

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 14, 1981

The twenty-eighth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 411:

DELETING THE REQUIREMENT THAT DEPT. OF  
HEALTH APPROVE COUNTY SERVICES FOR  
MEDICAL AID TO INDIGENTS.

Senator Hims1, District 9, Kalispell, introduced the bill at the request of the Audit Committee. The purpose is to do away with a requirement for approval of medical services that is being ignored by county commissioners.

Chad Smith, speaking for the Montana Hospital Association, spoke in support of the bill.

CONSIDERATION OF SENATE BILL 335:

ADOPTING A NEW DEFINITION OF MARINE,  
INLAND MARINE, AND TRANSPORTATION  
INSURANCE.

Senator Hazelbaker, District 41, Dillon, introduced the bill at the request of the State Insurance Department. Its purpose is to bring into conformity the definition of certain types of insurance with those in other states.

Josephine Driscoll, Chief Deputy Insurance Commissioner for the State Insurance Department, spoke in support of the bill, saying it would be much more beneficial to the insurance carriers to use the same forms nationwide.

CONSIDERATION OF SENATE BILL 336:

ALLOWING THE BOARD OF PARDONS TO  
DELEGATE CERTAIN HEARING FUNCTIONS.

Senator Ryan introduced the bill, stating that its purpose is to grant authority for one member of the Parole Board to conduct the interview prior to parole of prisoners and to

allow authorities from another state to conduct interviews prior to release of prisoners to Montana. He pointed out that this would avoid unnecessary expense to Montana of sending a state official to conduct the interview.

Hank Bridges, Chairman of the State Parole Board supported the bill because of the convenience and because of the money which would be saved.

CONSIDERATION OF SENATE BILL 341:

PROVIDING FOR TRIAL IN ANY COUNTY WHERE  
AN OFFENSE THAT IS PART OF A COMMON  
SCHEME IS COMMITTED.

Senator Mazurek introduced the bill at the request of the Attorney General's office and the Blaine County Attorney. He said the concept of the bill arose as a result of a particular case in Blaine County involving two men convicted of breaking into jukeboxes in two different counties, but as a part of a continuing operation. Rather than charge them with one misdemeanor in each of two counties, the Blaine County Attorney charged them with a single felony for both crimes.

In response to a question from Senator O'Hara, Senator Mazurek specified that only if there was a common thread and a definite relationship running through several crimes could the crimes be charged in one county.

CONSIDERATION OF SENATE BILL 407:

SPECIFYING THE DISCIPLINARY AUTHORITY OF  
PROFESSIONAL & OCCUPATIONAL LICENSING BOARDS.

Senator S. Brown introduced the bill and presented a handout stating the problem which had suggested this bill (marked Exhibit A and attached to these minutes).

CONSIDERATION OF SENATE BILL 400:

TO CLARIFY THAT UPON PETITION FOR REHEARING  
OF A SUPREME COURT DECISION THE ADVERSE  
PARTY MAY FILE OBJECTIONS.

Senator Halligan, at the request of the Attorney General's Office, introduced the bill.

John Maynard, Assistant Attorney General, stated that its purpose is to conform the criminal rule with the civil rule relative to the seven-day period in which to request a rehearing following an adverse Supreme Court opinion.

FURTHER CONSIDERATION OF SENATE BILL 335:

ADOPTING A NEW DEFINITION OF MARINE,  
INLAND MARINE, & TRANSPORTATION  
INSURANCE.

Senator Olson moved that the bill receive a do pass. David Niss pointed out that on page 6, line 3, reference is made to exclusion of certain motor vehicles; and that on page 8, line 7, there is the same exclusion, except it refers to "motor homes" as "auto homes". Since there is no definition of either provided, it is hard to know if the two are supposed to be the same. Also, on page 16, line 8, he pointed out the term "wet marine insurance", a term which is no longer defined in the law. Senator Olson withdrew his motion.

DISPOSAL OF SENATE BILL 336:

Senator Mazurek moved that the bill DO PASS, and his motion carried unanimously.

