

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

20030

2005 SENATE JUDICIARY

SB 2030

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2030

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 10, 2005

Tape Number	Side A	Side B	Meter #
1			4130- End
			0.0 - End
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Relating to the filing of annual reports by guardians and conservators.

**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.

**Vonette Richtor** -Legislative Council this bill came from the Guardianship Study (meter 4130) explained each section of the Bill.

**Sen. Nelson** had a question of section 30.1-2709 (meter 4598).

**Mr. Mel Webster**- Attorney, Bismarck. (meter 4768) answered a question about a "conservator" and cited a supreme court case. Discussed Section 2 (meter 5040) and the filing of a report. Sen. Traynor discussed if a court should order a report that this is presently done. Mr. Webster supports Mr. Murry's changes.

**Mr. Ted Gladden** - State Court Administrator (meter 5620) Gave testimony (Att #1) (Side B, Tape 1) Discussion of "guardian vs. financial representative" and who files at what times.

**Bruce Murry** - Employee of ND Protection and Advocacy Project. (meter 135) Gave testimony (Att. #2) Discussed proposed amendments (Att #3).

**Donna Byzewski** Supervisor of the Guardianship Div. at Catholic Charities ND. (meter 685) Gave Testimony (Att #4) Discussion of operational locations and costs. Discussion of what type of honesty monitoring systems (956) (tape 2 side 1) cont. discussion of audits. Sen. Trenbeath asked who Ms. Byzewski programs are currently funded.

**Mr. Mc Donald's** on behalf of ARC testified in support of the bill.

**Testimony in Opposition of the Bill:**

None

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

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2030

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		315 - 4120
Committee Clerk Signature <i>Mina L Solberg</i>			

Minutes: Relating to the filing of annual reports by guardians and conservators.

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

Senators were present. The hearing opened with committee work on the above Bill

**Sen. Traynor** (meter 500) discussed with the committee the making of the two amendments for this bill

**Sen. Trenbeath** made the motion to twice amend the bill and **Senator Triplett** seconded the motion to amend. (meter 700) All were in agreement with the interim (Jeff) to create a numbered amendment from Leg. Council will not act on amendment.

**Sen. Traynor** closed the hearing.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2030

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 12, 2005

Tape Number	Side A	Side B	Meter #
2	X		100-500
Committee Clerk Signature <i>Moina L. Halberg</i>			

Minutes: Relating to the filing of annual reports by guardians and conservators.

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

Senators were present. The hearing opened with committee work on the above Bill

**Sen. Trenbeath and Senator Triplett** (meter 100) discussed with the committee the for this bill

(Refer to amendment page)

**Sen. Trenbeath** made the motion amend the bill and **Senator Triplett** seconded all were in favor with a voice vote.

**Sen. Trenbeath** motioned to Do Pass as Amended seconded by **Senator Syverson** .

All were in favor.

Carrier: **Senator Hacker**

**Sen. Traynor** closed the hearing.

Date: 01/12/05  
Roll Call Vote #: 1

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2030**

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move to Amended 50134.0201

Motion Made By Sen. Trenbeath Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	X		Sen. Nelson	X	
Senator Syverson	X		Senator Triplett	X	
Senator Hacker	X				
Sen. Trenbeath	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 01/12/05  
Roll Call Vote #: 2

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2030**

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move to DO PASS as Amended 50134.0201

Motion Made By Sen. Trenbeath Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	X		Sen. Nelson	X	
Senator Syverson	X		Senator Triplett	X	
Senator Hacker	X				
Sen. Trenbeath	X				

Total (Yes) \_\_\_\_\_ 6 No \_\_\_\_\_ 0

Absent \_\_\_\_\_ 0

Floor Assignment Senator Hacker

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



**REPORT OF STANDING COMMITTEE**

**SB 2030: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2030 was placed on the Sixth order on the calendar.

Page 1, line 11, after "ward" insert "and provide a copy of the report to the ward"

Page 1, line 12, after the underscored period insert "The guardian shall report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited."

Page 1, line 19, after the underscored period insert "Any report must be similar in substance to the state court administrator's form."

Page 2, line 21, after the underscored period insert "The guardian shall report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited."

