2009 SENATE JUDICIARY

SCR 4009

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4009

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 8021

Committee Clerk Signature

Minutes: **Senator D. Nething, Chairman**

To respond to issues related to an aging population and to study the efficacy of statutes governing guardianship and public administration services.

Jim Ganje – Supreme Courts Office – He hands in written testimony for Chief Justice Gerald VandeWalle. See written testimony.

Senator Nelson – Asks about the study that was done in 2005.

Ganje – Said the way that study resolved was with a recommendation from the interim committee that approximately $700,000 be provided to the Dept. of Human Services to pursue guardianship efforts, when that made it's way through session it was reduced to $40,000 to print brochures.

Senator Schneider – Are there any states out there that are doing some cutting edge things in terms of statutes covering guardianship.

Ganje – There are a number of models they have looked at, all with their own set of problems. He describes a few. He says it becomes more of an issue and more complex as the elder population increases.

Bruce Murry – Attorney with the ND Protection and Advocacy Project – See written testimony.

Senator Fiebiger – What do we do if we don't do the study again.

Murry – He would recommend approaching the appropriations committee and the House Human Services Committee that is hearing HD1012 and asking if the 40,000 appropriation for emergency guardianships should be increased while a limited study of an administrator system goes forward. He thinks more emergency funding now may be more effective.

Senator Olafson- Asks about ND Protection Advocacy.

Murry – Explains what the organization is.

Senator Krebsbach – District 40-Prime sponsor- Adds additional information on this study. She is very concerned about the public administrator's role in this. She said ever since we have had a change in the court system back in the '90's the funding for this type of thing has virtually disappeared from the county structure, who is largely responsible for this funding. She said we have a situation here that overlaps in two areas of government. Human services and in the area of the court system. We need to come to some resolve in this area for it to be workable for the state and the citizens of our state.

Donna Byzewski – Program Director of the Guardianship Division at Catholic Charities of ND. See written testimony.

Senator Olafson – Does she think a study would be a waste of time and instead we should take the results of the previous study and move forward to solve those problems from there.

Byzewski – Responds, that is exactly it.

Mark Westereng – Ward County Public Administrator – He works in the trenches. The judicial system oversees the work he does and he reports to them annually. They have absolutely no way to appropriate any funding for doing the work needed. He addresses the major gaps that need to be addressed. He said they need to move past the results of the last study.

Rudy Jenson- Chairman of the Administrative Committee on Veterans Affairs

See written testimony. He requests to be included in the study.

Close the hearing SCR 4009

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR4009

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 8022

Committee Clerk Signature

Minutes: **Senator D. Nething, Chairman**

Committee work

Committee discusses adding amendments to make this work.

Senator Nelson will work Senator Krebsbach on language to make this work

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4009

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/2/09

Recorder Job Number: 8364 forward to 47:27

Committee Clerk Signature

Minutes: **Senator D. Nething, Chairman**

Senator Nething discusses the proposed amendment. Combining the two.

Senator Nelson motions do pass on the amendments

Senator Fiebiger seconds

Verbal vote – all yea

Senator Nelson –moves do pass on the amended bill

Senator Fiebiger seconds

Vote 6-0

Senator Nelson will carry

Date: 2/2/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4009

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

amendments

Legislative Council Amendment Number _____

Action Taken ☐ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Nelson Seconded By Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman			**Sen. Tom Fiebiger**		
Sen. Curtis Olafson – V. Chair.			**Sen. Carolyn Nelson**		
Sen. Stanley W. Lyson			**Sen. Mac Schneider**		

Total (Yes) _____ (N) _____

Absent _____

Floor Assignment _____

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

Verbal

Date: 2/2/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR4009

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ **Do Pass** ☐ **Do Not Pass** ☒ **Amended**

Motion Made By Sen Nelson Seconded By Sen Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		**Sen. Tom Fiebiger**	X	
Sen. Curtis Olafson – V. Chair.	X		**Sen. Carolyn Nelson**	X	
Sen. Stanley W. Lyson	X		**Sen. Mac Schneider**	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Nelson

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

REPORT OF STANDING COMMITTEE

SCR 4009: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4009 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "the impact in this state of a"

Page 1, line 2, remove "significant increase in the elderly population and"

Page 1, line 3, after "population" insert ", including veterans,"

Page 1, line 4, remove "guardianship and" and after "services" insert "and methods for the timely and effective delivery of guardianship services"

Page 1, replace lines 5 through 10 with:

"**WHEREAS**, during the 2003-04 interim, a study of guardianship services by the interim Criminal Justice Committee, with the assistance of the North Dakota Guardianship Task Force, identified important deficiencies in the funding and effective delivery of guardianship services; and

WHEREAS, legislation recommended by the interim Criminal Justice Committee to address the deficiencies was not enacted and methods for the effective delivery of guardianship services generally, and public guardianship services in particular, remain uncertain, inconsistent, and lacking in sufficient funding; and"

Page 1, line 11, after "a" insert "critically important"

Page 1, after line 15 insert:

"**WHEREAS**, the Administrative Committee on Veterans' Affairs sees a need to study issues of public administrator services and methods for the timely and effective delivery of guardianship services as it relates to the aging veteran population of this state; and"

Page 1, line 21, remove "the impact in this state of a significant increase in the"

Page 1, line 22, remove "elderly population and"

Page 1, line 23, after "population" insert ", including veterans,"

Page 1, line 24, remove "guardianship and" and after "services" insert "and methods for the timely and effective delivery of guardianship services"

Renumber accordingly

2009 HOUSE JUDICIARY

SCR 4009

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4009

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11093, 11099

Committee Clerk Signature A Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SCR 4009.

Sen. Karen Krebsbach: Sponsor, support. This bill arose from Justice VandeWalle's address to the Legislature back in January. It was amended down in the Senate to exclude some of the issues that were in there for seniors. However, it did leave in the fact that the guardianship services and that of the public administrator needed to be studied in North Dakota. This has been ongoing controversy for some time. In my county, Ward County, it has become quite an issue in that of public administrative control and how is he going to be paid. Prior to court reunification, the counties received certain dollars for these services and once that happened, the money wasn't there for these important services. The public administrator's role comes from the court system. They are dedicated by the judge, who gives them the case. We do have an aging population in our state. The role of this person is going to be much more economical in many cases. Not only in aging populations but we're finding even in young people, a public administrator can even take care of some of their needs that they have. The services vary by case. At the same time, we have a situation in ND for a method of delivery of the public administrator's position. In some cases, I think in Bismarck for example, it is privatized. In my county of Ward, it is contracted through each county. It just

seems to me that this is a situation that is growing in the state and we need to get a handle as to how to bring some unification in the delivery methods of these situations. I'm sure you will hear from others today that think that getting a more detailed look at what the goal is, how they handle it, and what the duties are. But at the same time, I think that we need to take a look at it in the Interim to study the attributes of these services and including that of the judicial system services. It's always been a thought in my mind, where does this belong? Does this belong in Human Services or in the court system. Judging from what I've done so far, I can see a combination of both. I'm sure that from this study it will become much clearer as to what we need to do. By the way, the Senate Judiciary committee also amended it to take care of the veterans. That's going to be probably more prominent as we go on from here as well.

Chairman DeKrey: Thank you. Further testimony in support.

Chief Gerald VandeWalle, ND Supreme Court: Support. The resolution has been narrowed down. We have to start someplace and I feel it is important. I will tell you that this is the tip of the iceberg. Public Administration, for one thing, in the last year there have been three cases in which the elderly person has been ripped off by a family member. Usually that comes to light when the family member has to apply for public assistance because there is no money left. This whole thing really has to be looked at. Sen. Krebsbach is correct, the Public Administrator issue is a very difficult issue, and we're having trouble finding them. Ward County is one example; interestingly enough, when the Senate amended in veterans, I think Grand Forks County resolved their issue by having the veteran service officers also do some of the public administration work because there were so many veterans that were involved. That is probably a good solution. But it is a very difficult situation. Part of it is, who pays for this since reunification. Anything that mentions court, they think that you are to pay for it. The

statute clearly says that the counties are responsible. So these are some of the issues that I can think of that need to be looked at and I do support the study.

