

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2028

2005 SENATE JUDICIARY

SB 2028

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2028

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 10, 2005

Tape Number	Side A	Side B	Meter #
1	X		3841 - End
1		X	0.0 -1295
Committee Clerk Signature <i>Maria L. Selberg</i>			

Minutes: Provide for a guardianship services system and appropriations.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Delomore - District 43 introduced the bill (meter 3841). This bill came out of the interim committee that I chaired, criminal justice along with Sen. Trenbeath and Senator Triplett. Thank you goes to ND Guardianship task force who work hard in helping our committee come up with three quality bill drafts. Discussed the three bills (SB 2028, SB 2029, and SB 2030) and how they work together.

Sen. Traynor questioned appropriations to fund program are any of these folks who would be wards under this bill be able to pay for services rendered? I believe not, this bill is targeted to the ones ineligible for developmental disabilities case management services. That is why we set it up as a separate entity.

Rodger Wetzel, LSW, MPA Eldercare Program Director (meter 44244) Gave attach testimony (Att. #1) and included (att. #2) ND Guardianship Task Force.

Sen. Nelson wanted to know how many people does Mr. Wetzel anticipate will be on this program. (meter 4800) to be referred to later with a survey.

Donna Byzewski, CO-chair ND Guardianship Task Force and Supervisor of Guardian ship Division at Catholic Charities ND. (meter 5058) See attachment #3. **Sen. Traynor** asked how currently these things are handled. (meter 5755) Discussion of the haphazardness of current program. The results of this is that often a person is either without any guardianship or they are in over restrictive guardianship i.e. state hospital, because there is no other alternative. This was is costly ie., a mentally ill person refusing to do there daily medication may end up in the Emergency room. Sen. Nelson asked if this was put/included in the Governors budget? No. We submitted this bill to his office but he chose to not include it in his budget. It would be a new service.

Bill Chaussee, Admin of Guardian and Protective Services, Inc. (meter 6237) gave testimony (Att #5). Discussed the difference of the people that will be charged for services, part or all, and the ones who have absolutely no funds available for service. (side B of tape 1) discussion of cost of program/budget and funding.

Vonette Richter (meter 362) gave testimony (Att #6).

Mel Webster, ND Catholic Conf. and Attorney in Guardianship, Bismarck (meter 698) Spoke in support of bill. Stated that this although is **not** a state wide program and needs to be. Cited a case.

Page 3

Senate Judiciary Committee

Bill/Resolution Number SB 2028

Hearing Date January 10, 2005

Bruce Murry, Brain Injury Assoc. of ND read Mary Simonson, President's testimony (meter 879). **Senator Syverson** questioned why this could not be a function of Human Services. Mr. **Murry** responded that it was more cost efficient to do this with private contract.

Testimony in Opposition of the Bill:

None

Testimony in Neutral to the Bill:

JoAnn Hoesel, Director of the Division of Mental Health & Substance Abuse for the Department of Human Services. (meter 1100) gave testimony (Att. #8).

Sen. Nelson (meter 1202) asked questions on the impact of the program and amount of additional people it would take to "gear up".

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2028

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 10, 2005

Tape Number	Side A	Side B	Meter #
1		X	3615 - 3749
Committee Clerk Signature <i>Mira L Solberg</i>			

Minutes: Relating to establishment and modification of parole expiration dates.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing reopened with the following:

Senator Triplett moved to do pass SB 2028 **Sen. Nelson** seconded the motion. All in favor, no oppose.

Carrier: **Senator Triplett**

Senator John (Jack) T. Traynor, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE

SB 2028: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2028 was rereferred to the Appropriations Committee.

2005 SENATE APPROPRIATIONS

SB 2028

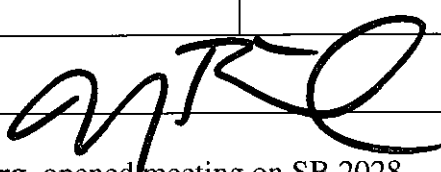
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2028

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 01/24/05

Tape Number	Side A	Side B	Meter #
1		X	1031-end
Committee Clerk Signature 			

Minutes: **Chairman Holmberg** opened meeting on SB 2028.

Vonnette Richter, Legislative Council appeared before the committee to provide an overview of SB 2028. Ms. Richter, provided excerpts from 2005 Interim Criminal Justice Report for SB 2028, entitled Guardianship Services Study. This is attached as appendix I.

Roger Wetzel, Director of the Eldercare Program at St. Alexius appeared in support of SB 2028. Mr. Wetzel provided the committee with written testimony, see appendix II. Questions were asked regarding how the Eldercare Program arrived at the \$772,000 or \$3,000/ person total funds. Mr. Wetzel also supplied the committee with a list of North Dakota Guardianship State Task Force members, see appendix III.

Donna Byzewski, CO-Chair, ND Guardianship Task Force appeared in support of SB 2028. Ms. Byzewski provided the committee with written testimony, see appendix IV.

Sen. Thane (3398) : "Who initiates this program?"

Mr. Byzewski: "It could be anyone from an ER doctor, Priest, Primary Physician, or Adult proactive Services."

Questions were raised regarding the set up costs of this program. Ms. Byzewski indicated that the total number of finds in which they asked for would be all the money they needed to run the program, adding that if a person was receiving funds from another entity they would have a contract with that entity to liquidate assets and place them into a revolving fund. Ms. Byzewski enclosed a 2 year budget summary with her testimony, see appendix V.

Tom Tupa, Guardianship Task Force appeared in support of SB 2028. Mr. Tupa responded to questions raised by members of the committee. No written testimony was provided.

Bruce Murry, ND Prot. & Advoc. Project appeared in support of SB 2028. No written testimony was provided.

Sen. Mathern (4596): "How long from the first call will it take for the process to get underway?"

Mr. Murry: "Weeks, days, hours, it depends on the case and the circumstance."

Jack McDonald, ARC ND appeared in support of SB 2028. No written testimony was provided.

Ted Gladden, State Court Administrator appeared on behave of the State Judicial Conference, in support of SB 2028.

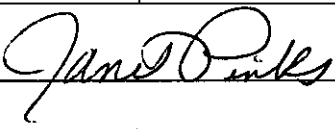
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2028

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 02/15/05

Tape Number	Side A	Side B	Meter #
1	x		1,291
Committee Clerk Signature 			

Minutes: **Chairman Holmberg** opened discussion on SB 2028

Sen. Fischer went over proposed amendment # .0101, by reading it aloud. Stating that the important piece of this bill is that we get the system the guardianships and training for volunteers to in the bill and keep it alive. They agreed that to keep this going is the most important piece to have the \$40,000 and keep the bill alive. Sen. Fischer moved the amendment, seconded by Sen. Andrist.

Sen. Christmann: On line 10 it mentions contracting, was that left in there or was that supposed to be changed.

Sen. Fischer: The language is flexible an that it may include contracting if they so choose to.

A voice vote was taken, motion carried. Motion was made for a **DO PASS as AMENDED** by Sen. Fischer, seconded by Sen. Mathern. Roll call vote was taken, 14 yeas, 0 nays, and 1 absent and not voting. Sen. Fischer will carry the bill.

Date 2-15-05Roll Call Vote #: 42005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2028Senate SENATE APPROPRIATIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass As Amended

Motion Made By

Fischer

Seconded By

Mather

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	✓		SENATOR KRAUTER	✓	
VICE CHAIRMAN BOWMAN	✓		SENATOR LINDAAS	✓	
VICE CHAIRMAN GRINDBERG	✓		SENATOR MATHERN	✓	
SENATOR ANDRIST	✓		SENATOR ROBINSON	✓	
SENATOR CHRISTMANN	✓		SEN. TALLACKSON	✓	
SENATOR FISCHER	✓				
SENATOR KILZER	✓				
SENATOR KRINGSTAD					
SENATOR SCHOBINGER	✓				
SENATOR THANE	✓				

Total (Yes)

14

No

0

Absent

0

Floor Assignment

Fischer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2028: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2028 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "shall" with "may"

Page 1, line 5, remove "contract with an entity to"

Page 1, line 14, replace "\$772,550" with "\$40,000"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment reduces the general fund appropriation provided to the Department of Human Services for the purpose of contracting for the establishment and maintenance of a guardianship services system for vulnerable adults by \$732,550, from \$772,550 to \$40,000.

2005 HOUSE HUMAN SERVICES

SB 2028

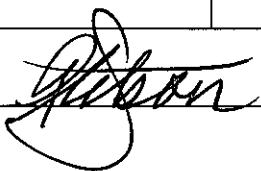
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2028**

House Human Services Committee

☐ Conference Committee

Hearing Date 7 March 2005

Tape Number	Side A	Side B	Meter #
1		X	2830 - end
2	x		10-1210
Committee Clerk Signature 			

Minutes:

Chairman Price opened the hearing of SB 2028.

Vonette Richter, attorney for Legislative Council. I staffed the Interim Criminal Justice Committee. One of the studies assigned to that committee was the study of guardianship services in the state. The committee worked closely with the ND Guardianship Task Force and prepared the bill that you have in front of you. There are two sections to the bill and I will go over the changes from the original version. The changes are that on line 4 the original bill said "shall contract with an entity to create." The other change was the appropriation amount was \$772,550 in the original bill and it's \$40,000 in the engrossed bill.

Rep. Uglem: Can you tell me how they managed to lower the appropriation that much?

Richter: I can't. I wasn't in the Appropriation Committee to hear the discussion. I don't know what the reasoning behind that was.

Tom Tupa, representing the Guardianship Task Force and filling in for Senator Tom

Fischer. Senator Fischer was going to explain about the appropriation and explain the amendment being passed around and why the Senate did what they did with regard to reducing the appropriation. **(Amendment attached.)** The amendment is simply to change line 14, on page 1 from \$40,00 back up to \$466,888. The explanation for that is the second sheet that you received that explains the expenditures that will be used during the biennium with regard to the establishment of the program. One of the reasons the bill was reduced to \$40,000 was we had been working with the Senate Appropriations Committee and there was some resistance prior to their final action with the \$770,000. As the bill points out it deals with an independent contract arrangement through the Department of Human Services. The dollars were in there and there was some question about that although we felt we could justify that \$770,000 without any difficulty; however, Senator Fischer and a few others were very concerned with getting the bill from the Senate side to the House side keeping it alive. After we sat and visited with him for some time he said let's just put the \$40,000 and make sure it sails through the Senate, which it did, and comes over to the House side and then we'll try fix all of that over here. He has put the burden into your Committee and your chamber and he feels confident that you people will take care of it.

Rep. Devlin: Why would you expect the policy committee to make the change. If it were a financial issue I would think you would want this amendment placed on by Appropriations. That's where the bill will go next.

Tupa: We thought that perhaps this committee would deal with it and then refer it

Appropriations at which time we would discuss it one more time with those folks. We would like the support of this committee.

Rodger Wetzel, director of the Eldercare Program at St. Alexius, testified in favor of the bill.

(Testimony attached.)

Donna Byzewski, ND Guardianship Task Force, testified in favor of the bill. (Testimony

attached.) She distributed a list of the task force members and resolutions from different

agencies: **ND Judicial Council, AARP North Dakota, ND Association for the Disabled,**

Guardianship Association of ND, Partners, Inc., Catholic Charities ND, Guardian and

Protective Services, Inc. (attached.)

Carol Watrell, guardian. (See Attached Testimony)

Tape 2 :

Senator Tom Fischer, District 46:

I am not going to take an awful amount of your time, I am here in support of this bill, it has been before us the past three sessions, in one form or another. It is time to do something about it. In the Senate, we pulled a large appropriation out of it, but I would like to present an amendment replacing part of that appropriation. In order to get this up and running, there are some administrative costs, however I left the training standards basically because I wasn't sure what would happen in the house committee, but I am hoping we can work it out. This is a worthwhile cause and we need, as citizens of ND, take care of those who can't take care of themselves. I would hope you will give this a positive conclusion.

Chairman Price: When you proposed the amendment on the Senate side, to reduce this to \$40,000. Was that to just keep it alive?

Sen. Fischer: Yes, we had other areas that were requiring over 2 million dollars and I didn't want to get this bill to get mixed in that. If nothing else to get that funding for it. Before, we had \$50,000 in it and it didn't pass. It has a lot of merit and should be put into place.

Chairman Price: Was there any particular reason, other than money, that you took out the contract with an entity?

Sen. Fischer: No, it was strictly the dollars.

Mel Webster, Attorney Testimony attached.

Bruce Murray: Testimony attached.

Rep. Porter: How many cases do you have a year?

Bruce Murray: 6 or more.

Shelly Peterson, Long Term Care Association. Testimony Attached.

Steve Rixen, Med Center One Health Systems:

I am here today to give our support to SB 2028. It is a small price to pay, to assist with helping others who can not help themselves. I urge a Do Pass recommendation and would take any questions.

Brian Quigley, Director of Montrail & Burke County Social Services.

We also would like to echo support for this bill. In the past 2 months, I have dealt with 3 cases, of elderly people needing guardianship. We have no options, one case an individual has been transported to Minot hospital, in multiple cases via ambulance. That individual refused medical treatment and had friends pick them up. That person will die, unless we can get a guardian.


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2028

House Human Services Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
2		x	4460-5619
Committee Clerk Signature 			

Minutes:

Chairman Price opened discussion on HB 2028.

Rep. Devlin: Is the \$40,000 figure, send it to Appropriations?

Chairman Price: It will go to Appropriations, appropriation over \$5,000 , Fiscal impact of \$50,000.

Rep. Kaldor: Senator Fischer has offered an amendment.

Chairman Price: I wish there would be some way we could involve those families that just wash their hands of it or move away, or whatever.