Page 2, line 29, after the underscored period insert "Any report must be similar in substance to the state court administrator's form."

Page 3, line 5, after "30.1-28-12" insert ", fails to file a report at other times as the court may direct"

Page 3, line 10, remove "with the court's previous orders"

Page 3, line 24, after the first "accounting" insert "and provide a copy of the report or accounting to the protected person"

Page 4, line 5, after the underscored period insert "Any report must be similar in substance to the state court administrator's form."

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2030

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2030

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/14/05

Tape Number	Side A	Side B	Meter #
1	xx		0-22.5
1	xx		45-46.3
Committee Clerk Signature <i>Klaun Penrose</i>			

Minutes: 12 members present, 2 members absent (Rep. Bernstein & Rep. Charging).

**Chairman DeKrey:** We will open the hearing on SB 2030.

**Representative Lois Delmore:** I was the chair of the Interim Criminal Justice committee. The first two bills (SB 2029 and SB 2030) came out of that committee. They center on guardianship appointment, successor guardian as well as filing of reports by guardians and conservators.

Vonette Richter will explain the two bills in greater detail. There is still one more bill, in the Senate Appropriations Committee.

**Chairman DeKrey:** Did you want to talk about SB 2030.

**Representative Delmore:** Yes, that bill is dealing with the filing of reports and asking that they come up with a form for the filing of those reports. They are both tied together.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Vonette Richter, LC:** I staffed the Interim Criminal Justice Committee. The Committee was charged with studying guardianship services issues, and there is another bill dealing with

guardianship services. These two bills, SB 2029 and SB 2030 were two bills that kind of resulted from that study, that even though they weren't within the main scope, they are essentially procedural issues dealing with the guardianship process. The first bill, SB 2029, sets out a process in code for the appointment of a successor guardian. The committee heard testimony that there are frequently times in the guardianship process where there is a need to appoint a successor guardian, either because of retirement or death of a guardian, or some other reason why that person can't continue to serve as guardian. The bill you have is about the procedure, as far as the notice requirement, in subsection 4, there is a little change from standard notice procedure, provides that if a current or former guardian serves as a public administrator or corporate guardian with more than 10 wards, the notice of motion and motion may be served by first class mail. In the Senate Judiciary Committee, the next sentence was added to that bill, starting on line 18 provides that the public administrator or corporate guardian shall then provide written notice of the motion to the state office of the Protection and Advocacy Project, along with contact information for each ward and proposed guardian.

**Chairman DeKrey:** Why did the Senate pick the P&A.

**Vonette Richter, LC:** I'm not sure.

**Chairman DeKrey:** Do you want to give a quick overview of SB 2030.

**Vonette Richter, LC:** SB 2030 is an engrossed bill, changes were made in the Senate Judiciary. This bill sets out of annual report requirement for guardians and conservators. There were 4 section in the bill, each one addressing a little different area. The first one is the guardianship of minors, the section of the code in the Uniform Probate code, which sets out a procedure requiring guardians of minors to file an annual report. There is also at the bottom of

the first page, a requirement that the Office of State Court Administrator develop a form in an attempt to make these reports a little more uniform in the content that they contain. Section 2 of the bill is the annual reporting requirement for guardians of incapacitated persons. Again, similar language, again the State Court Administrator's office is to provide a form for this purpose. Section 3 of the bill is essentially a penalty for failure to file a report, annual report or a report as the court may direct and provide for contempt for failure to file. Section 4 is a section in the chapter dealing with conservatorship, again it requires an annual report on a form developed by the State Court Administrator's office. Currently, I understand the court may require reports at any time, and if I recall from the testimony, in most cases there is an annual report now, this would just make a requirement.

**Chairman DeKrey:** Thank you.

**Vonette Richter, LC:** I am passing out the written interim committee's background information that Rep. Delmore talked about earlier (see written testimony).