Rep. Wolf: Has the Supreme Court or the State ever paid for public administrators, even prior to reunification.

Chief Gerald VandeWalle: Part of the statute says that they will be paid out of the estate. Well, in many instances, these people we help, there is no estate; but if there is, they can charge fees to the estate and the estate will honor them. There have been some scandals in regard to that also.

Rep. Wolf: So if the statute says that the county shall pay this, why is there, for example, a new work done and there is a huge issue in Ward County. Who is going to make the county pay that, if that is what the statute says, they are violating the law, correct.

Chief Gerald VandeWalle: You are right, the court can issue an order that they can sell the county courthouse, or something. There isn't a very satisfactory solution because there's a problem . It's the same problem we face in Indigent Defense. There is a problem when the court appoints a person, and also judges whether the person performed correctly or not.

Rep. Wolf: What is to be done in the Interim. It's fine to study it in the Interim but there won't be a solution for two plus years.

Chief Gerald VandeWalle: Do what we've been doing. Limiting a law, trying to put it together by beg, borrowing or pleading. There is a provision that presiding judges/court can appoint someone from Human Services to do something like that. It's really not a very good solution. We think that is has been shoved under the rug for a long time; as the population ages, it is really coming to the fore. As an example, I really shouldn't get into this, because it opens up a can of worms. Public Administrators and other people that take care of estates are required to file reports to the court, that's all they are required to do. I think most people think, well if they

are filed with the court, the court must look at them. The court doesn't look at them unless someone raises the issue, it's not looked at. If courts are going to look at it, it's a piece of paper; you would need accountants and staff to look it. Simply saying "file it with the court" is no guarantee of anything.

Rep. Klemin: Well we have a bill that's going through the legislature this session on adult guardianships from the Uniform Laws Commission, how is that related to what we're talking about.

Chief Gerald VandeWalle: I have not had a chance to really sit down and study that. I understand from Judge Hagerty, who mentioned it. When I think Uniform Laws, I have to go back and usually read what the commentary says to understand what it is that they are doing. I don't know if it is an issue or not. It may, but I don't know that.

Chairman DeKrey: Thank you. Further testimony in support.

Donna Byzewski, Program Director, Guardianship Division at Catholic Charities ND: Support (attachment).

Rep. Delmore: In the services that are under your purview, are you going to do the monitoring of the guardianship services that you can provide.

Donna Byzewski: In our program, in the contract that we have with Dept. of Human Services, we must be an accredited agency, so we have to monitor the services that we provide.

Rep. Wolf: Where are you located at.

Donna Byzewski: We have offices in Fargo, Bismarck, Minot, Grand Forks, as well as smaller offices in Killdeer and Ypsilanti.

Rep. Wolf: Are you a non-profit.

Donna Byzewski: Yes.

Rep. Wolf: Where do you receive your funding, from donations?

Donna Byzewski: All of our funding is through the Dept. of Human Service's budget. We also receive some funding through the United Way and have fundraisers.

Rep. Wolf: Do you charge a specific amount for guardianship that you do, or do you a take percentage, depending on their assets. How are those fees calculated.

Donna Byzewski: Our fees are $5.24/day that is the contract with DHS.

Rep. Wolf: The Dept. of Human Services pays you that daily fee for the guardianship services that you provide, from their budget.

Donna Byzewski: Yes.

Chairman DeKrey: Thank you. Further testimony in support.

Mark Westerly, Public Administrator, Ward County: Support. Our county's controversy had been reported about funding, and the public administrator's role. I represent many people who are legally incapacitated; I get involved in their affairs after their problems are already in crisis. The reason that I am appointed is because there aren't any family members, care administrators, or family members that are inappropriate. These people's situation are already a train wreck, I am already behind the curve in trying to manage their affairs; financially – people are owing creditors, decisions about healthcare need to be made, in some cases it is a 24/7 job, and there is no funding for this assistance. I am on the clock all the time. I have an Alzheimer's patient (who is a client) who is at a nursing home in Minot. She hadn't been seen by neighbors for a few days, and since she was a ward of the county they did a welfare check, and she was found lying in her bed, asleep, smoke covered the other half of her house, because she had left the frying pan cooking on the stove. Through further investigation, she was removed from the home, taken to the hospital where she was diagnosed with Alzheimer's and the doctor recommended that she become a resident of the nursing home. It was found that she was an only child, never been married, had no children; there wasn't anybody to

contact. So she has been a ward of the county since 2003. Then another example is John, who lived alone in Minot. He was taken to Trinity Hospital. Family members refused to get him care, so since he had to have decisions made regarding health care, the hospital petitioned and I was appointed the guardian for John. In working with doctors, we made health care decisions over the next period of time. It ultimately ended with making end of life decisions for him, because he was not going to recover. Then another example was of an elderly retired couple, where they lived adequately for their means. But then their daughter and a son-in-law came from out-of-state and wanted to obtain a power of attorney for them. We handled their affairs. Over the next year, they were successful in stealing $116,000 from their accounts, claiming that they were working on their behalf. After being involved, I went to the police department, Dept. of Human Services, and tried to get them back on track and get their bills paid. In the meantime, $116,000 is gone, most likely will not be recovered. One of the main reasons we have problems with funding, is because the court has the authority to appoint these cases to me, but there is no appropriation authority whatsoever. The county refuses to pay it, because they feel it is unfunded mandate. What we have here are the most vulnerable people in the state. Everybody wants this work to be done. The courts require it to be done, but there is nobody willing to pay for it.

Rep. Klemin: I'm interested in your comment that the county doesn't want to pay for this, because they consider it an unfunded mandate. It is the position of the county commission there that basically everything that the county does should be paid by the state. It seems that we are getting more and more of this and I don't know where unfunded mandates start and stop.

Mark Westerly: Well I can't speak for the whole county commission. I know a couple of the commissioners there have publicly stated that they believe this is an unfunded mandate.

When you used to have county court, it was appointed by the county court. The whole process did fall on the county court. But when you had court reunification, the public administrators got sucked up into the state like every other position; therefore, the burden still falls on the counties, but now the State assigns the work. That's where the conflict comes from. In one month in 2006, I had four cases, and I just don't have the capacity to handle four cases in one month, or even start at the beginning with inventory and start going through their affairs. The compensation in the budget at that time, was $400/month.

Chairman DeKrey: Thank you. Further testimony in support.

David Boeck, Protection and Advocacy Project: Support. Many of the counties, in terms of public administrators, don't fund the position at all. Some fund at a very low level, and most people out there don't know what a public administrator is or who they are. This is a problem that needs attention. I wouldn't go as far to say that it is an unfunded mandate. I think, in some of these cases, the court could order the counties to make the payment. I think that's in the statute. I think that's one possibility for getting the county to pay. I think there are a growing number of veterans in the state, that don't have anyone to help them out, and they need someone to help them with their affairs. You hear a lot about traumatic brain injury and post-traumatic stress, and a lot of these veterans become estranged from their families, and this really creates a crisis for people who play a very important role and paid an obligation to us and we can't ignore that. It's also correct that we have lots of people aging. Well, I guess everyone is. We need to study this. If the House approves the study, and if LC selects to do the study, we would be happy to be involved.

Rep. Delmore: Do you have numbers and statistics that you could show us some of those folks that you've tracked based on 2000 to the present (over the past 9 or 10 years) that have needed services.