Rep. Kreidt: Regarding this, these people just don't have anyone there. We have Bill Chaussee, Guardian Services, in our area and we use him a lot. Without him, we would have a very serious problem. I would like to see the bill go forward. The bill is really needed. I make the motion.

Rep. Nelson: Second.

Rep. Pietsch: That is just with the bill, not with the amendment?

Chairman Price: They are going to have to figure out how much money is available for this to get started. There is always the fear that when you go down there with the larger amount, they will just kill it. If we start with a figure down here, and try and make the argument for the increases in dollars, maybe you can get somewhere, but I don't know if we can get what they are asking.

Rep. Pietsch: If there are any extra funds, they can adjust it later. Is that correct?

Chairman Price: They can raise it back up to whatever amount they want or whatever they think they can find.

Rep. Nelson: I question when you place a number like \$40,000, do we limit ourselves on funding this adequately? That seems like such a low number, they might except it.

Chairman Price: We have tried \$50,000 in the past and they haven't passed it.

Rep. Nelson: I agree, you don't know what they will do.

Rep. Devlin: I would support it, but with Senator Fischer's amendment, it would sure get their attention.

Chairman Price: The senate appropriations actually decreased it.

Rep. Kaldor: I agree with Rep. Nelson and understand Rep. Devlin. If we send it to them as it came to us from the Senate, I believe it conveys that we agree with the amount. I don't the amount should be, but maybe we should somehow convey to them that there are some significant costs involved, as Senator Fischer has identified. Is it worth having in place with just \$40,000, I don't know.

Chairman Price: At least it is a start, to get it down there. I don't know that I agree necessarily that we need 1 1/2 FTE's and a 1/2 support staff. What I would like see them do is take some of

the money, and even if they do just the training in the standards piece, it's a beginning. Or even if they used it for court costs, if they take this money and go at least to one piece of it, we have had interim studies, bills and we have not gotten anywhere. It bothers me when they say, we need to have \$15,000 to set standards. There has to be a set of standards out there they we could adopt from some other state.

Rep. Nelson: What do you think is a good number?

Chairman Price: Do you mean what we need to pay for, or what we can get passed? I would be happy if we can get this through.

Rep. Nelson: Then we should just leave it then.

Rep. Devlin: Madam Chairman, as you pointed out, this certainly is not a new topic to this committee, it always seems to run into funding wall. Sometimes even with \$40,000, you can get at least get it started. Then you look for more funding next session.

Chairman Price: If they could fund a guardian or some court cases. Just to get it started. When this was presented before with larger amounts, it went nowhere.

Rep. Nelson: Question.

Rep. Pietsch: Second

Do Pass and re-referred to Appropriations.

Vote: 10-0-2

Rep. Kreidt: Carrier

Date: 3/9/05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2028

House _____ Committee _____
Human Services

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass - Re Ref (eng)

Motion Made By Rep Nelson Seconded By Rep Pietsch

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S. Price	✓		Rep.L. Kaldor	✓	
V Chrm.G. Kreidt	✓		Rep.L. Potter	✓	
Rep. V. Pietsch	✓		Rep.S. Sandvig	✓	
Rep.J.O. Nelson	✓				
Rep.W.R. Devlin	✓				
Rep.T. Porter	AB				
Rep.G. Uglem	✓				
Rep C. Damschen	✓				
Rep.R. Weisz	AB				

Total () yes 10 No 6

Absent 2 Weisz - Porter

Floor Assignment Rep Kreidt

on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 10, 2005 12:41 p.m.

Module No: HR-44-4626
Carrier: Kreidt
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2028, as engrossed: Human Services Committee (Rep. Price, Chairman)
recommends DO PASS and BE REREFERRED to the Appropriations Committee
(10 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2028 was
rereferred to the Appropriations Committee.

2005 HOUSE APPROPRIATIONS

SB 2028

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2028
Guardianship Services Appropriation

House Appropriations Committee
Human Resources Division

Hearing Date: 3-22-05 Tuesday a.m.

Tape Number	Side A	Side B	Meter #
I	X		1.0 - 8.5
	X		33.2 - 47.2
Committee Clerk Signature <i>Diane M. Ovelly</i>			

Minutes: **Chairman Delzer** called the meeting to order at 9:03 a.m. All members present.

Rep. Gary Kreidt, District 33, introduced SB 2028, commenting on nursing facilities with residents who have no family members or guardians available. It is time for a serious look at appropriating \$466,888 to get this worthy program up and running.

Chairman Delzer: Explain vulnerable adults who are ineligible for DD case management services (line 5 and 6 of bill). Who are you trying to cover?

Rep. Kreidt: If we could defer that question to the experts, I would appreciate it.

Chairman Delzer: If the bill is passed at \$40,000, is it going to do any good? Should we kill it?

Rep. Kreidt: We left it at \$40,000 to get it out of committee. The basic program can get off the ground, with the hopes of getting more money in it later.

Chairman Delzer: Did you ask the Department of Human Services about the "may start" language?

Rep. Kreidt: No.

Vice Chair Pollert: Rep. Kreidt, were the \$40,000 or the \$466,888 in the Governor's budget?

Rep. Kreidt: I do not know.

Chairman Delzer: No. And it is not a continuing appropriation. Protection and Advocacy has been pushing for it, but it resides in the Department of Human Services.

Rep. Metcalf: Is Catholic Family Services similar?

Chairman Delzer: No. That deals only with DD people.

Rep. Wieland: Primarily, it deals with people who have assets?

Rep. Kreidt: No. This is for anyone in need of this service, including those with assets.

Rep. Metcalf: If this is done by agencies, why do we need for separate agencies?

Rep. Kreidt: I do not know.

After discussion on a different bill, committee members turned their attention back to SB 2028.

Tom Tupa, North Dakota Guardianship Task Force, testified on SB 2028 (see one-page double-sided 2 Year Guardianship Program Budget handout that was given to Sen. Fischer to consider 3/7/05). For the most part, people needing guardianship are not being served in hospital and LTC settings.

Rodger Wetzel, North Dakota Guardianship Task Force and Eldercare Director of St.

Alexis Hospital, testified on SB 2028 (see three-page written testimony by his NDGTF co-chair, Donna Byzewski). He said a survey which showed that the elderly with Alzheimer's or a stroke, the chronically ill w/ schizophrenia, and brain-injured people are the ones typically not being served and have no money. This means attorneys have to be begged to deal with these cases.

Page 3

Human Resources Division

Bill/Resolution Number SB 2028

Hearing Date 3-22-05

Chairman Delzer stated the money goes to court costs and to Catholic Family Services, but asked how many would apply to a RFP.

Wetzel: We have guardianship protective services, both non-protective and those who pay for a fee.

Lynn Jacobsen, Elder Rights Administrator for Aging Services for the Department of Human Services, spoke on the current Code for vulnerable adults, found in chapter 50; chapter 28 deals with guardianship. It costs \$350,000 for two years for Human Service Centers and salaries of those dealing with vulnerable people. No federal money is available

Chairman Delzer: From the department's standpoint, would \$40,000 be worth it?

Jacobsen: Yes. It would establish training and standards.

Chairman Delzer: Isn't the seminar system in place?

Jacobsen: It is a payment service. Once guardianship is established, we are out of it.

Chairman Delzer called a recess after Jacobsen finished.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2028
Guardianship Services Appropriation

House Appropriations Committee
Human Resources Division

Hearing Date: 3-23-05 Wednesday p.m.

Tape Number	Side A	Side B	Meter #
I	X		12.0 - 36.5
Committee Clerk Signature <i>Diane M. Overly</i>			

Minutes: **Chairman Delzer** called the meeting to order on SB 2028. The Senate took it down to \$40,000. The House passed it and it is here at \$40,000. There is a request to take it back up to \$466,888. The bill sponsors would take any amount they could.

Rep. Metcalf: Could we provide court costs for guardianship services?

Chairman Delzer: This is open for discussion. We will wait for Rep. Pollert to come back.

Rep. Metcalf: Just seeing if there is an interest.

Chairman Delzer: My take on it is just the \$40,000 right now. It would not go to conference committee with that.

Rep. Kerzman: I move \$40,000 for Training and Standards and \$188,000 for court costs.

Rep. Metcalf: I second it.

Chairman Delzer: Do you want to try a substitute?

Rep. Metcalf: Yes. I motion a substitute for \$40,000 for court costs and \$188,000 for guardianship services.

Rep. Kerzman: I second it.

Rep. Metcalf: Basically, I was told they can get by without administration services costs. But the court costs and guardianship service, they definitely have to have.

Chairman Delzer: The \$40,000 was wanted for standards to establish criteria. This looks like it will be a contract with Catholic Family Services.

Rep. Kerzman: If we just give them an amount, they could establish training and standards out of that. Some of the court costs could be absorbed by the court, I think. We definitely need guardianship services. It could cost us more if it is not available.

Chairman Delzer: We have to decide how we are going to do this. I agree that if we change the money, we do not have to specify its use. I am going to support the \$40,000 level.

Rep. Kerzman: I will agree to \$40,000, but I think it should go to conference committee.

Chairman Delzer: We will be conferencing HB 1012 and we could add it there. I have never supported guardianship in the past. The federal adult protective money has been used and ombudsmen. Everyone has to decide for himself, though. The clerk will call the roll for the substitute motion to designate \$40,000 for court costs and \$188,000 for guardianship for SB 2028. Motion fails 3-3.

Rep. Wieland: I cannot support the amount of \$228,000. I would make a motion to make it a total of \$75,000, with \$25,000 for court costs and \$50,000 for guardianship. A two-to-one basis.

Rep. Kerzman: I second it.

Chairman Delzer: The clerk will call the roll. Motion fails 3-3. Does anyone wish to try something else?

Rep. Bellew: I move a Do Pass on SB 2028 as is.

Chairman Delzer: Motion dies for lack of second.

Rep. Wieland: I make the motion of \$65,000 with \$20,000 designated for court costs and \$45,000 for guardianship.

Vice Chair Pollert: I second it for discussion purposes.

Chairman Delzer and Rep. Wieland discussed language using "up to" the amounts of money.

Chairman Delzer: Stephanie (LC), do you understand?

Stephanie/LC said yes and restated motion.

Chairman Delzer: The clerk will call the roll. We have a Do Pass On Amendment with 4-2.

Rep. Wieland: I would move a Do Pass As Amended on SB 2028.

Rep. Metcalf: I second it.

Chairman Delzer: The clerk will call the roll. Motion fails 3-3. Committee members, if we vote again, it will go the same way. Are any of you going to offer amendments in full committee? We can take it over without recommendation.

Vice Chair Pollert: I could go along with that, but probably would not support it in full.

Rep. Wieland: I could carry it.

Chairman Delzer: I would not expect that of anyone.

Rep. Kerzman: I think we should just Do Not Pass. There is not much with it.

Rep. Wieland: I think they would like to get it set up with any amount of dollars. They would like to see the bill pass. It does go to a conference committee and this gets it going.

Vice Chair Pollert: I have another amendment. I move we do away with all amendments and go back to the original bill with \$40,000 with the original language.

Rep. Bellew: I second it.

Chairman Delzer: The clerk will call the roll. Motion carries 4-2. We are back to the bare bill.

Do you wish to try anything else?

Rep. Wieland: I will move a Do Pass on SB 2028.

Rep. Bellew: I second it.

Chairman Delzer: Discussion?

Rep. Metcalf: It is the same bill that came from the Senate, so no conference committee.

Chairman Delzer: The clerk will call the roll. Motion fails 3-3. I will take this over Without Recommendation. I do not think we have to make a motion. Stephanie (LC), check what is the proper procedure for this in the future. Have an amendment drawn up for full committee.

Hearing adjourned on SB 2028.

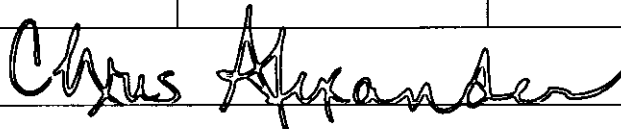
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2028
Guardianship System

House Appropriations Full Committee

☐ Conference Committee

Hearing Date March 30, 2005

Tape Number	Side A	Side B	Meter #
1		B	#0 - #17.5
Committee Clerk Signature 			

Minutes:

Rep. Ken Svedjan, Chairman opened the discussion on SB2028.

Rep. Jeff Delzer explained that this came out of committee with no recommendation. This bill puts in place guardianship services with an appropriation of \$40,000 to Human Services for the purposes of contracting for the establishment and maintenance of a guardianship service system for vulnerable adults who are eligible for DD case management services. This is only effective during the 2005-07 biennium. The Senate reduced this bill to \$40,000 from the original \$70,000. Our subcommittee discussed several proposals and all were defeated.

Rep. Ken Svedjan, Chairman clarified that the bill stands at \$40,000 for the start of services to this population of people, but it would not fund other proposals such as outreach.

Rep. Ole Aarsvold asked if there was any opposition

Rep. Jeff Delzer answered that there was no full hearing on this as we took the definition of the bill from the standing committee who referred this to us. Part of the opposition is that this has

been before us a couple of times before and some may really need this and others may be forced into this. Another concern is that this should be covered under the jobs ombudsman program.

This bill passed out of two or three standing committees at \$40,000 and there is reluctance here to add any additional funding. Rep Delzer moved a Do Pass motion for SB2028

Rep. Al Carlson seconded

Rep. Ralph Metcalf moved a substitute motion to amend SB2028 with amendment #0202 which would increase the funding from \$40,000 to \$278,888.

