

Senate Bill 2029
Senate Judiciary Committee

Testimony of Cynthia M. Feland
Distirct Court Judge
Chair, Task Force on Guardianship Monitoring
January 13, 2025

Chair Larsom, members of the Senate Judiciary Committee, I am Cynthia Feland, District Court Judge in the South Central Judicial District and chair of the Task Force on Guardianship Monitoring established under Section 27-27-01 of the North Dakota Century Code to address the accountability of guardians and to provide for further protection of individuals under guardianship by recommending to the North Dakota Supreme Court the regulations necessary to enhance the guardianship monitoring program and to investigate suspected guardian mismanagement or illegal behavior. The Government Finance Committee of the 68th Legislative Assembly also indicated its interest in consolidating general fund guardianship programs under one funding umbrella.

To accomplish these duties, the Task Force implemented a four-phased approach to create three independent entities that would all be under the supervision of the Supreme Court. Phase One involves drafting a bill that creates the Office of Guardianship and Conservatorship (OGC) and authorizes the Supreme Court to create the Guardianship and Conservator Review Board (Review Board) and the Office of Guardianship and Conservatorship Counsel (Investigation Counsel). Phase Two involves the recommendation of court rules to the Supreme Court. Phase Three involves establishing policies for these three entities. Phase Four involves the establishment of internal operating procedures and drafting standard forms to be used by the OGC, Review Board, and Investigation Counsel. Appendices 1, 2 and 3 are attached to my testimony illustrating the creation of these entities.

The Task Force coordinated with Legislative Counsel to draft the bill envisioned in Phase One, creating the OGC, which will administer public guardianship and conservatorship programs. The end result is Senate Bill 2029 which was submitted and sponsored by the Government Finance Committee. After submission, the Task Force noted additional language was needed to further the investigative goal of the legislation and is requesting a few amendments to the bill. The proposed amended bill is submitted with my testimony with the amendments reflected in green. Senate Bill 2029.

SECTION 1.

Section 1, the primary section of the bill, creates and enacts Chapter 27-27.1, a new chapter establishing the OGC and outlining its duties and powers.

Section 27-27.1-01. Definitions. This section provides the general definitions for the chapter.

An “agency permit” allows the OGC to grant individual employees of a professional guardianship or conservatorship entity the authority to provide guardian or conservator services without obtaining an individual license. The license would be held by the professional guardianship or conservatorship entity. The permit is “temporary” as the OGC would have the authority to revoke it if the permit holder is found to have committed misconduct.

The Guardianship and Conservator Review Board (Review Board) would be independent of the OGC and function as a hearing panel to adjudicate allegations of misconduct against a guardian and conservator.

“Identifiable information” encompasses personal information provided to the OGC when public services are requested.

“Investigation counsel” is the guardianship and conservatorship counsel, which is independent of both the OGC and the Review Board. The investigation counsel will receive, screen, and investigate allegations of guardian or conservator misconduct.

Conservators and guardians will either be “licensed” or “unlicensed.” Different duties and powers apply to licensed and unlicensed conservators and guardians. The Task Force determined that licensure would create a mechanism for preventing a professional guardian, with the ability to act as guardian for multiple wards in multiple areas of the state, from continuing to provide services following a finding of mismanagement or illegal behavior. Currently, if a professional guardian commits misconduct and is removed in a particular case, there is no clear mechanism to address the other cases in which the professional guardian has been appointed. If professional guardians or conservators are subject to license revocation, then the professional guardian or conservator could be removed in mass, thereby protecting vulnerable people from predatory behavior. Actions taken toward Non-professional or family guardians and conservators would be addressed through a register maintained by the Supreme Court.

The bill also defines public conservator and public guardian. The intent and purpose of public conservators and public guardians is to distinguish those cases where the OGC has “contracted” with another to provide guardianship or conservatorship services for individuals who are eligible for public services but have no one that is able or willing to provide those guardianship or conservatorship services.

Public services are state or federally-funded programs available to eligible individuals. Initially, the OGC will offer four public services for eligible individuals: two covering the payment of guardianship and conservatorship service fees (formerly DD contract and PASS

funding), and two cover petitioning costs for the establishment a guardianship and conservatorship (Establishment Funds, DD contract, DD family establishment funds).

Section 27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and duties - Report - Audit.

Subsection 1 creates the OGC under the Supreme Court as a centralized point for guardianship and conservatorship services. All of the guardianship programs (PASS, Establishment, DD) financed by the general fund will be consolidated under the OGC.