DISPOSAL OF SENATE BILL 341:

Senator Anderson moved that the bill DO PASS, and the motion carried unanimously.

DISPOSAL OF SENATE BILL 400:

Senator S. Brown moved the bill DO PASS, and his motion carried unanimously.

DISPOSAL OF SENATE BILL 407:

David Niss pointed out that a Statement of Intent would be needed with this bill, and agreed to provide one. Senator S. Brown then moved that the bill, along with the Statement of Intent, DO PASS, and the motion carried unanimously.

DISPOSAL OF SENATE BILL 411:

Senator Berg moved DO PASS, and his motion carried unanimously.

FURTHER CONSIDERATION OF SENATE BILL 288:

Senator Anderson stated that Jeanne Anderson, Billings, a member of the Judicial Standards Commission, had wanted to testify in committee relative to her reservations about this bill. Senator S. Brown said that he had talked to her when she was in Helena, and felt that her fears about this bill had been put to rest. Senator Anderson said that he had agreed to hold the bill, along with SB 369, until he hears from Ms. Anderson. Senator S. Brown then stated that he has a real

grievance with people lobbying members of the committee against the bill, but refusing to discuss their problems with him or to show up to testify in front of the committee.

CONSIDERATION OF SENATE BILL 404:

TO GENERALLY REVISE THE LAW RELATING TO  
THE APPOINTMENT OF GUARDIANS FOR  
INCAPACITATED PERSONS.

Senator Mazurek, District 16, Helena, described this bill as a companion bill to SB 403. He said that the problem leading to drafting of this bill is that developmentally disabled people are not able to handle all their affairs themselves, and need limited guardianships to help in some instances. Current law does not provide a precise definition of the authority the guardian has or does not have.

CONSIDERATION OF SENATE BILL 403:

TO CONFORM PROVISIONS APPLICABLE TO  
PROTECTIVE SERVICES TO MONTANA'S  
GUARDIANSHIP AND CONSERVATOR LAW.

Senator Mazurek led straight into discussion of this bill as a follow-up to the preceding one. He said that this bill relates to the area of protective services. He stated that no one should necessarily have to fall under the definition of "de facto guardians" when they have gone through no process to become guardians, and pointed specifically to the cases of individuals who run group homes for the elderly, handicapped, or retarded. He presented a letter and accompanying statement of support for the bill from the Social and Rehabilitative Services (marked Exhibits B and C attached to these minutes).

Rosemary Zion, as drafter of the bill, spoke in support of it and traced the history of the bill. Her testimony indicated a tremendous need on the part of the handicapped and those who deal with them to have a limited guardianship available to them. She said that without this kind of guardianship, the handicapped can very easily become victims -- as can anyone who undertakes to help them without having first established the proper authority.

Judith Carlson, Deputy Director of the S.R.S., supported Mrs. Zion's statements and urged support of the bill.

Rosalie Walsh spoke in support, saying that developmentally disabled should be allowed all the control they can handle over their lives, but they should have limited guardianships available for the areas in which they need help.

Beth Richter, of the State Developmentally Disabled Advisory Council, read a statement in support (marked Exhibit D and attached to these minutes).

In closing, Senator Mazurek offered a letter from Professor Rusoff (marked Exhibit E and attached to these minutes).

Senator Anderson asked if Mrs. Zion had shown the drafts of this bill to Dick Heard, at Boulder. She was not certain whether he had received a copy or not, but said that it could be done.

Senator Mazurek, in a response to Senator Anderson's question relative to the necessity of the bill, replied that it only provided a mechanism for accomplishing appointment of a limited guardian -- that it did not necessitate action. He felt for this reason that there would be no cost to the state in implementing the terms of the bill.

Senator Anderson asked if passage of these two bills would make it necessary for the manager of a group home to petition for guardianship in order to continue handling of the patient's Social Security checks. Senator Mazurek said that the choice would depend entirely upon what the patient requested.