Rep. Ole Aarsvold seconded

Rep. Francis J. Wald asked what the dollars would be used for

Rep. Ralph Metcalf answered that this would be administrative costs, training standards costs, court costs, and guardianship costs. There is a genuine need out there for this program and they need the additional moneys to get this program off the ground. (meter Tape #1, side B, #6.1)

Rep. Francis J. Wald asked if lines 9-10 of the bill meant that they would contract out with Lutheran Social Services or the like, or if Human Services would do this work.

Rep. Ralph Metcalf answered that this work will be contracted out and that is where these funds would go. These groups are already conducting guardianship programs..

Rep. Jeff Delzer explained that this was a new program that is over and above the Governor's Budget and will probably come in even higher the next time.

Rep. Ken Svedjan, Chairman asked where most of these eligible people reside.

Rep. Ralph Metcalf answered that they don't reside anywhere. They are indigents who end up in the jails or the sometimes in the nursing homes, but most are homeless. Without a guardian

they do not take their medications or take care of themselves which only makes the problem worse.

Rep. Al Carlson commented that this bill went through 2 policy committees and we don't have nearly the information they did in order to make this policy decision for \$40,000. If this is such a high priority it should have been included in the Human Services budget.

Rep. Ralph Metcalf commented that the policy committees changed the appropriations in this bill and there is a definite need out there for this program. This is a justifiable cost since they are probably costing the state more than this now since they end up in the jail systems and the public nursing homes.

Rep. Alon C. Wieland commented that this program is a good program but it is unclear at what level it should be funded. This bill should be supported and it would be bad to see the level of funding cause the entire bill to fail.

Rep. Ken Svedjan, Chairman called for a voice vote on the substitute motion to amend SB2028 with amendment # 0202. Motion failed. (meter Tape #1, side B, #11.4)

Rep. Ralph Metcalf moved to further amend SB2028 with amendment #0201 which would increase the \$40,000 to \$100,000 for the funding for this program.

Rep. Ole Aarsvold seconded

Rep. Jeff Delzer commented that this was looked at in the subcommittee and if the money is changed in this bill there will need to be a conference on it.

Rep. Ole Aarsvold asked if the county commissioner reported any expenses caused from not having this program in place.

Rep. Alon C. Wieland answered that there were some costs reported. Catholic Family Services took most of the cases that were out there but they received no remuneration for their efforts.

Rep. Ken Svedjan, Chairman called for a voice vote on the motion to amend SB2028 with amendment #0201. Vote was unclear. Rep Svedjan called for a roll call vote on the motion. Motion failed with a vote of 9 yeas, 14 neas, and 0 absences.

Rep. Keith Kempenich moved a Do Pass motion on SB2028.

Rep. Alon C. Wieland seconded

Rep. Ken Svedjan, Chairman called for a roll call vote on the Do Pass motion for SB2028. Motion carried with a vote of 15 yeas, 8 neas and 0 absences. Rep Kreidt will carry the bill to the house floor.

Rep. Ken Svedjan, Chairman closed the discussion on SB2028.

Date: 3/23/05
Roll Call Vote #: (1)

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2028

House Appropriations - Human Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion Fails to designate \$40K for court costs; \$188K for guardianship

Motion Made By Rep. Metcalf Seconded By Rep. Kerzman

Representatives	Yes	No	Representatives	Yes	No
Chairman Jeff Delzer		✓	Rep. James Kerzman	✓	
Vice Chairman Chet Pollert		✓	Rep. Ralph Metcalf	✓	
Rep. Larry Bellew	✓				
Rep. Alon C. Wieland		✓			

Total (Yes) 3 No 3

Absent _____

Floor Assignment Rep. _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/23/05
Roll Call Vote #: 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2028

House Appropriations - Human Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion Fails

Motion Made By Rep. Wieland Seconded By Rep. Kerzman

last to vote *

Representatives	Yes	No	Representatives	Yes	No
Chairman Jeff Delzer		✓	Rep. James Kerzman	✓	
Vice Chairman Chet Pollert		✓	Rep. Ralph Metcalf	✓	
Rep. Larry Bellew		✓			
Rep. Alon C. Wieland	✓				

Total (Yes) 3 No 3

Absent _____

Floor Assignment Rep.

If the vote is on an amendment, briefly indicate intent:

Amendment for making it a total of \$ _____
for the appropriation.

Date: 3/23/05
Roll Call Vote # 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 5B 2028

House Appropriations - Human Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass on amendment

Motion Made By Rep. Wieland Seconded By Rep. Pollert

Representatives	Yes	No	Representatives	Yes	No
Chairman Jeff Delzer	✓		Rep. James Kerzman	✓	
Vice Chairman Chet Pollert		✓	Rep. Ralph Metcalf	✓	
Rep. Larry Bellew		✓			
Rep. Alon C. Wieland	✓				

Total (Yes) 4 No 2

Absent _____

Floor Assignment Rep.

If the vote is on an amendment, briefly indicate intent:

Amendment would appropriate \$65,000, of which \$20,000 would be designated for court costs and \$45,000 designated for guardianship.

Date: 3/23/05
Roll Call Vote #: (4)

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. JB 2028

House Appropriations - Human Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion fails for a Do Pass on amendment for \$65K w/ designation of \$20K for court costs & \$45K for guardianship.

Motion Made By Rep. Wieland Seconded By Rep. Metcalf

Representatives	Yes	No	Representatives	Yes	No
Chairman Jeff Delzer		✓	Rep. James Kerzman	✓	
Vice Chairman Chet Pollert		✓	Rep. Ralph Metcalf	✓	
Rep. Larry Bellew		✓			
Rep. Alon C. Wieland	✓				

Total (Yes) 3 No 3

Absent _____

Floor Assignment Rep. _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/23/05
Roll Call Vote #: 5

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2028

House Appropriations - Human Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass on motion to do away w/ all amendments & go back to original bill w/ #40K

Motion Made By Rep. Pollert Seconded By Rep. Bellew

Representatives	Yes	No	Representatives	Yes	No
Chairman Jeff Delzer	✓		Rep. James Kerzman		✓
Vice Chairman Chet Pollert	✓		Rep. Ralph Metcalf		✓
Rep. Larry Bellew	✓				
Rep. Alon C. Wieland	✓				

Total (Yes) 4 No 2

Absent _____

Floor Assignment Rep.

If the vote is on an amendment, briefly indicate intent:

Date: 3/23/05
Roll Call Vote #: 6

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2028

House Appropriations - Human Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion Fails for a Do Pass on original bill

Motion Made By Rep. Wieland Seconded By Rep. Bellew

Representatives	Yes	No	Representatives	Yes	No
Chairman Jeff Delzer	✓		Rep. James Kerzman		✓
Vice Chairman Chet Pollert	✓		Rep. Ralph Metcalf		✓
Rep. Larry Bellew		✓			
Rep. Alon C. Wieland	✓				

Total (Yes) 3 No 3

Absent _____

Floor Assignment Rep. Delzer Without recommendation

If the vote is on an amendment, briefly indicate intent:

Date: March 30, 2005
Roll Call Vote #: 02

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2028

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep Kempenich Seconded By Rep Wieland

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol		X
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson		X
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer		X
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew		X
Rep. Ole Aarsvold		X	Rep. Alon C. Wieland	X	
Rep. Pam Gulleeson		X	Rep. James Kerzman		X
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams		X			
Rep. Al Carlson	X				

Total Yes 15 No 8

Absent 0

Floor Assignment Rep Kreidt

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 30, 2005 1:42 p.m.

Module No: HR-58-6646
Carrier: Kreidt
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2028, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)
recommends **DO PASS** (15 YEAS, 8 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2028 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2028

SB 2028

Testimony in support of SB 2028 - January 10, 2005

-Rodger Wetzel, LSW, MPA, Eldercare Program Director,
St. Alexius Medical Center, Bismarck, ND

Mr. Chairman, and members of the committee:

My name is Rodger Wetzel. I am the Director of the Eldercare Program at St. Alexius. I have been in this position for 19 years. Prior to this position, I was the Assistant Director of the Aging Services Division of the NDDHS. I also am a member of the Guardianship Association of ND (GAND), and was elected co-chair of a state Guardianship Task Force which has been addressing guardianship needs in ND. (Membership information is being provided.)

In the past 33 years I have been directly involved in over 300 guardianships. Most often I have served as the "court visitor", the person/social worker who completes the psycho-social assessment for the district judge and client prior to the guardianship hearing.

In North Dakota we do not have a system, and often not even the essential services, if some of our most vulnerable people, because of mental incapacity, need a guardianship.

I compliment the 2003 ND Legislative Session for passing the study resolution SCR 4008, and the Legislative Council for choosing to study the issue. I also compliment the Interim Criminal Justice Committee for developing this legislation, for their overwhelming support, and for their willingness to work so closely with the state Guardianship Coalition in jointly addressing guardianship needs in North Dakota.

The most vulnerable populations are "mentally incapacitated" individuals who are elderly, are chronically mentally ill, or who have experienced a traumatic brain injury. The DD population generally are served by the state through contracted guardianships.

Let me give you an example: An elderly lady, low income with no immediate family, is living in her own apartment. She now has moderate Alzheimer's disease, and this has progressed to the point where she is not mentally able to take care of herself, or her home. Her home is becoming a risk to the health and safety of herself and other building residents. She is not able to manage her own finances, and has given away some funds. She is not applying for needed services, nor seeing a doctor, so her other health problems are increasing. But she still believes she is doing just fine, which is typical of people with dementias. It is possible that with a guardian authorized to make sure she legally applies for and receives essential services, she could function at a lesser costly level of care for a period of time. Often the guardianship is the missing link along the continuum of home and community-based services.

Because she has very limited finances, there may be no resources to pay for the costs of a guardianship process, or to pay a guardian a nominal fee to manage her affairs. Even if there were resources available, if she has no family member or friend willing to step forward to serve as her guardian, there may be no agency or interested guardians available. And even if she had a relative willing to step forward and serve as her guardian, that relative may not fully understand the responsibilities of a guardian, which could include managing her finances, legal affairs, living arrangements, medical care, any nursing home placement, mental health service needs, and other areas. We support the use of trained volunteer guardians, when possible.

Another example of a person who often falls between the cracks is a chronically mentally ill or brain-injured person who has limited resources and no interested family members. Sometimes these individuals have exhausted any willing family support because of their long-term serious mental illness or behavior problems, and may need an outside party to make sure they legally apply for and get essential services, which may help keep them out of institutional settings, or hospitals.

I urge you to give a "do pass" to SB 2028, so that these mentally incapacitated individuals, generally through no fault of their own, may receive essential guardianship services. I would be happy to answer any questions.



**St. Alexius Medical Center
PrimeCare**

The St. Alexius Eldercare Program has considered needs for guardianship services in North Dakota to be considered during the 2005 Legislative Session;

WHEREAS, the establishment and oversight of guardianship services is essential for the well-being of vulnerable adults in North Dakota; and

WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota; and

WHEREAS, a need exists for the expansion of guardianship services to afford protection for vulnerable adults in need of protective services, including many older adults I work with; and

WHEREAS, the St. Alexius Eldercare Program has observed that guardianship proceedings have not been initiated at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED that the St. Alexius Eldercare Program hereby endorses the concept of a public guardianship program in the State of North Dakota, and requests that the 59th Legislative Assembly of North Dakota give favorable consideration to proposed legislation to establish a public guardianship program in the State of North Dakota.



by Rodger W. Wetzel, Director

"Let all be received as Christ."

900 East Broadway • PO Box 5510 • Bismarck, ND 58506-5510
Tel. 701.530.7000 • Fax 701.530.8984 • TDD 701.530.5555 • www.st.alexius.org

North Dakota Guardianship Task Force

(Representatives have been/will be requested from these organizations/constituencies -
some have requested to be kept informed, but cannot serve at this time)

#2

- ND Legislators
- ND Supreme Court
- ND Attorney General's Office
- Guardianship Association of ND
- Catholic Charities/Catholic Family Services
- ND Bar Association
- ND Protection and Advocacy Program
- Legal Assistance of ND
- District Attorneys Association
- District Judges Association
- Mental Health Association of ND
- Traumatic Brain Injury Association
- Aging Services Division of NDDHS
- Mental Health Division of NDDHS
- AARP
- Partners in Guardianship
- NDLTC Association
- Neuropsychologists Association
- ND State Hospital
- ND Medical Association
- A current guardian
- A current court visitor
- A current attorney active in guardianships
- Others - as interested

#3

Senate Judiciary Committee
Testimony on Senate Bill 2028
John T. Traynor, Chairman
January 10, 2005

Good morning, Chairman Traynor and committee members. My name is Donna Byzewski and I am co-chair with Rodger Wetzel of the North Dakota Guardianship Task Force. I am also supervisor of the Guardianship Division at Catholic Charities North Dakota (CCND). Our agency has been providing corporate guardianship services since 1986. Currently, CCND serves as guardian for more than 350 people with developmental disabilities.

From August 2003 to August 2004, the North Dakota Guardianship Task Force worked closely with the Interim Criminal Justice Committee as it studied the status of guardianship services in North Dakota. The Task Force is made up of over twenty-five (25) organizations or individuals who have expertise and extensive experience in the area of guardianship. The Task Force strongly supported this study because of the gap in the availability of guardianship services for people with mental illness, vulnerable elderly individuals and persons with traumatic brain injuries. Based on the frequent requests for services from our agency and other guardianship programs and the findings of the survey completed for the Interim Criminal Justice Committee, there are a number of people with diminished capacity who are experiencing life threatening situations, medical emergencies, abuse or neglect issues, psychiatric difficulties, financial exploitation and the need for appropriate housing/residential services. These are very vulnerable people who are at tremendous risk because they do not have the safety net of a guardian.

