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STATE OF WASHINGTON

NO.

IN THE SUPREME COURT OF WASHINGTON

(Court of Appeals No. 55648-7-I)

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2006 NOV 20 PM 4:24

SUSAN E. RIVAS,
Respondent,
vs.

OVERLAKE HOSPITAL MEDICAL CENTER; OVERLAKE INTERNAL MEDICINE ASSOCIATES,
Defendants,
And

EASTSIDE RADIOLOGY ASSOCIATES; OVERLAKE IMAGING; WASHINGTON IMAGING SERVICES,
Appellants,
And

ROBERT L. DAVIDSON, M.D., and JANE DOE DAVIDSON, his wife, and the marital community thereto,
Defendants,
And

ALLAN MURAKI, M.D. and JANE DOE MURAKI, his wife, and the marital community thereof,
Appellants.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Susan Rivas, Respondent in the Court of Appeals and Plaintiff in the King County superior Court proceedings below, "Plaintiff" petitions the Court to accept review of the Court of Appeals decision terminating review and review of Court of Appeals Order Denying Motion for Reconsideration designated in Part B of this petition.

B. COURT OF APPEALS DECISION AND ORDER DENYING MOTION FOR RECONSIDERATION.

Plaintiff asks the Supreme Court to accept review of and reverse the decision filed by the Court of Appeals on September 18, 2006 reversing the Trial Court's order denying defendant's motion for dismissal on Summary Judgment, and to accept review and reverse the Order Denying Motion for Reconsideration filed by the Court of Appeals on October 20, 2006. A copy of the September 18, 2006 decision and the Order Denying Motion for Reconsideration are attached as Appendix A, pages 1-12.

C. ISSUES PRESENTED FOR REVIEW

Plaintiff commenced an action for medical negligence against a physician on July 21, 1999 three years and one day after defendant physician's last alleged negligent act of omission which occurred on

July 20, 1996. RCW 4.16.350 requires legal action for medical negligence to be commenced within three years of the last act or omission. RCW 4.16.190 tolls the statute of limitations during the time a Plaintiff is incompetent or disabled to such a degree he cannot understand the nature of the proceedings. As a direct result of the physician's negligence, Plaintiff was comatose and in a hospital intensive care unit from July 19 to July 23, 1996. The issues presented for review are:

1. Did the Court of Appeals err by holding that Plaintiff's admitted incapacity, lasting four days, did not toll the medical statute of limitations under RCW 4.16.190?

2. Did the Court misinterpret RCW 4.16.190 when it held that a four day period of incapacity is too short, as a matter of law to toll the medical statute of limitations?

3. Did the Court confuse the definition of incapacity set out in RCW 4.16.190 with the separate definition of incapacity set forth in Chapter 11.88 RCW, the guardianship statute by failing to recognize each statute has its own separate definitions of incompetency and disability?

4. Whether by requiring a litigant to qualify for a guardian, the decision is in conflict with this Court's decision in *Young v. Key*

Pharmaceuticals, 112 Wn 2d 216, 770p. 2d 182 (1989), which held that the tolling statute is intended to operate regardless of a guardian's presence.

5. Whether the decision violates due process by interpreting the tolling statute in a manner that deprives a litigant of her full statutory period in which to investigate and file her suit by failing to properly interpret a statute.

6. Whether it violates public policy and due process to interpret a tolling statute in a manner that leaves future litigants unsure, uncertain, and unclear as to how the tolling statute will be applied (an issue of substantial public interest; see RAP 13.4 (b)(4)).

7. Does the phrase "as determined according to the Chapter 11.88 RCW" in RCW 4.16.190 compel adoption of the Chapter 11.88 RCW definition of incapacity or only compel the Court to use the Chapter 11.88 RCW process of determining incompetency or disability (e.g. superior court determination, jury trial if requested, witnesses, legal representation, burden of proof, etc.)?

8. Should the requirement for appointing a guardian set forth in RCW 11.88.010 (1)(c), "a demonstration of management insufficiencies over time" be applied to the tolling statute where

the only question is whether the litigant could understand the proceedings?

D. STATEMENT OF THE CASE

Plaintiff underwent an angioplasty on July 19, 1996. She suffered a rupture (dissection) of the renal artery that same day which went untreated. CP 522-523. The loss of Plaintiff's kidney became inevitable by noon on July 20th due to loss of blood supply. The kidney was surgically removed July 22, 1996. Plaintiff commenced this action on July 21, 1999.

In his answer, Defendant Muraki asserted Plaintiff's action was time barred by RCW 4.16.350, the three year statute of limitations. Defendant moved for Summary Judgment of Dismissal on that basis. The King County Superior Court denied the motion ruling that it was question of fact for the Court or jury to determine whether Plaintiff was incompetent or disabled during the four day period from July 19 to July 23, 1996 sufficient to toll the statute of limitations.

Defendant sought discretionary review in the Court of Appeals, Division I, on February 14, 2005. Court Commissioner James R. Verallin denied Defendant's motion stating "but it seems unlikely that RCW 4.16.190 intends so strict a limitation on tolling for incapacity."

App. B at pages 1-7, Commissioner's ruling Denying Discretionary Review.

Defendants then filed a Motion to Modify the Commissioner's Ruling on April 27, 2005. The Court of Appeals failed to set a date for Plaintiff to file an answer to the Motion to Modify as required by RAP 17.4 (e), and, without any answer from Plaintiff a divided Court granted Defendant's Motion to Modify. App. B at pages 8-10. When Plaintiff called this error to the attention of the Court of Appeals, the Court simply entered a notation ruling that the Plaintiff could file an answer to the motion that was already granted which would be forwarded to the panel for "reconsideration". App. B at page 11. The answer was filed and a divided Court (1 dissent) granted the Motion to Modify again on October 14, 2005. App. B at page 12-13.

The Court of Appeals reversed the Trial Court on September 18, 2006 holding that even if Plaintiff was in fact comatose and disabled in the intensive care unit for four days, she could avail herself of the tolling provisions of RCW 4.16.190 only if she could qualify to have a guardian appointed during her disability:

> "while we do not set out a bright line rule for the minimum duration of incapacity to qualify for a guardian to be appointed, it is clear under the guardianship states, a four day incapacity would be insufficient to permit appointment of a guardian. As

> a matter of law, Rivas cannot meet her burden of proof that a guardianship would have been appropriate when her cause of action occurred. The Trial Court erred on denying Muraki's Motion for Summary Judgment". App. A at page 9.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Summary of Argument

This Court, in *Young*, supra, has held that the tolling statute's plain language indicates that the right it confers on the "person entitled to bring and action" is not affected or diminished by the appointment of a guardian. *Young* holds the focus is to be solely in the disabling condition and tolling was to operate regardless of a guardian's presence. The Court of Appeals decided that the tolling statute cannot take effect unless litigants can prove they were disabled long enough for a guardian to have been appointed and that they would have qualified for a guardian during their period of disability. This decision conflicts with the plain language of the tolling statute RCW 4.16.190 and the two separate and distinct definitions of incompetency and disability set out in each of the two statutes (Tolling – RCW 4.16.190; Guardianship – RCW 11.88.010 (1)(a-c)).

By ignoring the tolling statute's own separate definition of incompetency or disability ("incompetency or disability to such a

degree that he or she cannot understand the nature of the proceedings") the Court's decision wrongly forces a litigant to have to satisfy the definitions of incompetency or disability in Chapter 11.88 RCW, including "management insufficiencies over time" and assume the hypothetical burden of proving they could have qualified for and could have completed the entire hypothetical guardianship process for the appointment of a guardian during the period of alleged disability, even when no person or entity ever deemed a guardianship necessary because of the availability of hospital care or other family assistance, and even when the question of tolling may be raised years after the event.