David Boeck: I don't have any statistics with me, I could try and find some for you relating to this.

Rep. Delmore: If we study this, I think that's where we need to begin, I think that's the key. Where we go with it and what we need to do, is to show a steady progression of real needs. Unless there is something on paper that could show us what those needs are, we're going to have trouble trying to change anything and knowing what to do with programming. I don't know if it's necessary for this committee, but if it is adopted as a study, I am going to encourage everybody that has been here today to get down some facts and figures on paper, unfortunately that's probably what we need to get funding for this program.

Ch. DeKrey: Thank you. Further testimony in support. Testimony in opposition or neutral. We will close the hearing.

(Reopened later in the session.)

Chairman DeKrey: We will take a look at SCR 4009. What are the committee's wishes.

Rep. Klemin: I would like to comment, I was on the committee as were others of you, and studied this issue a few years ago. The real conclusion that was reached was that there is a deeper issue, that there is a need for additional funding which was never done. Although this has probably got a lot of merits for study, I'm not sure what exactly we will accomplish by studying this matter all over again to come up with a conclusion that you need to have more money. It is a mandatory study right now. It doesn't say "shall consider", it says "it shall study".

Rep. Kretschmar: Since it is a resolution, the Council can do what they wish.

Rep. Koppelman: I move that we amend on page 2, line 1, insert "consider studying" rather than study.

Rep. Kingsbury: Second.

Rep. Vig: Since this is a resolution, we don't need the amendment.

Chairman DeKrey: Better safe than sorry. Voice vote, motion carried. (Legislative Council said this amendment wasn't necessary and so it was not added to the bill).

Rep. Delmore: I move a Do Pass as amended (but was never amended).

Rep. Wolf: Second.

13 YES 0 NO 0 ABSENT DO PASS/CONSENT CALENDAR CARRIER: Rep. Delmore

Date: 3/17/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SCR 4009

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee LC Amendment # _____

Action: ☑ DP ☐ DP / As Amended ☐ & Rerefer to Approp.
☐ DNP ☐ DNP / As Amended

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 (No) 0 (Absent) 0

Floor Carrier: Rep. Delmore

☐ Vote is amendment, briefly indicate intent:

Placed on Consent Calendar.

REPORT OF STANDING COMMITTEE

SCR 4009, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SCR 4009 was placed on the Tenth order on the calendar.

2009 TESTIMONY

SCR 4009

Attachment 1
SCR - 4009

SENATE CONCURRENT RESOLUTION NO. 4009
– SUMMARY –

Senate Concurrent Resolution 4009 was introduced at the request of Chief Justice Gerald VandeWalle. Chief Justice VandeWalle is unable to attend this hearing due to a long-scheduled prior commitment, but extends his thanks to Senator Krebsbach for her willingness to serve as prime sponsor, and his thanks to Senators Nelson and Wardner and Representatives DeKrey, Klein, and Kretschmar for agreeing to sign on as sponsors of the resolution.

SCR 4009 is directed at an important issue addressed in the Chief Justice's State of the Judiciary message: the aging of North Dakota's population and the complex and compelling issues related to elder abuse, neglect, and exploitation, all of which result in matters to be addressed in the courts and in society generally. NDSU's Census Data Center estimates that within the next 20 years the elderly population in North Dakota's 39 rural counties will exceed 30 percent. As far back as 2002, one of the Center's Population Bulletins noted: "The significant rise in seniors will require the need for more effective and efficient service delivery systems, elderly appropriate housing, a more integrated informal care system, and a host of other needs." The situation has not become less compelling. For the judicial system, the issue manifests in the increased need for guardians, conservators, and public administrators.

SCR 4009 notes that the scope and adequacy of guardianship services generally, and public guardianship services in particular, are unclear and there is a question whether such services will be sufficient to respond in the future to the state's aging population. Uncertainties concerning public administrator services are particularly acute. The provision of public administrator services is governed by N.D.C.C. Ch. 11-21, a copy of which is attached. The presiding judge of the judicial district in which a particular county is located is authorized to appoint a public administrator for that county. By law, the public administrator is the guardian and conservator for the county and must take charge of the estates of incapacitated persons, minors, and others when there is no one to care for those persons and they cannot care for themselves. State law provides that public administrators are compensated in the same manner as others who serve as a guardian or conservator, meaning compensation can be paid through the estate. Many times, the majority of times, there is no money in the estate to pay the public administrator. Some public administrators receive compensation from the county in which they provide services. Historically, most public administrators received no compensation except, for example, for minor sums authorized from Social Security payments received by the ward in their charge. Some public administrators are provided office space in the county in which they provide services. Historically, most provided their own office space or worked out of their homes. Most public administrators have covered expenses such as telephone and postage out of their own pockets.

The kinds of cases handled by public administrators vary greatly but the numbers have been steadily increasing over recent years. Guardian and Protective Services, a non-profit entity, provides public administrator services over a 21 county area, with a caseload including guardianships, conservatorships, powers of attorney, trusteeships, and personal representative of estates. The public

administrator who serves Williams County and the surrounding area regularly handles about 40 cases at a time. Most of the wards in his care are in basic care facilities and nursing homes, and most have no income with which to pay for services. The public administrator serving Ward County and the surrounding area also regularly handles about 40 cases at a time. Most are guardianships or conservatorships. He has an office but no secretary. The public administrator serving the southeastern part of the state handles about 75 cases. In Grand Forks, the veterans affairs officer serves as public administrator.

There is currently a patchwork of public administrator services around the state. Compensation and support services are uncertain. Cases handled by public administrators range from simple to very complex. Oftentimes, detailed reports must be filed with various federal agencies, such as Social Security and Veterans Administration. As noted in the study resolution, the governing law is vague and incomplete with respect to the kinds of services provided, levels of supervision, general accountability, and the responsibility to adequately compensate public administrators when there is no other source of compensation.

The need for guardianship services has been discussed in the past, but the aging of North Dakota's population underscores the importance of taking another look. State law is currently inadequate with respect to public administrators, an important part of the network of support for those who cannot support themselves. It is unclear as well whether the judicial system is adequately situated to respond to the aging population and the unique needs and requirements that are associated with this trend. Several models for providing guardianship/public administrator services have been considered in other states. It is important that this issue be studied to determine whether governmental services, including judicial services and public administrator services, are adequate to respond to issues related to the state's aging population.

Submitted by:
Jim Ganje
Office of State Court Administrator

CHAPTER 11-21
PUBLIC ADMINISTRATOR

11-21-01. Public administrator - Appointment - Term of office. The presiding judge of the judicial district in which a county is located may, after consultation with the judges of the judicial district, appoint a public administrator for that county. A public administrator may be a corporation or limited liability company. The initial appointments under this section may be made upon completion of the terms of public administrators elected in 1984. The public administrator shall hold office for four years and until a successor is appointed and qualified. The presiding judge may appoint a single public administrator to serve more than one county within the district court's jurisdiction.

11-21-02. Bond of public administrator - Conditions. The bond of the public administrator shall run to the state of North Dakota for the benefit of any party who may be damaged by a breach of the conditions thereof. Whether the bond is issued by the state bonding fund or by a surety company, it shall guarantee that the public administrator will:

1. Faithfully discharge all the duties of the office.

2. Account annually to the judge of the district court for all estates and property under the public administrator's official control and care, or whenever required so to do by the judge.

3. Turn over to the successor in office all property and estates in the public administrator's official care and control, and truly account for the same.

4. Turn over all property and estates in the public administrator's official care and control to any other administrator, executor, or guardian designated by the judge of the district court, and truly account for the same.

5. Perform such other acts and duties properly relating to the office as may be ordered by the district judge.

The bond shall be approved and endorsed as provided for administrators and executors.