Guardianship should be pursued only when alternative resources such as homemaker services, representative payee for social security benefits, social service support, residential placements, in-home services, etc., have been tried but are unsuccessful or not appropriate given the circumstances. A guardianship is established because the court has determined that the person is at significant risk because his or her ability to make responsible decisions is compromised. Guardianship is very intrusive and should only be used as a last resort because it involves taking some or all rights away from the individual and giving them to the guardian.

Once appointed, the guardian has the duty and responsibility to make very difficult decisions on behalf of the ward. The following are some examples of decisions that guardians frequently face: whether to move a person out of his or her home because of a decline in health; should chemotherapy be tried or not; do the risks outweigh the benefits of trying a new psychiatric drug that offers hope but possible severe side effects; how to take away a person's checkbook because of thousands of dollars in bills and overdrafts but still maintain that person's dignity; if an individual with Alzheimer's disease can no longer eat, should a feeding tube be inserted in the stomach; should a person receive CPR if their heart or breathing arrests; etc. A guardian must be available 24 hours a day, 365 days per year, to problem solve or provide consent.

There are a number of indigent, vulnerable people in North Dakota and this bill offers them a safety net as well as a chance for a better life. The appropriation of \$772,550 makes it possible for the Department of Human Services to contract with an entity to develop a comprehensive service system that is truly needed. The Task Force put much energy and time into developing an accurate budget of how the appropriation could be utilized. One of the most integral parts of this legislation is providing day-to-day, direct guardianship services for up to 210 individuals at a cost of \$350,000. The daily rate for the provision of guardianship services for each ward is \$5.00. Given the depth of responsibility that a guardian has, I can honestly say that the \$5.00 per ward/per day is money well spent. Because this bill is directed towards meeting the needs of indigent vulnerable people, the appropriation also includes an expenditure of \$135,000 for petitioning costs. To establish a guardianship, the services of two (2) attorneys and a court visitor are required and this typically costs about \$1,000. In addition, the appropriation includes the expenditure of \$40,000 to fund two essential components: training of volunteer guardians as well as already established guardians and the development of formalized standards of practice for guardians. The bill also includes an expenditure of \$247,000 toward administrative costs that the entity, with which DHS contracts, would incur.

In closing, passage of this bill will have an immediate and positive impact on the lives of people who are at risk of harm and need the support of a guardian. On behalf of the Task Force, I am respectfully asking each of you to support SB 2028 by making a "Do Pass" recommendation. I would welcome any questions that you may have. Thank you!

2 YEAR BUDGET

ADMINISTRATIVE COSTS: *

\$247,000

Salaries, wages, benefits @33%	\$192,000
2-3 employees	
Rent	12,000
Telephone	3,000
Internet services (web)	2,000
Office equipment	4,000
Supplies	6,000
Travel	10,000
Fees, memberships, in-house training	3,000
Professional services	2,000
Insurance	12,000
Miscellaneous	1000

* This allocation is to cover 2 to 3 FTEs: a director and up to 2 support staff. The amount is expected to cover all basic administrative and staff costs. The duties and responsibilities of this entity will be clearly defined RFP.

TRAINING AND STANDARDS: **

40,000

Standards development	15,000
Training	25,000

** The \$15,000 portion will be used to develop the standards which will be formalized, adopted, and utilized on a statewide basis. The \$25,000 portion is to be used over the biennium to provide training to new and already established guardians. This will also be used to recruit, screen, and train new volunteers.

COURT COSTS:***

135,000

Petitioning Attorney	@ \$450 per case
Guardian Ad Litem	@ \$350 per case
Court Visitor	@ \$200 per case

*** The funds in this category will be used to pay the costs of establishing 126 new guardianships over the biennium at a rate of \$1000.00 per case. Funds in excess of the cost to establish the new cases, are expected to be used for appeals and contested guardianships.

GUARDIANSHIP SERVICES: ****

350,550

**** These funds will be used to pay for the provision of guardianship services. This amount was created utilizing a gradual accumulation of individuals beginning at 10 and increasing by 10 each month for the final 21 months of the biennium. Ninety days were set aside to allow for program start-up time. It is estimated that at least 210 individuals will be served and services paid for at a rate of \$5.00 per day.

TOTAL COST FOR BIENNIUM:

\$772,550

#5

Senate Judiciary Committee
Testimony of Bill Chaussee, Administrator
Guardian and Protective Services, Inc.
in Support of Senate Bill No. 2028
January 10, 2005

Mr. Chairman and Members of the Committee:

My name is Bill Chaussee, administrator of Guardian and Protective Services, Inc. I am also a past president of the Guardianship Association of North Dakota and a board member of the National Guardianship Association. I appear before you in support of Senate Bill No. 2028.

Guardian and Protective Services, Inc. (GaPS), a non profit corporation, has offices in Bismarck and Fargo. Our agency provides protective arrangements to vulnerable adults who are unable to secure services through family members, agencies, or other interested parties. These protective arrangements include powers of attorney for health care and/or finances, representative payee, and when necessary, guardianship. The people we serve are elderly, severely mentally ill and traumatic brain injured with complex problems, making it difficult to find family members or volunteers to serve. GaPS services help reduce homelessness, self-neglect, financial exploitation and ensure proper medical treatment and asset management.


Guardian and Protective Services, Inc.
Senate Bill No. 2028
January 10, 2005
Page 2

GaPS receives referrals from families, concerned neighbors and friends, human service centers, home care agencies, county social services, hospitals, senior centers, banks, attorneys, and courts. We are presently providing services to over 350 individuals in the Bismarck and Fargo areas.

Funding for our Program is received from cases with the ability to pay, grants, donations, limited county funds, and United Way. The number of "low income" individuals that we are assisting far exceed those with ability to pay. While, sixty-five percent of our funds are received from "paid cases", almost sixty-five percent of people we serve are determined to be "low income".

Establishing funding sources for guardianship and alternatives to guardianship is a major concern as we are exhausting our grant resources and there is a tremendous need for guardians for low income vulnerable adults.

We request your support of this Senate Bill No. 2028.



Bill Chaussee, Administrator

Vonnette
Rickter
#6

Excerpts from 2005 Interim Criminal Justice Report for Senate Bill Nos. 2028, 2029, and 2030.

GUARDIANSHIP SERVICES STUDY

The committee received testimony and information from a number of individuals and agencies involved in the area of guardianships and the need for guardianship services in the state. The committee also received extensive information from the North Dakota Guardianship Task Force, a group made up of representation from the Department of Human Services, the North Dakota Long Term Care Association, the State Bar Association of North Dakota, the Protection and Advocacy Project, the State Hospital, and numerous guardianship service provider organizations. The task force provided to the committee information regarding community education, petitioning and hearing, resources, guardians, court visitors, indigent individuals in need of guardians, and legislation. The committee's considerations focused on two issues--the guardianship services needs in the state and procedural guardianship issues.

Guardianship Services Needs in the State

The committee received extensive information and testimony from the North Dakota Guardianship Task Force regarding the guardianship services needs in the state. According to the testimony, the Legislative Assembly has enacted a number of significant changes to the state's guardianship laws over the past 16 years, including separating guardianship law from conservatorship law, allowing for limited guardianships, changing the burden of proof from a preponderance of the evidence to clear and convincing evidence, changing the law relating to capacity versus incompetence, and requiring that alternative resource plans be considered. It was noted that the Legislative Assembly rejected the new changes to the Uniform Probate Code that dealt with guardianship in part because it was believed current North Dakota law was better than the proposed revisions to the Uniform Probate Code.

Guardianship, which is a court-appointed relationship between a competent adult and an individual who is not able to handle the individual's affairs, is not an automatic process. The testimony stressed that each individual's situation must be considered carefully and completely. A guardian is required to act in and represent the best interests of the ward, protect the ward and the ward's rights, and ensure that services are provided in the most normal and least restrictive means possible. According to the testimony, much of a guardian's time is spent talking with physicians, case managers, social workers, pastors, family members, or police officers on behalf of wards. It was noted that guardianship should be pursued only when alternative resources such as homemaker services, a representative payee for Social Security benefits, social services support, residential placements, and in-home services have been tried but are unsuccessful or not appropriate given the circumstances. According to the testimony, a guardian often must make very difficult decisions on behalf of a ward. It was noted that most wards do not have assets. Some wards have Social Security benefits or veterans' benefits that can be used but most are indigent.

The committee also received testimony that there are no statutory standards regarding the qualifications of guardians other than a guardian must be 18 years of age and competent. It was noted that Catholic Charities North Dakota, which is the only organization in the state providing corporate guardianship services, does have policies regarding the qualifications of guardians it hires. It was stressed that there is a need to develop statewide standards for guardians.

The committee received the results of a survey conducted by the North Dakota Guardianship Task Force. The purpose of the survey, which was conducted in early January 2004, was to help determine the need, standards and practices, and funding issues regarding guardianship services in the state. The task force received 141 responses to the survey and categories of respondents included family members, the legal profession, and social services. With respect to the issue of need, 57 percent of the respondents indicated guardianship needs for the populations served are not adequate and 50 percent of the respondents indicated it is difficult to find individuals who are willing to serve as guardians. The results indicated that family members are typically the first choice for guardians, but when a family member is not available, a public administrator assigned by a judge becomes the guardian. It was noted that a number of courts do not have a public administrator. The survey results also indicated that approximately 22 percent of the respondents indicated family members are generally not willing or able to serve as guardians. It was noted that as anticipated, over half of the survey respondents indicated they are seeing changes in the population needing guardianship services. Those changes are most identifiable in the elderly population, followed by individuals with mental illness, physical disabilities, and head and brain injuries. With regard to standards and practices for guardianship, approximately 25 percent of the respondents indicated they do not have an adequate knowledge of guardianship and the guardianship process and when asked if they have experienced any barriers or problems accessing or working with the legal system for guardianship, 35 percent indicated "yes" with the majority citing lack of funds and length of time for the process as barriers. Eighty-three percent of the respondents indicated that there should be minimum standards for individuals serving as guardians. The survey results also indicated the need for guardians to be serving in the best interests of the wards, citing accountability, knowledge of expectations, and to ensure and protect consumer rights and assets as important. Regarding the funding of guardianship services in the state, the survey results indicated that the ward or the ward's family pays for the legal costs of establishing the guardianship; however, when resources are not available, the guardianship establishment costs are being paid by pro bono services, state agencies, counties, the State Hospital, legal aid, nursing homes, charitable organizations, and the petitioner. It was noted that many respondents indicated that if resources are not available, the court is not petitioned and a guardian is not appointed.

To address the issues raised in the testimony regarding the need for guardianship services in the state, the committee considered a bill draft that required the Department of Human Services to contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system would be required to include a base unit funding level, provider standards, staff competency requirements, an emergency funding procedure to cover the costs of establishing needed guardianships, and guardians and training for guardians. The bill draft also provided for an appropriation of \$772,550. Testimony in explanation of the bill draft indicated

that the appropriation amount included \$247,000 for administrative costs, \$40,000 for training and standards, \$135,000 for court costs, and \$350,000 for guardianship services.

According to the testimony in support of the bill draft, \$772,550 is the minimum amount needed to provide training to guardians and guardianship services to 210 needy persons. The testimony indicated that the bill draft would provide guardianship services for those persons who are vulnerable but who are not developmentally disabled. The testimony further indicated that the rules that would be developed would include financial eligibility criteria. The appropriation would pay for guardianship services for an individual at a rate of \$5 per day. The services a guardian provides for \$5 per day include making legal decisions, securing housing, making health care decisions, and completing applications for services. The estimate that 210 individuals are in need of guardianship services is based upon the guardianship task force survey. Although Catholic Charities North Dakota is the only organization in the state providing corporate guardianship services, the bill draft would allow for organizations other than Catholic Charities North Dakota to contract with the Department of Human Services for the guardianship services.

Procedural Guardianship Issues

During the course of the committee's study of guardianship services needs issues, several issues were raised regarding the guardianship process, including the procedure for the appointment of a successor guardian and the filing of annual reports by guardians and conservators.

Regarding the appointment of a successor guardian, the committee received testimony that state law does not provide for a procedure for the appointment of a successor guardian. There are frequently instances in which the appointment of a successor guardian is necessary, such as the death or resignation of a guardian. It was noted that the procedure for the appointment of a successor guardian is not the same as the procedure for the creation of the guardianship. When naming a successor guardian, there is not a need to repeat the entire guardianship proceeding because the determination that a guardian is necessary has already been made and therefore that part of the process does not need to be repeated for the appointment of a successor. The testimony indicated that a parent or guardian may name a successor guardian in a will or a coguardian may have been appointed at the time the guardianship was initially created. Testimony received from an attorney who practices in the area of guardianship law indicated that the procedures used by attorneys for the appointment of a successor guardian meet the requirements of guardianship statutes; however, it would be helpful if the statutes specifically provided for the appointment of successor guardians.

The committee considered a bill draft that established a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian. The bill draft provided that the notice of motion must include a statement that provides an opportunity for hearing, if requested. If a hearing is not requested, the court may appoint a successor guardian. It was noted that the procedure in the bill draft follows the procedure set forth in the North Dakota Rules of Court Rule 3.2. This rule provides for a motion accompanied by a brief and an affidavit signed by the existing guardian or someone with knowledge of the reasons a successor guardian is needed. The bill draft also contained a provision that provided if the guardian is a public administrator or a corporate guardian that serves more than 10 wards, the guardian is permitted to provide notice by publishing the motion and the notice of motion in a

newspaper of general circulation within the judicial district in which the court is located. Because of concerns that publication of a motion regarding the appointment of a successor guardian is a shortcut and a departure from statutory notice requirements, the bill draft was amended to provide that the motion and the notice of motion for a public administrator or a corporate guardian with more than 10 wards may be served by first-class mail.