By forcing even a hypothetical guardianship procedure on a litigant who may never have wanted nor needed a guardianship, the Court has created great uncertainty for all future litigants because the Court cannot say how much time needs to elapse or how long the hypothetical guardianship process needs to be. App. A, page 9, Decision. This case raises issues of substantial public interest that should be determined by this Court because by impermissibly adding terms to the tolling statute the Court of Appeals decision injects great uncertainty as to how or in what way RCW 4.16.190 will toll the medical statutes of limitations in the future, and has deprived Plaintiff

of due process by taking away from her the very right the tolling statutes was to confer.

2. The Court of Appeals decision that an incompetency or disability lasting four days does not toll the statute of limitations conflicts with the plain language of the tolling statute.

The plain language of RCW 4.16.190 provides that:

> If a person entitled to bring an action mentioned in this chapter...be at the time the cause of action accrued...incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to Chapter 11.88 RCW, the time of such disability shall not be part of the time limited for commencement of action.

The clear intent and meaning is that the running of the statute of limitations is tolled for any litigant during any period where he or she cannot understand the proceedings when his or her cause of action accrued. The only question facing this court is how to determine ("decide") whether this particular disability existed. RCW 4.16.190 directs the use of the process set out in Chapter 11.88 to make this decision ("determination").

The Court of Appeals decision does not follow a logical interpretation of the statute which would permit the trial court to make this decision. Actually, Chapter 11.88 RCW spells out how this decision will be made (RCW 11.88.010 (1)(a) and (b) "when a superior court determines," and RCW 11.88.045 (3)):

> The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

Instead, the Court of Appeals holds that a full guardianship petition and process must be initiated hypothetically and that only the definitions of incompetency or disability used in Chapter 11.88 RCW apply, including the requirement that management insufficiencies over time be demonstrated. This leads to the absurd and confusing result that a litigant admittedly incompetent or disabled to such an extent that she couldn't understand the proceedings for a four day period during which time her cause of action accrued cannot avail herself of the intended benefits of the tolling statute because she cannot also fit under the separate definitions in the guardianship statute, including management insufficiencies over time.

Basic rules of statutory construction dictate that "[l]egislative definitions generally control in construing the statutes in which they appear." *Childers v. Childers*, 89 Wn.2d 592, 598, 575 P.2d 201 (1978), quoted in *State v. Edwards*, 92 Wn.App. 156, 163, 961 P.2d 969 (1998). Moreover, courts must construe the statute as a whole, giving effect to all the language used. All provisions of an act must be

analyzed in relation to one another, and, if possible, harmonized to ensure proper construction of each provision. *State v. Lee*, 96 Wn. App. 336, 341, 979 P.2d 458 (1999). *Accord: Moen v. Spokane City Police Dept.*, 110 Wn. App. 714, 42 P.3d 456 (2002).

"A court does not glean the meaning of a particular word from that word alone, but rather from the Legislature's intent within the statute as a whole." *State v. J.A.,* 105 Wn. App. 879, 885, 20 P.3d 47 (2001); *citing, Davis v. Dept. of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999). *Accord: Dahl-Smyth, Inc. v. Walla Walla,* 110 Wn. App. 26, 38 P.3d 366, *rev'd on other grounds,* 147 Wn.2d 1001 (2002). Appellate courts should always "focus during construction, when necessary...on the legislative context." *Spokane v. White*, 102 Wn. App. 955, 961, 10 P.3d 1095 (2000), *rev. denied,* 142 Wn.2d 1011 (2001).

3. The Court of Appeals fails to give proper meaning to the word "determine" as used in RCW 4.16.190.

The common legal definition for the word "determine" is to decide. This is the definition set forth in Blacks Law Dictionary Fourth Edition (1957):

> To bring to a conclusion, to settle by authoritative sentence. To decide.

It is clear that the legislature in separately defining incompetency or disability in RCW 4.16.190 and by directing that the question of whether a litigant met this definition be decided according to Chapter 11.88 RCW did not intend to amend RCW 4.16.190 by adding more terms or definitions to it.

If a statute is plain and unambiguous its meaning must be derived from the language itself. *Cockle v. Dept of Labor; Indus.* 12 Wn.2d 801,807, 16 P.3d 583 (2001).

4. The Court of Appeals Decision by holding that a litigant must qualify for a guardian before he or she can avail himself or herself of the tolling provisions is in conflict with this court's holdings in *Young v. Key Pharmaceuticals* and with the available authorities.

Young v. Key Pharmaceuticals, Inc. supra separated entirely the process of appointing a guardian under RCW 11.88 from the tolling statue RCW 4.16.190. In *Young* the defendant's medical provider argued that because a guardian had been appointed for a minor, the Statute of Limitations began to run from the date of the appointment. *Young* rejected this argument holding that the rights conferred by RCW 4.16.190 were personal to the person entitled to bring the action, and could not be taken away whether or not a guardian was appointed.

> The tolling statue makes no mention of the effect of a guardian's appointment, which we believe means that the statute was intended to operate regardless of the guardian's presence. *Young* at page 221.

The *Young* court also held as follows:

> The tolling statute's plain language indicates the right it confers "on the person entitled to bring an action" is not diminished by the appointment of a guardian. The words "the time of such disability' refer to the person's disabling condition itself, not merely the disability to bring suit. This focus on the disabling condition is reinforced by the reference to RCW 11.88. *Young* at page 221.

In *Young,* the defendant argued for an erroneous interpretation of the statute of limitations that would lead to an absurd or unintended result. The court, in separating the underlying condition of the person claiming the benefit of the tolling statue from the guardianship procedure, held at Page 224:

> Nevertheless, this result flows from unmistakable clear statutory language. We will not imply exceptions to statutes of limitations where they have not been expressly provided by the legislature.[1]

Teglund and Ende in 15A, Washington Practice, Handbook, Civil Procedure § 4.5 provided an interpretation of RCW 4.16.190 consistent with the forgoing analysis:

> It is doubtful that the legislature intended to require a formal determination of incapacity under RCWA 11.88 in order to justify tolling. Presumably, the standards for incapacity found

[1] It should be noted that *Young* may have also failed to keep in mind the two separate definitions of incompetency in the statute but this issue was not germaine to the question presented in *Young* since there a guardian had already been appointed. This is a good opportunity for the Supreme Court to correct any misimpression that might be caused by *Young*. *Young* was decided before "management insufficiencies over time" was added to Ch. 11.88 RCW in 1990.

> in the guardianship statute are to be used as guides in determining whether a person seeking a toll could not "understand the nature of the proceeding" within the meaning of RCWA 4.16.190

Even assuming, for the sake of argument, that a guardianship had already been established for Susan using the definitions and procedures in RCW Ch.11.88 these proceedings would never have answered the question posed by RCW 4.16.190 - Susan's ability or inability to understand the nature of the proceedings when her cause of action occurred - because that definition or criteria is nowhere mentioned in RCW 11.88. Instead RCW 11.88 proceedings would have focused on the definition or criteria for a guardianship of persons (RCW 11.88.010 (1)(a)) or estates (RCW 11.88.010 (1)(b)) using the "management insufficiencies over time" qualification (RCW 11.88.010 (1)(c)) none of which ever require proof that the alleged incapacitated person could not understand the nature of the proceedings. Therefore, if Susan had claimed tolling solely because she was the subject of a guardianship, the inquiry would not end there. The litigants would still have to look backward. Susan would still have to establish in an independent proceeding before a jury that she could not understand the nature of the proceedings when her cause of action

occurred. The trial court or jury would still have to look backwards to July 19-23, 1996, the dates the Plaintiff was incapacitated.