Senator Anderson wanted to know why the bill had failed last year. Mrs. Zion said that haste had been the largest contributing factor. The bill had not been shown to the Bar Association, the Judiciary, or the Veterans Administration. For that reason, the V.A. opposed it last year, although this year they do not. Mrs. Zion also said that she felt this bill would do much toward increasing the number of guardianships employed for medical situations. People who would be willing to take on only this sort of responsibility would be allowed to do so without having to become full guardians for individuals who did not really need one for other purposes.

Senator Anderson suggested that there might be a conflict of interest in cases where one person handled all aspects of a developmentally disabled person; but Mrs. Zion replied that there would be better protection against this under this bill than currently exists.

Senator Anderson said that implementing this bill might require a great increase in record-keeping costs; but Mrs. Zion said that she did not think this would be the case.

Senator Anderson asked Mrs. Zion to give examples showing the need for the bill. She discussed the case of a person who might or might not need open heart surgery, and the difficulty that might be encountered in getting the group home manager, who would not have adequate authority to give consent, or

getting the surgeon to assume the responsibility. She then described the scene which would result in a D. D. person breaking a hip, and the staff having to look around at the hospital for someone willing to assume the responsibility for giving consent for treatment. She also described group home managers facing a problem with a patient and being unwilling to mete out discipline, even though they felt they knew how to solve the problem, because there was no one with the authority to grant permission for instituting the discipline.

DISPOSAL OF SENATE BILL 404:

Senator Mazurek moved that the bill DO PASS, and his motion carried unanimously.

DISPOSAL OF SENATE BILL 403:

Senator O'Hara moved that the bill DO PASS, and the motion carried unanimously.

FURTHER CONSIDERATION OF SENATE BILL 224:

Senator Mazurek presented amendments (marked Exhibit F and attached to these minutes). Senator S. Brown moved that the amendments be adopted, and the motion carried unanimously.

Senator O'Hara moved that the bill be tabled.

Senator Mazurek moved that the bill be further amended on line 11 of page 8, by inserting, following "was", "caused or committed"; and on line 11 by striking "caused or committed"; and on line 13, following "subdivisions", by inserting "was". The amendments passed unanimously.

Senator O'Hara again raised the possibility of tabling the bill until Rep. Keedy's bill on this subject gets over to this committee. Chairman Anderson stated that there was not much time remaining in which to consider the bill, and that a decision would be made on February 19 relative to the disposition of this bill.

DISPOSITION OF SENATE BILL 265:

David Niss pointed out that lines 14 and 15 provide for one and one-half times the compensation presently allowed. In referencing to "additional services", this amount would be very difficult to compute. He agreed to prepare an amendment, which is shown on the attached Committee Report.

Senator Berg moved that the amendment excluding subsection (5) be adopted, and the motion carried unanimously. Senator B. Brown then moved that the bill DO PASS AS AMENDED, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 112:

Senator Tveit moved to amend the bill on page 1, line 19, following "." by inserting "At any time after receiving a complaint, the commission may notify the parties that it declines further jurisdiction and thereupon the complainant may petition the district court". This motion passed unanimously.

Senator Anderson asked if Senator Tveit would change "may" to "shall" in line 14. Putting it into the form of a motion, it carried five to four with one abstention on a roll call vote.

DISPOSITION OF SENATE BILL 29:

Senator S. Brown moved to amend page 2, line 4, following "residential", by inserting "or commercial"; and on page 3, line 7, following "residential", by inserting "or commercial". These amendments passed unanimously. It was then specified that it was the intent of the author of the bill and the intent of the committee that this language apply to all established farm businesses. Senator S. Brown moved that the bill DO PASS AS AMENDED, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 245:

Senator Mazurek moved to amend the bill on page 5, line 20, by striking "\$5" and inserting "\$3". His motion passed unanimously. Senator S. Brown moved that the bill DO PASS AS AMENDED, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 267:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report. The amendments passed unanimously. He then moved that the bill DO PASS AS AMENDED, and the motion carried with Senator Olson objecting.

  
\_\_\_\_\_

ROLL CALL

JUDICIARY COMM TTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/14/81

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.