Subsection 2 provides the required duties of the OGC to develop policies and procedures governing public guardianship and conservatorship services, ethical standards for licensed and unlicensed guardians and conservators, and policies and procedures for proceedings when a guardian or conservator is unable to fulfill their duties. The OGC is also required to maintain accurate records of all financial transactions and provide a biennium report to legislative management regarding the operations of the OGC.

Distinguishing licensed or professional guardians and conservators from unlicensed or family guardians and conservators in the bill draft recognizes the inherent differences between the two types of guardians and conservators and ensures that the requirements for family guardians and conservators are not too onerous.

Subsection 3 provided the OGC with discretionary power, including the recommendation of rules applicable to guardians and conservators, establishment of training and mentoring for guardians and conservators, and monitoring of guardianship and conservatorship services. In addition, the OGC would have the ability to exercise a preferred claim against the estate of an individual receiving public guardianship and conservatorship services in the event the

individual's estate is able to provide reimbursement and receive private, federal, and other public funds. The Task Force felt it would be important to have the ability to accept private funds if such funds were offered. There may be individuals or families wishing to donate funds and this would allow the acceptance of those gifts and a way to hold and use them appropriately.

Subsection 4 prohibits the OGC from authorizing payment to a public guardian or public conservator who exceeds a specific case threshold. The OGC would be required to develop caseload ratios.

Subsection 5 prohibits the OGC and any employee or officers from acting as a "public" guardian or conservator or otherwise representing a person in their official capacity. The OGC does not provide direct services.

Section 27-27.1-03. Guardianship and conservatorship support fund - Continuing appropriation.

This section creates the guardianship and conservatorship support fund to hold all money transferred by the legislative assembly and collected by the OGC as a continuing appropriation for use in administering guardianship and conservatorship services and programs.

Section 27-27.1-04. Records - Confidentiality - Disclosure - Penalty.

This section identifies information and reports that are classified as confidential and the policies and procedures for disclosure of the information and records. The proposed legislation is modeled after the confidentiality and access statute of the Department of Health and Human Services (DHHS).

To address concerns raised after the Task Force submitted a draft bill to the Government Finance Committee surrounding the ability of investigation counsel to share information involving potential criminal activity uncovered during an investigation with the Office of the

Attorney General (AG) and Bureau of Criminal Investigation (BCI), a new subsection 3 is proposed permitting disclosure of the same.

A penalty for unauthorized disclosure is also provided in subsection 4.

Section 27-27.1-05. Guardianship and conservatorship limitations - Representation to the public - Exemption.

Subsection 1 prohibits a person from acting as guardian or conservator for three or more adult individuals at the same time without a license. The proposed language is modeled after Rule 59 of the North Dakota Supreme Court Administrative Rules.

Subsection 2 prohibits a public guardian or conservator from providing services to minors unless the minor is seeking guardianship as an incapacitated adult.

Subsection 3 prohibits unlicensed guardians and conservators from representing themselves to the public as licensed.

Subsection 4 exempts federal and state agencies and financial institutions from the licensing requirement when appointed as conservators. Financial institutions include any organization authorized to do business under state or federal laws as a financial institution, including, a bank, the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.

Subsection 5 creates a penalty for violation of this section. The penalty provision does not take effect until after August 1, 2026, to allow the OGC time to develop licensure standards and process licensure applications. The effective date is also delayed to provide time for guardians and conservators to understand and satisfy the standards and to submit an application for licensure.

Section 27-27.1-06. Immunity.

Provides civil immunity to anyone who provides good faith information or testimony regarding a guardian or conservator's misconduct or lack of professionalism.

27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.

Subsection 1 grants the Supreme Court original jurisdiction to revoke or suspend guardian or conservator licenses.

Subsection 2 allows district courts to hear appeals when the OGC denies a license application.

Subsection 3 requires courts to waive court costs and filing fees if a person is receiving public services.

Subsection 4 requires all guardians and conservators to adhere to ethical standards adopted by the OGC or Supreme Court.

Section 27-27.1-08. Guardianship and conservatorship review board - Guardianship and conservator counsel.

Authorizes the Supreme Court to create the Review Board, defined in section 27-27.1-01(2), and Investigation Counsel, defined in section 27-27.1-01(4) above.

Although primarily responsible for resolving informal and formal complaints alleging guardian or conservator misconduct, the Review Board is also intended to be a mechanism for providing education and resources to all guardians and conservators to allow them to overcome deficiencies and continue to provide guardianship services. Currently, there is no uniform process for addressing concerns or complaints of alleged misconduct by the guardian and

conservator. Further, if action is taken against a guardian or conservator there is no mechanism currently for review of other cases involving the same guardian or conservator.