5. If the legislature had intended to engraft the definitions of incompetency or disability set forth in Chapter 11.88 RCW they would have clearly said so.

The plain language of RCW 4.16.190 says nothing about adapting the definitions of incompetency or disability set out in Chapter 11.88 RCW, more particularly RCW 11.88.010 (1)(a-c). If the legislature had intended to engraft these specialized definitions into the tolling statute it could easily have done so, by stating "incompetency or disability as defined in Ch. 11.88 RCW" or "as defined in RCW 11.88.010 (1)(a-c)" but it did not.

The decision by the Court of Appeals impermissibly adds terms that are not present in the tolling statute. This violates due process and the usual and normal rules of statutory construction. It also creates vagueness and uncertainty, leaving numerous litigants guessing at the meaning of RCW 4.16.190, in violation of Article I § 3 of the Constitution of Washington and established case law. *Anderson v. Issaquah*, 70 Wn. App. 64, 75, 851 P.2d 744 (1993) ("a statute which either forbids or requires the doing of an act in terms so vague that men [and women] must necessarily guess at its meaning and differ as to its application, violates the first essential due process of law").

Here, even the Court of Appeals is unable to set out any specifics as to the minimum period of incapacity forcing dozens to guess later. App. A decision at page 9 (no "bright line").

6. The reading of RCW 4.16.190 by the Court of Appeals leads to unlikely, absurd or strained consequences.

This court should accept review and offer a proper interpretation of RCW 4.16.190. The Court of Appeals asserts that because Plaintiff had not gone through the entire hypothetical guardianship process set forth in RCW 11.88, RCW 4.16.190 could never operate to toll the Statute of Limitations. But in making that assertion, the court ignores the problem that still would be left to be faced by the current finder of fact even if Susan had been subject to a guardianship since July 19, 1996: whether she understood the nature of the proceedings at the time of the cause of action occurred and how long did this specific condition persist. RCW 11.88 and RCW 4.16.190 pose substantially different questions. Using the results of an RCW 11.88 guardianship to conclusively prove the requirements of RCW 4.16.190 were met is absurd. What if only a limited guardian was appointed? What if serious deficiencies over time were enough for a full and formal guardianship of both her person and estate, but Susan could still understand the nature of the proceedings? The question posed by

RCW 4.16.190 wouldn't have been addressed. The trial court (or jury) who actually faces that issue in a Statute of Limitations context will always have to address that issue regardless of whether a guardian was appointed and will always have to do so by looking backward to the time the cause of action accrued.

Washington courts have held that they will adopt the interpretation of statutes that best advances the legislative purpose and avoids unlikely, absurd, or strained consequences. *Thurston County ex rel. Bd. Of County Com'rs v. City of Olympia* 151 Wn. 2d 171, 86 P.3d 151 (2004). Put another way, when the court construes a statute, spirit and intent of the statute should prevail over the literal letter of the law, and there should be made that interpretation which best advances legislative purpose. *Dumas v. Gagner* 137 Wn. 2d 268, 971 P. 2d 17 (1999) *reconsideration denied.* The most sensible interpretation of RCW 4.16.190 is for this court to say that the reference to Ch. 11.88 RCW does not engraft the guardianship definitions into the tolling statute or require the appointment of a guardian. RCW 4.16.190 only requires due process for the benefit of both sides in determining Susan's condition at the time her cause of action accrued – a full trial by jury (or to the court if the jury is waived) on the issues. In fact, the

word "determine" really refers to a hearing with findings to put an end to a matter.

7. This case involves an issue of substantial public interest.

This court has readily granted review of cases involving statutes of limitation or issues regarding time limits. *Young* supra, *Troxell v. Rainier Pub. Sch. Dist.* 154 Wn 2d 119, P.3d 1173 (2005). It is of vital public interest to have these questions properly determined, an important provision of RAP 13.4 (b)(4). *Strikes Woods Neighborhood Assoc. v. City of Lacy,* 124 Wn 2d 459, 880 P.2d 25 (1994) emphasized the public importance of these decisions:

> It is a well accepted premise that litigants and potential litigants are entitled to know that a matter as basic as time computation will be carried out in an easy, clear and consistent manner, thereby eliminating traps for the unwary who seek to assert or defend their rights (*Strikes* at page 463).

Plaintiff and numerous other litigants are entitled to a sensible and reasonable way to determine when the statute of limitations is tolled and for how long. They shouldn't have to guess or be subject to the judicial uncertainty created by the Court of Appeals decision.

8. Nothing in the legislative history of RCW 4.16.190 suggests that the legislature did not retain its own exclusive definition of incompetency or disability or that it intended to adopt Chapter 11.88 RCW's definition of incompetency or incapacity or provide tolling only to those who have management insufficiencies over time.

The complete legislative history of RCW 4.16.190 is set forth in Appendix C, sub-appendices 1-6. Nothing in the legislative history supports the Court of Appeals interpretation of RCW 4.16.190.

RCW 11.88.010 was amended by substitute Senate Bill No. 2086 (Chapter 95, Washington Laws, 1st ex. Sess) in 1975 to eliminate reference to "Imbecility" or "Idiocy" and establish the concept of a limited guardianship. Appendix 1.

RCW 4.16.190 was amended by substitute Senate Bill No. 2872 (Chapter 80, Washington Laws, 1st ex. Sess.) which also amended a number of provisions of other sections of the Revised Code of Washington including RCW 4.16.190 § 2; RCW 5.60.030 § 3 – witness competency RCW 6.12 § 4-6 – Homesteads; RCW 7.28 § 7 – adverse possession, etc. A copy of this bill and all the legislative history of this amendment are attached. Appendix 2 and Appendix 5.

The Judiciary Committee in 1977 in amending RCW 4.16.190 confirmed its intent to eliminate objectionable terms and provide a better definition of disability and incompetency. Appendix 5.

In fact, the legislature felt so strongly about the purpose and intent of the amendment in SSB 2872 that it enacted a statement of purpose in section one of the Act. Appendix 2. This purpose is set forth in the

historical and statutory notes in the annotated version of RCW 4.16.190. Appendix 6.

At the same time the legislature amended RCW 11.88.010 by Chapter 309 of Washington Laws, 1977 1st Sess. To eliminate reference to the terms "insanity" and "mental retardation". A copy of the relevant portion of Chapter 309 is set forth in Appendix 3.

RCW 11.88 was amended substantially again in 1990 by Substitute Senate Bill no. 6868 (Chapter 122 Washington Laws 1990). Appendix 4, adding the "over time" concept to RCW 11.88.010 (1)(c).

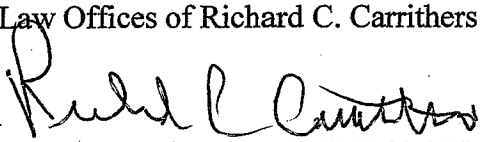
RCW 4.16.016 was amended for the last time in 1993 to clarify the application of tolling provisions to imprisoned persons. Appendix 6.

