; and

(c) The name, address and interest of the individual filing the objection.

(3) Objections to testamentary appointments shall be filed in the court in which the will is probated.

Section 20. Hearing

Within the time limits prescribed by section 27(2)(c), the court shall hold a hearing to determine:

(1) Whether the parents of a minor are dead, whether they have had their parental rights terminated or suspended by order of the court, or whether the minor has or is entitled to financial resources which may be jeopardized because of the minor's age or which cannot be protected other than through court-ordered assistance or the establishment of a conservatorship; and, if so,

(2) Whether appointment of a limited personal guardian, personal guardian, limited conservator and/or conservator for the minor is necessary; and, if so,

(3) Who should be appointed.

Section 21. Dispositional Alternatives

(1) The petition shall be dismissed if it is not proven that the parents of a minor are dead, that they have had their parental rights of custody terminated or suspended by order of the court, or that the minor has or is entitled to financial resources which may be jeopardized because of the minor's age or which cannot be protected from damage or dissipation other than through court-ordered assistance or the establishment of a conservatorship.

(2) If a will is refused probate, any testamentary designation of a personal guardian or conservator contained therein shall be void.

(3) If it is proven that the parents of a minor are dead, that they have had their parental rights terminated or suspended by order of the court, or that the minor has or is entitled to financial resources which may be jeopardized because of the minor's age or cannot be protected from damage or dissipation other than through court-ordered assistance or the establishment of a conservatorship, the court may order any of the dispositional alternatives described in section 10(2) or any combination thereof which will enable the minor to meet the essential requirements for his or her physical health or safety, manage his or her financial resources, and develop his or her abilities to the maximum extent possible.

(4) (a) The court may appoint any individual eligible under section 12(1) of this act to serve as limited personal guardian or personal guardian, and any individual or corporation eligible under that section to serve as limited conservator or conservator for a minor. Nothing in this provision or section 12 shall exclude the appointment of an adult sibling or other close relative of the minor when the conflict of interest is determined to be unsubstantial and such an appointment will clearly be the most beneficial to the minor.

(b) The following priorities shall guide the court's selection of a limited personal guardian, personal guardian, limited conservator and/or conservator for a minor from among those eligible:

(i) The individual or corporation proposed by the minor;

(ii) The limited personal guardian, personal guardian, limited conservator and/or conservator appointed or recognized by the appropriate court of the jurisdiction in which the minor resides;

(iii) The individual who/or corporation which filed an acceptance of a testamentary designation;

(iv) An individual with whom the minor has been living for more than six (6) months prior to the hearing;

(v) An individual with whom the minor has substantial ties;

(vi) An individual or corporation nominated by any individual or corporation included in subparagraphs (4)(b)(ii)-(v) of this section;

(vii) A volunteer public guardian or volunteer public conservator.

The court may select the individual or corporation best qualified and most willing to serve from among those of equal priority. The court may pass over a person or corporation having priority and appoint a person having a lower priority or no priority when it can be demonstrated that the selection will be of greater benefit to the minor. Appointments of volunteer public guardians and volunteer public conservators shall be in accordance with section 33.

(5) The dispositional order shall set forth:

(a) The name and address of the individual, if any, appointed to serve as the limited personal guardian or personal guardian for the minor and/or of the individual or corporation, if any, appointed to serve as the limited conservator or conservator of the minor;

(b) The duties and powers of the limited personal guardian, personal guardian, limited conservator and/or conservator for the minor, if any;

(c) The terms and conditions of any other dispositional alternatives ordered by the court;

(d) The facts and reasons supporting the selection of the limited personal guardian, personal guardian, limited conservator and/or conservator for the minor; and

(e) The date of the initial review hearing.

The court shall also explain the terms of the order to the minor as well as the procedures for terminating or modifying the dispositional order.

Section 22. Periodic Review

(1) Following appointment of a limited personal guardian, personal guardian, limited conservator or conservator for a minor, a review hearing shall be held within the time limit prescribed in section 27(2)(d) to:

(a) Determine whether the duties and powers set forth in sections 25 and/or 26 are being exercised diligently and in good faith;

(b) Determine whether the dispositional order should be modified or terminated;

(c) Approve payment of compensation and reimbursement of expense, if any, from the financial resources of the minor; and

(d) Resolve any other relevant matter which the parties raise.

(2) Following a review hearing the court may issue any of the orders listed in section 14(4) of this act.

Section 23. Modification of Dispositional Orders

(1) In addition to the review procedures prescribed under section 22 of this act, the minor, the limited personal guardian, personal guardian, limited conservator, or conservator for the minor, or any other individual interested in the welfare of the minor may apply to the court for:

(a) Modification or termination of the dispositional order;

(b) Replacement of the limited personal guardian, personal guardian, limited conservator, or conservator;

(c) Approval or disapproval of the compensation or reimbursement for expenses requested by the limited personal guardian, personal guardian, limited conservator, or conservator; or

(d) Resolution of a dispute over the individual conservatorship plan.

(2) (a) An application from a minor may be communicated to the court by any means, including but not limited to oral communication or informal letter. Upon receipt of such an informal request the court shall contact the minor's attorney of record or appoint new counsel to prepare a formal application.

(b) Applications filed by individuals other than the minor and formal applications filed pursuant to paragraph (2)(a) of this section shall set forth the name and address of the individuals and entities entitled to notice, the relief requested and the facts and reasons supporting the request.

(3) Any party may object to the relief requested in an application;

(4) (a) The court shall hold a hearing on all applications:

(i) Which are filed pursuant to section 32 of this act;

(ii) Which request termination of the guardianship or conservatorship of the minor;

(iii) Which request a change in custody of the minor; or

(iv) To which an objection has been filed.

(b) All other applications may be granted without a hearing.

(5) After notice, the court may join separate applications and separate objections filed under this section, unless joinder would be prejudicial to the interests of the minor.

(6) The criteria, priorities and procedures set forth in section 21 shall apply to dispositional orders issued following submission of an application under this section.

Section 24. Termination

(1) The guardianship and/or conservatorship of a minor whether established by court order or

testamentary designation, shall terminate upon:

- (a) The death of the minor;
- (b) The minor's [eighteenth birthday/attaining of majority];
- (c) The marriage of the minor;
- (d) The adoption of the minor; or
- (e) An order of the court.

(2) Within sixty (60) days of a minor's [eighteenth birthday/attaining of majority], an intervention proceeding may be initiated under section 6 of this act if it appears that upon attaining majority, the minor will be a partially disabled or disabled person.

Section 25. Duties and Powers of Limited Personal Guardians and Personal Guardians for Minors

(1) It is the general duty of individuals appointed to serve as a limited personal guardian or personal guardian for a minor to carry out, diligently and in good faith, the specific duties and powers assigned by the court. In carrying out these duties and powers, such individuals shall:

(a) Assure that the personal, civil and human rights of the minors whom they are serving are protected; and

(b) Encourage those minors to:

(i) Participate in all decisions which affect them; and

(ii) Develop their abilities to the maximum extent possible.

(2) (a) A limited personal guardian for a minor may be assigned any portion of the duties and powers listed in paragraphs 3(a)-(g):

(i) In those particular areas in which, or for that period of time during which, the parental rights of the parent of the minor have been suspended; or

(ii) In those particular areas in which a minor, whose parents are dead or have had their parental rights terminated, requires assistance to meet the essential requirements for his or her physical health or safety.

(b) A limited personal guardian may also be assigned the duty to assist the minor in those particular areas in which the minor's ability to meet the essential requirements for his or her physical health or safety, and/or to protect his or her rights, and/or to obtain necessary services, and/or to fulfill his or her civil duties is impaired, as well as in other ways not specifically prohibited by subsections (4) and (5) of this section.

