

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 386

S. P. 152

In Senate, January 30, 1973

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Shute of Franklin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Protective Services for Incapacitated Adults.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 18, c. 501, sub-c. III-B, additional. Chapter 501 of Title 18 of the Revised Statutes is amended by adding a new subchapter III-B to read as follows:

SUBCHAPTER III-B

GUARDIANSHIP OF INCAPACITATED ADULTS IN NEED OF
PROTECTIVE SERVICES

§ 3638. Public guardian; Bureau of Social Welfare

The Bureau of Social Welfare of the Department of Health and Welfare shall act as public guardian for incapacitated adults as provided in this subchapter and whenever the term "public guardian" is used in this subchapter it shall mean and refer to the Bureau of Social Welfare.

§ 3639. Purposes and responsibility

The public guardian may be nominated and appointed as guardian of the person and estate of those adults who have been determined under this subchapter to be incapacitated and in need of guardianship. The authority of the public guardian shall be exercised by the Director of the Bureau of Social Welfare and by any persons duly delegated by said Director of the Bureau of Social Welfare to exercise such authority.

§ 3640. Definition

For the purpose of eligibility for guardianship under this subchapter, the phrase "incapacitated person" shall mean any person who is 18 years of age or over, and who is impaired by reason of advanced age, physical or mental

illness or incapacity, or other cause to the extent that he lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning his person or property, except that this subchapter shall not include those persons who are provided for under subchapter III-A.

§ 3641. Nomination

The public guardian shall be nominated in writing to act as guardian, by:

1. Relative or friend. A relative or a friend; or
2. Government officials. The commissioner of any state department, the overseers of the poor, welfare director or health officer of any municipality.

Within 30 days after its receipt, the public guardian shall accept or reject such nomination in writing. Its acceptance shall be binding upon it to file the petition forthwith.

§ 3642. Petition

Pursuant to its nomination the public guardian shall, or in its discretion in any other case may, petition for its appointment to act as guardian of the person and estate of an alleged incapacitated person by filing a written petition in the probate court for the county in which the alleged incapacitated person resides or in which his estate is located. Said petition shall be accompanied by a detailed written guardianship plan in accordance with the individual and specific needs of the alleged incapacitated person, and by a certification by a licensed physician or licensed psychologist as to the impairment of the person for whom the public guardian is sought to be appointed.

In the event that the public guardian shall decline to accept a nomination filed under section 3641, the nominator or any other person authorized to nominate under section 3641 may petition the probate court as provided in this section for the appointment of a public guardian.

§ 3643. Appointment of guardian ad litem

As soon as the petition for appointment of a public guardian is received in the appropriate court, the judge shall appoint an attorney to act as guardian ad litem to represent the alleged incapacitated person in all proceedings before the court until such time as a public guardian is appointed or the petition is dismissed. The Department of Health and Welfare shall pay the costs of the guardian ad litem.

§ 3644. Notice and hearing

The probate court shall appoint a time and place for hearing and shall order that notice of the proceedings be given by serving in hand or by certified mail the alleged incapacitated person for whom a guardian is sought to be appointed with a copy of the petition and order of the court at least 10 days before the day of hearing. Like notice in hand, or by certified mail, shall be served upon the Bureau of Social Welfare, upon the guardian ad litem and upon such other persons as the court may direct. The Bureau of Social Welfare and the guardian ad litem may waive service.

At such hearing, the burden shall be upon the petitioner to establish that the person for whom a guardian is sought to be appointed is so incapacitated by reason of advanced age, physical or mental illness or incapacity or other causes that he is incapable of managing himself and his affairs independently, and requires care and supervision of his person and estate.

§ 3645. Findings of probate court

Upon petition and hearing, as provided in this subchapter, the probate court shall appoint the public guardian of the person and estate if it shall find:

1. Resident. The person is a resident of this State;

2. Incapacitated. The person is incapacitated by reason of advanced age, physical or mental illness or incapacity, or other cause to the extent that he lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning himself or his property.

In every case in which the public guardian is appointed, the court shall adopt the guardianship plan as submitted or modified, under which the guardian shall act.