Investigation Counsel would be responsible for receiving, screening, and investigating allegations of guardian or conservator misconduct and reporting Counsel's findings and recommendations to the Review Board.

The creation, composition, standards, and procedure applicable to the Review Board and the Investigation Counsel would be promulgated by the Supreme Court rulemaking process.

Section 27-27.1-09. Supreme Court - Discretionary powers.

This section authorizes the Supreme Court to grant immunity to members of the Review Board, develop confidentiality and disclosure standards for disciplinary hearings, grant subpoena and other investigative powers, and adopt rules related to guardian and conservator investigations and hearings.

Section 27-27.1-10. Attorney General - Counsel.

An amendment is proposed by the Task Force dividing Section 27-27.1-10 into two subsections.

Subsection 1 is unchanged from the pre-filed version of the bill and provides that the AG will represent the OGC, Review Board, or Investigation Counsel when the cause of action is against either entity or its officers or employees while performing an official duty.

Subsection 2, is proposed to be added to clarify that the AG and BCI are the primary authorities to conduct criminal investigations, while investigation counsel will conduct disciplinary investigations.

Section 27-27.1-11. Duty to disclose and cooperate.

Subsection 1 requires state and local governments and their officers and employees to cooperate with investigations by providing requested information and documentation unless disclosure is prohibited by federal law or regulation.

Subsection 2 provides that service of process extends to the entire State and mandates sheriffs and police officers to serve process and execute all lawful orders of the OGC, the Review Board, or the Investigation Counsel.

Section 27-27.1-12. Duties of witnesses – Penalty.

This section requires a person to attend a disciplinary proceeding as a witness if subpoenaed. There is a proposed amendment in subsection 2, which provides a mechanism for the OGC, Review Board, or Investigation Counsel to seek enforcement of a subpoena by the district court. The proposed amendment changes the enforcement authority from the district court overseeing the guardianship or conservatorship case at issue to the district court where attendance or production is required. This amendment is being sought to limit the involvement of a district court overseeing a guardianship or conservatorship case being investigated until a final disciplinary order has been issued.

Section 27-27.1-13. Preferred claim.

This section grants the state a preferred claim against the estate of an individual receiving public guardian or conservatorship services in the event the individual's estate is able to provide reimbursement. The language of this section is similar to estate recovery processes used by DHHS and was developed with the assistance of DHHS's counsel who is a member of the Task Force.

SECTION 2.

Section 2 creates a new subsection to 30.1-28-07, authorizing the creation of a disqualification roster to be maintained by the state court administrator to identify nonprofessional guardians or conservators that are removed for cause. The disqualification roster is the alternative to licensure for nonprofessional or family guardians to prevent an individual removed by a court for misconduct from being appointed as a guardian or conservator in another case.

A proposed amendment is made in the last sentence of this new subsection. The amendment clarifies that a licensed guardian or conservator must go through the license revocation process before being added to the disqualification roster. This amendment is made to prevent one district court judge from adding a licensed guardian or conservator to the disqualification roster, which could affect other guardianship and conservatorship cases throughout the state.

SECTION 3.

Section 3 creates a new subsection to section 30.1-29-15, authorizing the creation of a disqualification roster to be maintained by the state court administrator to identify unlicensed conservators that are removed for cause. As in Section 2, the disqualification roster is the alternative to licensure for nonprofessional conservators to prevent an individual removed by a court for misconduct from being appointed as a conservator in another case. An amendment that mirrors the amendment in Section 2 is also proposed here.

SECTION 4.

This section amends the Medicaid statute in section 50-24.1-07 to allow the OCG to claim funds paid out for public guardianship services above DHHS's Medicaid claim. The "preferred claim" status allows the state to recover OGC funding before sharing any balance with the federal government. On Medicaid claims, the federal government receives approximately 50% of the amount collected by DHHS.

SECTION 5.

This section repeals Chapter 27-27, which created the Guardianship Monitoring Task Force. The Task Force will accomplish its mission before this bill goes into effect on August 1, 2025.

SECTION 6.

The proposed amendment to the bill divides section 6 into three subsections. Subsection 1 has six-line items. The three proposed amendments to subsection 1 include adding the "Salaries and wage - agents," "Operating expenses – agents," and the "Full-time equivalent positions" line items. The amended line items will not be part of the OGC budget, and will instead be directed to BCI enabling the hiring of four specialized investigators.

Subsection 2 explains that "operating expenses" in subsection 1 is one-time funding, and Subsection 3 requires the Judicial Branch to submit a report on the use of the one-time funding to the Appropriations Committee of the 70th Legislative Assembly.