Testimony in support of the bill draft indicated that the bill draft would be helpful in providing a statutory procedure for the appointment of successor guardians. The testimony indicated that the procedure in the bill draft is the procedure being used by attorneys in the state for the appointment of successor guardians. It was noted that although the procedure in subsection 4 of the bill draft is a departure from current statute, it is economical and at the same time protects the rights of individual wards. It was also noted that less than 10 percent of all successor guardianship appointments are contested. Other testimony indicated that because it is now possible to serve notice by fax and e-mail, allowing service by first-class mail is a satisfactory option.

Testimony in opposition to the bill draft expressed concern about the method of service provided for in subsection 4 of the bill draft. According to the testimony, the method of service--first-class mail--affects the due process of a ward if the ward's guardian has 10 or more wards. It was argued that this change would treat a ward with a corporate guardian differently than a ward with a private-party guardian. It was also argued that because wards of corporate guardians are often members of groups with specific disabilities, to treat such individuals differently than those with private guardians could create a perception of discrimination.

The committee also received testimony regarding the reporting requirements of guardians and conservators. According to the testimony, in about 99 percent of guardianship and conservatorship cases, the court requires an annual report; however, the requirement is not statutory. In addition, the testimony indicated that each judge has different practices for the filing and approval of reports causing a lack of predictability in the current system.

The committee considered a bill draft that provided for an annual report requirement for guardians and conservators. The bill draft also required the State Court Administrator's office to develop and provide a form that may be used to fulfill reporting requirements.

Testimony in support of the bill draft indicated that the bill draft would make it clear that the filing of an annual report is not the same as court approval of the report. It was noted that the bill draft makes it clear that court approval requires notice.

Testimony from the State Court Administrator's office indicated that the Council of Presiding Judges has not been satisfied with the handling of annual reports. It was noted that this bill draft is an attempt to clarify the procedure and provide direction to judges. According to the testimony, the judiciary is in agreement with moving forward with this idea. It was also noted that a standardized form would give information to the judges in a uniform format and make it easier to spot irregularities.

One committee member expressed concern that there has not been any harm identified which creates a need for this legislation. It was noted that requiring annual reports would take judicial discretion out of the process.

Recommendations

The committee recommends Senate Bill No. 2028 to require the Department of Human Services to contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system is required to include a base unit funding level, provider standards, staff competency requirements, the use of an emergency funding procedure to cover the costs of establishing needed guardianships, and guardians and training for guardians. The bill also provides for an appropriation of \$772,550.

The committee recommends Senate Bill No. 2029 to establish a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian.

The committee recommends Senate Bill No. 2030 to provide for an annual report requirement for guardians and conservators. The bill draft also requires the State Court Administrator's office to develop and provide a form that may be used to fulfill reporting requirements.

#7

Brain Injury Association of North Dakota
209 Second Street Southeast
Valley City, North Dakota 58072
Phone 701-845-1124
Fax 701-845-1175

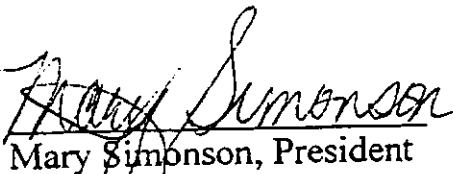
The Brain Injury Association of North Dakota considers proposed changes affecting guardianship services in North Dakota to be considered during the 2005 Legislative Session;

WHEREAS, the establishment and oversight of guardianship services is essential for the well-being of vulnerable adults in North Dakota; and

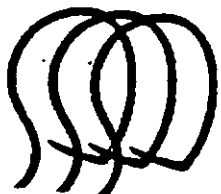
WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota as a tool to maximize community integration and used following all exploration of surrogate decision making instruments; an

WHEREAS; the Brain Injury Association of North Dakota has observed that guardianship proceedings have at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW THERE, BE IT RESOLVED that the Brain Injury Association of North Dakota by a vote of its membership on January 7, 2005, hereby endorses the concept of a public guardianship program in the State of North Dakota and request that the 59th Legislative Assembly of North Dakota, which will convene January 2005 give favorable consideration to proposed legislation to establish a public guardianship program in the State of North Dakota


Mary Simonson, President

1/7/2005
Date



TESTIMONY
SB 2028 – JUDICIARY COMMITTEE
SENATOR J. TRAYNOR, CHAIRMAN
JANUARY 10, 2005

Chairman Traynor, members of the Senate Judiciary Committee, I am JoAnne Hoesel, Director of the Division of Mental Health & Substance Abuse for the Department of Human Services. I am here today to provide information regarding the guardianship bill.

The Department of Human Services supports the concepts of this legislation but is unable to support the bill, as the funding is not within the executive budget. I am here to acknowledge that there are situations where vulnerable adults are in need of guardianship services and have no options. These situations can occur when an adult is unable to make appropriate decisions in financial or health care situations whether due to the aging process or mental illness. When guardianship is not available it increases a person's vulnerability to losing their independence. The only formal guardianship program in place is available to individuals who have a developmental disability. The Aging Services Division is able, in a few situations, to pay for the initial court costs of guardianship but does not have funding for ongoing guardianship services. There is no program for those with a mental illness in need of this service.

The Department applauds the involvement of the broad-based group that has worked closely over many years to address this area of concern.

Thank you.

ADDITIONAL SUBMITTED TESTIMONY SUBMITTED AT
HEARING

5. This section does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under section 14-09-09.15.

14-09-10. Reciprocal duty of support - Support of poor. It is the duty of the father, the mother, and every child of any person who is unable to support oneself, to maintain that person to the extent of the ability of each. This liability may be enforced by any person furnishing necessities to the person. The promise of an adult child to pay for necessities furnished to the child's parent is binding.

14-09-11. Allowance to parent for support of child. The district court may direct an allowance to be made to a parent of a child out of its property for its past or future support and education on such conditions as may be proper, whenever such direction is for its benefit.

14-09-12. Support by county - Liability of parent's estate. If a parent chargeable with the support of a child dies leaving it chargeable upon the county and leaving an estate sufficient for its support, the board of county commissioners of the county, in the name of the county, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees, and next of kin of the parent.

14-09-13. Neglect of child - Parent liable to third person. If a parent neglects to provide articles necessary for that parent's child who is under that parent's charge, according to that parent's circumstances, a third person in good faith may supply such necessities and recover the reasonable value thereof from the parent.

14-09-14. When parent not liable for support of child. Repealed by S.L. 1999, ch. 141, § 25.

14-09-15. Support of children after majority. When a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor.

14-09-16. Control of property of child. The parent, as such, has no control over the property of the child.

14-09-17. Child's earnings - Relinquished by parent. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling the child and receiving the child's earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

14-09-18. Wages of minors. The wages of a minor employed in service may be paid to the minor until the parent or guardian entitled thereto gives the employer notice that the parent or guardian claims such wages.

14-09-19. Parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relatives within the third degree, or by the county social service board of the county where the child resides, and when the abuse is established the child may be freed from the dominion of the parent and the duty of support and education may be enforced.

14-09-20. When parent's authority ceases. The authority of a parent ceases:

1. Upon the appointment by a court of a guardian of the person of a child;
2. Upon the marriage of a child; or
3. Upon its attaining majority.

14-09-21. Parent and child not liable for acts of other. Neither parent nor child is answerable as such for the act of the other.

RESOLUTION

The North Dakota Judicial Conference, at its biannual meeting of November 23, 2004, considered proposed changes affecting guardianship services in North Dakota to be considered during the 2005 Legislative Session;

WHEREAS, the establishment and oversight of guardianship services is within the jurisdiction of the district court in North Dakota; and

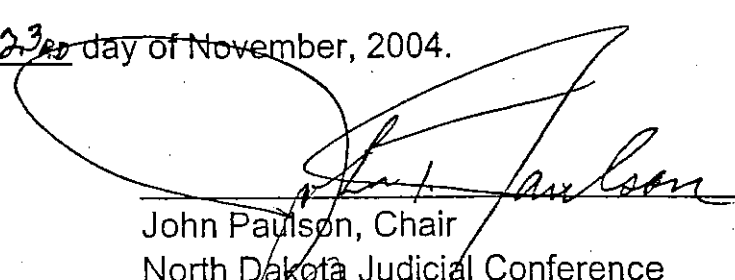
WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota; and

WHEREAS, a need exists for the expansion of guardianship services to afford protection for vulnerable adults in need of protective services; and

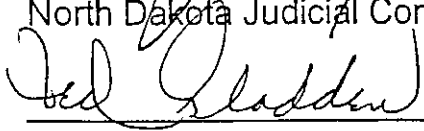
WHEREAS, the court system has observed that guardianship proceedings have not been initiated at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED that the North Dakota Judicial Conference, by a vote of its membership, hereby endorses the concept of a public guardianship program in the State of North Dakota, and requests that the 59th Legislative Assembly of North Dakota, which will convene in January 2005, give favorable consideration to proposed legislation to establish a public guardianship program for the State of North Dakota.

ADOPTED this 23rd day of November, 2004.



John Paulson, Chair
North Dakota Judicial Conference



Ted Gladden, Secretary
North Dakota Judicial Conference

NORTH DAKOTA JUDICIAL CONFERENCE

JUDGES OF THE SUPREME COURT

Gerald W. VandeWalle
William A. Neumann

Dale V. Sandstrom

Mary Muehlen Maring
Carol Ronning Kapsner

JUDGES OF THE DISTRICT COURT

South Central District

*Gail Hagerty
Sonna M. Anderson
Bruce B. Haskell
Donald L. Jorgensen
Burt L. Riskedahl
Bruce Romanick
Thomas J. Schneider
Robert O. Wefald

Northeast District

*M. Richard Geiger
Lee A. Christofferson
Laurie A. Fontaine
Donovan Foughty
Lester Ketterling
John C. McClintock, Jr.

East Central District

*Georgia Dawson
Douglas R. Herman
John C. Irby
Lawrence A. Leclerc
Frank L. Racek
Cynthia Rothe-Seeger
Wade L. Webb

Northwest District

*William W. McLees
Robert W. Holte
Gary A. Holum
David W. Nelson
Douglas Mattson
Gerald H. Rustad

Northeast Central District

*Karen K. Braaten
Bruce E. Bohlman
Debbie Kleven
Lawrence E. Jahnke
Joel D. Medd

Southeast District

*John T. Paulson
James M. Bekken
Ronald E. Goodman
John E. Greenwood
Richard W. Grosz
Mikal Simonson

Southwest District

*Allan L. Schmalenberger
Zane Anderson
Ronald L. Hilden

JUDGES OF THE MUNICIPAL COURTS

Robert A. Keogh
Julie Evans

SURROGATE JUDGES OF THE SUPREME AND DISTRICT COURTS

Norman J. Backes
Benny Graff

Gordon O. Hoberg
William F. Hodny
Jon R. Kerian

Everett Nels Olson
Kirk Smith

Attorney General Wayne K. Stenehjem
Clerk of the Supreme Court Penny Miller
Dean of the UND School of Law Paul A. LeBel

MEMBERS OF THE BAR

Michael F. Daley
Dennis E. Johnson

Steven J. Lies

Sherry Mills Moore
Michael D. Sturdevant

Executive Secretary Ted Gladden

63 Members



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December 21, 2004

Donna Byzewski, Co-Chair
Rodger Wetzel, Co-Chair
North Dakota Guardianship Work Group
PO Box 2264
Bismarck ND 58502

AARP North Dakota has reviewed proposed changes affecting guardianship services in North Dakota to be considered during the 2005 legislative session. The proposed changes are consistent with our national policy which states in part:

"states should either establish a public guardianship program to provide free or nominal-cost guardian or conservator services for needy elderly people who cannot be represented by qualified relatives or others, or permit the establishment of such programs by volunteer, for-profit or nonprofit organizations. States should require that these programs meet certain standards and be licensed or certified before and during the performance of their responsibilities. At a minimum the standards should limit the number of wards served, require adequate liability insurance for the protection of the wards and their property, and set mandatory conflict-of-interest standards."

In the interest of our most vulnerable citizens we encourage your favorable consideration.

Sincerely,

A handwritten signature in cursive script that reads "Betty Keegan".

Betty Keegan, State President
AARP North Dakota

A handwritten signature in cursive script that reads "Janis Cheney".

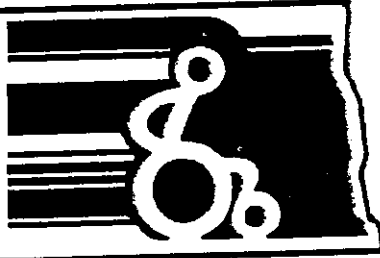
Janis Cheney, State Director
AARP North Dakota

*Personal and Legal Rights - The Policy Book: AARP Public Policies 2004

RECEIVED JUL 13 2004

1913 SOUTH WASHINGTON
GRAND FORKS, ND 58201
(701) 775-5577
1-800-532-NDAD (6323)
www.ndad.org

North Dakota
Association for the
Disabled, Inc.



The North Dakota Association for the Disabled, Inc. considers proposed changes affecting guardianship services in North Dakota to be considered during the 2005 Legislative Session;

WHEREAS, the establishment and oversight of guardianship services is essential for the well-being of vulnerable adults in North Dakota; and

WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota; and

WHEREAS, a need exists for the expansion of guardianship services to afford protection for vulnerable adults in need of protective services; and

WHEREAS, The North Dakota Association for the Disabled, Inc. has observed that guardianship proceedings have not been initiated at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED that the North Dakota Association for the Disabled, Inc. by a vote of its membership, hereby endorses the concept of a public guardianship program in the State of North Dakota, and request that the 59th Legislative Assembly of North Dakota, which will convene in January 2005, give favorable consideration to proposed legislation to establish a public guardianship program for the State of North Dakota.

Adopted this 22 day of December, 2004.