§ 3646. Duties of public guardian

The public guardian shall have custody of the person of the ward and shall determine the ward's place of residence. The public guardian may apply for and effect the placement of any ward in accordance with law, in an appropriate home, hospital or institution having facilities and staff adequate to provide care and supervision consistent with the need of the ward. Any placement, if in a facility described in Title 22, sections 5 and 1811, shall be made only if such facility is duly licensed. In the event that the license of any such facility shall be suspended or revoked, the public guardian having any ward placed therein shall remove such ward and effect an appropriate placement of the ward as soon as practicable after knowledge of the suspension or revocation of the license. Except as otherwise specifically provided in this subchapter, the general provisions of this chapter relating to the powers and duties of guardians of adult persons are applicable to the public guardian acting under this subchapter. The public guardian may apply for and receive on behalf of any ward any benefits, grants or public aid to which such ward is entitled. The public guardian shall keep books of account or other records showing separately the principal amount received, increments thereto and disbursements therefrom for the benefit of any ward, together with the name of such ward, the source from which the money was received and the purpose for which the money was expended. The public guardian shall settle the account of its ward in accordance with section 3901.

Upon the termination of the guardianship, the public guardian shall file with the court its final accounting and shall make disposition of any assets of any such ward then in its hands as ordered by the court. This section shall not abrogate any powers or duties vested by law in the head of any public institution, or vested by the settlor of a trust in the trustee thereof, for the benefit of any ward under the guardianship of the public guardian.

§ 3647. Bond and compensation

The public guardian shall not be required to file bonds in individual guardianships but shall give a surety bond for the joint benefit of the wards placed under the guardianship of the public guardian, with a surety company or companies authorized to transact business within the State of Maine, in an amount not less than the total value of all assets held by the public guardian, which amount shall be computed at the end of each state fiscal year and approved by the judge of the probate court for Kennebec County. At no time shall the bond of the public guardian be less than \$5,000.

No compensation, profit or benefit shall accrue to the public guardian from a ward or from any other source or service as public guardian. Any personal expenditures made on the ward's behalf by the public guardian shall, when properly evidenced, be reimbursed out of the ward's estate.

Claims for service rendered by state agencies shall be submitted to the probate judge for approval before payment.

§ 3648. Special guardian

Pending any proceeding under this subchapter, the probate court may appoint the public guardian as special guardian for the alleged incapacitated person as provided by section 3510, and may order guardianship of the person as well as of the estate.

§ 3649. Priority to private guardian

The public guardian shall be ineligible if it is determined by the probate judge that a suitable private guardian is available and willing to assume responsibilities for such service.

§ 3650. Grounds for removal

The probate court shall have exclusive power to remove the public guardian when:

1. Failure to perform. It has failed to perform any duties imposed by law; or
2. Interests jeopardized. For any reason the interests of the person for whom it has been appointed guardian under this subchapter are likely to be jeopardized by a continuance in office.

§ 3650-A. Removal of public guardian

The probate court on its own motion may, and on the petition of any interested person alleging adequate grounds for removal shall, order the public guardian to appear and show cause why it should not be removed, or when necessary to protect the ward, may summarily remove it. Upon removal, the court may appoint a new guardian for the ward. The public guardian summarily removed may apply by petition to have the decree of removal vacated and to be reinstated, and if the court vacates the removal and reinstates it, the court shall make any order appropriate to accomplish reinstatement.

§ 3650-B. Discharge of public guardian

The probate court shall have exclusive power to discharge, by appropriate order, the public guardian, as follows:

1. Ward or guardian. Upon petition by the ward or the public guardian after receiving evidence that the ward no longer requires a guardian; or

2. Public guardian. Upon petition of the public guardian while the ward still required guardianship, accompanied by a petition for appointment of a new guardian.

The public guardian shall not be discharged on its own petition until the court appoints the substitute guardian or determines that no new guardian is required.

§ 3650-C. Review

The public guardian, at least annually, and at any time when ordered by the probate court, shall review separately the case of every person for whom the public guardian is acting as guardian under this subchapter. A report of each review shall be filed with the probate court in which the proceedings are filed. Each review shall contain an examination and an evaluation of the guardianship plan and recommendations for modification thereof as deemed appropriate or necessary.