The remainder of subsection 1 consolidates all of the existing guardianship programs into one budget. Currently, three agencies receive guardianship appropriations that cover at least eight programs related to adult guardianships. The majority of guardianship programs are

administered under the DHHS through the Aging Services Division, Developmental Disabilities (DD) Services Division, North Dakota State Hospital (NDSH), and Life Skills Transition Center (LSTC).

The Aging Services Division administers the Guardianship Establishment Fund, which covers the petitioning costs to establish guardianship for qualified individuals. Petitioning costs include fees for the services of the petitioning attorney, guardian ad litem (GAL), and court visitor. Under the Aging Services Establishment Fund, petitioning costs are capped at \$3,000 per case.

The DD Services Division administers the DD Guardianship Establishment Program and the Corporate Guardianship Contract. Under the DD Establishment Program, funds are available to cover the petitioning costs to establish guardianship for family members or friends who are willing to serve as guardians of DD adults. To qualify for services, the proposed ward must be 18 years of age or older, eligible for DD case management services as defined in section 25-01.2-01 of the North Dakota Century Code, and be at or below the 100% federal poverty level or Medicaid-eligible. Like the Establishment Fund administered by Aging Services, the petitioning costs are capped at \$3,000 per case.

Under the Corporate Guardianship Contract, the DD Services Division contracts with Catholic Charities to provide guardianship services for 529 DD adults receiving DD case management services. The Corporate Contract includes two-line items: one covering the petitioning costs to establish the guardianship and one covering guardianship fees.

As part of its operating costs, the North Dakota State Hospital establishes guardianships for individuals with a mental illness who are receiving treatment at its facility. Generally, guardianships initiated by NDSH begin with the establishment of an emergency guardianship

while the petition for long-term guardianship is pending. After guardianship is established, NDSH also expends funds for the appointment of successor guardians, for medication orders, and for court orders to continue treatment at their facility. As expenditures by the NDSH for guardianship services are part of its operating expenses, no guardianship bills or summaries have included these guardianship costs.

Guardianships are also established by the Life Skills Transition Center (LSTC) for minors with an intellectual or developmental disability who are becoming incapacitated adults for whom LSTC is continuing to provide services. Guardianship petition costs as well as costs for the appointment of successor guardians, and medication or continued treatment orders, similar to the NDSH, are part of the professional services or operating expenses line items of the LSTC's budget. Here again, LSTC's guardianship costs have not been included in guardianship bills and summaries.

The Office of Management and Budget (OMB) administers the Public Administrator Support Services (PASS) program through the North Dakota Association of Counties (NDACo). PASS funds are grants provided to pay a flat rate to cover the cost of guardianship services for vulnerable adults. To qualify for PASS funding, the vulnerable adult must be at least 18 years of age, and at or below 100% of the federal poverty level or Medicaid eligible. Adults with developmental disabilities (DD) are not eligible to receive PASS funding and are funded through either the DD Establishment Fund or DD Corporate Contract. The petitioning costs to establish a guardianship are not covered under the PASS program. By the end of the 2023-25 biennium, approximately 600 individuals are projected to be enrolled in the PASS program.

Lastly, the Judicial Branch administers and operates the Guardianship Monitoring Program, to conduct well-being and financial reviews referred to the program by district courts.

In addition to referrals from district courts, the program manager also conducts random financial reviews and provides educational guardianship training. Funds are also expended under the monitoring program for the appointment of court visitors to conduct well-being reviews.

Reimbursement for each visitor appointment is capped at \$300 (6-hours at \$50.00/hr.). For more complex cases, the court-appointed visitor may request approval for additional time.

The costs to staff the existing Guardianship Monitoring Program, the proposed OGC, Review Board, and Investigative Counsel are not included in the appropriation in Section 6 of this bill, rather they are included in the Judicial Branch's budget. The cost to staff and administer the OGC, Review Board, Investigative Counsel, and existing Monitoring program is approximately \$2.2 million.

Under this bill draft, administration of all of the existing guardianship programs currently administered by DHHS and OMB would become the responsibility of the OGC. The four original line items categorize the existing expenditures into establishment costs for DD and non-DD cases, and guardianship and conservatorship services for DD and non-DD cases.