Ronald Gibbens, President

"A CHARITABLE NON-PROFIT ORGANIZATION"

BOARD OF DIRECTORS

Ronald Gibbens
President

Mark Lysne
Vice-President

Wendell Grondahl
Secretary/Treasurer

Darrell Farland
Director

Mike Berg
Director

Bob Mongeon
Director

Anne Putbrese
Director

RESOLUTION

Catholic Charities North Dakota has considered proposed changes affecting guardianship services in North Dakota to be considered during the 2005 Legislative Session;

WHEREAS, the establishment and oversight of guardianship services is essential to the well being of vulnerable adults in North Dakota; and

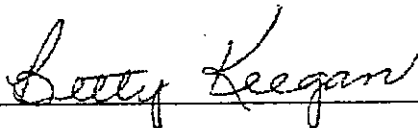
WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota; and

WHEREAS, a need exists for the expansion of guardianship services to afford protection for vulnerable adults in need of protective services; and

WHEREAS, Catholic Charities North Dakota has observed that guardianship proceedings have not been initiated at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED that Catholic Charities North Dakota by a vote of its Board of Directors endorses the concept of a public guardianship program in the State of North Dakota, and requests that the 59th Legislative Assembly of North Dakota, which will convene in January 2005, give favorable consideration to proposed legislation to establish as well as fund a public guardianship program for the State of North Dakota.

ADOPTED this 5th day of January, 2005.



President
Catholic Charities North Dakota

RESOLUTION

The Guardianship Association of North Dakota has considered proposed changes affecting guardianship services in North Dakota to be considered during the 2005 Legislative Session.

WHEREAS, the establishment and oversight of guardianship services is essential to the well being of vulnerable adults in North Dakota; and

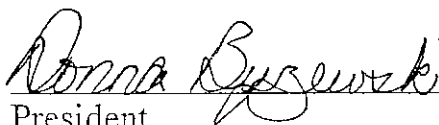
WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota; and

WHEREAS, a need exists for the expansion of guardianship services to afford protection for vulnerable adults in need of protective services; and

WHEREAS, the Guardianship Association of North Dakota has observed that guardianship proceedings have not been initiated at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Guardianship Association of North Dakota by a vote of its Board of Directors endorses the concept of a public guardianship program in the State of North Dakota, and requests that the 59th Legislative Assembly of North Dakota, which will convene in January 2005, give favorable consideration to proposed legislation to establish a public guardianship program for the State of North Dakota.

ADOPTED this 22ND day of December, 2004.



President

Guardianship Association of North Dakota

Partners, Inc.
3130 Nevada Street
Bismarck, ND 58503
701-799-2469

Having reviewed the proposed changes affecting guardianship services in North Dakota to be considered during the 2005 Legislative Session;

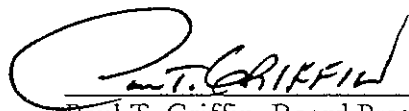
WHEREAS, the establishment and oversight of guardianship services is essential for the well-being of vulnerable adults in North Dakota; and

WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota; and

WHEREAS, a need exists for the expansion of guardianship services to provide appropriate protection to vulnerable adults in need of protective services; and

WHEREAS, Partners, Inc. has observed that guardianship proceedings have not been initiated at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Partners, Inc hereby endorses the concept of a public guardianship program in the State of North Dakota, and requests that the 59th Legislative Assembly of North Dakota, which will convene in January 2005, give favorable consideration to proposed legislation to establish a public guardianship program in the State of North Dakota.



Paul T. Griffin, Board President
Partners, Inc.



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GUARDIAN AND PROTECTIVE SERVICES, INC.

Guardian and Protective Services, Inc. considers proposed changes affecting guardianship services in North Dakota to be considered during the 2005 Legislative Session;

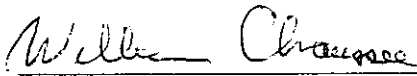
WHEREAS, the establishment and oversight of guardianship services is essential for the well-being of vulnerable adults in North Dakota; and

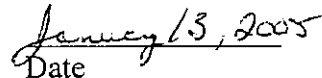
WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota; and

WHEREAS, a need exists for the expansion of guardianship services to afford protection for vulnerable adults in need of protective services; and

WHEREAS, Guardian and Protective Services has observed that guardianship proceedings have not been initiated at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED that Guardian and Protective Services, Inc. hereby endorses the concept of a public guardianship program in the State of North Dakota, and request that the 59th Legislative Assembly of North Dakota, which will convene in January 2005, give favorable consideration to proposed legislation to establish a public guardianship program in the State of North Dakota.


William Chaussee, Administrator


Date

Fargo Office

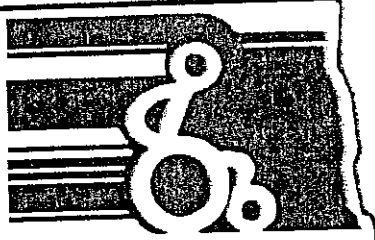
701-297-8988 • Fax 701-451-9203
Toll Free 1-866-798-4277
email gapsfargo@gapsinc.org
100 South 4th Street, Suite 403
Fargo, North Dakota 58103

website www.gapsinc.org

Bismarck Office

701-222-8678 • Fax 701-222-6666
Toll Free 1-888-570-4277
email gaps@gapsinc.org
316 North 5th Street, Suite 112
Bismarck, North Dakota 58501

North Dakota
Association for the
Disabled, Inc.



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1913 SOUTH WASHINGTON
GRAND FORKS, ND 58201
(701) 775-5577
1-800-532-NDAD (6323)
www.ndad.org

The North Dakota Association for the Disabled, Inc. considers proposed changes affecting guardianship services in North Dakota to be considered during the 2005 Legislative Session;

WHEREAS, the establishment and oversight of guardianship services is essential for the well-being of vulnerable adults in North Dakota; and

WHEREAS, a guardianship task force and interim legislative committee have studied the issues related to guardianship services and propose the establishment of a public guardianship program in North Dakota; and

WHEREAS, a need exists for the expansion of guardianship services to afford protection for vulnerable adults in need of protective services; and

WHEREAS, The North Dakota Association for the Disabled, Inc. has observed that guardianship proceedings have not been initiated at times where needed due to lack of financial resources and because an identifiable entity does not exist to initiate guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED that the North Dakota Association for the Disabled, Inc. by a vote of its membership, hereby endorses the concept of a public guardianship program in the State of North Dakota, and request that the 59th Legislative Assembly of North Dakota, which will convene in January 2005, give favorable consideration to proposed legislation to establish a public guardianship program for the State of North Dakota.

Adopted this _____ day of December, 2004.

Ray Gibbens Program Services Exec.

"A CHARITABLE NON-PROFIT ORGANIZATION"

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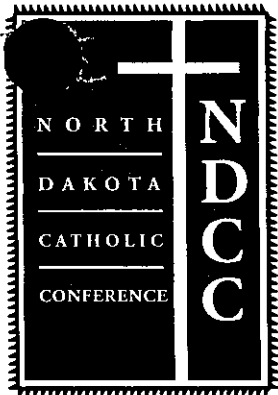
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*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

To: Senate Judiciary Committee
From: Christopher T. Dodson, Executive Director
Subject: Senate Bill 2028 (To Provide a Guardianship Services System)
Date: January 10, 2005

The North Dakota Catholic Conference supports Senate Bill 2028 to provide a guardianship services system in North Dakota.

Others have or will testify to the specific need for such a system. A guardianship task force and interim legislative committee have studied the issues related to guardianship services and concluded that a need exists to expand guardianship services to afford protection for vulnerable adults. This conclusion is supported by the Catholic Church in North Dakota, which through Catholic Charities of North Dakota, is one of the entities that currently provides guardianship services.

It is not, however, our experience alone that draws our support for this bill. One of the Ten Commandments states: "Honor your father and your mother, that your days may be long in the land which the Lord your God gives you." This call to honor the family is also a basis upon which our society is built.

In our brothers and sisters, we see the children of our parents; in our cousins, the descendants of our ancestors; in our fellow citizens, the children of our country. In this way, our relationships with our neighbors are recognized as personal in character. This is why the Old Testament prophets called on society to care for the orphan, the widow, and the immigrant. These persons, who in that time were the ones without family and community support, were to be cared for like family. Guardianship programs continue that call today. They serve the ones often without family like family, providing needed assistance and protection.

There is a growing need to care for the vulnerable persons among us in a manner that respects their dignity and acknowledges their inclusion in the human family. This bill addresses that need. When we adequately provide such services, we are all enriched. This is why that commandment is the only one of the Ten Commandments that contains a promise to those who keep it: "that your days may be long in the land which the Lord your God gives you."

We urge a **Do Pass** recommendation on Senate Bill 2028.

227 W. Broadway, Suite 2
Bismarck, ND 58501

223-2519
1-888-419-1237
FAX # (701) 223-6075

<http://ndcatholic.org>
ndcatholic@btinet.net

TESTIMONY OF Melvin L. Webster IN SUPPORT OF SB 2028

I am an attorney. I practice in Bismarck, ND. Guardianship is a major area of my practice. I urge the committee to support Senate Bill 2028 and vote "do pass."

This bill provides a minimal level of funding for guardianship services for persons who for one reason or another are otherwise unable to access guardianship services. Sometimes the problem is that the proposed ward or the proposed ward's family does not have sufficient funds to pay for the petitioning attorney, the court visitor which must be a licensed social worker or a registered nurse, and the guardian ad litem for the proposed ward.

However, even when pro bono legal services and a qualified, volunteer visitor and physician are located, no one can be found to serve as the guardian. Since December I have encountered four such cases. One is currently pending in Burleigh County District Court. Two sisters are currently serving as the temporary guardians, but they work full time, have young children, are totally bewildered by the vast array of choices they must make and applications for various programs such as SSI, housing, medical assistance and other programs. This is complicated by the fact that the Ward is chronically mentally ill and has alienated her family. Her father is retired and lives in Virginia. He has scraped together enough to pay for the court process, but he has limited funds and can not afford to pay for continuing guardianship services after appointment. The local public administrator is overwhelmed cases in which there are no funds to pay for services required after appointment. This ward has appeared in district court for various misdemeanor offenses. She has accessed emergency hospital services at least 3 times in the last six months. Without a guardian, she will undoubtedly again appear in district court and utilize local medical services. As I mentioned she is but one of four similar cases.

There are many instances when there is no appropriate family member. Frequently, when mental illness is the cause of the disability, family members are estranged from the proposed ward. Persons who are incapacitated due to mental illness or a traumatic brain injury are frequently the most difficult wards to serve as they are up and active in the community. They are cases that simply are beyond the capacity of a volunteer even a family member volunteer. You will hear from a volunteer guardian today—Carole Watrel. But Carole is an exception. Although she is a volunteer, she has extensive background as a social worker and working with persons who are mentally ill.

This bill, even if full funding were restored, will not provide a Carole Watrel for each ward but it will provide competent, professional guardianship service for vulnerable elderly persons, mentally ill persons, and others who are presently unable to access guardianship. I again urge your support of SB 2028.

I became the guardian for my ward in October of 2000. She is a middle aged (50) woman with mental illness. This woman has a large family, a mother & 8 siblings in this area. The family was always arguing as to the care of my ward. No one in this family wanted to become her guardian because of all the animosity within the family.

At that time Karen lived in the apartments on the east side for mentally ill. She would on some days sit in her apartment which she kept darkened most of the time, all day. She received her meds from a nurse assistant in a lock down situation. In a lock down situation, the person is watched until she swallows the medication. Sometimes she would let her mother in the apt, & sometimes not. It was the same with me. In the evening she would go the the ER at both hospitals with usually fake illnesses. She just liked the atmosphere of the ER. This practice, which she did innumerable times, did not set well with the ER staff. Over a month period, for instance, she went to the ER perhaps 50 times, as she would go more that once a day to both ER's here in Bismarck. All these visits were billed to the state, of course, and for fantasy problems.

With the help of a local psychiatrist, & the knowledge that her life situation could not continue as it was, some changes were made. She was moved to the Arbor House, a temporary home for the mentally ill, from her apartment in east Bismarck. She was furious with me for this change. I, as her guardian had to appear before a group of social workers and explain my reasons to them. I was told that if Karen had not had a guardian, this move, for her own betterment, would not have been possible.

Prior to that I had her tested for possible employment, a drivers license, all of which proved unworkable & impossible...all this took hours of time on my part and all this was done on a voluntary basis....anyway Karen, while acting that she was still furious with me, slowly started to take part in the life of Arbor House. She likes to cook & clean & soon was able to help in that capacity & it was easy to notice her change. Her mother couldn't get over the difference. After 6 months she had to leave Arbor House as that is the maximum time one can stay there. She was then moved around the corner to a duplex house called the Lewis & Clark house, also for the mentally ill. This was another difficult move for Karen, she doesn't take change easily. She was assured she will never have to move again & she won't have to. Her family again moved her, & that was about a year and a half ago now.

At the present time Karen does some cooking and cleaning at the home and is reimbursed as a chore-giver. So she feels like she has a job as is far more satisfied.

This isn't to say her life is perfect. It never will be. She has schizophrenia. She still takes her meds on a lock-down basis. Much of the time she is not happy and complains, but she is up every day and involved in many activities of daily living, especially cooking and cleaning. And yes, she still finds a reason to go to the ER's, but only once in a while.

If Karen had not had a guardian, she could not have been moved from her apartment for the mentally ill. But how many persons would take on this sort of volunteer work? If it were not for 2 men in this room now, who I really admire, I would not have taken this assignment either. There are not many volunteers who would be able to handle a case like this.

Thank you. I will be happy to answer any questions.