§ 3650-D. Exclusiveness

When the probate court has appointed a public guardian under this subchapter, no other guardian shall be appointed for the same ward during the continuation of such guardianship.

§ 3650-E. Consent to autopsy and burial arrangement

The public guardian, in the absence of available next of kin, may authorize the performance of an autopsy upon the body of any deceased ward. The public guardian, in the absence of available next of kin, or in the event that next of kin refuses to assume responsibility therefor, shall cause any deceased ward to be suitably buried and shall have authority to expend funds of the ward for that purpose, and in the event the ward is without funds at the time of death, the public guardian shall cause him to be suitably buried at public expense, as in the case of the burial of any other deceased indigent person.

Sec. 2. R. S., T. 22, c. 958, additional. Title 22 of the Revised Statutes is amended by adding a new chapter 958 to read as follows:

CHAPTER 958**PROTECTIVE AND SUPPORTIVE SERVICES FOR ADULTS****§ 3460. Legislative purpose**

The purpose of this chapter is to provide protective and supportive services to those adults who are incapacitated by reason of advanced age or physical or mental incapacity, and who, with some assistance, are capable of living and functioning in society.

§ 3461. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Bureau. "Bureau" means the Bureau of Social Welfare.
2. Incapacitated person. "Incapacitated person" means any person who is 18 years of age or over, and who is impaired by reasons of advanced age, mental or physical illness or incapacity, or other cause, to the extent that he lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning his person or property, except that this chapter shall not include those persons who are provided for in Title 18, chapter 501, subchapter III-A.
3. Protective services. "Protective services" shall mean those services whose objective is to protect an incapacitated person from himself and from others. They shall consist of evaluation of the need for service and mobilization on the person's behalf of appropriate existing services. Such protective services shall include, but shall not be limited to, arrangements for appropriate living quarters, obtaining financial benefits to which the person is entitled, securing medical services and supplies and legal services. In those situations where exploitation, prevention of injury, protection of the person and his property and serving the necessities or amenities of life are at issue, such protective services shall include seeking the appointment of a public or private guardian for the incapacitated person.
4. Supportive services. "Supportive services" shall mean those services whose objective is to make it possible for an incapacitated person to become rehabilitated or self-sufficient to the maximum extent possible. These supportive services shall include, but shall not be limited to, counselling, transportation, assistance in obtaining adequate housing, medical and psychiatric care, and nutritional services.
5. Ward. "Ward" means a person for whom the bureau has been duly appointed guardian pursuant to Title 18, chapter 501, subchapter III-B.

§ 3462. Responsibility of bureau; rules and regulations

1. Assistance. The Bureau of Social Welfare shall respond to complaints concerning and requests for assistance from or on behalf of all incapacitated adults. Services provided by the bureau shall be protective or supportive in nature and the bureau may provide them from its own resources, by mobilizing available community resources, or by purchase of services from voluntary or state agencies. Voluntary services shall be initiated only with the consent of the incapacitated person.

2. Rules and regulations. The bureau shall adopt rules and regulations for the administration of this chapter.

§ 3463. Appointment of guardian

The bureau shall serve as public guardian for incapacitated adults under Title 18, chapter 501, subchapter III-B.

§ 3464. Role of bureau, source of services

The role of the bureau shall be primarily that of supervision and coordination. To the extent that assets are available to incapacitated adults or wards, the cost of services shall be borne by the estate of persons receiving such services.

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of Health and Welfare, Bureau of Social Welfare, the sum of \$128,500 to carry out the purposes of this Act. The breakdown shall be as follows:

	1973-74		1974-75
HEALTH AND WELFARE, DEPARTMENT OF			
Bureau of Social Welfare			
Personal Services	(6) \$50,000	(6)	\$52,000
All Other	10,000		15,000
Capital Expenditures	750		750
	<hr/> \$60,750		<hr/> \$67,750

STATEMENT OF FACT

The purpose of this bill is to provide for adults the same protections as are now provided for children and retarded persons. It is proposed that this protection shall be accomplished by providing a range of services whose objective is to enhance the capabilities of the individual to permit continued independent living in the community.

However, in those instances where the objective of independent living is not attainable, there are provisions in the bill providing for custody of the individual by a public guardian.