The third line item on the proposed amended bill, "Establishment costs – indigents," incorporates the DHHS Aging Services Division Guardianship Establishment Fund. The OGC would continue to cover petitioning costs for indigent adults. For the current biennium, 2023-25, the Guardianship Establishment Fund was increased to \$423,000 which included an increase in the per case cap from \$2,500 to \$3,000. Even with the increased appropriation, the Aging Service's Establishment Fund was exhausted sometime in late March or early April of 2024. A major contributing factor to the rapid depletion of the Aging Service's Establishment Fund was due to deficit spending during the prior biennium. During the 2021-23 biennium, the Aging Service's Establishment Fund ran at a deficit that was balanced at the beginning of the current

biennium. In May 2024, DHHS used its authority to conduct inter-department transfers, allocated \$300,000 to replenish the Aging Service's Establishment Fund. The Aging Service's Establishment Fund is on track to receive 292 referrals this biennium.

Other factors contributing to the rapid depletion of the Aging Service's Establishment Fund are rising costs for services and increased demand. Under the current \$3,000 per case cap, unpaid services totaled \$139,909 as of January 8, 2024. At the current rate, unpaid services could exceed \$177,600 by the end of the biennium. The funding request for the 2025-27 biennium listed in the bill would increase the per-case cap to \$5,000 to ensure that we are able to continue to find providers willing to perform the necessary services to establish guardianships.

The fourth line item on the proposed amended bill, "Establishment costs - developmentally disabled," incorporates both of the DD establishment funds administered by the DD Services Division: DD Guardianship Establishment Funds for families and DD contract cases with Catholic Charities. The OGC would continue to cover petitioning costs for both types of DD cases. For the current biennium, the DD Services Division was appropriated \$500,192: \$300,000 for family cases under the DD Establishment Fund and \$200,195 under the Corporate Guardianship Contract with Catholic Charities.

The requested appropriation for the 2025-27 biennium in line four is \$1,296,400. Two major justifications warrant the substantial increase requested. First, the original amount appropriated to the DD Guardianship Establishment Fund was not even close to meeting the demand. As of January 7, 2025, the DD Services Division approved 112 of the 124 requests for "family" Establishment Funds. At the current rate, the projected demand for "family" referrals by the end of the current biennium would be approximately 166. The average cost to establish a guardianship for a DD individual is approximately \$3,000 per case. However, many of these

referrals require the establishment of an emergency guardianship which increases the cost to approximately \$4,000 per case. The DD Services Division has already obligated all of its funding for family guardians this biennium. Additional funding for 40 more slots was added in September of 2024, but 80% of those funds have already been exhausted. Meaning, the 2023-25 appropriation amount was insufficient to meet demand.

The second major justification for the funding request is to deplete the current waiting list for DD corporate guardianship services. Maintaining a waiting list for DD adults in need of guardianship services is nothing new to Catholic Charities. In 2012, Windsor Schmidt, in his report to this Legislature, reported that Catholic Charities was facing a waiting list of 25. Not even 10 years later, in 2021, Catholic Charities' waiting list surpassed 90, more than triple the total on the 2012 list. At of the beginning of this year, Catholic Charities has a waiting list of approximately 142 individuals seeking to receive guardianship services.

As the waiting list grows, it is not uncommon for some of these individuals to remain on the Catholic Charities waiting list for a year or more before receiving services. In some cases, DD adults have been on Catholic Charities' waiting list for over four years. The need for crisis management has significantly contributed to the extended wait times for these DD adults who remain one crisis away from becoming an emergency case themselves. The availability of guardianship services should not be crisis-driven. The increased funding request is intended to enable all of those currently on the waiting list to receive guardianship services. The funding request also incorporates the establishment costs incurred by the North Dakota State Hospital and DHHS Life Skills Transition Center.

The fifth line item on the proposed amended bill, "Public guardian and conservator fees – indigents" incorporates the PASS program. The OGC would continue to cover public guardian

conservator fees. During the 2023 special session, PASS funding was increased to \$7.1 million. Without the additional appropriation during the 2023 special session, not only would PASS funding have been exhausted before the end of the biennium, but the Guardianship Association of North Dakota (GAND) and guardianship providers would have been asked to take clients and wait for reimbursement of their services until the subsequent biennium.

At the present funding level, PASS funds are again projected to be exhausted at the end of the current biennium. While the increased PASS funding has had a significant positive impact on public guardians; the \$7.1 million is insufficient to maintain the program for the 2025-27 biennium. At the end of the 2023-25 biennium, it is estimated that approximately 600 individuals will be enrolled in the PASS program. Enrollment is projected to continue to increase by five individuals a month. The 2025-27 funding request of \$8.6 million is based on an \$18/day rate, a one-dollar increase over the current \$17 daily rate, which may already be insufficient to adequately reimburse guardianship providers for services. During the 2023 legislative session, the PASS daily rate was increased from \$10/day to \$14/day. Additional appropriations during the 2023 special legislative session allowed PASS to offer a daily rate of \$17.