11-21-03. Bond of public administrator may be increased - Annual statement. The judge of the district court shall require the public administrator to make a statement annually, under oath, of the amount of property in the administrator's hands or under the administrator's control as administrator, for the purpose of ascertaining the amount of bond necessary to secure such property. The court, from time to time and as occasion may require, may demand additional security from the administrator, and if the same is not furnished within twenty days after such demand, may remove the public administrator and appoint another.

11-21-04. Filing of bond and oath. The public administrator shall file the administrator's oath and bond with the judge of the district court. The bond and oath must be recorded at length in the record books of the court.

11-21-05. Duties and powers of public administrator. The public administrator shall be ex officio public special administrator, guardian, and conservator in and for the county and shall take into the administrator's charge, without application to any appropriate court or special appointment, the estates of all deceased persons, and the persons and estates of all minors, and the estates or persons and estates of all incapacitated persons, in the following cases:

1. When a person dies intestate in the county without relatives or known heirs.

2. When a person dies testate and the executor named in the will is absent or fails to qualify and there is no heir, legatee, or devisee available to act as personal representative.

3. When an unknown person dies or is found dead in the county.

4. When money, property, papers, or other estate is left in a situation exposed to loss or damage, and no other person administers the estate.

5. When any estate of any person who dies intestate in the county or elsewhere is left in the county and is liable to be injured, wasted, or lost, and the intestate does not leave a known spouse or heirs in this state.

6. When a minor is under the age of fourteen years, the minor's parents are dead, and the minor has no guardian or conservator.

7. When any estate is left in the county belonging to a minor whose parents are dead, or whose parents, if living, refuse or neglect to qualify as guardian or conservator, or who, having qualified, have been removed as guardians or conservators, or from any cause are incompetent to act as guardians or conservators, when such minor has no one authorized by law to take care of and manage the minor's estate.

8. When the estate or person and estate of an incapacitated person shall be left in the county and there is no legal guardian or conservator for such incapacitated person and no competent person who will qualify to take charge of such estate or to act as guardian or conservator known to the court having jurisdiction.

9. When for any other good cause, the court shall order the administrator to take possession of an estate to prevent its being injured, wasted, stolen, or lost.

11-21-06. May act as general and special administrator, guardian, and conservator. The public administrator shall have the same powers as are conferred upon special administrators, guardians, and conservators, and shall be subject to the same duties, penalties, provisions, and proceedings as are enjoined upon or authorized against special administrators, guardians, and conservators by the laws of this state so far as the same may be applicable. The public administrator may be appointed in proper cases as general administrator without giving additional bond, except that the court may require additional security, and when so appointed, the public administrator shall continue the administration until it is finally settled unless the public administrator resigns, dies, is discharged in the ordinary course of law as the administrator, or is removed for cause as public administrator or as administrator of such estate.

11-21-07. Public administrator to prosecute necessary suits. The public administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers, or other estate of any deceased person or of any minor or incapacitated person when such estate or person is in the administrator's charge or custody.

11-21-08. Compensation of public administrator. The public administrator shall receive the same compensation for services as is allowed by law to executors, administrators, guardians, and conservators unless the court, for special reasons, allows a higher compensation.

11-21-09. Public administrator not to charge attorney's fees - Penalty. A public administrator shall not charge a fee as an attorney in the administration of the estates of decedents of which the public administrator shall be the administrator. Any person who shall violate this section is guilty of an infraction.

11-21-10. Public administrator to act as receiver in assignment for the benefit of creditors. When a person makes an assignment for the benefit of creditors, the public administrator, either on the administrator's own petition or on the petition of a creditor of the assignor, shall be appointed receiver and shall administer the assignment in the place of the assignee named therein.

11-21-11. Civil officers to inform public administrator as to property. All civil officers shall inform the public administrator of all property and estate known to them which is liable to loss, waste, or injury and which, by law, ought to be in the hands of the public administrator.

11-21-12. Giving notice on taking charge of estate - Penalty for failure. The public administrator, immediately upon taking charge of any estate except one over which the administrator has taken charge under the order of the district court for the purpose of administering the same, shall file in the office of the district court a notice that the administrator has taken charge of the estate. If a public administrator fails to file the notice, the administrator shall forfeit and pay to the persons entitled to the estate a sum not exceeding two hundred dollars and the court may remove the public administrator from office. The forfeiture shall be recovered before the district court on motion and after reasonable notice of the motion has been given to the public administrator.

11-21-13. Court may order public administrator to account to successors. The district court, at any time and for good cause shown, may order the public administrator to account for and deliver all money, property, or papers belonging to an estate in the administrator's hands, to the administrator's successor in office, to the heirs of the estate, or to any personal representative or conservator regularly appointed as provided by law.

11-21-14. Removal from office. The public administrator may be removed from office in the same manner and for the same reasons as other public officers may be removed except that for the reasons specified in sections 11-21-03 and 11-21-12 a public administrator may be removed summarily upon the motion of the judge of the district court.

Conference of Chief Justices
Conference of State Court Administrators

Resolution 1

In Support of the NCSC Concept Paper, *State Courts and Elder Abuse: Ensuring Justice for Older Americans*

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators recognize that elder abuse, neglect, and exploitation involve complex civil and criminal issues that require a sustained and committed response by the courts; and

WHEREAS, issues such as capacity, undue influence, and consent create particular challenges to court responses to elder abuse; and

WHEREAS, the National Center for State Courts' Concept Paper, *State Courts and Elder Abuse: Ensuring Justice for Older Americans*, examines the alarming prevalence of elder abuse and the unique opportunities afforded to the courts to intervene in a variety of court settings to ensure justice for older Americans; and

WHEREAS, the Concept Paper puts forward a call to action to policymakers, judges, judicial officials, court administrators, court managers, court clerks, law enforcement, attorneys, community-based organizations, adult protective services, elder care specialists, and all individuals who support the rights of older Americans:

- To encourage judicial leaders to prioritize court improvement in the areas of elder abuse detection and response;
- To increase judicial and court awareness of aging issues and elder abuse;
- To increase the availability of training for judges and court staff on elder issues at the state level;
- To improve court documentation of cases involving older persons (especially elder abuse, domestic and family violence, and guardianships);
- To encourage funding agencies to provide adequate resources to enable the courts to identify and to respond to elder abuse; and

WHEREAS, the Concept Paper concludes with the following seven recommendations for state court leaders:

- Create a national resource for the courts on aging issues, elder abuse, and guardianships;

- Develop national and statewide model practices;
- Encourage local courts to examine current responses and develop innovative methods and approaches to elder abuse;
- Ensure that both judicial and court staff are trained on aging issues and elder abuse;
- Develop court performance standards and case management systems that improve documentation and oversight of cases involving older persons;
- Encourage judicial and court participation in multi-agency partnerships to combat elder abuse; and
- Support local, state, and federal legislation and budgets that provide the court with the resources it needs to address elder abuse;

NOW, THEREFORE, BE IT RESOLVED that the Conferences hereby adopt the following national action plan to:

- Encourage NCSC to seek funding to establish and institutionalize the *Center for Elders and the Courts*, which shall include an Internet-based Resource Center;
- Develop and promote judicial leadership at the state level for improving court identification of and responses to elder abuse;
- Encourage collaborative efforts, such as the *Elder Abuse and the Courts Working Group*, and support team-oriented problem-solving approaches that prioritize justice for older Americans;
- Institutionalize national, state, and local training programs and conferences on elder issues targeting the judiciary and court staff;
- Initiate a national research agenda to assess the prevalence and context of elder abuse as it appears in the courts, to document and evaluate intervention-based court programs, and to develop a promising practices database;
- Encourage funding and development of court tools, such as performance standards and bench cards, specific to the needs of older persons; and
- Advance the use of technology to identify and document cases that involve older persons and to improve monitoring and compliance practices.