**Chairman DeKrey:** Further testimony in support.

**Melvin Webster, attorney:** Support. SB 2030, one of the major changes in this bill, in section 1, is it mandates that an annual report be filed with the court. The present language makes it optional, the court may require it. This is not really a difference in practice. In my years of practice, I think in almost every instance, the court has said we want an annual report in regards to this guardianship. The same change is also made in regards to the guardianship chapter, regarding incapacitated adults. The report is now mandated, and in the conservatorship chapter, a manual accounting is now required. One of the other changes that occurs with this bill, is that this bill clarifies what happens when an individual files a guardianship report with the

clerk of court. If, as is the case in many guardianships involving mentally disabled persons, the report is filed with the court. This bill clarifies that there is no adjudication, no court approval regarding that report unless the individual who files the report specifically notices a hearing and requests court approval in regards to that report. That same change is made in all of the sections in regard to the guardianship of minors, the guardianship of incapacitated adults, and conservatorships. It's very clear, as it wasn't even to attorneys, what happens if you filed those reports. If you want the reports approved by the court, it clarifies that you need to provide notice to every interested person, and provide an opportunity for a hearing.

**Chairman DeKrey:** My memory is also that when the Court reviews these reports, should they want to schedule a hearing, that they also have the option to do that.

**Melvin Webster:** Yes.

**Representative Kretschmar:** Under the new statute, would someone who is an interested person, a relative, have standing to come in and request the court to have a hearing on the report and issue an order.

**Melvin Webster:** Yes.

**Chairman DeKrey:** Thank you. Further testimony in support of SB 2030.

**Ted Gladden, State Court Administrator:** Support (see written testimony).

**Chairman DeKrey:** Thank you. Further testimony in support of SB 2030.

**Bruce Murry, Protection and Advocacy Project:** Support (see written testimony).

**Chairman DeKrey:** You testified that you would refer it to the general ombudsman in previous testimony. So if you had someone who is mentally ill, who is under guardianship, would you probably refer that to the Mental Health Association of ND then.

**Bruce Murry:** Actually, I think if someone had a mental illness, we would serve the person ourselves. If they wanted to work with the Mental Health Association, we would be happy to partner with them, but we kind of see ourselves as front line for people with DD and mental health and more of a back-up role for people who might live in a nursing home, etc.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Donna Byzewski, Supervisor, Guardianship Division at Catholic Charities ND:** Support (see written testimony).

**Representative Meyer:** The people that are guardians now and aren't filing an annual report, how will they be notified under this new requirement.

**Donna Byzewski:** Usually when you receive the letters of guardianship, and the orders of guardianship when you are appointed guardian, there is a statement in the guardianship orders when that report should be filed. I would say that a majority of judges right now are requiring that and it is in the letters of guardianship. Some judges may, however, only require every two or three years, but I would say that 95% of the 350 people that we are guarding for, the reports are required annually, and it's written right in the guardianship letters and orders. It would be the guardianships that were written probably pre-1990, because that is when some real big changes occurred in the guardianship law and so those older guardianships probably don't have that language. As guardian, we do receive notices from some courts when the court report is due also.

**Representative Kretschmar:** In Catholic Charities, is there an individual person who is guardian of a particular ward, not just a corporation, it's a person isn't it.

**Donna Byzewski:** For our corporate guardianship program, the corporation, Catholic Charities ND, is the guardian, but by law, we need to notify the court of which representative of Catholic Charities is the one that serves as guardian, so we have 11 guardianship workers, plus myself. Each of those, we notify the court on behalf of each people who they are guardianing for. There's a clear record of which representative is actually serving on behalf of Catholic Charities.

**Chairman DeKrey:** Thank you. Further testimony in support, testimony in opposition. We will close the hearing.

(Reopened later in the same session)

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2030.

**Representative Maragos:** I move a Do Pass.

**Representative Delmore:** Seconded.

12 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Delmore



Date: 2/14/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2030

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	A		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	A				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Delmore

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

**REPORT OF STANDING COMMITTEE (410)**  
February 14, 2005 11:31 a.m.

**Module No: HR-29-2750**  
**Carrier: Delmore**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2030, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2030 was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

SB 2030

#1

**Testimony Before the  
Senate Judiciary Committee  
on SB 2030  
by Ted Gladden, State Court Administrator**

Chairman Traynor and members of the Senate Judiciary Committee, I am appearing today in support of SB 2030. I believe there is confusion in regard to expectations resulting from filing guardianship reports with the court. This amendment helps to clarify the impact of a guardianship report being filed.