F. CONCLUSION

The Supreme Court should accept review of the Court of Appeals decision because it conflicts with established law and because it creates confusion and uncertainty, and it raises an issue of substantial public interest as well as issues of due process and fairness. The Supreme Court should hold that RCW 4.16.190 has established its own definition of incapacity. This court should also hold that RCW 11.88.010 (1)(a-c) are not relevant to the Judicial inquiry that must take place for the proper application of RCW 4.16.190. The Supreme Court should also hold that the phrase "such incompetency or

disability as determined according to Chapter 11.88 RCW" means only that the issue must be determined or decided by a superior court, that the plaintiff, if requested, may have a jury trial on the issue and that the plaintiff may call witnesses, and lastly, that the incompetency or disability set forth in RCW4.16.190 must be proven by clear, cogent and convincing evidence.

Respectfully Submitted
Law Offices of Richard C. Carrithers

by 
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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SUSAN E. RIVAS, Respondent, v. EASTSIDE RADIOLOGY ASSOCIATES; OVERLAKE IMAGING; WASHINGTON IMAGING SERVICES; ALLAN MURAKI, M.D. and JANE DOE MURAKI, his wife, and the marital community thereof, Petitioners, OVERLAKE HOSPITAL MEDICAL CENTER; OVERLAKE INTERNAL MEDICINE ASSOCIATES; ROBERT L. DAVIDSON, M.D. and JANE DOE DAVIDSON, his wife, and the martial community thereof, Defendants.	)	No. 55648-7-I **DIVISION ONE** PUBLISHED OPINION FILED: September 18, 2006

APPELWICK, C.J. — This is a medical malpractice lawsuit subject to a three-year statutory limitation period. The plaintiff filed the complaint three years and a day after the last allegedly negligent act or omission. The trial court denied the defendants' motion to dismiss as untimely. The trial court ruled that a factual question remained as to whether statutory tolling provisions applied while

the plaintiff was allegedly incapacitated in the intensive care unit (ICU) for several days following the medical procedure. We agree that no petition for nor prior determination of incapacity is required to trigger tolling under RCW 4.16.190, and whether a particular plaintiff meets the statutory standard is a question of fact. However, we hold that a four-day incapacity period cannot be a tolling event as a matter of law. We reverse the trial court's order and dismiss the complaint with prejudice.

FACTS

Susan Rivas had renal vascular disease. Dr. Alan Muraki performed a renal angioplasty on July 19, 1996. Muraki did not treat Rivas after the July 19 procedure. Due to complications from the July 19 procedure, the loss of Rivas's kidney became inevitable on July 20 and the kidney was removed on July 21. Rivas was in the (ICU) from July 19 through July 23, a total of four days. She was discharged from the hospital on July 26.

Rivas filed this action against Muraki[1] on July 21, 1999.[2] Muraki moved

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[1] Rivas also named several other defendants. All defendants except petitioners herein have been dismissed. For ease of reference, we refer to the remaining defendants as "Muraki," "defendants," or "petitioners."

[2] Muraki notes that Rivas's investigation started significantly earlier than she filed her lawsuit. Muraki also notes that neighboring states have shorter limitation periods than Washington. Neither of these considerations is relevant. The only question is whether Rivas brought her claim within the time limit the Washington Legislature has set forth, not whether she could or should have brought it earlier. The fact that Washington's limitation period for medical malpractice claims is longer than that of neighboring states is a legislative policy decision that does not affect the analysis in this case.

for summary judgment on the ground that Rivas's suit was barred by the statute of limitations. In her declaration, Rivas stated that she was unable to act or otherwise look out for herself from July 19 until at least July 23. For purposes of this appeal, we assume that Rivas was totally helpless in the ICU between July 19 and July 23.

The trial court ruled that the tolling statute

> does not require the actual appointment of a guardian pursuant to Ch. 11.88 RCW, but, instead, permits a determination by the court in this action on the incompetency/disability issue with reference to the standards set forth in Ch. 11.88 RCW.

The trial court gave the parties leave to pursue discovery on the issue of Rivas's incapacity. After discovery, Muraki renewed his motion. The trial court ruled that factual issues precluded summary judgment as to whether Rivas was incapacitated as determined by chapter 11.88 RCW. The trial court found that

> when the court accepts Plaintiff's evidence as true and makes all reasonable inferences therefrom, a fact finder could find that the Plaintiff was incapacitated at the time her cause of action accrued under RCW ch 11.88. . . . [The motion for summary judgment is denied] due to the existence of genuine issues of material facts as to whether the statute of limitations was tolled during the period of July 19, 1996 and July 23, 1996.

We granted Muraki's request for discretionary review.

ANALYSIS

Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). A material fact is one upon which the outcome of the litigation depends. Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997). All facts and reasonable inferences must be considered in the light most

favorable to the nonmoving party. Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). We review questions of law de novo. Mains Farm Homeowners Ass'n v. Worthington, 121 Wn.2d 810, 813, 854 P.2d 1072 (1993).

Because the statute of limitations is an affirmative defense, the burden is on the party asserting it, here Muraki, to prove the facts that establish it. Haslund v. City of Seattle, 86 Wn.2d 607, 620-21, 547 P.2d 1221 (1976). In Washington, actions for medical malpractice must be brought "within three years of the act or omission alleged to have caused the injury or condition." RCW 4.16.350. For purposes of this appeal, we assume that Muraki's last negligent act or omission was on July 20, 1996.[3] Rivas filed her suit on July 21, 1999, more than three years after the last act or omission. Thus, Rivas's action against Muraki is time-barred unless the statute of limitation was tolled for some reason.

RCW 4.16.190 tolls the statute of limitation in cases of personal disability:

> If a person entitled to bring an action mentioned in this chapter . . . be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, . . . the time of such disability shall not be a part of the time limited for the commencement of action.

[3] Muraki asserts that his latest act or omission was on July 19. The trial court ruled that the loss of the kidney became inevitable as of July 20, and Rivas adopts this finding. Rivas asserts that her cause of action accrued on July 20, when the loss of the kidney became inevitable.

Chapter 11.88 RCW governs guardianships.[4] RCW 11.88.010 sets out the scope of the trial court's power to appoint guardians:

> (1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons . . .
>
> (a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.
>
> . . .
>
> (c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.
>
> . . .
>
> (f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

Rivas argues that the statute of limitations was tolled by her incapacity under RCW 4.16.190 until July 23, 1996. Because Rivas asserts she is entitled to tolling, she bears the burden of proof. See Wickwire v. Reard, 37 Wn.2d 748,

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[4] Rivas argues that the standards set out in a prior version of the guardianship statutes apply. We disagree. In 1977, the legislature amended the tolling statute to remove the word "insane" and add the reference to the guardianship statutes. Laws of Washington 1977, 1st Ex. Sess., ch. 80 § 2. The guardianship statues underwent major revision in 1990 that included the insertion of the current language of RCW 11.88.010(1)(a), (b), and (c). Laws of Washington 1990, ch. 122, § 2, at 853. In 1993, the legislature amended the tolling statute again on an unrelated issue and retained the reference to the guardianship statutes. The current language of chapter 11.88 RCW controls the standards by which a trier of fact would determine whether tolling is triggered under RCW 4.16.190 in cases of incapacity. The current language was in effect when Rivas was in the ICU. And, although the tolling statute's reference to the guardianship statutes was added prior to the 1990 amendments, the language was retained when the tolling statute was later amended in 1993. See City of Seattle v. Green, 51 Wn.2d 871, 874, 322 P.2d 842 (1958) ("[w]hen a statute is adopted by specific descriptive reference, the adoption takes the statute as it exists at that time").

751, 226 P.2d 192 (1951) (holding, in context of tolling of statute of limitation on different grounds than asserted here, that burden of proving event justifying tolling rests upon the person asserting it).