(3) The specific duties and powers assigned to a personal guardian for a minor by the court shall be those of a parent, whose parental rights have not been terminated or suspended, toward his or her child, including but not limited to:

(a) Taking custody of the minor subject to any limitations and visitation privileges prescribed by the court;

(b) Assuring that the minor receives adequate food, clothing, health and other professional care, shelter, and education;

(c) Assuring through the initiation of court actions and other means that the minor enjoys the personal and civil rights to which he or she is entitled;

(d) Providing any required consents or approvals on behalf of the minor, including consent to the marriage of the minor or enlistment of the minor in the armed services;

(e) Assisting the minor to the maximum extent possible, to learn and assume the duties and responsibilities of a productive, law-abiding citizen;

(f) Receiving money payable for the support of the minor if a separate limited conservator or conservator has not been appointed; and

(g) Expending sums from the financial resources of the minor to cover the reasonable costs incurred on behalf of the minor.

(4) If a separate limited conservator or conservator has been appointed for the minor, then the receipt and expenditure of funds by the limited personal guardian or personal guardian shall be consistent with the duties assigned to and procedures and policies established by the limited conservator or conservator.

(5) A limited personal guardian or personal guardian shall not be:

(a) Obligated to provide for the minor from his or her own funds;

(b) Liable to third persons by reason of the parental-type relationship for acts of the minor;

(c) Empowered to take or consent to any of the actions for limited personal guardians for partially disabled and disabled persons by section 16(5)(a)-(c) and (f).

(6) (a) A limited personal guardian or personal guardian for a minor shall submit a report to the court at least ten (10) days before the initial review hearing and:

(i) Annually thereafter;

(ii) When the court orders additional reports to be filed;

(iii) When the limited personal guardian or personal guardian resigns or is removed; or

(iv) When the guardianship is terminated.

(b) The report shall set forth:

(i) The name and address of the minor, the limited personal guardian or personal guardian, and the individual or facility having custody of the minor;

conservators and conservators for partially disabled and disabled persons under section 17(6) of this act shall also apply to limited conservators and conservators appointed to serve minors.

(7) (a) A limited conservator or conservator for a minor shall submit a report to the court at least ten (10) days before the initial review hearing, and:

(i) Annually thereafter;

(ii) When the court orders additional reports to be filed;

(iii) When the limited conservator or conservator resigns or is removed; and

(iv) When the conservatorship is terminated.

(b) The report shall set forth:

(i) The name and address of the minor and the limited conservator or conservator;

(ii) A complete financial statement of the financial resources under the control and/or supervision of the limited conservator or conservator;

(iii) The services being provided to the

minor and the relationship of those services to the individual conservatorship plan;

(iv) The significant actions taken by the limited conservator or conservator during the reporting period;

(v) The compensation requested and the reasonable and necessary expenses incurred by the limited conservator or conservator;

(vi) Any significant problems relating to the conservatorship which have arisen during the reporting period; and

(vii) Any changes which should be made in the duties and powers of the limited conservator or conservator.

Attached to the report shall be an updated individual conservatorship plan developed by the limited conservator, conservator, the limited personal guardian or personal guardian if any, and to the maximum extent possible, the minor.

(c) Following submission of a report, or in conjunction with a review hearing pursuant to section 22 or a proceeding initiated under section 23 of this act, a conservator shall submit to a physical check of the financial resources placed under his, her or its control, in the manner specified by the court.

CHAPTER 4 GENERAL PROVISIONS

Section 27. Time Limits

(1) The following time limits shall apply to proceedings initiated under chapter 2 of this act:

(a) An evaluation report shall be submitted pursuant to section 8(3) of this act no more than twenty (20) days after the filing of a petition;

(b) A hearing shall be held pursuant to section 9 of this act no more than thirty-five (35) days after the filing of a petition;

(c) A dispositional hearing shall be held pursuant to section 11(1) of this act no more than ten (10) days after a finding that an individual is a partially disabled or disabled person;

(d) A review hearing shall be held pursuant to section 14(1)(a) no more than one (1) year after appointment of a limited personal guardian and/or limited conservator, and biennially thereafter;

(e) A review hearing shall be held pursuant to section 14(1)(b) no more than six (6) months after appointment of a personal guardian and/or conservator, and annually thereafter;

(f) Hearings required by sections 15(4)(a)(i)-(ii) shall be held no more than thirty (30) days after the application is filed. Hearings required by section 15(4)(a)(iii) shall be held no more than thirty (30) days after the objection is filed.

(2) The following time limits shall apply to proceedings initiated under chapter 3 of this act:

(a) Acceptance of a testamentary designation shall be filed pursuant to section 18(2)(b) no more than thirty (30) days after the will containing the designation has been filed for probate;

(b) An objection to a testamentary designation shall be filed pursuant to section 19 no more than twenty (20) days after service of the notice required by section 29(1)(a);

(c) A hearing shall be held pursuant to section 20 of this act no more than thirty (30) days after the:

(i) Filing of a petition; or

(ii) Filing of an objection to a testamentary designation; or

(iii) No more than fifteen (15) days after expiration of the period for accepting a testamentary designation if a written acceptance has not been filed;

(d) A review hearing shall be held pursuant to section 22 of this act no more than six (6) months after a limited personal guardian, personal guardian, limited conservator and/or conservator has been appointed for a minor and at least annually thereafter;

(e) Hearings required by sections 23(4)(a)(i)-(iii) shall be held no more than thirty (30) days after the application has been filed. Hearings required by section 23(4)(a)(iv) shall be held no

more than thirty (30) days after the objection has been filed.

(3) The informal, *in camera* hearing required by section 31(3), shall be held no more than fifteen (15) days after an objection to a request for appointment of a guardian *ad litem* has been filed.

(4) The following time limits shall apply to proceedings for emergency and standby appointments:

(a) A hearing shall be held pursuant to section 32(1)(c) of this act no more than forty-eight (48) hours after an application for an emergency appointment has been filed;

(b) An application shall be filed pursuant to section 32(3) of this act within ten (10) days after an individual appointed on a standby basis assumes guardianship and conservatorship duties.

(5) A continuance may be granted:

(a) Upon a stipulation by the parties; or

(b) For good cause shown following a written motion, notice to the individuals and entities enumerated in section 29(1)(a) of this act in the form and manner prescribed in sections 29(1)(b) and 29(2) and a hearing if an objection to the continuance is filed.

(6) The court shall set the date for a hearing and have notice served within five (5) days of the filing of the pleading requiring the hearing and/or the notice, except following the filing of an application under section 32(1) in which case the time for the hearing shall be set and notice served within twenty-four (24) hours.

Section 28. Rights and Privileges

(1) (a) In all proceedings under this act the parties shall have a right to:

(i) Prior notice;

(ii) Counsel;

(iii) Be present;

(iv) Compel the attendance of witnesses;

(v) Present evidence and confront and cross-examine witnesses, including the multidisciplinary evaluation team appointed pursuant to section 8 of this act;

(vi) An impartial decision-maker; and

(vii) Appeal adverse orders and judgments in the manner prescribed in (the Rules of Civil Procedure).

(b) In addition to the rights listed in paragraph (1)(a), the subject of an intervention proceeding shall have a right to close proceedings to the public, except that even if a proceeding has been closed to the general public, the court may, for good cause shown, admit persons having a legitimate interest in the proceedings or in the hearing process unless the subject of the intervention proceeding objects.

(c) In addition to the rights listed in paragraph (1)(a) of this section, private individuals who initiate an intervention proceeding and who are unable to obtain counsel for financial reasons, shall have a right to have the [district/county/state] attorney appointed to represent them.

(d) An individual alleged or found to be partially disabled or disabled shall also have a right to:

(i) A jury in hearings held pursuant to section 9 of this act; and

(ii) Have an independent expert appointed by the court at the expense of the [state/county/court] to evaluate him or her if that individual is unable for financial reasons to secure independent medical, psychological or other expert opinion regarding the alleged disability and the need for restrictions on the legal capacity to act in his or her own behalf.