NAME: JUDITH H CARLSON DATE: 2/14/81

ADDRESS: 111 N SANDERS

PHONE: 9-5622

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: SR 403 + 404

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENTS: THESE BILLS WILL CLARIFY DIFFERENCE

BETWEEN PROTECTIVE SERVICES AUTHORITY OF

THE DEPT + THE GUARDIANSHIP / CONSERVATORSHIP

AUTHORITY IT WILL ALLOW COURTS TO APPOINT

GUARDIANS FOR ONLY THOSE FUNCTIONS REQUIRED BY

THE NEEDS OF THE PERSON. SRS NOW RECEIVES

IN MANY CASES, MORE AUTHORITY OVER PERSONS THAN

IT NEEDS OR WANTS.

In support of  
Senate Bill 404

My name is Rosalie Walsh. As a consumer and DD professional I am testifying in support of Senate Bill 404, which would allow for limited guardianships of incapacitated persons.

My concerns include an interest in protecting the rights of developmentally disabled persons and insuring that any decisions made which affect them are in their best interests. Yet I am not interested in denying them those personal choices which they as individuals are capable of making for themselves.

Therefore, I would like to see our system create a balance between allowing developmentally disabled persons to exercise control over their own lives insofar as they are able, while at the same time preventing their victimization.

I also believe a bill such as this would encourage more relatives and advocates of DD persons to become involved in a positive way in their lives.

Finally, I would like to point out that the State ARC (Association for Retarded Citizens) has advocated this type of bill since 1968.

DATE: 2/14/81

ADDRESS: ATTORNEY GENERAL'S OFFICE

PHONE: 449-2026

REPRESENTING WHOM? ATTORNEY GENERAL

APPEARING ON WHICH PROPOSAL: SB 400

DO YOU: SUPPORT? ☒ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

28

DATE:

ADDRESS:

PHONE:

## REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

NAME: Rosalie Walsh DATE: 2-14-81

ADDRESS: Carroll College

PHONE: 442-9874

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 403-404

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPCSE? \_\_\_\_\_

COMMENTS: See written statement.



NAME: JOHN J. JONES DATE: 2-19-51

ADDRESS: Box 607

PHONE: 447-2950

REPRESENTING WHOM? Ans: Hong Kong

APPEARING ON WHICH PROPOSAL: 45044

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

27

OFFICE OF THE LEGISLATIVE AUDITOR  
SUNSET POSITION PAPER #9

RE: RANGE OF PENALTIES GIVEN REGULATORY BOARDS

The Council of State Governments Task Force on State Dental Policies and the Federal Trade Commission (FTC) have each addressed the issue of the range of penalties available for regulating licensees. The two groups stated that in certain instances regulatory boards will not pursue disciplinary action against licensees because the boards believe the alternatives available to them may be too severe for the violation. For example, Montana statutes concerning the Boards of Optometrists and Osteopathic Physicians appear very stringent in penalties for violations of the licensing acts. The statutory language of both laws suggests that the only disciplinary recourse available to the boards is revocation of an individual's license.

In contrast to these specific statutes, a Montana law specifying the duties of regulatory boards attached to the Department of Professional and Occupational Licensing (Section 37-1-103, MCA) describes a somewhat broader range of alternatives.

"Each board shall: 1) set and enforce standards and rules governing . . . the conduct of the members of the particular profession or occupation within its jurisdiction; and sit in judgment in hearings for the suspension, revocation, or denial of a license."

Thus, there appears to be an implied range of disciplinary action up to revocation; however, the range of penalties is not specific.

The FTC and the Council of State Governments stated that a solution to the problem is to allow boards a range of penalties in the law which would fit any disciplinary situation. For example, the Montana Board of Medical Examiners has the statutory authority written into Section 37-3-323, MCA to:

- "(a) revoke his license;
- (b) suspend his right to practice for a period not exceeding 1 year,
- (c) suspend its judgment of revocation on the terms and conditions to be determined by the board;
- (d) place him on probation, or



- (e) take any other action in relation to disciplining him as the board in its discretion considers proper."