Carole Watrel, LSW
701-222-4607

Ft Union Room
2 p.m

II
2028

Senate Appropriations Committee - January 24, 2005
Testimony in support of SB 2028
-Rodger Wetzel, LSW, MPA/MHA, Eldercare Program Director,
St. Alexius Medical Center, Bismarck, ND

Chairman Holmberg and members of the Committee:

My name is Rodger Wetzel. I am the Director of the Eldercare Program at St. Alexius. I have been in this position for 19 years. Prior to this position, I was the Assistant Director of the Aging Services Division of the NDDHS. I also am a member of the Guardianship Association of ND (GAND), and was elected co-chair of the state Guardianship Task Force which has been addressing ND guardianship needs.

In the past 33 years I have been directly involved in over 300 guardianships. Most often I have served as the "court visitor", the social worker who completes the social assessment of the client/guardian for the district judge and client prior to the guardianship hearing. I also have worked with persons with dementia for 19 years.

In North Dakota we do not have a system, and often not even the essential services, if some of our most vulnerable people, because of mental incapacity, need a guardianship.

I compliment the 2003 ND Legislature for passing study resolution SCR 4008, and the Legislative Council for choosing this study. I also compliment the Interim Criminal Justice Committee for introducing this legislation, for their strong support, and for their willingness to work so closely with the state Guardianship Task Force in addressing guardianship needs. I also compliment the Senate Judiciary Committee for their recent support for this legislation.

The very vulnerable populations are "mentally incapacitated" individuals who are elderly, are chronically mentally ill, or who have experienced a traumatic brain injury. The developmentally disabled population generally are served by the state through contracted guardianships. Our Task Force completed a statewide survey to give us an estimated number of individuals needing these guardianship services, and this number has been used to estimate costs in this legislation.

Let me give you a common example I have experienced: An elderly lady, low income with no immediate family, is living in her own apartment. She has been a good citizen all of her life. She now has Alzheimer's disease which has progressed so that she is not mentally able to take care of herself or her home. Her apartment is becoming a risk to the health and safety of herself and other building residents. She is not able to manage her own finances, and has given away some funds. She is not applying for needed services, is not taking a bath or her meds, and not seeing a doctor, so her other health problems are increasing. But she still believes she is doing "just fine", which is typical of people with dementias. It is probable that with a guardian authorized to make sure she applies for and receives essential services, she could continue to function at home and out of a facility and reduce emergency medical care. Because she has very limited finances, there are no funds to pay the costs of a guardianship hearing or to pay a guardian/agency a monthly fee to manage her affairs. Often the guardianship is necessary first link to home and community-based services, financial management, and medical care.

If she did have a relative or volunteer willing to step forward and voluntarily serve as her guardian, that relative may not fully understand the serious responsibilities of being a legal guardian, which could include managing her finances, legal affairs, living arrangements, medical care, any nursing home placement, mental health service needs, and other needs. We do support recruiting and training volunteer guardians, when possible. So there is a need for basic standards for all guardians and some basic guardianship training also exists, whether the guardian is a volunteer or receives a fee. These (underlined) needs are addressed in this bill.

(continued on reverse side)

Other examples of people who often fall between the cracks are chronically mentally ill or brain-injured persons who have limited resources and no interested family members. Sometimes these individuals have exhausted any willing family support because of their long-term serious mental illness or continuing behavior problems, and they need an outside party, such as a guardian, to make sure they apply for needed services, and continue these services, which may help keep them out of institutional settings or hospitals. Or it may be determined that they need a guardian when they are discharged.

I urge you to give a "do pass" to SB 2028, so that all these mentally incapacitated individuals, generally through no fault of their own, may receive essential guardianship services, including legal hearings and monthly monitoring. In addition, there would be basic standards developed for all guardians, and basic guardianship training provided. Another task force member will address specific cost issues and guardian responsibilities.

This is a very vulnerable population which needs these essential guardianship services.

Thank you! I would be happy to answer any questions.

IV
2028

Senate Appropriations Committee
Testimony on Senate Bill 2028
Senator Ray Holmberg, Chairman
January 24, 2005

Good morning, Chairman Holmberg and committee members. My name is Donna Byzewski and I am co-chair with Rodger Wetzel of the North Dakota Guardianship Task Force. I am also supervisor of the Guardianship Division at Catholic Charities North Dakota (CCND). Our agency has been providing corporate guardianship services since 1986. Currently, CCND serves as guardian for more than 350 people with developmental disabilities.

From August 2003 to August 2004, the North Dakota Guardianship Task Force worked closely with the Interim Criminal Justice Committee as it studied the status of guardianship services in North Dakota. The Task Force strongly supported this study because of the gap in the availability of guardianship services for people with mental illness, vulnerable elderly individuals and persons with traumatic brain injuries. Based on the frequent requests for services from our agency and other guardianship programs and the findings of the survey completed for the Interim Criminal Justice Committee, there are a number of people with diminished capacity who are experiencing life threatening situations, medical emergencies, abuse or neglect issues, psychiatric difficulties, financial exploitation and the need for appropriate housing/residential services. A guardianship is established because the court has determined that the person is at significant risk because his or her ability to make responsible decisions is compromised. Guardianship is very intrusive and should only be used as a last resort because it involves taking some or all rights away from the individual and giving them to the guardian. These are very vulnerable people who are at tremendous risk because they do not have the safety net of a guardian.

There are a number of indigent, vulnerable people in North Dakota and this bill offers them a chance for a better life. The appropriation of \$772, 550 makes it possible for the Department of Human Services to contract with an entity to develop a comprehensive service system that is truly needed. The Task Force put much energy and time into developing an accurate budget of how the appropriation could be utilized. Today, I would like to provide a more detailed explanation of the different sections of this suggested budget.

Guardianship Services: The most important part of this legislation is providing day-to-day, direct guardianship services for up to 210 individuals at a cost of \$350,550. The rate for the provision of guardianship services is \$5.00 per ward/per day. Once appointed by the court, the guardian has the duty and responsibility to make very difficult decisions on behalf of the ward. The following are some examples of decisions that guardians frequently face: whether to move a person out of his or her home because of a decline in health; should chemotherapy be tried or not; do the risks outweigh the benefits of trying a new psychiatric drug that offers hope but possible severe side effects; how to take away a person's checkbook because of thousands of dollars in bills and overdrafts but still maintain that person's dignity; if an individual with Alzheimer's disease can no longer eat, should a feeding tube be inserted in the stomach; should a person receive CPR if his or her heart or breathing arrests; etc. A guardian must be available 24 hours a day, 365 days per year, to problem solve or provide consent. Please keep in mind that these services would only be available as a guardian of last resort. The majority of referrals would involve individuals who have no family members who are available or appropriate to serve as guardian or those who do have family but have worn them out because of the severity and unpredictability of their particular disability. Given the depth of responsibility that a guardian has, I can honestly say that \$5.00 per ward/per day is money well spent.

Court Costs: Because this bill is directed towards meeting the needs of indigent, vulnerable people, the appropriation also includes an expenditure of \$135,000 for petitioning costs. To establish a guardianship, the services of two (2) attorneys (a petitioning attorney and a guardian ad litem) as well as a court visitor and psychologist or physician are required. This typically costs about \$1,000. This is a key portion of this bill and it must go hand in hand with the above-mentioned guardianship services. Without funding for petitioning costs, a person would not be able to access the needed day-to-day guardianship services and as a result remain at risk of harm.

Training and Standards: In addition, the appropriation includes the expenditure of \$40,000 to fund two essential components: training of volunteer and already established guardians and the development of formalized standards of practice for guardians. For those guardianship cases where the needs are less intense, a volunteer guardian could be a perfect

match. However, it would be too risky to assign a volunteer guardian before the person has had in-depth training as well as a thorough background check. This training would also be available to family members or others who are currently serving as a guardian. The establishment of standards of practice is an area about which the Task Force felt very strongly. Having consistent, recognized standards for guardians is critical to help ensure that persons with diminished capacity are receiving high quality guardianship support. One thought would be to incorporate standards of practice into North Dakota's excellent guardianship law.

Administrative Costs: The two (2) year budget also includes an expenditure of \$247,000 toward administrative costs that the entity, with which DHS contracts, would incur. It was important to the Task Force to include all start up costs, salaries and benefits for a minimum of two employees (a director and support staff person) and necessary operating costs so that the recipient of the RFP would have the necessary tools to create and coordinate a unified guardianship service system for people with mental illness, vulnerable elderly individuals and persons with a traumatic brain injury.

In closing, passage of this bill will have an immediate and positive impact on the lives of people who are at risk of harm and need the support of a guardian. On behalf of the Task Force, I am respectfully asking each of you to support SB 2028 by making a "Do Pass" recommendation. I would welcome any questions that you may have. Thank you!

III
2028

NORTH DAKOTA GUARDIANSHIP STATE TASK FORCE

NAME	ORGANIZATION REPRESENTED
Allan Stenehem	ND Mental Health Association
Bill Chaussee	Guardian & Protective Services Inc.
Birch Burdick	Cass County State's Attorney
Brad Maasjo	Admin. Committee on Veteran Affairs
Bruce Levi	ND Medical Association
Bruce Murry	ND Protection and Advocacy
Judge Burt Riskedahl	District Court Judge
Carole Watrel	Volunteer Guardian & Graying of ND Coalition
Christine Hogan	ND Bar Association
Cindy Lien	ND State Hospital
Diane Medicine Stone	Dakota Center for Independent Living
Donna Byzewski	ND Catholic Family Services/Catholic Charities
Helen Funk	NDDHS -Aging Services Div. - LTC Ombudsman
Karen Romig-Larson	NDDHS - Mental Health/Substance Abuse Division
Linda Wright	NDDHS - Aging Services Division
Jay Brown	
Ken Tupa	APT, Inc.
Marlowe Kro	AARP ND
Mary Simonson	HI Soaring Eagle Ranch/Open Door Center - Brain Injured
Dr. M.C. Brown	Medcenter One - Neuropsychology
Mel Webster	Webster & Engel Law Firm
Paul Griffin	Freedom Resource Center/Partners Inc.
Rodger Wetzel	St Alexius - Eldercare Program & Court Visitor
Sandi Tabor	ND Attorney General's Office
Shelly Peterson	ND Long Term Care Association
Ted Gladden	ND Supreme Court
Tom Tupa	APT, Inc.

House Human Services Committee
Testimony on Senate Bill 2028
Representative Clara Sue Price, Chairman
March 7, 2005

Good afternoon, Madame Chairman Price and committee members. My name is Donna Byzewski and I am co-chair with Rodger Wetzel of the North Dakota Guardianship Task Force. I am also supervisor of the Guardianship Division at Catholic Charities North Dakota (CCND). Our agency has been providing corporate guardianship services since 1986. Currently, CCND serves as guardian for more than 350 people with developmental disabilities.

As a guardian, much of my time is spent talking with physicians, case managers, social workers, pastors, family members, emergency room personnel or police officers on behalf of my wards. These conversations frequently provide me with another lesson that guardianship is not an easily understood concept. Today, I would like to take a few minutes to explain the role and responsibilities of a guardian so you have a clearer picture of the services that this bill would fund.

Guardianship should be pursued only when alternative resources such as homemaker services, a representative payee for social security benefits, social service support, residential placements, in-home services, etc., have been tried but are unsuccessful or not appropriate given the circumstances. A guardianship is established because the court has determined that the person is at significant risk because he or she lacks the ability and capacity to make responsible decisions. Guardianship is very intrusive and should only be used as a last resort because it involves taking away some or all rights from the individual and giving them to the guardian.

Today, I would like to tell you about one person for whom CCND has served as guardian. Julie shared an apartment for many years with her boyfriend. When he died, Julie continued to live alone in her apartment. Soon, county social services began receiving calls from neighbors in the apartment building because of the awful odors coming from Julie's apartment. Adult protection workers visited Julie and found rotting food on the kitchen table and counters, garbage strewn all over and a few bugs in different areas of the apartment. The adult protection workers also noted that Julie did not appear to feel well. Her lower legs were enormous from swelling and she had difficulty walking. Over the next few days, the workers visited several times and they offered to arrange a number of different support services for her. She refused all assistance as well as any medical care. Julie had also fallen behind in paying her bills and the electricity was about to be cut

off. It became apparent to the workers that with the support of her boyfriend, Julie had been able to manage quite well as he handled the bills, kept up the apartment and helped her make decisions. Her boyfriend's death caused a huge hole in her life and each day resulted in more concerns about her health and safety.

It was during the fourth visit that the adult protection workers decided to seek an emergency guardianship because they noticed bugs crawling out of her shoes. When she took off her shoes and socks, the workers found large open sores with maggots in them. They contacted Julie's brother and asked if he would serve as her guardian but he refused. He was worn out from being at the receiving end of Julie's anti-social behavior for many years. Within a few hours, an emergency guardianship was established and CCND was appointed guardian. With guardianship papers in hand, our guardianship worker went to Julie's apartment and after an initial assessment, she offered to take Julie to the hospital. When Julie refused, our guardianship worker called an ambulance as the guardianship order gave us the authority to veto Julie's decision if it would be seriously detrimental to her. Julie was admitted to the hospital and treated for two months for a severe infection in her foot. Julie came very close to having her foot amputated. During that time, a number of assessments were completed and Julie was diagnosed as having schizophrenia and a possible personality disorder. It was determined by her physicians and our guardianship worker that Julie would not be able to return to her apartment. After many unsuccessful attempts to discuss with Julie where she would like to live, our worker finally made the decision to move her to a group home which specializes in serving people with ongoing psychiatric difficulties. Two months after the emergency guardianship went into place, a court hearing was held and the court determined that CCND should be named the permanent guardian.