(e) No right accorded in this subsection shall be waivable, except for the right to close proceedings to the public set forth in paragraph (1)(b) of this section and the right to a jury set forth in paragraph (1)(d). Any waiver of the right to a closed proceeding or to a jury shall be in writing or on the record, and shall demonstrate that the individual waiving the right has knowingly and voluntarily waived it after being fully informed of the right and of the consequences of relinquishing it.

(2) An attorney shall be appointed to represent the subject of an intervention proceeding in any matter arising under this act for which independent counsel has not been retained by or on behalf of that individual.

(3) A stenographic and/or mechanical record shall be made of all proceedings held pursuant to this act.

(4) (a) Statements of individuals alleged or found to be a partially disabled or disabled person made during the course of evaluations, examinations and treatment pursuant to this act, shall be privileged, confidential, and not admissible without the individual's consent in any civil or criminal proceedings other than proceedings pursuant to this act.

(b) If the subject of an intervention proceeding is under the influence of psychotropic medication during any judicial hearing held pursuant to this act, the court and the jury, if any, shall be advised of this fact and of the purpose of the medication and the effect which it may have on the individual's actions, demeanor and participation at the hearing.

(c) Any hearing held pursuant to this act may be held at such places as the court directs including the place of residence of the subject of the intervention proceeding.

Section 29. Notice and Dissemination of Plans and Reports

(1) (a) The court shall have notice of any pleadings filed, hearings required or actions taken pursuant to sections 6(1), 7, 9, 11, 14, 15, 17(6), 18, 19, 20, 22, 23, 26(6), 27(5), 31, 32(1) and 32(2) of this act served on:

- (i) The parties as defined in section 3(9);
- (ii) The attorney of record for each party;
- (iii) The individuals most closely related to the subject of the intervention proceeding by blood or marriage unless their names or whereabouts are unknown and cannot be reasonably ascertained;
- (iv) The individual or facility, if any, having custody of the subject of the intervention proceeding;
- (v) The individual(s), if any, appointed or proposed for appointment or testamentarily designated as limited personal guardian or personal guardian;
- (vi) The individual(s) and/or corporation(s), if any, appointed or proposed for appointment, or testamentarily designated as limited conservator or conservator;
- (vii) The individual(s), if any, appointed or proposed for appointment as guardian *ad litem*;
- (viii) The [executor/personal representative/administrator] of the estate of the testator following a testamentary designation;
- (ix) The Administrator of Veterans' Affairs if the financial resources of the subject of the intervention proceeding include a benefit, compensation, pension or insurance payable by the Veterans' Administration; and
- (x) The surety on the bond for the limited conservator or conservator, if any.

(b) Notices shall set forth the:

- (i) Rights of the parties;
- (ii) The procedures and time limits for exercising those rights in the particular proceeding to which the notice refers; and
- (iii) The date, time, place, purpose and possible consequences of the hearing, if any, to which the notice refers.

(2) (a) Attached to any notice served in conjunction with this act shall be a copy of the pleading which gave rise to the notice.

(b) Personal service shall be made on each of the individuals or entities receiving notice in the manner prescribed by (citation to the relevant Rules of Civil Procedure).

(c) The contents of all documents served shall be explained, to the maximum extent possible, to the subject of the intervention proceeding in the language, mode of communication, and

terms which that individual is most likely to understand.

(3) (a) The court shall send evaluation reports submitted pursuant to section 8 of this act to the attorney of record for each of the parties and directly to any party who is not represented by counsel.

(b) The court shall send plans and reports submitted pursuant to sections 16(2), 16(6), 17(2), 17(7), 25(6), 26(2) and 26(7) of this act to:

- (i) The partially disabled or disabled person or minor;
- (ii) The attorney of record for the partially disabled or disabled person or minor;
- (iii) The (name of the state Developmental Disabilities Advocacy Office) if the partially disabled or disabled person has a developmental disability; and
- (iv) The individuals and entities specified in subparagraphs (1)(a)(iii)-(vii) and (ix) of this section.

(c) The contents of all plans and reports shall be explained to the subject of the intervention proceeding in the language, mode of communication and terms which that individual is most likely to understand. Portions of reports which are likely to cause severe psychological or physical harm to the subject of the intervention proceeding may be disclosed to that individual through a psychiatrist, psychologist or other appropriate professional.

Section 30. Duties and Compensation of Counsel

(1) The principal duty of an attorney representing the subject of an intervention proceeding is to represent zealously that individual's legitimate interests.

(2) To the maximum extent possible, the subject of the intervention proceeding shall remain responsible for determining his or her interests. However, an attorney may seek appointment of a separate guardian *ad litem* when the circumstances set forth in section 31 of this act apply.

(3) Attorneys appointed to represent the subjects of intervention proceedings shall be entitled to reasonable compensation. If the subject of the intervention proceeding is unable for financial reasons to pay such compensation in whole or in part, the court shall award the appointed attorney an amount representing reasonable compensation for the services performed, or shall appoint the [public defender or legal services office] to represent the individual.

Section 31. Procedures and Criteria for Appointment of a Guardian *ad Litem*; Duties and Powers

(1) (a) The subject of an intervention proceed-

ing, the attorney for that individual, the limited personal guardian, personal guardian, limited conservator or conservator, if any, for that individual, and/or anyone interested in the welfare of that individual, may file an application to have a guardian *ad litem* appointed.

(b) The application shall set forth:

(i) The name and address of the individuals and entities entitled to notice;

(ii) The facts and reasons supporting the request; and

(iii) The name, address and qualifications of the individual proposed for appointment as guardian *ad litem*.

(2) Any party may file an objection to a request for appointment of a guardian *ad litem* or to the individual proposed for the appointment. Objections by the subject of the intervention proceedings may be communicated to the court by any means, including but not limited to oral communication or informal letter. Objections by other individuals or entities shall be in writing.

(3) The court may grant or deny an application without a hearing unless a timely objection is submitted. If an objection is filed, the court shall hold an informal, *in camera* hearing.

(4) The court shall appoint a guardian *ad litem* to protect the rights of the subjects of intervention proceedings if it is shown that because of youth, or because of impaired ability to receive and evaluate information effectively regarding the proceeding, or because of impaired ability to communicate decisions regarding the proceeding, they cannot determine their own interests without assistance, and either:

(a) No limited personal guardian or personal guardian has been appointed;

(b) The interests of the subject of the intervention proceeding and those of his or her parent, limited personal guardian or personal guardian conflict; or

(c) The appointment is otherwise required in the interests of justice.

(5) The eligibility requirements and priorities set forth in section 12 for selection of a limited personal guardian or personal guardian shall apply to the selection of a guardian *ad litem*.

(6) Guardians *ad litem* shall assist the individuals for whom they have been appointed to determine their interests in regard to the legal proceedings in which they are involved. If an individual is wholly incapable of determining his or her own interests, the guardian *ad litem* shall make that determination and advise counsel accordingly. In so doing, guardians *ad litem* shall:

(a) Inquire thoroughly into all the circumstances that a prudent individual in the position of the person for whom the guardian *ad litem* has

been appointed would consider in determining his or her interests in the proceedings; and

(b) Encourage the individual whom they are serving to participate, to the maximum extent of that individual's ability, in all decisions and to act on his or her own behalf on all matters in which he or she is able.

(7) The court should inform guardians *ad litem*, upon appointment, of their duties and powers.

Section 32. Emergency and Standby Appointments

(1) (a) If during the pendency of a proceeding initiated under chapter 2 or 3 of this act, it appears that there is an imminent danger that the physical health or safety of the subject of the intervention proceeding will be seriously impaired or that the financial resources of that individual will be seriously damaged or dissipated unless immediate action is taken, the subject of the intervention proceeding, or any adult interested in the welfare of that individual may apply to the court in which the proceeding is pending for the emergency appointment of a limited personal guardian and/or limited conservator.

(b) The application shall state:

(i) The names and addresses of the individuals and entities entitled to notice;

(ii) The relief requested and the facts and reasons supporting that request; and

(iii) If the pending proceeding was filed under chapter 2 of this act, a statement that the application has been discussed with the disabilities resources officer and that the restrictions, protections, and assistance requested are the least restrictive alternative which will avert the imminent danger to the respondent and/or the respondent's financial resources.