Similarly, the Board of Radiologic Technologists has the authority (Section 37-14-321, MCA) to do the following:

"A license or permit may be suspended for a fixed period or may be revoked, or such technologists may be censured, reprimanded, or otherwise disciplined as determined by the board...."

In reviewing the appropriate licensing statutes for the boards subject to sunset, it is apparent that most laws specify that the boards have the power to revoke or suspend. A range of available disciplinary actions is usually not provided. A summary of the boards' authority in taking disciplinary actions as set down in the boards' specific licensing statutes appears in Appendix A.

ISSUE:

Should the laws that apply to disciplinary action of regulatory boards specify the range of penalties which are available to the boards?

# APPENDIX A

## Board Name

### 1st Sunset Cycle

<u>Board Name</u>	<u>Revoke</u>	<u>Suspend</u>	<u>Deny</u>	<u>Probation</u>	<u>Reprimand Censure</u>	<u>Board Discretion</u>
Accountants . . . . .	X	X	X		X	X
Architects . . . . .	X					
Banking . . . . .			X			
Electricians . . . . .	X	X				
Engineers and Land Surveyors . . . . .	X	X	X			X
Insurance Commissioner . . . . .	X	X	X			
Investment Commissioner . . . . .	X	X	X			X
Landscape Architects . . . . .	X	X				X
Physical Therapists . . . . .	X	X	X			X
Plumbers . . . . .	X	X				
Realty Regulation . . . . .	X	X				

### 2nd Sunset Cycle

<u>Board Name</u>	<u>Revoke</u>	<u>Suspend</u>	<u>Deny</u>	<u>Probation</u>	<u>Reprimand Censure</u>	<u>Board Discretion</u>
Athletics . . . . .	X		X			
Barbers . . . . .	X	X				
Chiropractors . . . . .	X	X		X		X
Cosmetologists . . . . .	X	X	X			
Dentistry . . . . .	X	X		X	X	
Hearing Aid Dispensers . . . . .	X	X	X			
Massage Therapists . . . . .	X	X	X			
Medical Examiners . . . . .	X	X		X		X
Morticians . . . . .	X	X	X			
Nursing . . . . .	X	X	X			
Nursing Home Administrators . . . . .	X	X	X			
Optometrists . . . . .	X					
Osteopathic Physicians . . . . .	X					
Pharmacists . . . . .	X					
Podiatry Examiners . . . . .	X					
Psychologists . . . . .	X					
Radiologic Technologists . . . . .	X	X			X	
Sanitarians . . . . .	X	X				X

28

<u>Board Name</u>	<u>Revoke</u>	<u>Suspend</u>	<u>Deny</u>	<u>Probation</u>	<u>Reprimand Censure</u>	<u>Board Discretion</u>
Speech Pathologists & Audiologists. . . .	X	X	X			
Veterinarians . . . . .	X	X	X			
<u>3rd Sunset Cycle</u>						
Aeronautics . . . . .	X	X				X
Horse Racing. . . . .	X	X	X			
Livestock . . . . .	X	X	X			
Oil and Gas Commission. . . . .			X			
Water/Waste Water Operators . . . . .	X	X				
Water Well Contractors. . . . .	X	X				

DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

*Exhibit B*



TED SCHWINDEN, GOVERNOR

P.O. BOX 4210

STATE OF MONTANA

HELENA, MONTANA 59604

2 February 1981

The Honorable Joe Mazurek  
Montana State Senate  
Capitol Station  
Helena, MT 59601

Dear Senator Mazurek:

The Director, the Office of Legal Affairs and the concerned divisions of the Department of Social and Rehabilitation Services have reviewed, as introduced by you, the bill amending the Montana guardianship laws and the Protective Service Acts to allow for limited guardianships in Montana. We support your bill in that it would provide the means for tailoring appropriate guardianships for the particular situations. The Department of Social and Rehabilitation Services has responsibilities in many situations where limited guardianship would be preferred to a full guardianship. Accompanying this letter is a statement detailing our reasons for supporting the bill.