One aspect of the relationship between the tolling and guardianship statutes was addressed in Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 770 P.2d 182 (1989). In Young, a minor plaintiff had a guardian appointed. The Young court held that the appointment of a guardian did not diminish the minor's right to tolling under RCW 4.16.190. Rather, the Young court held that "[t]he words 'the time of such disability' refer to the person's disabling condition itself, not merely the disability to bring suit" and that "[t]his focus on the disabling condition is reinforced by the reference to RCW 11.88." Young, 112 Wn.2d at 221. The Young court noted that the tolling statute did not mention the effect of the guardian's appointment, which the court interpreted to mean "that the statute was intended to operate regardless of the guardian's presence." Young, 112 Wn.2d at 221.

The parties are not arguing that a prior adjudication of incapacity under chapter 11.88 RCW is necessary to invoke the tolling provision, and the plain language of the tolling statute does not require such a prior adjudication. The legislature has not restricted the application of the tolling statute only to cases where a prior adjudication of incapacity has been made. Had the legislature intended to require a prior adjudication, it could have used the language "pursuant to an order issued under chapter 11.88 RCW" instead of "such

incompetency or disability as determined according to chapter 11.88 RCW." Because it did not do so, we do not impose a requirement of a prior order.

Rather, the tolling statute refers to the process set forth in chapter 11.88 RCW. The plaintiff's alleged incapacity must be evaluated on the basis set forth in the guardianship statutes. Although a prior determination of incapacity is not necessary to permit tolling under RCW 4.16.190, the plaintiff must show that a guardianship would have been appropriate had one been sought when the cause of action accrued. We hold that the legislature intended to allow the trial court to look back to determine whether, at the time the cause of action accrued, the plaintiff was incapacitated to the degree necessary to permit appointment of a guardian. If so, then tolling is appropriate under RCW 4.16.190. No separate petition for guardianship is required.

The guardianship statutes require the fact finder to determine the issue of the alleged incapacity by clear, cogent, and convincing evidence. RCW 11.88.045(3). Although the determination of incapacity is a factual question, factual questions "may be resolved on summary judgment if, given the evidence in the record, a court could reach only one reasonable result." Alaska Pac. Trading Co. v. Eagon Forest Prods., 85 Wn. App. 354, 361, 933 P.2d 417 (1997). Muraki argues that a few days' stay in the ICU cannot be a tolling event as a matter of law, because the guardianship statutes do not envision such an incapacity as within the scope of guardianship. Muraki stresses that the language of RCW 11.88.010(c) provides that a finding of incapacity must be "based upon a demonstration of management insufficiencies over time,"

(emphasis added) and that the time periods referenced in the guardianship statutes show that the phrase "over time" was not intended to apply to short-term incapacity of only a few days.

The Washington Supreme Court has recognized that appointment of a guardian is a time-consuming process. In re Schuoler, 106 Wn.2d 500, 505-06, 723 P.2d 1103 (1986). The legislature has set out its intent in providing for guardianships:

> It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

RCW 11.88.005. The guardianship statutes do not set out a minimum number of days of incapacity required in every instance to justify appointment of a guardian. Rather, whether a guardian was justified would depend on the nature and circumstances of each guardianship proceeding and the alleged incapacity.

However, the guardianship statutes set out notice and hearing time periods as procedural safeguards to prevent appointment of a guardian other than to the "minimum extent necessary." RCW 11.88.055. The shortest period in any section of the statute is under RCW 11.88.040, which allows the 10-day notice of a hearing date to be reduced for good cause to no less than three days. The alleged incapacitated person is entitled to consult with counsel of his or her

choosing and prepare for the hearing for not less than three weeks. RCW 11.88.045(1)(a). A shorter period is presumed insufficient. RCW 11.88.045(1)(a). Upon receiving a guardianship petition, the court must appoint a guardian ad litem (GAL) to represent the best interests of the alleged incapacitated person. RCW 11.88.090(3). The GAL must file his or her report at least 15 days before the hearing on the petition. RCW 11.88.090(5)(f). Other time periods set out in the guardianship statutes could add to the minimum time required to appoint a guardian.[5]

While we do not set out a bright line rule for the minimum duration of incapacity to qualify for a guardian to be appointed, it is clear that under the guardianship statutes, a four-day incapacity would be insufficient to permit appointment of a guardian. As a matter of law, Rivas cannot meet her burden of proof that a guardianship would have been appropriate when her cause of action accrued. The trial court erred in denying Muraki's motion for summary judgment.

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[5] See, e.g., RCW 11.88.030(4)(a) (petitioner must serve notice of proceeding no more than five days after filing petition); RCW 11.88.030(5) (petitions shall be heard within 60 days); RCW 11.88.090(3) (GAL has five days from receipt of notice of appointment to file and serve statement of qualifications, and any party can seek a show cause hearing for why the GAL should not be removed within three days of service of the statement); RCW 11.88.045(4) (a written medical report must be presented to the court by a provider who personally examined and interviewed the alleged incapacitated person within 30 days of preparing the report).

We reverse the trial court's order and grant Muraki's motion for summary judgment. We dismiss Rivas's complaint with prejudice.

Appelwick, C.J.

WE CONCUR:

Dwyer, J.

Rivas v. Eastside Radiology Associates, No. 55648-7-I

Agid, J. (concurring) -- While I agree with the majority opinion, I write separately to emphasize the guardianship statute's requirement that incapacity be "based upon a demonstration of management insufficiencies *over time* in the area of person or estate."[1] As the majority explains, the legislature clearly drafted the guardianship statute to avoid a rush to judgment that would unfairly or inappropriately deprive a ward of her liberty. In furtherance of that objective, it not only created the lengthy process the majority describes at pages 8-9, it also incorporated as a substantive standard the requirement that one seeking a guardianship establish a pattern of incapacity "over time." In my view, a four-day coma such as the one we have assumed Ms. Rivas suffered in this case, cannot as a matter of law suffice to meet that substantive standard. I therefore agree that the trial court should have granted Muraki's motion for summary judgment.

Agid, J.

[1] RCW 11.88.010(1)(c) (emphasis added).

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SUSAN E. RIVAS, Respondent, v. EASTSIDE RADIOLOGY ASSOCIATES; OVERLAKE IMAGING; WASHINGTON IMAGING SERVICES; ALLAN MURAKI, M.D. and JANE DOE MURAKI, his wife, and the marital community thereof, Petitioners, OVERLAKE HOSPITAL MEDICAL CENTER; OVERLAKE INTERNAL MEDICINE ASSOCIATES; ROBERT L. DAVIDSON, M.D. and JANE DOE DAVIDSON, his wife, and the martial community thereof, Defendants.	No. 55648-7-I **DIVISION ONE** ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, Susan Rivas, having filed her motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

DATED this 20th day of October, 2006.

FOR THE COURT:

Appelwick, C.J.
Judge

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STATE OF WASHINGTON
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APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SUSAN E. RIVAS, Respondent, v. OVERLAKE HOSPITAL MEDICAL CENTER; OVERLAKE INTERNAL MEDICINE ASSOCIATES; ROBERT L. DAVIDSON, M.D., and JANE DOE DAVIDSON, his wife, and the marital community thereof, Defendants, EASTSIDE RADIOLOGY ASSOCIATES; OVERLAKE IMAGING; WASHINGTON IMAGING SERVICES; ALLAN MURAKI, M.D., and JANE DOE MURAKI, his wife, and the marital community thereof, Petitioners.	No. 55648-7-I COMMISSIONER'S RULING DENYING DISCRETIONARY REVIEW

Eastside Radiology Associates, Overlake Imaging Services, Washington Imaging Services, Alan Muraki, M.D., and Jane Doe Muraki (the defendants), seek discretionary review of the trial court order denying their summary judgment motion to dismiss under the statute of limitations. Defendants argue that the four days Susan Rivas was in intensive care in the hospital do not establish a sufficient incapacity "over time" required to toll the limitations period. Although the precise standard for incapacity for this purpose is debatable, it was not an obvious error to conclude that there are issues of fact regarding the alleged incapacity. Therefore discretionary review is not appropriate.