(c) A hearing shall be held within the time limit prescribed in section 27(4)(a) of this act, at which the rights set forth in section 28 shall apply.

(d) If the court determines that there is an imminent danger that the physical health or safety of the subject of the intervention proceeding will be seriously impaired and/or that the financial resources of that individual will be seriously damaged or dissipated unless immediate action is taken, and for matters filed under chapter 2 of this act, if the court determines in addition that there is no less restrictive means of protecting the respondent and/or the respondent's financial resources, it shall appoint a limited guardian and/or limited conservator in the manner prescribed in sections 13 or 21. The court shall assign to an emergency appointee only those duties and powers necessary to protect against the imminent danger shown.

(e) (i) If the application was filed prior to the hearing required by section 9 or section 20, the emergency appointment shall remain in effect until the conclusion of that hearing. However, if at a hearing held pursuant to section 9, the respondent is found to be a partially disabled or disabled person, the court may extend the emergency appointment until the conclusion of the dispositional hearing.

(ii) If the application was filed following a finding that an adult is a partially disabled or disabled person or that a minor meets the criteria set forth in section 21(3), the court shall direct the emergency appointee to file an application in accordance with section 15 or section 23 within five (5) days. The emergency appointment shall remain in effect until the conclusion of the hearing on that application.

(2) If at any time the court has probable cause to believe that a limited personal guardian, personal guardian, limited conservator or conservator is not effectively performing his or her duties and powers, and that there is an imminent danger that the physical health or safety of the partially disabled or disabled person or minor will be seriously impaired or that the financial resources of that individual will be seriously damaged or dissipated unless immediate action is taken, it shall:

(a) Suspend and temporarily replace the limited personal guardian, personal guardian, limited conservator, and/or conservator, with an individual or corporation meeting the qualifications set forth in section 12 or 21(4);

(b) Reassign the duties and powers of the suspended individual or corporation to the emergency appointee; and

(c) Direct the temporary appointee to file an application under section 15 or section 23 of this act within five (5) days if such an application is not already pending, and submit such reports as may be necessary.

(3) The court may designate another eligible individual or entity selected in accordance with section 12 or 21(4) to assume the duties and powers assigned to the limited personal guardian, personal guardian, limited conservator or conservator upon his or her resignation, incapacitation or death. The individual so designated shall submit an application pursuant to section 15 or 23 within the time limits prescribed by section 27(4)(b) of this act. An individual serving on a standby basis may exercise all of the duties and powers assigned to his or her predecessor as a limited personal guardian, personal guardian, limited conservator, or conservator, until the conclusion of the hearing on the application, unless otherwise ordered by the court.

Section 33. Appointment of Volunteer Public Guardians, Volunteer Public Conservators, and Volunteer Public Trustees

(1) (a) Pursuant to sections 11 and 12 or section 21 of this act, the court may select a volunteer public guardian or volunteer public conservator from the list published by the Guardianship/Conservatorship Oversight Commission for appointment as the limited personal guardian, personal guardian, limited conservator and/or conservator for a minor or a partially disabled or disabled person when:

(i) There is no other private individual or entity qualified under section 12(1) or 21(4) of this act who is able and willing to accept the appointment; or

(ii) The cost of a private limited personal guardian, personal guardian, limited conservator and/or conservator would substantially impede the minor or the partially disabled or disabled person from meeting the essential requirements for his or her physical health or safety, and/or the management of his or her financial resources, and/or the provision to that individual of any assistance necessary to develop or regain his or her abilities to the maximum extent possible; or

(iii) The primary source of support for the minor, or the partially disabled or disabled person, is from public funds; or

(iv) A volunteer public guardian or volunteer public conservator can best assist the minor or the partially disabled or disabled person to meet the essential requirements for his or her physical health or safety, and/or manage his or her financial resources, and/or develop or regain his or her abilities to the maximum extent possible.

(b) A volunteer public guardian may be assigned the same duties and powers and shall be subject to the same requirements and restrictions as a private limited personal guardian or personal guardian. A volunteer public conservator may be assigned the same duties and powers and shall be subject to the same requirements and restrictions as a private limited conservator or conservator.

(c) A volunteer public guardian may be appointed to serve as the limited personal guardian or personal guardian for no more than two (2) individuals. A volunteer public conservator may be appointed to serve as the limited conservator or conservator for no more than four (4) individuals.

(2) (a) A volunteer public trustee may be selected from the list published by the Guardianship/Conservatorship Oversight Commission for appointment as the trustee or co-trustee of any trust valued at less than \$ _____ when there are no private individuals or entities qualified, able and willing to serve as trustee, and either:

(i) At least one beneficiary of that trust has been found to be a partially disabled or disabled person, or is a minor for whom a limited personal guardian, personal guardian, limited conservator and/or conservator has been appointed; or

(ii) The creation of the trust would obviate the necessity of appointing or continuing the appointment of a limited conservator or conservator.

(b) No volunteer public trustee may serve as a trustee or co-trustee of a trust when that volunteer public trustee has interests which conflict substantially with those of any beneficiary of the trust.

(c) A volunteer public trustee may be assigned the same powers and duties and shall be subject to the same restrictions as private trustees pursuant to (citation to the relevant section of the state code).

Section 34. Effect of a Finding That a Person is Partially Disabled or Disabled and the Effect of a Guardianship or Conservatorship for a Minor

(1) A finding under this act that an individual is a partially disabled or disabled person shall not constitute a finding of legal incompetence. An individual found to be partially disabled or disabled shall retain all legal rights and abilities other than those expressly limited or curtailed in the dispositional order or subsequent order of the court.

(2) A minor for whom a limited personal guardian, personal guardian, limited conservator and/or conservator has been appointed shall be entitled to the same rights and privileges as a minor whose parents have not died or have not had their parental rights terminated or suspended, or who does not have or is not entitled to financial resources which may be jeopardized because of the minor's age.

Section 35. Compensation and Expenses

(1) Limited personal guardians, personal guardians, limited conservators and conservators, including volunteer public guardians and volunteer public conservators are entitled to reasonable compensation for services rendered and to reimbursements for reasonable and necessary expenses incurred in the performance of their assigned guardianship and/or conservatorship duties and powers.

(2) Such compensation and reimbursements shall be paid from the financial resources of the partially disabled or disabled person or the minor unless:

(a) A volunteer public guardian and/or volunteer public conservator has been appointed in accordance with section 33(1) of this act; and

(b) Either:

(i) Payment of compensation and reimbursements would substantially impede the minor, partially disabled person, or disabled person from meeting the essential requirements for his or her physical health or safety, managing of his or her financial resources, and/or developing or regaining his or her abilities to the maximum extent possible; or

(ii) The primary source of support for the minor, partially disabled person, or disabled person is from public funds.

(3) Volunteer public trustees who have been appointed to serve as a trustee or co-trustee of a trust in accordance with section 33(2) of this act, are entitled to reasonable compensation for services rendered and to reimbursements for reasonable and necessary expenses incurred in the performance of their trusteeship duties. Such compensation and reimbursements shall be paid from the corpus or income of the trust except when:

(a) The corpus of the trust is less than \$ ____; or

(b) Payment of such compensation and reimbursements would prevent the trust from providing funds to any beneficiary, funds which will be sufficient, when added to the other income of that beneficiary, to permit him or her to meet the essential requirements for his or her physical health or safety, and/or manage his or her financial resources, and/or develop or regain his or her abilities to the maximum extent possible.

(4) The state shall compensate and reimburse:

(a) A volunteer public guardian or volunteer public conservator not entitled under subsection (2) of this section to compensation and reimbursement from the financial resources of the partially disabled or disabled person or the minor; and

(b) A volunteer public trustee not entitled under subsection (3) of this section to compensation and reimbursement from the corpus or income of the trust.

(5) All compensation and reimbursements shall be approved by the court prior to payment.