Adopted as proposed by the CCJ/COSCA Courts, Children and Families Committee on July 30, 2008.

Attachment 2

4009

TESTIMONY -- PROTECTION AND ADVOCACY PROJECT

SENATE CONCURRENT RESOLUTION 4009 (2009)

SENATE JUDICARY COMMITTEE

Honorable Nething, Chairman

January 28, 2009

Chairman Nething, and members of the Senate Judiciary Committee, I am Bruce Murry, a lawyer with the North Dakota Protection and Advocacy Project (P&A). P&A is an independent, state disability rights agency.

P&A supports the study of the public administrator system. Most public administrators are grossly under-funded and overworked. Most struggle along and find ways to deliver quality services to their protected persons and wards. A few have failed their wards and protected persons very badly. A few public administrators have even been convicted of crimes against their wards. This system needs to be evaluated and updated for our current society.

P&A respectfully suggests that other guardianship services have been studied adequately. During the 2003-2004 Legislative Interim, a task force studied guardianship extensively and reported to the Interim Judiciary Committee. The task force and the Committee drafted a bill for a guardianship system of last resort for people without legal capacity. The bill focused on people who don't qualify for the guardianship system for people with developmental disabilities. The bill targeted three populations of vulnerable adults:

1) People losing capacity due to dementia and the advanced effects of aging;
2) People with severe mental illness;
3) People with severe brain injuries.

Of the approximately $750,000 included in the bill, the 2005 Legislative Assembly found funding for only $40,000 of services. The Legislature passed the structure of the program but the 2007 Legislative Assembly simplified the language to better match the small appropriation to the Department of Human Services. The Governor's budget again contains $40,000 for these services.

If this Committee feels additional guardianship services are needed, you may wish to seek amendment of HB 1012 to increase guardianship services.

Again, P&A does support studying North Dakota's public administrator system. We would be happy to contribute any expertise we might have. Thank you for your consideration.

during the 1999-2001 biennium and 18,039 during the 2001-03 biennium. Costs associated with the establishment and operation of the Commission on Legal Counsel for Indigents is estimated to be approximately $[redacted]5,285 for the 2005-07 biennium. This includes the [redacted] salary and benefits for a director, who would be appointed by the commission; a deputy; an administrative assistant; and four investigators. It was noted that because of the additional work that would be required in the first year, the commission may need more than the $8,654 estimated for expenses in the proposal.

One committee member suggested that the Legislative Assembly may want to consider whether the state's indigent defense system could be placed within an existing agency rather than to create a new agency.

Proposed Legislation

Based upon the legislation proposed by the Indigent Defense Task Force, the committee considered a bill draft that established the Commission on Legal Counsel for Indigents. The bill draft provided for the powers and duties of the commission and for a transition of indigent defense services from the Supreme Court to the commission. Under the bill draft, the Supreme Court maintained the current contract system for six months. However, on January 1, 2006, all indigent defense funds would be transferred to the commission. The bill draft did not contain an appropriation but relied on the Supreme Court to include the funding in its budget request so the amount would be included in the executive budget submitted to the Legislative Assembly rather [redacted] requiring the Legislative Assembly to add the [redacted]unt to the executive budget.

Testimony concerning the bill draft indicated that the intent of the task force in drafting the bill draft was to separate the money needed to establish the commission from the money needed to fund indigent defense services. It was emphasized that the $1,135,000 needed to establish the commission should be included in the bill draft and that the appropriation for the attorney services would be included in the Supreme Court budget request. Testimony in support of the bill draft indicated that the state needs to act on the issue of indigent defense. According to the testimony, the current system is in crisis and is not meeting the constitutional requirements because of inadequate funding. Because of the low funding and compensation, indigent defense attorneys have the incentive to plead out cases. Montana's indigent defense system has been challenged by the American Civil Liberties Union (ACLU). Montana requested that it be given an attempt to address the problem legislatively. According to the testimony, the Montana legislature's proposal to the ACLU is to increase indigent defense funding from $8.5 million to $20 million. According to the testimony, North Dakota's indigent defense system has many of the same problems as Montana's system, including inadequate funding [redacted]overworked attorneys. State and federal constitu[redacted]require that a defendant is entitled to an adequate [redacted]nse. It was emphasized that this is where the ACLU may step in and prove that defendants are not getting an adequate defense. The testimony noted that the system proposed in the bill draft does not totally replace the contract system with a public defender system but rather provides for a combination of the two systems. It was noted that there may be some merit to a full-time public defender system; however, this bill draft was the compromise reached by the task force. Finally, it was noted that as long as the appropriate safeguards and funding are in place, this proposal solved the problems with the current system.

Other Indigent Defense Issues

The committee received testimony that costs of indigent defense for mental health commitments, the civil commitment of sexual offenders, and guardians ad litem are still the responsibility of the county. These indigent defense costs are costing the counties about $300,000 per biennium. The committee was urged to consider whether these costs should be the responsibility of the state.

In response to committee concerns about the lack of attorneys willing to handle indigent defense cases, it was suggested that the Legislative Assembly may want to consider offering a law student loan repayment and forgiveness program for new attorneys who provide indigent defense services and other public interest legal work. The committee received testimony that over the past four years, 84 to 93 percent of law students at the University of North Dakota School of Law borrowed money to finance their law school education. The average student loan amount for graduates of the law school in 2003 was $48,800. The committee also received information on loan repayment and forgiveness programs in other states and on salaries and employment of recent law school graduates. A number of states, including Arizona, Florida, Maine, Maryland, Minnesota, New Hampshire, North Carolina, and Texas, have established loan repayment assistance and forgiveness programs for public service lawyers.

Recommendation

The committee recommends Senate Bill No. 2027 to establish the Commission on Legal Counsel for Indigents. The bill provides for the powers and duties of the commission and for a transition of indigent defense services from the Supreme Court to the commission. Under the bill, the Supreme Court would maintain the current contract system for six months; however, on January 1, 2006, all indigent defense funds will be transferred to the commission. The bill includes the funding for the establishment of the Commission on Legal Counsel for Indigents.

GUARDIANSHIP SERVICES STUDY

Background

When a court determines that an individual lacks the capacity to make or communicate the decisions necessary to manage personal affairs, a guardian may be appointed. Guardianship is the process by which a

court, after determining that an individual is incompetent to make specific decisions, delegates the right to make those decisions to a guardian. Depending on the state statutes, a guardian may also be referred to as a conservator, committee, or curator. The procedures to initiate a guardianship and the practices following the appointment of a guardian also differ from state to state. While all states require some sort of petition, notice, and judicial consideration before appointing a guardian, the extent of due process rights afforded the alleged incapacitated person varies from state to state.

As a general rule, there are two types of guardianships--a guardianship affecting personal interests, known as guardianship of the person and a guardianship of the estate. The spheres of authority of a guardian of the person and of a guardian of the estate are distinct and mutually exclusive. Some jurisdictions recognize a third type of guardianship, known as a limited guardianship. In a limited guardianship, the guardian is entrusted with only those duties and powers that the ward is incapable of exercising.

The purpose of statutes relating to guardianship is to safeguard the rights and interests of minors and incompetent individuals, and it is the responsibility of the courts to be vigilant in seeing that the rights of those individuals are properly protected. The court with jurisdiction over a guardianship is the superior guardian, while the guardian is deemed to be an officer of the court. The conduct of the guardian is subject to regulation by a court.

Development of North Dakota's Guardianship Law

Pre-1973 Guardianship Law

Under North Dakota's pre-1973 guardianship law, the county court was authorized to appoint a guardian for an individual or for the estate of any incompetent state resident. The guardianship proceeding was initiated by the filing of a petition with the county court. The alleged incompetent individual was served a citation, giving notice of the filing and the date of the hearing on the petition. After an informal hearing at which the attendance of the alleged incompetent individual was not required, the court was authorized to appoint a guardian if the court determined that an appointment was either necessary or convenient. The pre-1973 statutes did not require a medical evaluation or other evidence that the individual was actually incompetent. The court was also authorized to appoint a guardian ad litem. As distinguished from current law, the pre-1973 law established no standard of proof for determining whether an individual was incompetent.