I firmly believe that without the guardianship, Julie would have continued to live in deplorable conditions and continued to refuse medical treatment until it became life threatening. Without a guardianship, it is doubtful that Julie would have taken advantage of any of these services.

I did not tell you this story because it was exceptionally sad or alarming but more to illustrate that guardianship is hard work and stories such as this are very common in guardianship. This story clearly demonstrates the depth of the responsibility that a guardian has on behalf of each ward. Guardianship is not an 8AM to 5PM, Monday through Friday, job. A guardian must be available 24 hours a day, 365 days per year, to problem solve or provide consent. The saying, "the buck stops here," really does apply to guardianship. The court has given us the duty to make these very difficult decisions on behalf of our wards. A ward can have a team of fifteen professionals working

with him or her but, eventually, it falls on the guardian's shoulders to consider everyone's opinion, especially the ward's, and then make the final decision. Here are some examples of decisions that I frequently face as a guardian: whether to move a person out of his or her home because of a decline in health; should chemotherapy be tried; do the risks outweigh the benefits of trying a new psychiatric drug that offers hope but possibly has severe side effects; how to take away a person's checkbook because there are thousands of dollars in bills and overdrafts but still maintain that person's dignity; if an individual with Alzheimer's disease can no longer eat, should a feeding tube be inserted in the stomach; and should a person receive CPR if his or her heart or breathing arrests.

I hope that I have given you have a better picture of the services that \$4.60 a day would fund. There are a number of vulnerable elderly persons, people with severe mental illness and individuals with traumatic brain injuries who have unmet guardianship needs and this bill, with our proposed amendment, offers them a safety net as well as a chance for a better life. On behalf of the members of the task force, we sincerely hope that your committee will look favorably upon our request to increase the appropriation to \$466,888. I would like to give a brief breakdown of how the appropriation would be utilized. The most important part of this legislation is providing day-to-day, direct guardianship services for up to 75 individuals at a cost of \$188,888. Please keep in mind that these services would only be available as a guardian of last resort. This means that there are no family members or friends who would be available or appropriate to serve as guardian. Because this bill is directed toward meeting the needs of vulnerable people who have little or no money, the proposed appropriation includes an expenditure of \$50,000 to help pay for the petitioning process which is necessary to establish a guardianship. This process requires the services of two (2) attorneys, a court visitor and a physician or psychologist and it typically costs about \$1,000. In addition, our budget includes the expenditure of \$40,000 to fund two (2) essential components: training of volunteer guardians as well as already established guardians and the development of formalized standards of practice for guardians. The budget includes an expenditure of \$133,000 toward administrative costs that the entity, with which the ND Department of Human Services contracts, would incur.

SB 2028 will have an immediate and positive impact on the lives of people with diminished capacity who are at risk of harm. On behalf of the task force, I am respectfully asking each of you to support SB 2028 and our proposed amendment by making a "Do Pass" recommendation. I would welcome any questions that you may have. Thank you!

AMENDMENTS TO SB 2028
For Senator Tom Fischer
March 7, 2005

Page 1, line 14, replace "\$40,000" with "\$466,888"

House Human Services Committee - March 7, 2005
Testimony in support of SB 2028
-Rodger Wetzel, LSW, MPA/MHA, Eldercare Program Director,
St. Alexius Medical Center, Bismarck, ND

Committee Chair Price and members of the House Human Services Committee:

My name is Rodger Wetzel. I am the Director of the Eldercare Program at St. Alexius. I have been in this position for 19 years. Prior to this position, I was the Assistant Director of the Aging Services Division of the NDDHS. I also am a member of the Guardianship Association of ND (GAND), and was elected co-chair of the state Guardianship Task Force which has been addressing ND guardianship needs.

In the past 33 years I have been directly involved in over 300 guardianships. Most often I have served as the "court visitor", the social worker who completes the required social assessment of the client/guardian for the district judge and client prior to the guardianship hearing. I also have worked with persons with dementia for 19 years. I, and some attorneys I know who have guardianship expertise, often have been asked to donate our services when there is no available funding, but cannot continue to do this on a regular basis.

In North Dakota we do not have a program when our most vulnerable people, because of mental incapacity, need a guardianship just to help them with basic human needs and essential services.

We compliment the 2003 ND Legislature for passing SCR 4008, and the Legislative Council for choosing this study. We also compliment the Interim Criminal Justice Committee for introducing this legislation, for their strong support, and for their willingness to work so closely with the state Guardianship Task Force in addressing guardianship needs. We also appreciate the Senate Judiciary Committee's recent support for this legislation, but now we are very concerned about the proposed reduction in funding.

These very vulnerable populations are "mentally incapacitated" individuals who are elderly, are chronically mentally ill, or who have experienced a traumatic brain injury. The developmentally disabled population generally are served by the state through contracted guardianship services. Our statewide Task Force completed a statewide survey to give us an estimated number of individuals needing these guardianship services, and this number has been used to estimate costs in this legislation. (State Task Force Membership is provided.)

Let me give you a common example I have experienced: An elderly lady, low income with no immediate family, is living in her own apartment. She has been a good citizen all of her life. She now has Alzheimer's disease which has progressed so that she is not mentally able to take care of herself or her home. Her apartment is becoming a risk to the health and safety of herself and other building residents. She is not able to manage her own finances, and has given away some funds. She is not applying for needed services, is not taking a bath or her meds, and not seeing a doctor, so her other health problems are increasing. But she still believes she is doing "just fine", which is typical of people with dementias. It is probable that with a guardian authorized to make sure she applies for and receives essential services, and helps her manage her money, that she could continue to function at home, out of a facility, and reduce her emergency medical care problems.

(over)

Often the guardianship is necessary first link to home and community-based services, financial management, and medical care.

But because she has very limited finances, there are no funds to pay the costs of a guardianship hearing or to pay a guardian/agency a monthly fee to manage her affairs. If she did have a relative or volunteer willing to step forward and voluntarily serve as her guardian, that relative may not fully understand the serious responsibilities of being a legal guardian, which could include managing her finances, legal affairs, living arrangements, medical care, any nursing home placement, mental health service needs, and other needs. We do support recruiting and training volunteer guardians, when possible. So there is a need for basic standards for all guardians and a need for some basic guardianship training, whether the guardian is a volunteer or receives a monthly fee. These (underlined) needs are addressed in this bill.

Other examples of people who often fall between the cracks are chronically mentally ill or brain-injured persons who have limited resources and no interested family members. Sometimes these individuals have exhausted any willing family support because of their long-term serious mental illness or continuing behavior problems, and they need an outside party, such as a guardian, to make sure they apply for needed services, and continue these services, which may help keep them out of institutional settings or hospitals. Or it may be determined that they need a guardian when they are discharged.

I urge you to give a "do pass" to SB 2028, so that all these mentally incapacitated individuals, generally through no fault of their own, may receive essential guardianship services, including legal hearings and monthly monitoring. In addition, there would be basic standards developed for all guardians, and basic guardianship training provided.

These people are mentally incapable of managing their own lives. They legally may leave a nursing home because no one has the legal authority to keep them there. They may remain in a mental institution or psychiatric unit because no one will legally assume their care after discharge. Or without family, they may remain in life and death situation in a hospital or nursing home for days or weeks, since no one legally can make their health care decisions.

Please support these basic critical guardianship services for our people in the most vulnerable state...being mentally incapacitated, being poor and having no supportive family members.

Other members of our state Task Force will provide additional information on specific cost issues and guardian responsibilities.

Thank you! I would be happy to answer any questions.

TESTIMONY – PROTECTION AND ADVOCACY PROJECT
SB 2028 – HOUSE HUMAN SERVICE COMMITTEE
HONORABLE CLARA SUE PRICE, CHAIRMAN
March 7, 2004, 2:00 p.m.

Chairman Price, and members of the House Human Services Committee, I am Bruce Murry, an employee of the North Dakota Protection and Advocacy Project (P&A).

P&A supports SB 2028 for three reasons – community integration, safety, and proper standards.

Changes in health may leave a person unable to manage some of their affairs without assistance. In some situations, a guardian could be the last step to help someone remain in their community. A guardian must fulfill high standards and serve the interests of the ward, as required by the laws referenced in SB 2028.

Families and friends provide this assistance in many situations. However, friends and family grow apart, move, or have their health fail. Some people may exhibit behaviors related to their injury or condition that alienate family and friends. For these and other reasons, people may not have access to a qualified guardian.

A system exists to provide guardians of last resort to people with developmental disabilities. There is not a consistent system of last resort for people with dementias, brain injury, or mental health problems. This leaves people at increased risk of harm, exploitation, health crises, and institutionalization.

The original proposed funding for SB 2028 was reasonable. The Senate reduction to 5% funding does little to address the need. However, Senator Fischer's proposal to fund SB 2028 at 60% would accomplish a substantial part of the goals of the original proposal. I request your committee so amend SB 2028 and recommend it for passage to the House.

Thank you for your consideration. I would be happy to answer any questions.

House Appropriations Committee – Human Resources Division

Testimony on Senate Bill 2028
Representative Jeff Delzer, Chairman
March 22, 2005

Good morning, Chairman Delzer and committee members. My name is Donna Byzewski and I am co-chair with Rodger Wetzel of the North Dakota Guardianship Task Force. I am also supervisor of the Guardianship Division at Catholic Charities North Dakota (CCND). Our agency has been providing corporate guardianship services since 1986. Currently, CCND serves as guardian for more than 350 people with developmental disabilities.

From August 2003 to August 2004, the North Dakota Guardianship Task Force worked closely with the Interim Criminal Justice Committee as it studied the status of guardianship services in North Dakota. The Task Force strongly supported this study because of the gap in the availability of guardianship services for people with mental illness, vulnerable elderly individuals and persons with traumatic brain injuries. Based on the frequent requests for services from our agency and other guardianship programs and the findings of the survey completed for the Interim Criminal Justice Committee, there are a number of people with diminished capacity who are experiencing life threatening situations, medical emergencies, abuse or neglect issues, psychiatric difficulties, financial exploitation and the need for appropriate housing/residential services. A guardianship is established because the court has determined that the person is at significant risk because his or her ability to make responsible decisions is compromised. Guardianship is very intrusive and should only be used as a last resort because it involves taking some or all rights away from the individual and giving them to the guardian. These are very vulnerable people who are at tremendous risk because they do not have the safety net of a guardian.

There are a number of indigent, vulnerable people in North Dakota and this bill offers them a chance for a better life. By increasing the appropriation to \$446,888, it would now be possible for the Department of Human Services to contract with an entity to develop a comprehensive service system that is truly needed. The Task Force put much energy and time into developing an accurate budget of how the appropriation could be utilized. Today, I would like to provide a more detailed explanation of the different sections of this suggested budget.

Guardianship Services: The most important part of this legislation is providing day-to-day, direct guardianship services for up to 75 individuals at a cost of \$188,888. The rate for the provision of guardianship services is \$4.60 per ward/per day. Once appointed by the court, the guardian has the duty and responsibility to make very difficult decisions on behalf of the ward. The following are some examples of decisions that guardians frequently face: whether to move a person out of his or her home because of a decline in health; should chemotherapy be tried or not; do the risks outweigh the benefits of trying a new psychiatric drug that offers hope but possible severe side effects; how to take away a person's checkbook because of thousands of dollars in bills and overdrafts but still maintain that person's dignity; if an individual with Alzheimer's disease can no longer eat, should a feeding tube be inserted in the stomach; should a person receive CPR if his or her heart or breathing arrests; etc. A guardian must be available 24 hours a day, 365 days per year, to problem solve or provide consent. Please keep in mind that these services would only be available as a guardian of last resort. The majority of referrals would involve individuals who have no family members who are available or appropriate to serve as guardian or those who do have family but have worn them out because of the severity and unpredictability of their particular disability. Given the depth of responsibility that a guardian has, I can honestly say that \$4.60 per ward/per day is money well spent.

Court Costs: Because this bill is directed towards meeting the needs of indigent, vulnerable people, the appropriation also includes an expenditure of \$50,000 for petitioning costs. To establish a guardianship, the services of two (2) attorneys (a petitioning attorney and a guardian ad litem) as well as a court visitor and psychologist or physician are required. This typically costs about \$1,000. This is a key portion of this bill and it must go hand in hand with the above-mentioned guardianship services. Without funding for petitioning costs, a person would not be able to access the needed day-to-day guardianship services and as a result remain at risk of harm.

Training and Standards: In addition, the appropriation includes the expenditure of \$40,000 to fund two essential components: training of volunteer and already established guardians and the development of formalized standards of practice for guardians. For those guardianship cases where the needs are less intense, a volunteer guardian could be a perfect

match. However, it would be too risky to assign a volunteer guardian before the person has had in-depth training as well as a thorough background check. This training would also be available to family members or others who are currently serving as a guardian. The establishment of standards of practice is an area about which the Task Force felt very strongly. Having consistent, recognized standards for guardians is critical to help ensure that persons with diminished capacity are receiving high quality guardianship support. One thought would be to incorporate standards of practice into North Dakota's excellent guardianship law.

Administrative Costs: The two (2) year budget also includes an expenditure of \$188,888 toward administrative costs that the entity, with which DHS contracts, would incur. It was important to the Task Force to include all start up costs, salaries and benefits for a minimum of two employees (a director and a part-time support staff person) and necessary operating costs so that the recipient of the RFP would have the necessary tools to create and coordinate a unified guardianship service system for people with mental illness, vulnerable elderly individuals and persons with a traumatic brain injury.

In closing, passage of this bill will have an immediate and positive impact on the lives of people who are at risk of harm and need the support of a guardian. On behalf of the Task Force, I am respectfully asking each of you to support SB 2028 by increasing the appropriation to \$466,888 prior to making a "Do Pass" recommendation. I would welcome any questions that you may have. Thank you!