If we can be of any assistance in explaining how this proposed legislation relates to the responsibilities of our agency, or should there be any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Cary B. Lund".

Cary B. Lund, Attorney  
Office of Legal Affairs

CBL/na

cc: Rosemary Zion

22

Exhibit C

STATEMENT OF SRS IN SUPPORT OF BILL AMENDING  
GUARDIANSHIP AND PROTECTIVE SERVICE ACTS

The Department of Social and Rehabilitation Services supports the proposed amendments to the Guardianship Act, creating a ~~limited~~ guardianship and the proposed amendments to the Protective Services Acts, limiting their effect in relation to the Guardianship Law.

The changes proposed in the Guardianship and Protective Services Acts will serve to clarify the relationship of those acts to each other and will also define the roles that the Social Services Division of the Department of Social and Rehabilitation Services may assume in providing Protective Services and undertaking legal responsibilities for incapacitated persons.

The acts as they are currently written are to an extent duplicative in that the Protective Services Acts allow the State to assume substantial legal responsibilities for incapacitated persons in a manner that is similar to guardianship and conservatorship. ~~This lack of distinction between the Guardianship Act and the Protective Services Acts has lead to some confusion among attorneys and the courts.~~ Consequently, the State has on occasion, received by the language of Court Orders for Protective Services significant guardianship authority over and thus legal responsibilities for an incapacitated person. This authority often is neither necessary nor desired. A further problem is that such authority is received by protective services procedures which not only differ from those required in guardianship proceedings but which are also less stringent.

The concept of limited guardianship would provide courts greater discretion in designing appropriate guardianships. ~~Under the current law a limited guardianship is only implied.~~ The proposed changes would incorporate the concept into the law and set forth specifically the procedure for and elements of such a guardianship. ~~Under the present law, the authority and responsibilities given a guardian may be far in excess of that actually needed.~~ Consequently, the State and private parties often find guardianship to be a burden upon them and the ward when it is granted. Potential guardians are reluctant to take on the tasks and legal responsibilities of a full guardianship. ~~Limited guardianship would encourage concerned parties to more readily assume responsibility for the individual in the realms where it is needed while allowing the individual to retain those responsibilities he is capable of exercising.~~ An incapacitated person's needs could be more appropriately met in this manner.

The authority and responsibilities granted to a limited guardian would have to be specifically stated in a court decree. Such authority and responsibilities as are granted

by a court order would have to be predicated upon stated findings as to the need for guardianship. The guardian would know from the court decree what his legal responsibilities are in relation to a ward and the guardian's legal liabilities might consequently be limited by this clearer definition.

ExhibitsBeth Richter  
State DD Council

The State Developmental Disabilities Planning & Advisory Council sponsored the research which led to Senate Bills 403 and 404 because the Council has long seen a need for a guardianship procedure more limited than the all-or-nothing guardianship process permitted by Montana state law at the present time.

In my three years with the Council, I have heard several parents of adult developmentally disabled persons express concern about the future welfare of their children, particularly as the parents progress into their senior years. Many parents are, at the same time, reluctant to have guardians appointed for their adult children because of the all-encompassing control over the child's life which this involves. The adult child may not live at home, but rather in <sup>another</sup> ~~A~~ setting in which his activities are controlled and monitored, in which case it is impossible for the parents to constantly guard against exploitation of their child or against ill-advised, but perhaps well-meaning, decisions made on behalf of the child. These are situations in which a limited form of guardianship can be very advantageous and desirable.

But, in addition, there are some adult disabled persons who live and function more independently than others and who are capable of personally handling most decisions they must make, but may need limited help in other areas. Some developmentally disabled adults are capable of making decisions about, for instance, buying a TV set, changing jobs, relocating to another apartment, and any number of other decisions we make in our everyday lives. But the prospect of having to make <sup>major</sup> ~~A~~ decision <sup>such as</sup> ~~about~~ getting married, consenting to a surgical procedure, or investing money, could render the same disabled adult completely helpless. For these individuals, a full guardianship is an unnecessary and costly procedure and more complex than it need be.