1973 Adoption of Uniform Probate Code Article V

In 1973 the North Dakota Legislative Assembly adopted the Uniform Probate Code. Article V of the Uniform Probate Code divided guardianship law into two parts. The first part, guardianship, provided for the protection of the person and the second part, conservatorship, provided for the protection of the estate. Article V differed from pre-1973 law in that the article separated the guardianship of the person and conservatorship of estates and property, improved due process provisions, and improved powers of the supervising courts. Article V also provided for a durable power of attorney that did not terminate on the disability or incompetence of the principal. In addition, Article V contained separate provisions for guardianships of minors and individuals who were mentally incompetent. Article V also required the appointment of a physician to examine the proposed ward and a visitor to interview both the proposed ward and the person seeking appointment as the guardian. Article V defined visitor as an individual who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings. The notice provisions defects of the pre-1973 statutes were partially remedied by Article V. Under Article V, a waiver of notice by a proposed ward was not effective unless the ward attended the hearing or the ward's waiver of notice was confirmed in an interview with the court-appointed visitor.

The adoption of Article V of the Uniform Probate Code resulted in other changes in the state's guardianship law. In proceedings for the removal of a court-appointed guardian, Article V changed the focus from the behavior of the guardian to the best interest of the ward. Another change was in venue for proceedings subsequent to appointment. The pre-1973 statute limited the jurisdiction to the county court that appointed the guardian. Article V gave the court in the county in which the ward resided concurrent jurisdiction with the appointing court in any subsequent proceedings relating to the guardianship.

1983 Amendments to Guardianship Statutes

In 1983 the Legislative Assembly passed House Bill No. 1057. The bill primarily dealt with three issues--the statutory guardianship of the superintendent of the Grafton State School, the services for developmentally disabled persons, and limited guardianships. The bill deleted provisions making the superintendent of Grafton State School the automatic guardian of the residents at Grafton. The bill also amended the statutory requirements for individualized habilitation plans by requiring that the plan state whether the developmentally disabled individual needs a guardian and determine the degree of protection the individual needs.

Regarding limited guardianship, House Bill No. 1057 expanded the definitions of "conservator" and "guardian" to include limited conservators and limited guardians. The bill directed the court to exercise its authority consistent with the "maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure." The provision required the court to make item-specific determinations and that the powers of the guardian be tailored to the actual limitations of the ward. The bill permitted the court to limit the powers of the guardianship at the time of appointment or at a later date. The bill also

specifically required the court to determine whether the proposed ward is mentally incompetent and thus not qualified to vote. The bill recognized the degrees of incapacity or incompetence and required the court to match the guardian's responsibilities with the ward's [redacted] mental and adaptive limitations.

1989 Amendments to Guardianship Statutes

In 1989 the Legislative Assembly enacted House Bill No. 1480, which made additional amendments to the guardianship provisions of the Uniform Probate Code. The bill provided for a definition of "alternative resource plan" and "least restrictive form of intervention." The bill also amended NDCC Section 30.1-28-02 to provide that the proposed ward may demand change of venue to either the county of residence or the county where the proposed ward is present. The bill expanded the duties of the attorney to include a personal interview of the proposed ward, explaining the guardianship proceeding to the proposed ward, and representing the proposed ward as guardian ad litem. The bill also expanded the duties of the physician and the visitor and provided for guardian reporting requirements.

Current Guardianship Law

The guardianship provisions of Article V of the Uniform Probate Code enacted in 1973 and the subsequent amendments in 1983 and 1989 are codified as NDCC Chapters 30.1-26, 30.1-27, 30.1-28, and 30.1-29. Chapter 30.1-26 contains the general provisions that pertain to guardianship, including definitions and jurisdic- [redacted] Chapter 30.1-27 provides for the guardianship of [redacted]rs; Chapter 30.1-28 provides for guardianships of incapacitated individuals; and Chapter 30.1-29 provides a system of protective proceedings designed to allow the management of estates by a court-appointed conservator.

North Dakota Century Code Chapter 30.1-28 contains provisions regarding the procedural rights of the ward or proposed ward. Section 30.1-28-09 requires that notice be served personally on the ward or proposed ward, that person's spouse, and parents if they can be located within the state. Notice to the spouse or parent, if they cannot be found within the state, may be given by mail or publication. Section 30.1-28-03(7) provides that the proposed ward must be present at the hearing in person unless good cause is shown for the absence. The section also provides that a proposed ward has the right to be represented by counsel and to be personally interviewed by the attorney. Section 30.1-28-04 provides that at a hearing under this chapter, the court is required to hear evidence that the proposed ward is an incapacitated person. The section provides that age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incompetency. The section also provides the standard of proof under which a finding of incapacity may be made.

North Dakota Century Code Section 30.1-28-06 [redacted]des that the authority and responsibility of a [redacted]dian terminates upon the death of the guardian or ward. Section 30.1-28-07 provides for the conditions under which a guardian may be removed, resign, or under which the guardianship may be terminated. Section 30.1-28-12 provides that a guardian of an incapacitated individual has only the powers and duties specified by the court.

Testimony and Committee Considerations

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 therefore that part of the process does not need to epeated 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 s more than 10 wards, the guardian is permitted to de 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 tion 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.

VULNERABLE ADULT ABUSE AND NEGLECT STUDY

Background

Federal Law on Vulnerable Adult Abuse and Neglect

Federal laws on child abuse and domestic violence provide services and shelters for victims, but there is no comparable federal law on vulnerable adult abuse. The federal Older Americans Act (42 U.S.C. 3001 et seq., as amended) provides definitions of elder abuse and authorizes the use of federal funds for the National Center on Elder Abuse and for certain elder abuse awareness, training, and coordination activities in states and local communities but does not fund adult protective services or shelters for abused older individuals.

Vulnerable Adult Protective Services

All 50 states and the District of Columbia have enacted legislation authorizing the provision of vulnerable adult protective services. Generally, these vulnerable adult protective services laws establish a system for the reporting and investigation of abuse and for the provision of social services to help victims and ameliorate the abuse. In most jurisdictions these laws pertain to abused adults who have a disability, vulnerability, or impairment as defined by state law, not just to older individuals.

These statutes vary widely in the age at or circumstances under which a victim is eligible to receive protective services; the definition of abuse; types of abuse, neglect, and exploitation that are covered; classification of the abuse as criminal or civil; reporting (mandatory or voluntary); investigation responsibility and procedures; and remedies for abuse.

Some state vulnerable adult protective services laws only relate to "domestic abuse," which is the abuse of individuals who reside in the community, while other vulnerable adult protective services laws also include individuals who reside in long-term care facilities, known as "institutional abuse." Each state defines long-term care facility differently; moreover, some states include other types of institutions, such as mental health facilities, in their statutes as well.

In some states in which the vulnerable adult protective services law covers only individuals who reside in the community, a separate law addresses institutional abuse. As with the vulnerable adult protective services laws, institutional abuse statutes create a mechanism for reporting, investigating, and addressing incidents of elder abuse which occur in long-term care facilities or other facilities covered under the law.