Section 36. Records

(1) Identifiable information shall not be collected in conjunction with any proceeding under this act unless that information is essential to:

(a) Providing necessary services;

(b) Determining whether an individual is a partially disabled or disabled person or whether a guardianship or conservatorship for a minor should be or has been established;

(c) Issuing, reviewing, modifying or terminating a dispositional order;

(d) Administering, monitoring, and evaluating the court and services provided to partially disabled or disabled persons and minors;

(e) Monitoring and evaluating the guardianship or conservatorship of a partially disabled or disabled person or a minor; or

(f) Conducting an authorized research, evaluation or statistical study.

(2) Information identifiable to an individual alleged or found to be partially disabled or disabled collected under subsection (1) of this section shall not be retained in retrievable form unless it is accurate; protected from unauthorized access, disclosure and dissemination; physically secure; and essential to accomplishing one of the purposes specified in subsection (1).

(3) Identifiable information retained pursuant to subsection (2) in conjunction with a proceeding initiated under chapter 2, shall not constitute a public record. Access to and disclosure of such records shall be strictly controlled.

(4) The subject of any record retained under subsection (2) of this section shall be entitled to inspect and copy that record, request correction, clarification or deletion of any portion of that record which he or she believes is inaccurate, misleading or retained improperly, and to submit for inclusion in that record, a statement concerning any disputed information.

(5) (a) Following the dismissal or withdrawal of a petition filed under section 6 of this act or the termination of a dispositional order, the subject of any record retained under subsection (2) in conjunction with the petition or order may file an application to have any identifiable, non-privileged information pertaining to the proceeding destroyed.

(b) At any time, the subject of a record retained pursuant to subsection (2) in conjunction with a proceeding initiated under chapter 3 of this act, may file an application to limit access to any identifiable, non-privileged information contained in that record which is likely to harm or stigmatize the individual.

(c) Copies of an order to destroy or limit access to a record issued pursuant to paragraphs (5)(a) and (5)(b) of this section shall be sent to all courts, agencies and individuals which may have that record or have copies of or identifiable notations regarding that record. Courts, agencies and individuals receiving a copy of such an order shall promptly dispose of all copies of the record or the portion or notations thereof which they possess in the manner specified unless the information was obtained for authorized research, evaluation or statistical purposes.

(d) The subject of a record shall be entitled

to receive a copy of that record, upon request, prior to its destruction or sealing.

Section 37. Bonds

(1) The court may require a limited conservator or conservator to have a surety satisfactory to the court furnish a bond conditioned upon the faithful discharge of all duties and powers assigned in the dispositional order or any modification thereof. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

(2) The following requirements and provisions shall apply to any bond required under this section:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the limited conservator or conservator and with each other;

(b) By executing an approved bond on a limited conservator or conservator, the surety consents to the jurisdiction of the court in any proceeding pertaining to the fiduciary duties of the limited conservator or conservator and the naming of the surety as a party defendant;

(c) On petition of a successor limited conservator or conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the limited conservator or conservator;

(d) The bond on the limited conservator or conservator is not void after the first recovery but may be proceeded against at subsequent times until the whole penalty is exhausted.

(3) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

Section 38. Liability of a Limited Personal Guardian, Personal Guardian, Limited Conservator or Conservator to Third Parties and Penalties for Violations of the Act.

(1) By accepting appointment or designation as a limited personal guardian, personal guardian, limited conservator, or conservator, an individual or corporation submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship which may be instituted.

(2) (a) Unless otherwise provided in the contract, limited conservators and conservators shall not be individually liable on a contract properly entered into in their fiduciary capacity in the course of managing the financial resources of a partially disabled or disabled person or a minor, unless they fail to reveal their representative capacity and fail to identify the partially dis-

abled or disabled person or the minor in the contract.

(b) Limited conservators and conservators shall be individually liable for obligations arising from ownership or control of financial resources of a partially disabled or disabled person or a minor or for torts committed in the course of administration of such financial resources only if they are personally at fault.

(c) Claims based on contracts entered into by limited conservators or conservators in their fiduciary capacity, on obligations arising from ownership or control of the financial resources of partially disabled or disabled persons or minors, or on torts committed in the course of managing the financial resources of partially disabled or disabled persons or minors may be asserted by proceeding against the limited conservators and conservators in their fiduciary capacity, whether or not they are individually liable therefor.

(d) Any question of liability between the financial resources of partially disabled or disabled persons or minors and the limited conservators or conservators individually, may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

(3) Any limited personal guardian, personal guardian, limited conservator or conservator who willfully violates the duties or misuses the powers assigned by court and thereby causes harm to the subject of the guardianship or conservatorship or to the financial resources of that individual shall be subject to a fine of up to \$10,000 for each such violation of duty or misuse of power, in addition to any civil liability to which the limited personal guardian, personal guardian, limited conservator or conservator may be subject.

(4) (a) Any individual who willfully discloses identifiable information or who willfully gains access to identifiable information in violation of section 36 of this act or who willfully violates an order issued pursuant to section 36(5)(c) shall be subject to a fine of up to \$5,000 for each violation.

(b) The subject of identifiable information which has not been destroyed or sealed in accordance with section 36(5) of this act, may initiate a civil action for damages or to restrain further dissemination.

Section 39. Venue of Proceedings Subsequent to a Dispositional Order or an Uncontested Acceptance of a Testamentary Appointment

The court where the subject of an intervention proceeding resides following issuance of a dispositional order or an uncontested acceptance of a testamentary designation, has concurrent jurisdiction with the court which issued the order

or in which the acceptance was filed, over proceedings held pursuant to 15, 23, 31 and 36 of this act and other proceedings related to the imposition of restrictions on the capacity of a person to act in his or her own behalf. Venue shall be in the jurisdiction which is the most convenient for and best serves the interests of the subject of the intervention proceeding. The court which issued the dispositional order or in which acceptance of a testamentary designation is filed shall be sent a copy of any order resulting from a subsequent proceeding in another jurisdiction.

Section 40. Burden of Proof

(1) In proceedings initiated under chapter 2 of this act:

(a) Proof beyond a reasonable doubt shall be required in order for the court to find that an individual is a partially disabled or disabled person and to impose or continue restrictions on that individual's legal capacity to act on his or her own behalf. Any other determination, except as specified in subparagraph (b)(i) of this section, may be made or action taken by the court on the basis of clear and convincing evidence.

(b) Both the burden of going forward and the burden of persuasion shall be on the party filing the petition, application, or motion except:

(i) A motion to dismiss filed pursuant to section 7 of this act shall be granted unless the petitioner proves there is probable cause to believe that the respondent is a partially disabled or disabled person;

(ii) A restriction on the legal capacity of the partially disabled or disabled person shall not be continued or added at a review hearing held pursuant to section 14 of this act unless the limited personal guardian, personal guardian, limited conservator and/or conservator proves beyond a reasonable doubt that the restriction is needed to achieve the purposes set forth in section 11(2) and that no less restrictive alternative will satisfy that need; and

(iii) The burden of persuasion shall shift to the party or parties opposing an application filed pursuant to section 15 by a partially disabled or disabled person, if that person presents testimony and/or evidence constituting a *prima facie* case supporting the requested relief.

(2) In proceedings initiated under chapter 3 of this act:

(a) A preponderance of the evidence shall be required in order for the court to make any determination or take any action.

(b) Both the burden of going forward and the burden of persuasion shall be on the party filing the petition, application, motion, or objection to a testamentary designation, except that the burden of persuasion shall shift to the party or parties

opposing an objection to a testamentary designation filed by a minor pursuant to section 19(1) of this act or an application filed by a minor pursuant to section 23 of this act if the minor presents testimony and/or evidence constituting a *prima facie* case supporting the objection or application.

(3) In proceedings held pursuant to sections 31(3) and 32(1)(c), the burden of persuasion shall be by a preponderance of the evidence. Both the burden of going forward and the burden of persuasion shall be on the applicant.