The Council urges your support for Senate Bills 403 and 404.

*Exhibit E*

SCHOOL OF LAW

(406) 243-4311

University of Montana

Missoula, Montana 59812

January 7, 1981



Rosemary Zion, Esq.  
Suite 201, Power Block  
P.O. Box 1255  
Helena, MT 59601

Dear Rosemary:

Thank you for sending the latest draft of your bill dealing with limited guardianships. I have read this draft and have no criticism of it, except for having found some typographical errors and some words for which I have substituted different words.

Martin Burke was the only member of the faculty who expressed any interest in the bill. He tells me that he has some experience with guardianships and said he will send his comments on your bill directly to you.

I hope you will continue to let me know what you are doing with this bill.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lester R. Rusoff".

Lester R. Rusoff  
Professor of Law

LRR:ss





Page 2

Line 25: STRIKE "45-13-302"

INSERT: "46-13-302"

PAGE 4

LINE 9: STRIKE "NOT"

PAGE 6

LINE 3: AFTER KNOWINGLY INSERT "or"

PAGE 6 INSERT NEW SUBSECTION AFTER LINE 11.

"(d) Upon the fourth occurrence he shall be permanently dismissed."

PAGE 6 INSERT NEW SUBSECTION AFTER LINE 16

"(3) The disciplinary actions provided for herein are in addition to and not in limitation of the employing agencies rights to otherwise discipline."

PAGE 7 LINE 8: STRIKE "43-13-302"

INSERT "46-13-302"

Patricia Ryan

DATE 2/14/81

COMMITTEE ON \_\_\_\_\_

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
JUDITH H CARLSON	SRS	403, 411	X X X	
Jim Pellegrini	OLA	411, 407		
ROGER McGLENN	IND. INS. AGENTS OF MT.	335	X	
Jimmy E Burgess	Board of Pardons	335	X	
Seth Riehl	State DD (insurance)	403	X	
Rosalie Walsh	self	403, 404	X	
Wendy Brown	visiting			
Eleanor Struck	visiting			
Rosemary Zion	self	403, 5B404	X	

# STANDING COMMITTEE REPORT

February 14, 19 81

MR. PRESIDENT

We, your committee or JUDICIARY

having had under consideration SENATE Bill No. 404

Respectfully report as follows: That SENATE Bill No. 404

DO PASS

# STANDING COMMITTEE REPORT

February 14, 1931

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 403

Respectfully report as follows: That SENATE Bill No. 403

DO PASS

*GA*

# STANDING COMMITTEE REPORT

February 14, 1981

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 411

Respectfully report as follows: That SENATE Bill No. 411

DO PASS

# STANDING COMMITTEE REPORT

February 14, 1981

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 341

Respectfully report as follows: That SENATE Bill No. 341

DO PASS

*P.B.*

# STANDING COMMITTEE REPORT

February 14, 19 91

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 336

Respectfully report as follows: That SENATE Bill No. 336

DO PASS

# STANDING COMMITTEE REPORT

February 14, 1961

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 400

Respectfully report as follows: That SENATE Bill No. 400

DO PASS



# STANDING COMMITTEE REPORT

February 14, 19 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 407

Respectfully report as follows: That SENATE Bill No. 407

DO PASS

STATEMENT OF INTENT ATTACHED

Mike Anderson Chairman.

# STANDING COMMITTEE REPORT

February 14, 1931

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 407

Respectfully report as follows: That Statement of Intent, SENATE Bill No. 407  
be adopted.

## STATEMENT OF INTENT RE: SB 407

SB 407 requires a statement of intent because it grants each licensing board allocated to the Department of Professional and Occupational Licensing the authority to adopt specifying grounds for disciplinary action and the type of action that may be taken.