NDCC § 30.1-28-12(8) currently provides that a guardian shall file a written report with the court. This language could be construed to suggest that based on the filing of a report, the court is providing some type of case oversight and this may not be the case. Routinely, guardianship reports are filed with the clerk of district court. Unless there is something that strikes a clerk as unusual or out of the ordinary, the file is not referred to a district judge unless a party requests a hearing. Thus, where the public may think there is some level of scrutiny on the part of the court, it may not be occurring. The court does not have a staff of special masters with accounting backgrounds or other technical backgrounds to review all guardianship reports filed. Only cases where a party requests a hearing does a review routinely occur. Courts, as part of an adversarial process, are used to acting on motions brought before them. Courts do not, as a matter of routine, review all documents that are just filed with the clerk of court. If a party brings a motion to the court regarding the guardianship report, the matter would then be scheduled and set for hearing, but, again, it is someone bringing the matter to the court, not the court acting on its own motion.

The amendments contained within SB 2030 clarify reporting requirements and the standing of the filing of annual reports with the court. The legislation clarifies the expectations of the court. Using standard report forms will facilitate the process and give guardians clearer direction on how information needs to be reported.

Thank you.

## TESTIMONY – PROTECTION AND ADVOCACY PROJECT

SB 2030 – SENATE JUDICIARY COMMITTEE

HONORABLE JOHN TRAYNOR, CHAIRMAN

January 10, 2004, 11:15 a.m.

Chairman Traynor, and members of the Senate Judiciary Committee, I am Bruce Murry, an employee of the North Dakota Protection and Advocacy Project (P&A).

Protection and Advocacy has consulted extensively with Mr. Melvin Webster, primary spokesperson for this bill. We agreed upon a number of clarifications and enhancements that would better serve the ward or protected person when the report is filed. The most important being reintroducing the need-for-continued-guardianship and history-of-institutionalization as required elements of the report. Providing a copy of the report to the ward is a new feature included in the amendments.

There are a number of other amendments to better protect the due process of the ward or protected person. The attached proposed amendments implement these changes.

Thank you for your consideration, and I suggest the committee amend the bill, and give the bill a "do pass" recommendation.

## PROPOSED AMENDMENTS TO SENATE BILL 2030:

On page 1, line 11, after the word "ward" insert "and provide a copy to the ward".

On page 1 line 12 after "ward's estate." insert "The guardian shall report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited."

On page 1, line 19, after the words "reporting requirements." Insert "Any report must be similar in substance to the state court administrator's form."

On page 2, line 21, after "ward's estate." insert "The guardian shall report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited."

On page 2, line 29, after the words "reporting requirements." Insert "Any report must be similar in substance to the state court administrator's form."

~~On page 3, line 4, after "file" replace the words "an annual" with "a"~~

On page 3, line 10, after the word "comply" remove the words "with the court's previous orders".

On page 3, line 24, after "file a final report and accounting" insert the words "and provide a copy to the protected person."

On page 4, line 5, after the words "reporting requirements." Insert "Any report must be similar in substance to the state court administrator's form."

# 3a

PROPOSED AMENDMENTS TO SENATE BILL 2030:

On page 1, line 11, after the word "ward" insert "and provide a copy to the ward"

On page 1, line 12, after the period, insert "The guardian shall report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited."

On page 1, line 19, after the period, insert "Any report must be similar in substance to the state court administrator's form."

On page 2, line 21, after the period, insert "The guardian shall report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited."

On page 2, line 29, after the period, insert "Any report must be similar in substance to the state court administrator's form."

On page 3, line 5, after the comma, insert "or at other times as the court may direct."

*fails to file a report as court may request at other times*

On page 3, line 10, after the word "comply" remove "with the court's previous orders"

On page 3, line 24, after the word "accounting", insert "and provide a copy to the protected person."

On page 4, line 5, after the period, insert "Any report must be similar in substance to the state court administrator's form."