Section 41. Rules of Evidence/Rules of Procedure

Except where specified otherwise, the rules of evidence and rules of procedure, including those on discovery, which are applicable in civil matters shall govern all proceedings under this act.

Section 42. Effect on Existing Guardianships and Conservatorships

(1) All guardianships and conservatorships established for partially disabled and disabled persons prior to the effective date of this act shall be reviewed by the court pursuant to section 14 within two (2) years. Until the review hearing, all limited personal guardians, personal guardians, limited conservators and conservators appointed prior to the effective date shall retain the powers assigned to them, unless an application has been granted under section 15. Prior to the review hearing, the limited personal guardian, personal guardian, limited conservator and/or conservator shall submit at least one (1) report in the form prescribed in sections 16(6) and/or 17(7), and an individual guardianship and/or conservatorship plan developed in the manner set forth in sections 16(2) and/or 17(2).

(2) All limited personal guardians, personal guardians, limited conservators and/or conser-

vators for minors appointed by court order or beginning their service following a testamentary appointment prior to the effective date of this act, shall retain the powers assigned to them by the court or by will unless an application has been granted under section 23 of this act, or one of the events specified in section 24 occurs terminating the guardianship or conservatorship. All such limited personal guardians and personal guardians shall submit a report in the form prescribed in section 25(6) no more than one year after the effective date of this act and annually thereafter for the duration of the guardianship. All such limited conservators and conservators shall submit an individual conservatorship plan in the form specified in section 26(2) and a report in the form specified in section 26(7) no more than one year after the effective date of this act and at least annually thereafter for the duration of the conservatorship.

Section 43. Authorization of Appropriations

To carry out the purposes of this act, there is authorized to be appropriated \$_____ for the fiscal year ending_____, \$_____ for the fiscal year ending_____, and \$_____ for the fiscal year ending_____.

Section 44. Severability of Sections

If any section, subsection, paragraph, sentence, or any other part of this act is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined to the section, subsection, paragraph, sentence or other part of this act directly involved in the controversy in which that judgment was rendered.

Section 45. Effective Date

This act takes effect _____

S. B. 407

**SENATE BILL NO. 407—COMMITTEE ON HUMAN
RESOURCES AND FACILITIES**

MARCH 12, 1981

Referred to Committee on Judiciary

SUMMARY—Provides procedure for appointment of guardians of adults and establishes special guardianships for persons of limited capacity. (BDR 13-1111)

**FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.**



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to guardianships; providing separate procedures for the appointment of guardians of minors and adults; establishing guardianships for persons of limited capacity and prescribing the power and duties of special guardians; and providing other matters properly relating thereto.

***The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:***

- 1 **SECTION 1.** Chapter 159 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 20, inclusive, of this act.
3 **SEC. 2.** *As used in sections 2 to 20, inclusive, of this act, unless the*
4 *context otherwise requires, a person is of "limited capacity" if he is able*
5 *to exercise the basic rights of citizenship and to make independently some*
6 *but not all of the decisions necessary for his own care and the manage-*
7 *ment of his property.*
8 **SEC. 3.** 1. *A proposed ward, a governmental agency, a nonprofit*
9 *corporation or any concerned person may petition the court for the*
10 *appointment of a guardian for an adult.*
11 2. *The petition must state:*
12 (i) *The name and address of the petitioner;*
13 (ii) *The name, age and address of the proposed ward;*
14 (iii) *Whether the proposed ward is a resident or nonresident of this*
15 *state;*
16 (iv) *The names and addresses, so far as they are known to the peti-*
17 *tioner, of the relatives of the proposed ward within the second degree;*
18 (v) *The name and address of the proposed guardian;*
19 (vi) *The name and address of any person, agency or corporation known*
20 *to assist the proposed ward on a frequent or routine basis;*
21 (vii) *A summary of the reasons why a guardian is needed; and*
22 (viii) *Requests for specific powers necessary to enable the guardian to*
23 *carry out the duties of the guardianship.*

1 **SEC. 4.** 1. *The court upon the filing of a petition for the appoint-*
2 *ment of a guardian for an adult shall direct the clerk to issue a citation*
3 *setting forth a time and place for the hearing and directing any person*
4 *or an officer of any institution having the care, custody or control of the*
5 *adult to appear and show cause why a guardian should not be appointed.*

6 2. *The citation and a copy of the petition must be served upon the*
7 *proposed ward, unless he waives service, in the manner provided by*
8 *N.R.C.P. 4, or in the manner authorized by the court, at least 20 days*
9 *before the hearing.*

10 3. *The court shall also order service of the citation in person or by*
11 *certified mail at least 14 days before the hearing upon:*

12 (a) *The proposed ward's spouse, parents and adult children;*

13 (b) *Any person, corporation or agency required to be named in the*
14 *petition; and*

15 (c) *The Veterans' Administration if the proposed ward is entitled to*
16 *receive benefits therefrom.*

17 *If service of the citation under this subsection is not practicable, the court*
18 *may order that service be made by alternative means, or dispense with*
19 *service.*

20 **SEC. 5.** *The citation must state that the:*

21 1. *Proposed ward may be adjudged to be incompetent or of limited*
22 *capacity and a guardian may be appointed for him;*

23 2. *Proposed ward's rights may be affected as specified in the peti-*
24 *tion;*

25 3. *Court or an investigator will explain the nature, purpose and*
26 *effect of the proceedings to the proposed ward;*

27 4. *Proposed ward has the right to appear at the hearing and to*
28 *oppose the petition;*

29 5. *Proposed ward has the right to be represented by an attorney*
30 *and that the public defender or other attorney will be appointed for him*
31 *by the court if he is unable to retain one; and*

32 6. *Proposed ward has the right to a jury trial.*

33 **SEC. 6.** 1. *Upon filing of the petition, the court shall appoint an*
34 *investigator. The investigator may be an employee of a social service*
35 *agency, a family service officer of the court or any qualified person,*
36 *and must have knowledge of support services and other public and*
37 *private resources available to the proposed ward and the ability to advise*
38 *the court how these resources may reduce or eliminate the need for a*
39 *guardian.*

40 2. *The investigator shall inform the proposed ward and the pro-*
41 *posed ward's closest relative of the contents of the citation and determine*
42 *whether the proposed ward:*

43 (a) *Is unable to attend the hearing;*

44 (b) *Wishes to contest the petition;*

45 (c) *Wishes to be represented by an attorney, and if so, whether the*
46 *proposed ward has retained an attorney; and*

47 (d) *Wishes to request termination or modification of a guardianship.*

48 3. *Not less than 7 days before the hearing, the investigator shall file*
49 *with the court and parties a written report stating his opinion of the*

1 nature of the proposed ward's incapacity, if any, and of the powers
2 which a guardian would need to assist the proposed ward.

3 SEC. 7. 1. A petitioner may request the court to appoint an emer-
4 gency guardian for an adult. The petitioner must support the request by
5 presenting under oath to the court facts which show that the:

6 (a) Proposed ward faces a substantial and immediate risk of irreparable
7 financial loss or serious physical harm;

8 (b) Proposed ward lacks capacity to respond to the emergency; and

9 (c) Petitioner has tried in good faith to notify the persons, agencies
10 and corporations entitled to notice under section 4 of this act.

11 2. If the court finds reasonable cause to believe that the proposed
12 ward is unable to respond to a substantial and immediate risk of irrepa-
13 rable financial loss or serious physical harm, it may appoint an emer-
14 gency guardian to serve for 7 days. The court shall limit the emergency
15 guardian's powers to those necessary to assist in the emergency.

16 3. Within 7 days after the appointment of an emergency guardian
17 under subsection 2, the court shall hold a hearing to determine the need
18 to extend the emergency guardianship. If the court finds by clear and
19 convincing evidence that the proposed ward is unable to respond to a
20 substantial and immediate risk of irreparable financial loss or serious
21 physical harm, the court may extend the emergency guardianship until
22 a general or special guardian is appointed, but not for more than 20
23 days. The court shall limit the emergency guardian's powers to those
24 necessary to assist in the emergency.