Long-Term Care Ombudsman Program

Additionally, all states and the District of Columbia have laws authorizing a long-term care ombudsman program that is responsible for advocating on behalf of long-term care facility residents who experience abuse, violations of their rights, or other problems. The program is mandated in each state as a condition of receiving federal funds under the Older Americans Act. The ombudsman program is an integral part of the systemic response to institutional elder abuse. The program's purpose is to investigate abusive situations when responding to complaints within a facility and then, if appropriate, make a referral to a vulnerable adult protective services program, a law enforcement agency, or the agency responsible for licensing and certifying such facilities. Moreover, in some states, the ombudsman program fulfills the role of adult protective services and has the legal authority to investigate and respond to abuse occurring within long-term care facilities.

Criminal Laws

An increasing number of states are passing laws that provide explicit criminal penalties for various forms of vulnerable adult abuse and neglect. Legislatures are also signaling their intent that elder abuse be treated as a crime in other ways. For example, some vulnerable adult protective services laws include a provision stating that elder abuse may be prosecuted criminally, while others define certain acts, such as sexual abuse, in the same words or by reference to definitions that are used in the criminal laws. In those states in which there is not a specific statute or provision authorizing criminal prosecution for elder abuse, a jurisdiction's basic criminal laws, such as battery, assault, theft, fraud, rape, manslaughter, or murder, can be used to prosecute someone who has committed an act of abuse against an older individual. Some legislatures have enacted enhanced penalties for certain crimes against older individuals.

North Dakota Law

North Dakota Century Code Chapter 50-25.2 provides for an adult protective services program. Section 50-25.2-02 requires the Department of Human Services, with the advice and cooperation of county social services boards, to develop, administer, and implement a program of protective services for vulnerable adults. Section 50-25.2-01 defines a "vulnerable adult" as an adult who has a substantial mental or functional impairment. This section defines "abuse" as the willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult. "Neglect" is defined as the failure to provide essential services necessary to maintain the physical or mental health of a vulnerable adult. The section defines "financial exploitation" as the taking or misuse of the vulnerable adult's resources or property by means of undue influence, breach of fiduciary responsibility, deception, harassment, criminal coercion, theft, or other unlawful or improper means.

Interim minutes are available upon request.

Senate Bill No. 2024 - Document Preservation Fund. This bill removes the June 30, 2005, expiration date for the document preservation fund and continues the additional fees imposed for the purpose of funding the document preservation fund. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2025 - Legislative Approval of Tribal-State Gaming Compacts. This bill requires the Governor to obtain legislative approval before entering, renewing, amending, or extending any tribal-state gaming compact. (Budget Committee on Human Services)

Senate Bill No. 2026 - Contractor Licensing and Regulation. This bill authorizes the Secretary of State to request criminal history record information regarding an applicant for a contractor's license or contractor seeking to renew a license; authorizes the Attorney General to bring a complaint against a contractor under consumer fraud laws; and specifies additional grounds upon which the Secretary of State may deny an application for a contractor's license, refuse to renew a license, or revoke a license. (Commerce Committee)

Senate Bill No. 2027 - Commission on Legal Counsel for Indigents. This bill establishes the Commission on Legal Counsel for Indigents, provides for the powers and duties of the commission, provides for a transition of indigent defense services from the Supreme Court to the commission, and provides for an appropriation to fund the establishment of the commission. (Criminal Justice Committee)

Senate Bill No. 2028 - Guardianship Services. This bill requires 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 bill also provides an appropriation for the program. (Criminal Justice Committee)

Senate Bill No. 2029 - Successor Guardian Appointments. This bill establishes a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian. (Criminal Justice Committee)

Senate Bill No. 2030 - Guardian and Conservator Annual Reports. This bill provides for an annual reporting requirement for guardians and conservators and requires the State Court Administrator's office to develop and provide a form that may be used to fulfill reporting requirements. (Criminal Justice Committee)

Senate Bill No. 2031 - Law Enforcement Training. This bill provides an appropriation to the Highway Patrol for the purpose of providing training for law enforcement officers and other emergency services providers. (Criminal Justice Committee)

Senate Bill No. 2032 - Business Initiative. This bill addresses a broad range of economic development and business climate issues, such as a business hotline pilot program, a Department of Commerce Division of International Trade, a local economic developer training program, a Dakota manufacturing initiative, and various studies relating to corporate taxes and economic development tax incentives, technology commercialization, economic development incentives, risk capital, intellectual property, liability insurance, and transportation. (Economic Development Committee)

Senate Bill No. 2033 - School District Residency Determinations. This bill requires an annual determination regarding the school district of residence for those students who are placed for noneducational reasons. (Education Committee)

Senate Bill No. 2034 - Higher Education Special Funds Continuing Appropriation. This bill continues the continuing appropriation of higher education institutions' special revenue funds, including tuition, through June 30, 2007. (Higher Education Committee)

Senate Bill No. 2035 - North Dakota University System Budget Request and Appropriation. This bill continues the requirement that the budget request for the North Dakota University System include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the North Dakota University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding through June 30, 2007. (Higher Education Committee)

Senate Bill No. 2036 - North Dakota University System Unspent General Fund Appropriations. This bill continues the North Dakota University System authority to carry over at the end of the biennium unspent general fund appropriations through June 30, 2007. (Higher Education Committee)

Senate Bill No. 2037 - Information Technology Statutory Provisions. This bill provides that the State Board of Higher Education is responsible for managing and regulating information technology planning and services for institutions under its control; excludes certain policies, standards, and guidelines of the Information Technology Department from the Administrative Agencies Practice Act; authorizes the Information Technology Committee to review information technology projects of the legislative branch in addition to major information technology projects of the executive and judicial branches; and requires the Information Technology Department to develop policies, standards, and guidelines using a process involving advice from state agencies and institutions. (Information Technology Committee)

Senate Bill No. 2038 - Statewide Information Technology Improvements Revolving Fund. This bill establishes a statewide information technology improvements revolving fund for information technology projects providing improvements in the efficiency of state

Attachment 3
4009

Senate Judiciary Committee
Testimony on Senate Concurrent Resolution 4009
Senator Dave Nething, Chairman
January 28, 2009

Good morning, Chairman Nething and committee members. My name is Donna Byzewski and I am program director of the Guardianship Division at Catholic Charities North Dakota (CCND) as well as a board member of the Guardianship Association of North Dakota (GAND). CCND has been providing corporate guardianship services since 1986 and we currently serve as guardian for more than 390 people with developmental disabilities. Our corporate guardianship program is seen as the guardian of last resort for people with developmental disabilities and we are only contacted if there is no one available or appropriate to serve as the person's guardian. The following testimony will help explain why I support almost all of Senate Concurrent Resolution (SCR) 4009 except for the portion asking for an assessment of the guardianship needs of the elderly population in North Dakota.

It is so gratifying whenever I see legislation that is aimed at improving guardianship services in North Dakota. I absolutely support the spirit and intent of SCR 4009; however, I am only able to support a portion of it. 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. The recommendations of the Interim Criminal Justice Committee were outlined in Senate Bill 2028 at the 2005 Legislature. SB 2028 asked that the Department of Human Services 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 bill addressed the need for funding of direct guardianship services, standards of practice for guardians, funding for petitioning costs and training for guardians. The requested appropriation was $772,550. Only $40,000 was approved by the 2005 Legislature. The Aging Services Division of DHS received an appropriation of $40,000 during each of the 2005 and 2007 biennia. The appropriation has been used for petitioning costs to establish emergency guardianships for indigent vulnerable people who are elderly or individuals with severe mental illness. The 2005 Legislature also asked the Aging Services Division to develop standards of practice for guardians. The Division worked with members of the Task Force and the resulting standards of practice can be found on the DHS website.

From my perspective, the gaps in North Dakota's current guardianship service system have been identified by the Interim Criminal Justice Committee study. Guardianship needs for vulnerable elderly people, individuals with mental illness and persons with traumatic brain injuries will continue to grow. Another study to find out if gaps in our service system exist is not needed. Rather, a study on how to best fill those gaps and fund those gaps is desperately needed, whether it is through the provision of corporate guardianship services, public administrators or some other model of public guardianship. As pointed out by SCR 4009, there is also a strong need to insure that guardianship services have oversight, supervision, accountability for the protection of the ward.