Renumber Accordingly

*1-1-80  
1-1-80  
1-1-80*

**Senate Judiciary Committee**  
Testimony on Senate Bill 2030  
John T. Traynor, Chairman  
January 10, 2005

*Same given to  
House  
Committee*

*#4*

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

I am writing to provide support for the amendments related to the filing of annual reports as outlined in SB 2030. However, I would like to limit my remarks to only as they pertain to guardianships because we are rarely appointed to act as conservator. Almost all of our wards have few if any assets other than small savings or checking accounts.

Under current guardianship law, it is not a requirement that reports to the court be filed annually but rather only as ordered by the court. It has always been CCND's policy to file an annual report to the court whether we are ordered to do so or not. I need to point out that most judges already require annual reporting. It is of utmost importance that the court has on file a detailed report of the services our ward receives, any changes that have occurred in our ward's life, an update on our ward's medical condition and a listing of all guardian consents that involve medical treatment. The guardian's report also includes an update regarding the ward's financial situation. It is also our agency's policy to send a copy of the report to our wards and their Developmental Disabilities Case Managers.

It is an enormous responsibility to be appointed guardian for a vulnerable person. It is now our court appointed responsibility to ensure as best as possible that a person is receiving the necessary care and services. The court has removed some or all rights from the person who is incapacitated and given them to the guardian. An annual report is one way to document with the court the status of our ward and any decisions that we have made on his or her behalf. Because a guardianship is so intrusive, we want to have a



clear record and documentation of any and all actions we have taken. The report to the court is one tool to provide minimal oversight of a guardian's actions. I do not view filing of an annual report as a burden but rather a protection for both the ward and guardian.

In addition, the amendment states that filing a report with the court does not constitute a determination on the merits of the report or constitute the court's approval of the report. CCND is comfortable with this as it is our primary purpose to clearly document any and all actions we have taken as guardian and we want to have this report on file with the court if ever questions arise concerning the care of our ward.

I would like to thank you for giving me the opportunity to provide support of SB 2030 as it pertains to guardianships. I will gladly answer any questions that the committee may have.

## **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.

**Testimony Before the  
House Judiciary Committee  
on SB 2030  
by Ted Gladden, State Court Administrator**

Chairman DeKrey and members of the House Judiciary Committee, I am appearing today in support of SB 2030. I believe there is confusion in regard to expectations of the courts resulting from filing guardianship reports. This amendment will help to clarify the impact of a guardianship report being filed.

NDCC § 30.1-28-12(8) currently provides that a guardian shall file a written report with the court. This language could be construed to suggest that based on the filing of a report, the court is providing some type of case oversight and this may not be the case. Routinely, guardianship reports are filed with the clerk of district court. Unless there is something that strikes a clerk as unusual or out of the ordinary, the file may not be referred to a district judge unless a party requests a hearing. Thus, where the public may think there is some level of scrutiny on the part of the court, it may not be occurring. The court does not have a staff of special masters with accounting backgrounds or other technical backgrounds to review all guardianship reports filed. Only cases where a party requests a hearing does a review routinely occur. Courts, as part of an adversarial process, are used to acting on motions brought before them. Courts do not, as a matter of routine, review all documents that are just filed with the clerk of court. If a party brings a motion to the court regarding the guardianship report, the matter would then be scheduled and set for hearing, but, again, it is someone bringing the matter to the court, not the court acting on its own motion.

The amendments contained within SB 2030 clarify reporting requirements and the standing of the filing of annual reports with the court. The legislation clarifies the expectations of the court. Using standard report forms prepared by the Office of State Court Administrator will facilitate the process and give guardians clearer direction on how information needs to be reported.

Thank you.

TESTIMONY - PROTECTION AND ADVOCACY PROJECT

SB 2030 - HOUSE JUDICIARY COMMITTEE

HONORABLE DUANE DEKREY, CHAIRMAN

February 14, 2005 9:00 a.m.

Chairman DeKrey, and members of the House Judiciary Committee, I am Bruce Murry, a staff attorney for the North Dakota Protection and Advocacy Project (P&A).

Protection and Advocacy has consulted extensively with Mr. Melvin Webster, primary spokesperson for this bill. We agreed upon a number of clarifications and enhancements that would better serve the ward or protected person when the report is filed.

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