25 SEC. 8. 1. If the proposed ward is in the state, he must attend the
26 hearing unless a physician certifies or attests that the proposed ward is
27 unable to attend because of medical reasons.

28 2. If the proposed ward is not in the state, he must attend the hear-
29 ing only if the court determines that his attendance is necessary in the
30 interests of justice. If the proposed ward is unable to attend the hearing
31 because of medical reasons, a physician must so certify or attest.

32 3. Emotional or psychological instability is not good cause for the
33 absence of the proposed ward within the meaning of this section unless,
34 because of that instability, attendance at the hearing is likely to cause
35 the proposed ward serious and immediate physiological damage.

36 4. The medical affidavit or certificate is evidence only of a pro-
37 posed ward's medical inability to attend the hearing and must not be
38 considered in determining the issue of incapacity.

39 SEC. 9. 1. Except as provided in subsection 2, a ward or proposed
40 ward must not, without his consent, be given any medication on the day
41 preceding and on the day of any judicial hearing.

42 2. The ward or proposed ward may be given medication on the day
43 preceding and on the day of a judicial hearing upon the written order
44 of a physician who finds it necessary to protect the ward, proposed ward
45 or others from serious bodily harm.

46 3. The ward or proposed ward is entitled to a postponement of the
47 hearing if he is given any medication in violation of this section.

48 4. The ward or proposed ward, upon his request at any judicial
49 hearing while he is under the influence of medication, is entitled to have

1 the court and jury informed regarding the medication and its effect on
2 his action, demeanor and participation at the hearing.

3 SEC. 10. 1. The petitioner has the burden of proving that the
4 appointment of a guardian is necessary.

5 2. The court shall make a stenographic record or tape recording of
6 the hearing.

7 3. At the hearing, the proposed ward is entitled to:

8 (a) Be represented by an attorney;

9 (b) Present evidence on his own behalf;

10 (c) Cross-examine witnesses who testify against him;

11 (d) Remain silent;

12 (e) Have the hearing open or closed to the public;

13 (f) Be present unless the court determines that his conduct in the court-
14 room is so disruptive that the proceedings cannot reasonably continue;

15 (g) The application of the rules of evidence applicable to other civil
16 proceedings; and

17 (h) A trial by jury on the issue of the need for the appointment of a
18 guardian.

19 SEC. 11. 1. If the court finds the proposed ward competent and not
20 in need of a guardian, it shall dismiss the petition.

21 2. If the court finds the proposed ward to be of limited capacity and
22 in need of a special guardian, it shall enter judgment accordingly and
23 specify the powers and duties of the special guardian.

24 3. If the court finds that appointment of a general guardian is
25 required, it shall appoint such a guardian of the ward's person, estate,
26 or person and estate.

27 SEC. 12. Before letters of guardianship may issue, a copy of the
28 order appointing the guardian must be served by mail upon the ward.
29 The order must contain the names, addresses and telephone numbers of
30 the guardian, the ward's attorney, if any, and the investigator.

31 SEC. 13. 1. Before selecting a guardian of an adult, the court shall
32 consult the ward to determine his preference. If the court does not
33 appoint the ward's nominee, it shall make specific findings of fact
34 explaining why appointment of the nominee would not have served the
35 best interest of the ward.

36 2. Among persons otherwise equally qualified, the court shall give
37 preference for appointment in the following order:

38 (a) The ward's nominee.

39 (b) The spouse of the ward or the spouse's nominee.

40 (c) An adult child of the ward or the child's nominee.

41 (d) A parent of the ward.

42 (e) A brother or sister of the ward.

43 (f) Any qualified interested person.

44 (g) A public agency.

45 SEC. 14. In addition to the other persons who are not qualified to
46 serve as a guardian as provided in this chapter, a person is not qualified
47 to serve as a guardian of an adult who is:

48 1. Providing substantial services to the proposed ward in a profes-
49 sional or business capacity;

50 2. A creditor of the proposed ward; or

1 3. An employee of any person, agency or corporation providing serv-
2 ices to the proposed ward in a professional or business capacity or likely
3 to provide these services during the guardianship, unless the employee
4 is the spouse, adult child, parent or sibling of the proposed ward and
5 the court determines that the potential conflict of interest is insubstantial
6 and that the appointment would clearly be in the proposed ward's best
7 interest.

8 SEC. 15. 1. A parent or spouse of an incompetent or person of
9 limited capacity may by will appoint a guardian. A testamentary appoint-
10 ment is effective when, after giving 7 days' prior written notice of his
11 intention to do so to the ward and to the person having his care or to
12 the ward's nearest adult relative, the guardian files an acceptance of
13 appointment in the court in which the will is probated or the estate
14 summarily administered. An appointment by a parent is effective if both
15 parents are dead or the surviving parent is adjudged incapacitated. If
16 both parents are dead, an effective appointment by the parent who died
17 later has priority unless it is terminated by the denial of probate. An
18 appointment by a spouse has priority over an appointment by a parent
19 unless it is terminated by the denial of probate.

20 2. Upon the filing with the appointing court of a written objection
21 to the appointment by the person for whom a testamentary appointment
22 of a guardian has been made, the appointment is terminated. An objec-
23 tion does not prevent an appointment of a guardian by the court in a
24 proceeding for the appointment of a guardian of an adult.

25 3. A testamentary appointment made by a will probated at the testa-
26 tor's domicile in another state is effective in this state.

27 SEC. 16. A special guardian shall exercise his supervisory authority
28 over the ward in a manner which is least restrictive of the ward's personal
29 freedom consistent with the need for supervision and protection.

30 SEC. 17. 1. The court may grant a special guardian of a person of
31 limited capacity the power to:

32 (a) Invest the property of the ward.

33 (b) Continue the business of the ward.

34 (c) Borrow money for the ward.

35 (d) Complete contracts of the ward.

36 (e) Make gifts from the ward's estate or make expenditures for the
37 ward's relatives.

38 (f) Sell, lease or surrender any property of the ward.

39 (g) Exchange or partition the ward's property.

40 (h) Perform any other act relating to the ward's property upon specific
41 instructions or approval of the court.

42 2. The provisions applying to a guardian of the estate in any of these
43 matters also apply to a special guardian authorized to act.

44 SEC. 18. A guardian shall not consent to experimental medical treat-
45 ment or sterilization of a ward or admit or commit a ward to a mental
46 health or mental retardation facility or a nursing home unless he is
47 specifically empowered to do so by the court.

48 SEC. 19. Every guardianship of an adult must be reviewed by the
49 court 1 year after the appointment of the guardian and biennially there-
50 after.

1 SEC. 20. *A ward or other person may petition the court for the*
2 *termination or modification of a guardianship of an adult. Upon the*
3 *filing of the petition, the court shall appoint the public defender or other*
4 *attorney to represent the ward if he has no attorney.*

5 SEC. 21. NRS 159.029 is hereby amended to read as follows:

6 159.029 So far as possible, any proceeding or matter undertaken or
7 commenced pursuant to any provision of law [prior to] before July 1,
8 1969, [shall] must be conducted and completed pursuant to this chap-
9 ter [.] , and any proceeding or matter undertaken or commenced pur-
10 suant to any provision of law before July 1, 1981, for the appointment
11 of a guardian of an adult must be conducted and completed pursuant
12 to the amendatory provisions which became effective on that date.

13 SEC. 22. NRS 159.031 is hereby amended to read as follows:

14 159.031 A guardian appointed [under NRS 159.013 to 159.203,
15 inclusive,] for a minor or an incompetent is a general guardian. A guard-
16 ian appointed [under any other provision of law] for a person of limited
17 capacity is a special guardian.

18 SEC. 23. NRS 159.035 is hereby amended to read as follows:

19 159.035 Any court having jurisdiction of the persons and estates of
20 minors and incompetent persons may appoint:

21 1. Guardians of the person, of the estate or of the person and estate
22 for resident incompetents or resident minors.