FACTS

In the course of treatment of her severe renal vascular disease, Susan Rivas was admitted to Overlake Hospital on July 19, 1996, and Dr. Muraki performed a renal angiogram and angioplasty. In the course of the angioplasty the right renal artery was dissected. On July 20, 1996, the loss of Rivas' right kidney became inevitable. On July 21, 1996, her right kidney was removed. From July 19 to July 23, 1996, Rivas was in intensive care. She was discharged from the hospital on July 26, 1996.

On July 21, 1999, three years and two days after the July 19, 1996 procedure, Rivas filed a malpractice lawsuit alleging that she had not been properly advised of the risks of or alternatives to an angioplasty, that the angioplasty had been improperly performed, that Dr. Muraki waited too long before calling for a vascular consultation or intervention, and that, as a consequence, her right kidney had to be removed.

The defendants moved for summary judgment, arguing that the three year statute of limitations barred the claim. Rivas argued that the statute of limitations was tolled while she was "incapacitated," from July 19 to July 22, 1996. The superior court denied the motion for summary judgment, concluding that there are issues of fact whether Rivas was incapacitated "as determined according to chapter 11.88 RCW," which is required to toll the statute of limitations.

The defendants seek discretionary review.

CRITERIA FOR DISCRETIONARY REVIEW

Discretionary review is available only:

> (1) The superior court has committed an obvious error which would render further proceedings useless;
> (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;
> (3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or
> (4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3(b).

DECISION

An action against a health care provider "shall be commenced within three years of the act or omission alleged to have caused the injury or condition." RCW 4.16.350(3). But if, at the time any cause of action accrues, the individual is "incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW," then the limitations period is tolled for the period of incompentency. RCW 4.16.190.

There is no case law directly defining what constitutes incapacity "as determined according to chapter 11.88 RCW" for purposes of tolling the statute of limitations, especially the length of time of the incapacity.[2] Rivas argues the legislative history demonstrates that the 1977 amendments to several statutes merely reflect an intent to shift from imprecise terms such as "insanity" to more appropriate references to general concepts of incapacity. The legislative history suggests that the 1977 amendments also include "a preference to the use of a process for defining incompetency or disability as fully set forth in chapter 11.88," Laws of 1977, 1st Ex. Sess., ch. 80 §1.

The defendants argue that the entire statutory scheme for appointing guardians must be considered in determining whether Rivas would have qualified for appointment of a guardian under ch. 11.88 RCW if she had applied at the time her cause of action accrued. They argue that the statutory procedures for establishing a guardianship contemplate that "over time" means more than just a few days. For example, the hearing on the petition may be heard up to 60 days after the petition is filed. RCW 11.88.030(5). But the statute seems flexible enough to accommodate emergent situations where appointment of a guardian could occur within just a few days. For example,

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[2] Young v. Key Pharmaceuticals, 112 Wn.2d 216, 220-24, 770 P.2nd 182 (1989) holds that RCW 4.19.190 tolls the statute of limitations for a minor child's medical malpractice claim during the period of the child's minority, even though a guardian had been appointed for the child. The opinion does not address the "over time" provision contained in the current version of RCW 11.88.010(1)(c).

Ch. 11.88 RCW discusses incapacity as the basis for establishing a guardianship of the person or estate.[1] "[A] person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety." RCW 11.88.010(1)(a). But the statute also includes a temporal consideration:

> A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

RCW 11.88.010(1)(c) (emphasis added).

For purposes of this motion, the defendants argue that, even assuming Rivas was completely helpless for four days while in intensive care, she would have to demonstrate that she would have qualified for appointment of a guardian if she had applied for one. Because the statute requires that the person demonstrate management insufficiencies "over time" to qualify for a guardian, the defendants argue that Rivas must be able to demonstrate that at the time her cause of action accrued she had been unable to care for herself for some extended period of time, not just a matter of three or four days.

---

[1] "Incompetent" for purposes of the tolling provision of RCW 4.16.190 is the same as "incapacity" for purposes of the guardianship statute. RCW 11.88.010(1)(f).

normally ten days notice must be given to the alleged incapacitated person, but on a showing of good cause, the required notice may be reduced to just three days. RCW 11.88.040(4).

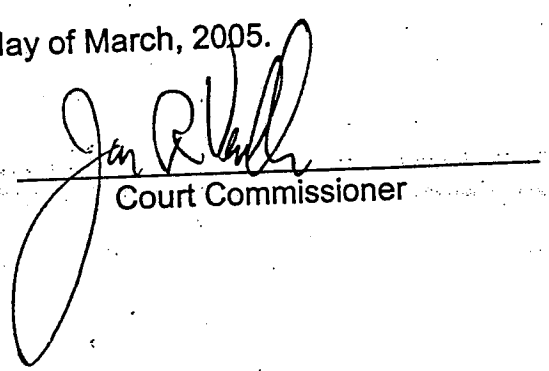
It may be that the legislature intends that tolling of a statute of limitations for incapacity is limited to those who have serious long-term incapacity sufficient to allow a guardianship of the person under the deliberative procedures required for such a guardianship. But the logical extension of the defendants' argument would seem to deny any tolling for an individual who suffers an incapacitating injury as the immediate result of an act of medical malpractice. For example, the tolling statute applies only to a person incapacitated when their cause of action accrues. RCW 4.16.190. The cause of action of a person who goes into a coma during a negligent surgery would accrue at the time of the surgery. At that time, the duration of the coma may be uncertain, but in order to qualify to obtain a guardian under the defendants' standards, it would be necessary that the patient was both incapacitated when the cause of action accrued, and that the incapacity had existed "over time." If a hearing on a guardianship petition is allowed on three days notice, the duration of the coma may remain uncertain at the time of the hearing and there would be no showing of an incapacity that had existed "over time." Because the individual would not qualify for appointment of a guardian, there could be no

tolling under RCW 4.16.190. But it seems unlikely that RCW 4.16.190 intends so strict a limitation upon tolling for incapacity. It is at least debatable that a person who is completely unable "to understand the nature of the proceedings" as the immediate result of an act of malpractice qualifies for tolling of the statute of limitations, even if the incapacity is limited to three or four days. It was not obvious error to conclude that there are genuine of issue of material fact regarding Rivas' alleged incapacity, and to deny the motion to dismiss under the statute of limitations.

The demanding criteria for discretionary review have not been satisfied. Now, therefore, it is hereby

ORDERED that the motion for discretionary review is denied.

Done this 31st day of March, 2005.



Court Commissioner

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle
98101-4170

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August 5, 2005

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CASE #: 55648-7-I
Susan E. Rivas, Respondent v. Overlake Hospital Medical Center et al., Appellants

Counsel:

Please find enclosed a copy of the Order Granting Motion to Modify the Commissioner's ruling entered in the above case today.