In closing, I respectfully ask the members of the Senate Judicial Committee to support SCR 4009 in terms of studying how to best fill the gaps in the guardianship service system for vulnerable elderly people as well as individuals with severe mental illness and persons with traumatic brain injuries in North Dakota. Thank you for giving me this opportunity to talk with you about the guardianship needs of the people of North Dakota and I welcome any questions that you may have.

Attachment 4
4009

Recommendations Partially Implemented

Recommendation #19

We recommend the Administrative Committee on Veterans' Affairs and the Department of Veterans' Affairs take appropriate action to add a conservator program to the Department's responsibilities and duties. The Administrative Committee and the Department should:

a) **Review this area with the Office of Attorney General to identify legal requirements and issues with conservatorships;**
b) **Review the resources required for this new program and determine whether job duties and responsibilities need to be reassigned between the Fargo main office and the Bismarck branch office;**
c) **Establish formal guidelines and policies for the operation of a conservator program and review the guidelines on a periodic basis; and**
d) **Establish management controls to ensure compliance with guidelines and policies and to monitor the programs efficiency and effectiveness.**

Original Condition

In certain circumstances, the federal Department of Veterans' Affairs will determine a veteran is unable to handle their financial affairs and an individual must be identified to account for the veteran's money and pay the financial obligations of the veteran. The individual responsible for a veteran's financial affairs is commonly referred to as a conservator or a fiduciary.

We identified two employees of the state Department of Veterans' Affairs were conservators for veterans. These duties were not to be performed using state resources as the Department did not have a conservatorship program. We identified a need for conservators for veterans in the state.

Action Taken

The Department has implemented a policy stating no employee may serve as a conservator or guardian. Based on limited review of information and discussions with employees, it appears no employees are acting as a conservator or guardian.

The Administrative Committee obtained information from other states regarding conservatorships. The Administrative Committee discussed such information and concluded costs associated with such a program would require substantial funding. The Administrative Committee's position was to not implement a conservatorship program.

Management's Response and Future Action to be Taken

The Administrative Committee and the Department agree with the status of the recommendation. The Department will identify programs available and monitor them for the possibility of providing conservatorship/ guardianship services to veterans and to start identifying individuals who would be willing to provide this service to veterans. The Administrative Committee and Department will monitor future legislative sessions for bills addressing this issue and take appropriate action if necessary

Recommendation 2-5

We recommend the Administrative Committee on Veterans' Affairs and the Department of Veterans' Affairs take appropriate action to add a conservator program to the Department's responsibilities and duties. The Administrative Committee and the Department should:

a) Review this area with the Office of Attorney General to identify legal requirements and issues with conservatorships;
b) Review the resources required for this new program and determine whether job duties and responsibilities need to be reassigned between the Fargo main office and the Bismarck branch office;
c) Establish formal guidelines and policies for the operation of a conservator program and review the guidelines on a periodic basis; and
d) Establish management controls to ensure compliance with the guidelines and policies and to monitor the programs efficiency and effectiveness.

Management's Original Response

Agree. The ACOVA agrees to study and research the proposal through the strategic planning process, review alternatives, and propose legislation if necessary. We will also coordinate with the guardianship study group and Legislative Council as required.

Management's Follow-Up Response Needed

Partially Implemented. Prior to 2005 legislative session, Administrative Committee on Veterans' Affair Chairman obtained and reviewed information from several states which had such a program. Conclusion reached was such a program was cost prohibitive for North Dakota's department of veterans' affairs. Information was given to Attorney General's office for possible inclusion of conservatorships in a guardianship bill they were working on for 2005 legislative action. Conservatorships were not included in the 2005 legislation. However, we were told such may be possible in a future session.

Commissioner ruled no department of veterans' affairs employee could be a veteran's conservator or guardian as such does not comply with the department's Conflict of Interest policy as published in the North Dakota Department of Veterans' Affairs Employee Handbook. No current employee of the department has any conservatorships or guardianships of veterans for which they are responsible.

The Administrative Committee on Veterans' Affairs is scheduled to address adopting a formal position on a department conservatorship program at its January 2006 quarterly meeting.

Suggested Response to Audit Recommendation 2-5:

Information obtained from various states which have conservatorship programs appeared to indicate costs associated with such a program require substantial additional funding and staffing.

Information was given to Attorney General's office for review and possible inclusion in their proposed 2005 guardianship legislation, as such would appear to make the best use of resources, both financial and human. We were told it would not be specifically included in the legislation, but if proposed bill became law, efforts would be taken to include conservatorships through policies and rules.

A substantially reduced version of the bill was adopted. We were told conservatorships would probably not be included in any policies or rules at this time. We were further told conservatorships may possibly be included in future legislation.

It is the position of the Administrative Committee on Veterans' Affairs that the Department of Veterans' Affairs not implement a conservatorship program, but instead, continue efforts to include such a program in the state's guardianship program.

It is further the policy of the Administrative Committee on Veterans' Affairs that no employee of the department, including the commissioner, may serve as a conservator or guardian.

Committee recommends adoption of this policy on conservatorships.
Motion by Daryl Beard to adopt the suggested response to Recommendation 2-5, second by Dave Vandergon. Motion passed unanimously.

House Judiciary Committee
Testimony on Senate Concurrent Resolution 4009
Representative Duane DeKrey, Chairman
March 17, 2009

Good morning, Chairman DeKrey and committee members. My name is Donna Byzewski and I am program director of the Guardianship Division at Catholic Charities North Dakota (CCND) as well as a board member of the Guardianship Association of North Dakota (GAND). CCND has been providing corporate guardianship services since 1986 and we currently serve as guardian for more than 390 people with developmental disabilities. Our corporate guardianship program is seen as the guardian of last resort for people with developmental disabilities and we are only contacted if there is no one available or appropriate to serve as the person's guardian. The following testimony will help explain why I support Senate Concurrent Resolution (SCR) 4009.

It is so gratifying whenever I see legislation that is aimed at improving guardianship services in North Dakota. 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. The recommendations of the Interim Criminal Justice Committee were outlined in Senate Bill 2028 at the 2005 Legislature. SB 2028 asked that the Department of Human Services 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 bill addressed the need for funding of direct guardianship services, standards of practice for guardians, funding for petitioning costs and training for guardians. The requested appropriation was

$772,550. Only $40,000 was approved by the 2005 Legislature. The Aging Services Division of DHS received an appropriation of $40,000 during each of the 2005 and 2007 biennia. The appropriation has been used for petitioning costs to establish emergency guardianships for indigent vulnerable people who are elderly or individuals with severe mental illness. The 2005 Legislature also asked the Aging Services Division to develop standards of practice for guardians. The Division worked with members of the Task Force and the resulting standards of practice can be found on the DHS website.

The gaps in North Dakota's current guardianship service system have been clearly identified by the Interim Criminal Justice Committee study. Guardianship needs for vulnerable elderly people, individuals with mental illness and persons with traumatic brain injuries will continue to grow. A study on how to best fill those gaps and fund those gaps is desperately needed, whether it is through the provision of corporate guardianship services, public administrators or some other model of public guardianship. As pointed out by SCR 4009, there is also a strong need to insure that guardianship services have oversight, supervision, accountability for the protection of the ward.

In closing, I respectfully ask the members of the House Judiciary Committee to support SCR 4009 in terms of studying how to best fill the gaps in the guardianship service system for vulnerable elderly people as well as individuals with severe mental illness and persons with traumatic brain injuries in North Dakota. Thank you for giving me this opportunity to talk with you about the guardianship needs of the people of North Dakota and I welcome any questions that you may have.