Guardianship service providers have indicated that a \$20.00 per day reimbursement rate is more appropriate, as even at \$18 per day, PASS funding does not cover all of the service provider's expenses in individual cases. Since the last biennium, guardianship service providers have reported a substantial increase in the cost of providing services due to increased insurance rates (some by as much as 20%), inflation rates, and wages. To offset the growing costs of providing guardianship services, professional guardianship service providers report that they must pursue grants and donations.

The sixth line item on the proposed amended bill, “Guardianship contracts - developmentally disabled” incorporates the portion of the DD Corporate Guardianship Contract with Catholic Charities that covers fees for providing guardianship services. The OGC would continue to cover fees for guardianship services for DD adults. The DD Services Division has appropriated \$4,288,349 for its corporate guardianship contract for this biennium. The current contract provides funding for guardianship services for 529 DD adults. Catholic Charities provides guardianship services for between 60 to 80 new DD adults in each biennium. Thus, although 40 of the DD adults receiving services from Catholic Charities died during the 21-23 biennium, the standard demand for services requires an increase in the number of individuals to be served. The line item request in this bill is \$6,835,136 which would provide funding to cover guardianship services for the 760 DD adults thereby incorporating the existing waiting list of 142 and the projected demand for additional DD guardianship services. The daily rate for DD guardianship fees is generally less than non-DD guardianship fees. The rate used for this line item is \$12.14 for the first year and \$12.50 for the second year.

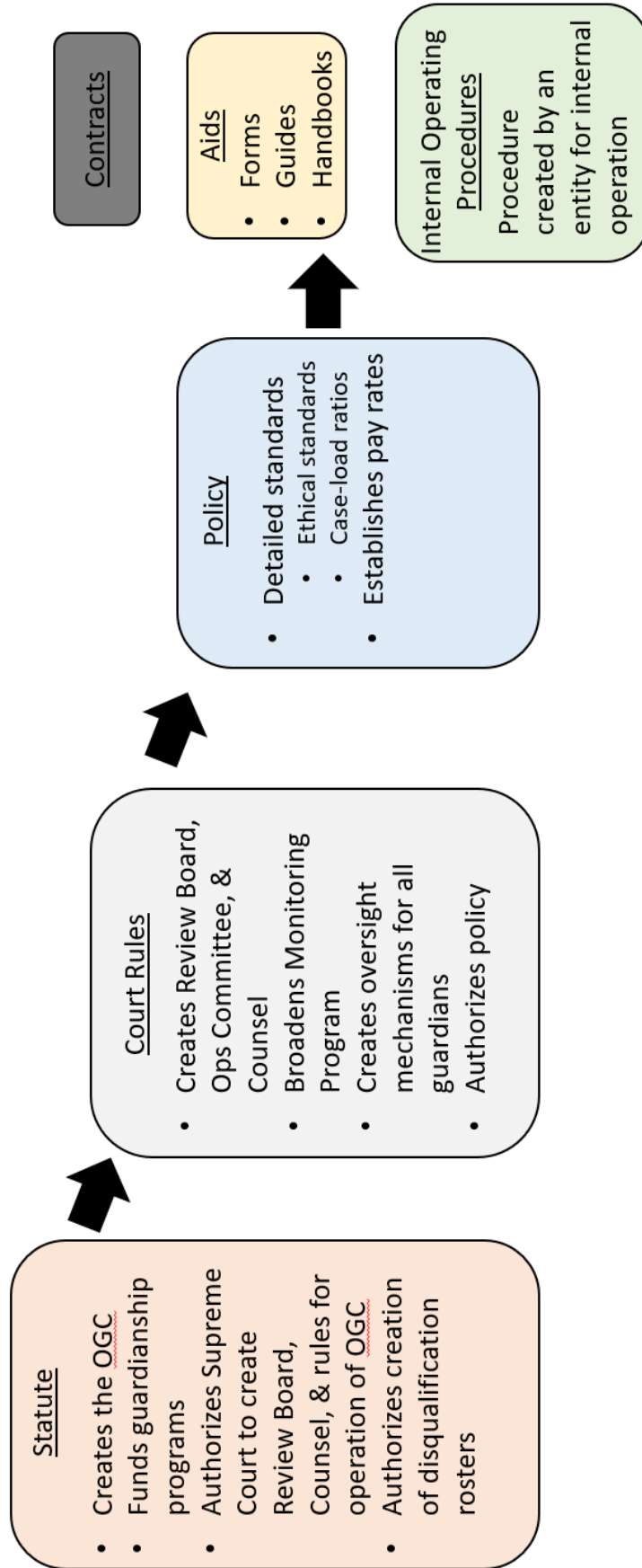
Given the number of programs to be covered under this legislation, for quick reference, attached to my testimony are two appendices. Appendix 4 provides a summary of guardianship funding and can be used as a quick reference of each of the existing guardianship programs encompassed in each of the appropriation line items reflected in this bill, the current appropriation for each of the individual guardianship programs, and the requested appropriation of the 2025-27 biennium. In addition, I’ve included the amounts that will be reflected in the Judicial Budget for the existing Guardianship Monitoring Program and the new programs proposed under this bill: the OGC, Review Board, and Investigative Counsel.