Each board adopting new substantive or procedural rules under SB 407 is to specify both the grounds upon which each type of disciplinary action may be taken, and the procedure to be used for each action. Each board using a disciplinary action not specified in subsection (1)(a)

~~DO PASS~~

continued

February 14, 1981

through (e) but considered proper under (1) (f) must also state in the rule the grounds upon which disciplinary action may be taken and the applicable procedure.

No rule shall specify disciplinary action for failure to renew any license or certificate, pay any fee or participate in any program of continuing education unless the renewal, fee or participation is required by statute.

Rules authorized by both SB 407 and by other provisions of law and previously adopted under such other provisions need not be readopted under SB 407.

*B.A.*

# STANDING COMMITTEE REPORT

.....February 14, 1931.....

MR. PRESIDENT .....

We, your committee on ..... JUDICIARY .....

having had under consideration ..... SENATE ..... Bill No. 267 .....

Respectfully report as follows: That..... SENATE ..... Bill No. 267 .....  
be amended as follows:

1. Page 4, line 21.  
Following: "department"  
Insert: "or a licensed child-placing agency"
2. Page 5.  
Strike: lines 12, 13, 20 and 21 in their entirety.  
Renumber: subsequent subsections
3. Page 8, line 7.  
Following: "toward the child"  
Strike: "1"
4. Page 8, line 8.  
Strike: "as defined in 41-3-102(3)(d)"
5. Page 8, line 10.  
Following: "child"  
Insert: "as defined in 41-3-102(3)(d)"  
~~EDPASS~~

continued

February 14 19 81

6. Page 11, line 3.  
Following: "that"  
Strike: "a licensed child placing agency"  
Insert: "the department"

And, as so amended,  
DO PASS

# STANDING COMMITTEE REPORT

February 14, 1981

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 265

Respectfully report as follows: That SENATE Bill No. 265  
be amended as follows:

1. Line 15.  
Following: "in"  
Insert: "subsections (1) through (4) of"

And, as so amended,  
DO PASS

# STANDING COMMITTEE REPORT

.....February 11, ..... 19..... 91

MR. .... PRESIDENT .....

We, your committee on ..... JUDICIARY .....

having had under consideration ..... SENATE Bill No. 112 .....

Respectfully report as follows: That ..... SENATE Bill No. 112 .....  
be amended as follows:

1. Line 14.  
Following: "chapter"  
Strike: "may"  
Insert: "shall"

2. Line 19.  
Following: "."  
Insert: "At any time after receiving a complaint, the commission  
may notify the parties that it declines further jurisdiction and  
thereupon the complainant may petition the district court."

And, as so amended,

DO PASS

SENATE COMMITTEE JUDICIARY

Date 2/14/81 Bill No. 112 ~~227~~ Time 12:14

NAME	YES	NO
Anderson, Mike	✓	
O'Hara, Jesse A.		
Olson, S. P.		✓
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Tveit, Larry J.	✓	
Brown, Steve	✓	
Berg, Harry K.		✓
Mazurek, Joseph P.		✓
Halligan, Michael		✓

Secretary

Chairman

Motion: Change "may" to "shall" in line 14, ~~last~~  
facts.

(include enough information on motion--put with yellow copy of committee report.)



# STANDING COMMITTEE REPORT

.....February 14..... 19 31.....

MR. PRESIDENT.....

We, your committee on JUDICIARY.....

having had under consideration SENATE Bill No. 245.....

Respectfully report as follows: That.....SENATE Bill No. 245.....

be amended as follows:

1. Page 5, line 20.  
Following: "\$2"  
Strike: "\$5"  
Insert: "\$3"

And, as so amended,

DO PASS

Mike Anderson.....  
Chairman.

# STANDING COMMITTEE REPORT

February 14 9 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 29

Respectfully report as follows: That SENATE Bill No. 29

be amended as follows:

1. Title, line 5.  
Following: "RESIDENCE"  
Insert: "OR BUSINESSES"
2. Page 2, line 4.  
Following: "residential"  
Insert: "or commercial"
3. Page 3, line 7.  
Following: "residential"  
Insert: "or commercial"

And, as so amended,

DO PASS

*B.A.*