The order will become final unless counsel files a motion for discretionary review within thirty days from the date of this order. RAP 13.5(a).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

enclosure

jh

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SUSAN E. RIVAS, Respondent, v. OVERLAKE HOSPITAL MEDICAL CENTER; OVERLAKE INTERNAL MEDICINE ASSOCIATES; ROBERT L. DAVIDSON, M.D., and JANE DOE DAVIDSON, his wife; and the marital community thereof, Defendants, EASTSIDE RADIOLOGY ASSOCIATES, OVERLAKE IMAGING; WASHINGTON IMAGING SERVICES; ALLAN MURAKI, M.D., and JANE DOE MURAKI, his wife, and the marital community thereof, Petitioners.	No. 55648-7-I ORDER GRANTING MOTION TO MODIFY

Petitioners have moved to modify the commissioner's ruling denying discretionary review. We have considered the motion under RAP 17.7 and have determined that it should be granted.

Now, therefore, it is hereby

ORDERED that the motion to modify is granted, and review is accepted; and, it is further

No. 55648-7-I/2

ORDERED that the court administrator/clerk shall set a perfection schedule.

Done this 5th day of August, 2005.

Baker, J

Elmington ACJ

I respectfully dissent.

Becker, J.

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RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
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CASE #: 55648-7-I
Susan E. Rivas, Respondent v. Overlake Hospital Medical Center et al., Appellants

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on August 29, 2005:

As the court failed to set a date for the filing of the answer to the motion to modify in accordance with RAP 17.4(e). Counsel for respondent shall have until 9/12/05 to file an answer to the motion. If an answer is filed by 9/12/05 it will be forwarded to a panel for reconsideration of the motion to modify.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

jh

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SUSAN E. RIVAS, Respondent, v. OVERLAKE HOSPITAL MEDICAL CENTER; OVERLAKE INTERNAL MEDICINE ASSOCIATES; ROBERT L. DAVIDSON, M.D., and JANE DOE DAVIDSON, his wife; and the marital community thereof, Defendants, EASTSIDE RADIOLOGY ASSOCIATES, OVERLAKE IMAGING; WASHINGTON IMAGING SERVICES; ALLAN MURAKI, M.D., and JANE DOE MURAKI, his wife, and the marital community thereof, Petitioners.	No. 55648-7-I ORDER GRANTING MOTION TO MODIFY

Petitioners moved to modify a commissioner's ruling denying discretionary review. We initially considered the motion and determined that it should be granted. However, because of a clerical error, we did not have the benefit of respondent's response. As that response has now been filed, we have considered the motion to modify again under RAP 17.7 and have determined that it should be granted. The parties shall continue to adhere to the perfection schedule previously issued.

Now, therefore, it is hereby

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No. 55648-7-I/2

ORDERED that the motion to modify is granted, and review is accepted.

Done this 14th day of October, 2005.

Baker, J

Ellington, J

I adhere to my dissent.

Becker, J.

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APPENDIX C

SUB-APPENDICES 1-6

APPENDIX 1

For service and return of subpoena, upon each person served, besides mileage, one dollar and fifty cents;

For summoning each juror, besides mileage, one dollar and fifty cents;

For serving an arrest warrant in any action or proceeding, besides mileage, ((four)) six dollars;

For serving or executing any other writ or process in a civil action or proceeding, besides mileage, ((two)) three dollars and fifty cents;

For taking and approving any bond, in a civil action or proceeding, required by law to be taken or approved by him, except indemnity bonds, ((two)) three dollars and fifty cents;

For each mile actually and necessarily traveled by him in going to or returning from any place of service, or attempted service, ((ten)) fifteen cents;

For making a deed to lands sold upon execution or order of sale or other decree of court, to be paid by the purchaser, ((six)) nine dollars;

For making copies of papers when sufficient copies are not furnished, ((two)) one dollar((s)) for first page and ((~~one dollar~~)) fifty cents per each additional page;

For the service of any process for which no other fee is provided for herein, ((two)) three dollars and fifty cents;

For the making of any return for which no other fee is provided herein, ((two)) three dollars and fifty cents;

For the execution of any process for which no other fee is provided herein, ((four)) six dollars;

For the service of affidavit and bond in replevin, ((two)) three dollars and fifty cents for each defendant; approval of bond, ((two)) three dollars and fifty cents; taking property, ((two)) three dollars and fifty cents;

For posting notices of sale, or postponement, ((two)) three dollars and fifty cents besides mileage;

For certificate of sale of real property, ((five)) seven dollars and fifty cents;

For serving notice of redemption, ((two)) three dollars and fifty cents; certificate of redemption, ((five)) seven dollars and fifty cents;

For making a return of no property found, two dollars;

For estray sales, crying sale, ((two)) three dollars and fifty cents, besides mileage;

For conducting sale of personal property pursuant to exemption or order of sale, five dollars.

Passed the Senate May 20, 1975.
Passed the House May 19, 1975.
Approved by the Governor May 28, 1975.
Filed in Office of Secretary of State May 28, 1975.

CHAPTER 95

[Substitute Senate Bill No. 2086]

GUARDIANSHIP

AN ACT Relating to guardianship; amending section 11.88.010, chapter 145, Laws of 1965 and RCW 11.88.010; amending section 11.88.020, chapter 145, Laws of 1965 as amended by section 4, chapter 28, Laws of 1971 and RCW 11.88.020; amending section 11.88.030, chapter 145, Laws of 1965

and RCW 11.88.030; amending section 11.88.040, chapter 145, Laws of 1965 as amended by section 1, chapter 70, Laws of 1969 and RCW 11.88.040; amending section 11.88.090, chapter 145, Laws of 1965 and RCW 11.88.090; amending section 11.88.100, chapter 145, Laws of 1965 and RCW 11.88.100; amending section 11.88.105, chapter 145, Laws of 1965 and RCW 11.88.105; amending section 11.88.107, chapter 145, Laws of 1965 and RCW 11.88.107; amending section 11.88.110, chapter 145, Laws of 1965 and RCW 11.88.110; amending section 11.88.120, chapter 145, Laws of 1965 and RCW 11.88.120; amending section 11.88.130, chapter 145, Laws of 1965 and RCW 11.88.130; amending section 11.88.140, chapter 145, Laws of 1965 and RCW 11.88.140; amending section 11.88.150, chapter 145, Laws of 1965 and RCW 11.88.150; amending section 11.92.010, chapter 145, Laws of 1965 as amended by section 5, chapter 28, Laws of 1971 and RCW 11.92.010; amending section 11.92.035, chapter 145, Laws of 1965 and RCW 11.92.035; amending section 11.92.040, chapter 145, Laws of 1965 and RCW 11.92.040; amending section 11.92.050, chapter 145, Laws of 1965 and RCW 11.92.050; amending section 11.92.056, chapter 145, Laws of 1965 and RCW 11.92.056; amending section 11.92.060, chapter 145, Laws of 1965 and RCW 11.92.060; amending section 11.92.090, chapter 145, Laws of 1965 and RCW 11.92.090; amending section 11.92.100, chapter 145, Laws of 1965 and RCW 11.92.100; amending section 11.92.110, chapter 145, Laws of 1965 and RCW 11.92.110; amending section 11.92.115, chapter 145, Laws of 1965 and RCW 11.92.115; amending section 11.92.120, chapter 145, Laws of 1965 and RCW 11.92.120; amending section 11.92.130, chapter 145, Laws of 1965 and RCW 11.92.130; amending section 11.92.150, chapter 145, Laws of 1965 as amended by section 1, chapter 18, Laws of 1969 and RCW 11.92.150; amending section 11.92.160, chapter 145, Laws of 1965 and RCW 11.92.160; amending section 11.92.170, chapter 145, Laws of 1965 and RCW 11.92.170; amending section 11.92.180, chapter 145, Laws of 1965 and RCW 11.92.180; amending section 11.92.185, chapter 145, Laws of 1965 and RCW 11.92.185; and adding new sections to chapter 11.88 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 11.88 RCW a new section to read as follows:

It is the intent and purpose of the legislature to recognize that mentally retarded, developmentally disabled, and other allegedly mentally incompetent persons have special and unique abilities and competencies with varying degrees of disability.