Appendix 5 is a brief outline that summarizes each of the existing guardianship programs and identifies each of their respective administrating agencies.

Respectfully Submitted:

Cynthia M. Feland
District Judge
Chair, Task Force on Guardianship Monitoring

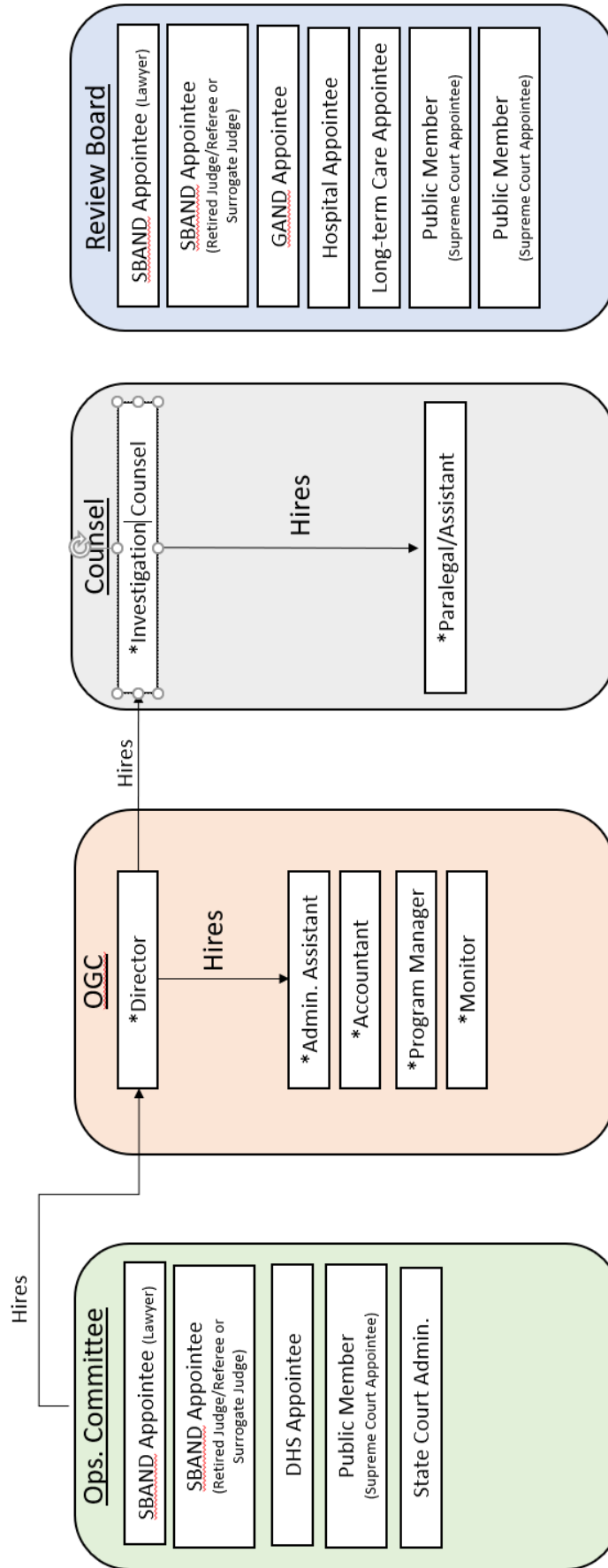
Appendix 1: Authorities & Purpose



Appendix 2: Guardianship Structure

Judicial Branch

Legend
 * FTE



Appendix 3: Guardianship Structure Roles & Responsibilities

Ops. Committee

- Approve budgets for OGC, Counsel, and Review Board
- Enact policies

Think Legislative Equivalent

OGC

- Administer funds for public services (PASS, DD, establishment funds)
- Draft budget & policies
- Administer Monitoring & Education Programs
- Process licenses