23 2. Guardians of the person or of the person and estate for incompe-
24 tents or minors, who although not residents of this state are physically
25 present in this state and whose welfare requires such appointment.

26 3. Guardians of the estate for nonresident incompetents or nonresi-
27 dent minors who have property within this state.

28 4. *Special guardians for persons of limited capacity whose need for*
29 *supervision is limited.*

30 SEC. 24. NRS 159.045 is hereby amended to read as follows:

31 159.045 Any person may file with the clerk of the court a petition
32 for the appointment of a guardian [.] for a minor. The petition [shall]
33 must include the following information, if known by the petitioner:

34 1. The name, age, residence and post office address of the proposed
35 ward.

36 2. Whether the proposed ward [is an incompetent or minor, and
37 whether he] is a resident or nonresident of this state.

38 3. Whether the appointment of a guardian of the person, of the
39 estate or of the person and estate is sought.

40 4. The name, residence and post office address of the proposed
41 guardian, and a declaration that the proposed guardian is qualified to
42 serve as guardian.

43 5. A general description and the probable value of the property of
44 the proposed ward and any income to which he is entitled. If any
45 [moneys are] money is paid or payable to the proposed ward by the
46 United States through the Veterans' Administration, the petition [shall]
47 must so state.

48 6. The name and address of any person or institution having the
49 care, custody or control of [a] the proposed ward. [who is an incompe-
50 tent or minor.]

1 7. The reasons why the appointment of a guardian is sought, the
2 relationship, if any, of the petitioner to the proposed ward and the
3 interest, if any, of the petitioner in the appointment.

4 SEC. 25. NRS 159.047 is hereby amended to read as follows:

5 159.047 1. Except as otherwise provided in NRS 159.049 to 159.-
6 053, inclusive, the court, upon the filing of a petition under NRS 159.045,
7 shall direct the clerk to issue a citation setting forth a time and place
8 for the hearing and directing the persons or institutions referred to in
9 subsection 2 to appear and show cause why a guardian should not be
10 appointed for the proposed ward.

11 2. A citation issued under subsection 1 [shall be served:

12 (a) If the proposed ward is an incompetent, on any person or an
13 officer of any institution having the care, custody or control of the
14 incompetent, and on the incompetent.

15 (b) If the proposed ward is a minor,] *must be served* on any person
16 or an officer of any institution having the care, custody or control of the
17 minor, and if the minor is 14 years of age or older, on the minor.

18 SEC. 26. NRS 159.049 is hereby amended to read as follows:

19 159.049 The court may, without citation, appoint a guardian for the
20 proposed ward if [:] *the*:

21 1. [The petitioner] *Petitioner* is a parent seeking appointment of a
22 guardian for his or her minor child under 14 years of age who is in the
23 lawful custody of the petitioner.

24 2. [The proposed] *Proposed* ward is a minor 14 years of age or
25 older and the petition is accompanied by the written consent of the minor
26 or the minor consents in open court.

27 3. [The petitioner] *Petitioner* is a foreign guardian of a nonresident
28 proposed ward [,] *who is a minor*, and the petition is accompanied
29 by an authenticated copy of the record of his appointment and by
30 evidence of existing authority of the foreign guardian.

31 SEC. 27. NRS 159.051 is hereby amended to read as follows:

32 159.051 If the court determines that the welfare of the proposed
33 *minor* ward requires the immediate appointment of a guardian, the court
34 may, with such notice as the court may order, appoint a temporary
35 guardian to serve until succeeded by another guardian, but in no event
36 for more than 5 days. Upon notice to the ward and to any person or
37 officer of an institution having the care, custody and control of the ward
38 before the appointment of the temporary guardian, and after a hearing
39 the court may for good cause shown extend the duration of the temporary
40 guardianship until a permanent guardian can be appointed. The tempor-
41 ary guardian is subject to such terms and conditions as the court may
42 prescribe in the order of appointment and, except as otherwise provided
43 in the order and in this section, is subject to the provisions of this chapter.

44 SEC. 28. NRS 159.055 is hereby amended to read as follows:

45 159.055 1. If it appears to the court that the allegations of the
46 petition are sufficient and that a guardian should be appointed for the
47 proposed ward, the court shall make an order appointing a guardian. The
48 order [shall:] *must*:

49 (a) Specify whether the guardian appointed is guardian of the person,
50 of the estate, or of the person and estate;

1 (b) [Specify whether the ward is an incompetent or minor;
2 (c)] Specify whether the ward is a resident or nonresident of this
3 state;

4 [(d)] (c) Specify the amount of the bond to be executed and filed
5 by the guardian; and

6 [(e)] (d) Designate the names and addresses of the heirs at law and
7 next of kin of the ward, so far as may be determined, upon whom
8 notice [shall] *must* be served.

9 2. Any notice required by the provisions of this chapter to be given
10 the heirs at law and next of kin of the ward is sufficient if mailed to the
11 persons listed in the order of appointment or in any amendment to
12 [such] *that* order which may be made by the court.

13 SEC. 29. NRS 159.061 is hereby amended to read as follows:

14 159.061 The parents of a minor, or either parent, if qualified and
15 suitable, [shall be] *are* preferred over all other for appointment as
16 guardian for the minor. Subject to this preference, the court shall
17 appoint as guardian for [an incompetent or] a minor the qualified
18 person who is most suitable and is willing to serve. In determining who
19 is most suitable, the court shall give consideration, among other factors,
20 to:

21 1. [Any request for the appointment as guardian for an incompetent
22 contained in a written instrument executed by the incompetent while
23 competent.

24 2.] Any request for the appointment as guardian for a minor child
25 contained in a will or other written instrument executed by a parent of
26 the minor child.

27 [3.] 2. Any request for the appointment as guardian for a minor
28 14 years of age or older made by the minor.

29 [4.] 3. The relationship by blood or marriage of the proposed
30 guardian to the proposed ward.

31 SEC. 30. NRS 159.063 is hereby amended to read as follows:

32 159.063 If any person or qualified entity is nominated guardian of a
33 minor by will, the court may, on the probate of the will, or at any time
34 thereafter, appoint [such] *that* guardian without any petition or notice.

35 SEC. 31. NRS 159.075 is hereby amended to read as follows:

36 159.075 When a guardian has taken the official oath and filed a
37 bond as provided herein, the court shall cause to be issued letters of
38 guardianship to the guardian. Letters of guardianship may be in the
39 following form:

40 State of Nevada
41 }
42 County of..... } ss.

43 To All To Whom These Presents Come, Greetings:

44 Know Ye, that on, 19....., the
45 (month) (day)

46 [.] *Judicial District Court*, County,
47 State of Nevada, appointed [guardian of the]

48 (name of guardian)

49
50 [(person) (*guardian of the person or estate of person and [estate]*)]

1 for
 2 *estate or special guardian* (name of ward)
 3 a(n), that the named guardian has qualified
 4 (minor or adult)
 5 and has the authority and shall perform the duties of [guardian of the]
 6
 7 [(person)] (*guardian of the person* or estate or person and
 8 for the named ward as
 9 [estate]) *estate or special guardian*)
 10 provided by law.

11 In Testimony Whereof, I have hereunto subscribed my name and affixed
 12 the seal of the court at my office on
 13 (month) (day)
 14 19.....

15
 16 Clerk
 17 (SEAL)
 18
 19 Deputy Clerk

- 20 SEC. 32. NRS 159.177 is hereby amended to read as follows:
 21 159.177 A guardian of the estate or special guardian who is author-
 22 ized to manage the ward's property shall make and file a verified account
 23 in the guardianship proceeding:
 24 1. Annually within 60 days after the anniversary date of his appoint-
 25 ment, unless the court otherwise orders.
 26 2. Upon filing his petition to resign and before his resignation is
 27 accepted by the court.
 28 3. Within 30 days after the date of his removal.
 29 4. Within 90 days after the date of termination of the guardianship.
 30 5. At such other times as the court may order.