Think Executive Equivalent

Counsel

- Validate legitimacy of concerns
- Investigate legitimate concerns
- Initiate formal proceedings
- Present findings to Review Board

Think independent AG Equivalent

Review Board

- Conduct oversight review hearings
- Issue findings and order

Think Judicial Equivalent

Appendix 4: Summary of Guardianship Funding

Office	Program	23-25 Funding	25-27 Funding Request	New Line Item in Bill
Bureau of Criminal Investigation (BCI)			960,000	Salaries and wage – agents
			322,000	Operating expenses – agents
Department of Health & Human Services (DHHS) Aging Services Division	Guardianship Establishment Fund	423,000	1,550,000	Establishment costs - indigents
DHHS Developmental Disabilities (DD) Services Division	DD Guardianship Establishment Fund	300,000	750,000	Establishment costs - developmentally disabled
DHHS DD Services Division	Corporate Guardianship Contract - Catholic Charities - Petitioning Costs	200,195	230,000	Establishment costs - developmentally disabled
DHHS North Dakota State Hospital (NDSH)	NDSH professional services/operating costs	193,596	288,000	Establishment costs - developmentally disabled
DHHS Life Skills and Transition Center (LSTC)	LSTC professional services/operating costs	23,388	28,400	Establishment costs - developmentally disabled
Office of Management and Budget (OMB)	Public Administrator Support Services (PASS)	7,100,000	8,638,020	Public guardian and conservator fees - indigents
DHHS DD Services Division	Corporate Guardianship Contract - Catholic Charities - Guardian Fees	4,288,349	6,835,136	Guardianship contracts - developmentally disabled
Supreme Court	Guardianship Monitoring Program*	624,008	2,202,543	Judicial Branch Budget
	OGC, Review Board, Investigative Counsel			Judicial Branch Budget
TOTAL			\$21,804,099	
*Includes current program manager and attorney hired under N.D.C.C. § 27-27-01				

Appendix 5: Summary of Current Guardianship Programs & Services

DHHS Aging Services Division - Guardianship Establishment Fund. Covers petitioning costs to establish guardianships for adults eligible to receive DD case management services.

- Petitioning costs include service fees for petitioning attorney, guardian ad litem (GAL), and court visitor.
- To qualify for services, the proposed ward must be at least 18 years of age, NOT eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.

DHHS DD Services Division - DD Guardianship Establishment Fund. Covers petitioning costs for families or friends who are willing to serve as guardian for a DD adult.

- To qualify for services, the proposed ward must be at least 18 years of age, eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.
- Current funding covers 100 cases at \$3,000 per case.

DHHS DD Services Division - Corporate Guardianship Contract. DHHS DD Services Division contract with Catholic Charities to cover petitioning costs and guardianship services for 529 DD individuals.

- To qualify for services, the proposed ward must be at least 18 years of age, eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.
- The total contract price includes two line items: one covers petitioning costs and the other covers guardianship services fees.
- Petitioning costs include service fees for petitioning attorney, guardian ad litem (GAL), and court visitor.
- Guardianship fees for each case are \$10.82/day for the first year of the biennium and \$11.36/day for the second.

NDSH - Professional Services / Operating Costs. NDSH establishes guardianships for individuals with a mental illness while receiving treatment.

- Generally, includes petitioning costs for establishment of emergency guardianships prior to regular guardianship
- Funds also expended for orders appointing successor guardians, and for medication, and continued treatment at an institution order.
- Expended funds are part of the agency's operating costs

LSTC - Professional Services / Operating Costs. LSTC establishes guardianships when a minor is becoming a DD adult needing guardianship services while LSTC is providing services

- Petitioning costs for the services of the petitioning attorney, GAL and court visitor.
- Funds also expended for orders appointing successor guardians, and for medication, and continued treatment at an institution order.
- Expended funds are part of the agency's operating costs

OMB - PASS Program. Provides guardianship grants to private agencies and individuals who serve as public guardians for vulnerable adults.

- Pays for guardian fees (\$17 per day), directly to the guardian.
- Does not cover petitioning costs.
- To qualify for services, individuals must be at least 18 years of age, NOT eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.
- The program is administered by the ND Association of Counties with funds that are passed to NDACO from OMB.
- Projected to have approximately 600 individuals who qualify for services at the end of the 23-25 biennium.

Judicial Branch. Currently operates the Guardianship Monitoring Program, which takes referrals from district courts to conduct wellbeing and financial reviews for existing guardianship cases.

- Referrals to the program are made by district courts
- Program manager also conducts random financial reviews and provides educational guardianship training.
- Court visitors are contracted to conduct wellbeing checks.