Such persons must be legally protected without the necessity for determination of total incompetency and without the attendant deprivation of civil and legal rights that such a determination requires.

Sec. 2. Section 11.88.010, chapter 145, Laws of 1965 and RCW 11.88.010 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of incompetent persons resident of the county, and guardians for the estates of all such persons who are nonresidents of the state but who have property in such county needing care and attention.

An "incompetent" is any person who is either

(((~~(1)~~))) (a) Under the age of majority, as defined in RCW 11.92.010, or

(((~~(2) Incapable~~)) (b) Incompetent by reason of insanity, mental illness, ((~~imbecility, idiocy;~~)) mental retardation senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his property or caring for himself or both.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of disabled persons, who by reason of their disability have need for protection and assistance, but who cannot be found to be fully incompetent, upon investigation by the court or any agency jointly designated by the mental health board and mental retardation board (or county social service administrative board where applicable) of the county where such person resides. After considering all evidence presented as a

result of such investigation, the court shall impose, by order, only such specific limitations and disabilities on a disabled person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incompetent nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

For the purposes of chapters 11.88 and 11.92 RCW the term "disabled person" includes, but is not limited to, an individual who is mentally retarded, mentally ill, developmentally disabled, or is gravely disabled.

Sec. 3. Section 11.88.020, chapter 145, Laws of 1965 as amended by section 4, chapter 28, Laws of 1971 and RCW 11.88.020 are each amended to read as follows:

Any suitable person over the age of eighteen years, or any parent under the age of eighteen years may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incompetent or disabled person; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian or limited guardian of the estate of an incompetent or disabled person; and any nonprofit corporation may act as guardian or limited guardian of the person and/or estate of an incompetent or disabled person if the articles of incorporation or bylaws of such corporation permit such action and such corporation is in compliance with all applicable provisions of Title 24 RCW. No person is qualified to serve as a domiciliary guardian who is

(1) under eighteen years of age except as otherwise provided herein;

(2) of unsound mind;

(3) convicted of a felony or of a misdemeanor involving moral turpitude;

(4) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(5) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(6) a person whom the court finds unsuitable.

Sec. 4. Section 11.88.030, chapter 145, Laws of 1965 and RCW 11.88.030 are each amended to read as follows:

Any interested person or entity may file a petition for the appointment of himself or some other qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as now or hereafter amended as the guardian or limited guardian of an incompetent or disabled person. ((Such)) A petition for guardianship or limited guardianship shall state:

(1) The name, age, residence and post office address of the incompetent or disabled person;

(2) The nature of his ((incapacity)) alleged incompetency in accordance with RCW 11.88.010;

(3) The approximate value and description of his property, including any compensation, pension, insurance or allowance to which he may be entitled;

(4) Whether there is, in any state, a guardian or limited guardian for the person or estate of the alleged incompetent or disabled person;

(5) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(6) The names and addresses, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the alleged incompetent or disabled person;

(7) The name and address of the person or institution having the care and custody of the alleged incompetent or disabled person;

(8) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(9) The nature and degree of the alleged disability and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(10) The requested term of the limited guardianship to be included in the court's order of appointment: PROVIDED, That no filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship unless the alleged incompetent or disabled person has an estate valued in excess of fifteen hundred dollars.

All petitions filed under the provisions of this section shall be heard within thirty days.

Sec. 5. Section 11.88.040, chapter 145, Laws of 1965 as amended by section 1, chapter 70, Laws of 1969 and RCW 11.88.040 are each amended to read as follows:

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given personally to the alleged incompetent or disabled person, if over fourteen years of age.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee only, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incompetent, disabled person, or minor, if ((over)) under fourteen years of age;

(2) A parent, if the alleged incompetent or disabled person is a minor, and the spouse of the alleged incompetent or disabled person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person ((~~having the care and custody of the incompetent, if any~~)) with whom the alleged incompetent or disabled person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing. If the petition is by a parent asking for his appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition be accompanied by the written consent of a minor of the age of fourteen years or upward, consenting to the appointment of the guardian or limited guardian asked for, or if the petition be by a nonresident

guardian of any minor or incompetent or disabled person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given. ((~~It shall not be necessary that the person for whom guardianship is sought shall be represented by a guardian ad litem in the proceedings.~~))

In all guardianship and limited guardianship hearings the alleged incompetent or disabled person shall be present in court at the final hearing on the petition. If the petition for guardianship or limited guardianship states that the alleged incompetent or disabled person is physically unable to be present, the guardian ad litem may request the court to waive the requirement of the presence of the alleged incompetent at the hearing or the court may remove itself to the place of residence of the alleged incompetent or disabled person and conduct the final hearing in the presence of the alleged incompetent or disabled person.

NEW SECTION. Sec. 6. There is added to chapter 11.88 RCW a new section to read as follows:

The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incompetent or disabled person, shall file in writing with the court, a designated stand-by limited guardian or guardian to serve as limited guardian or guardian at the death of the court-appointed guardian or limited guardian. Such stand-by guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death of the regularly appointed guardian or limited guardian, file with the superior court in which the original guardianship or limited guardianship was filed, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the stand-by guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the stand-by guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

NEW SECTION. Sec. 7. There is added to chapter 11.88 RCW a new section to read as follows:

An alleged incompetent or disabled person is entitled to independent legal counsel at his own expense to represent him in the procedure: PROVIDED, That if the alleged incompetent or disabled person is unable to pay for such representation or should such payment result in substantial hardship upon such person the county shall be responsible for such costs. The alleged incompetent or disabled person is further entitled upon request to a jury trial on the issues of his alleged incompetency or disability, with the standard of proof to be applied being that of clear, cogent, and convincing evidence.

In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a sworn medical report pertaining to the alleged incompetent or disabled persons' degree of incompetency or disability: PROVIDED, That the court may waive the filing of a sworn medical report.

NEW SECTION. Sec. 8. There is added to chapter 11.88 RCW a new section to read as follows:

Every petition for guardianship or limited guardianship, the grounds for which allege incompetency or disability as a result of mental illness or mental retardation, shall be referred by the court to an agency to be designated and paid for by the local mental health board and the local mental retardation board (or county social service administrative board where applicable) for an impartial investigation and report relating to the degree of incompetency or disability, the appropriateness of the petitioned for guardian or limited guardian, and the limits to be placed upon the disabled person should a limited guardianship be ordered. The investigation and report shall be made and forwarded to the court, with copies to the alleged incompetent or disabled person and the petitioner, within twenty days after reference to the agency by the court.

Sec. 9. Section 11.88.090, chapter 145, Laws of 1965 and RCW 11.88.090 are each amended to read as follows:

Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180, as now or hereafter amended, shall affect or impair the power of any court to appoint a guardian to defend the interests of any incompetent person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

Upon receipt of a petition for appointment of guardian or limited guardian, the court shall appoint a guardian ad litem, who may be a person recommended by either the local mental health board or mental retardation board (or county social service administrative board where applicable), to represent the interests of the alleged incompetent or disabled person in response to any petition for guardianship or limited guardianship. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incompetent or disabled person and such appointment shall not overcome the presumption of competency or full legal and civil rights of the alleged incompetent or disabled person.

The court appointed guardian ad litem shall have the authority, in the event that the alleged incompetent or disabled person is in need of emergency and life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency and life-saving medical services on behalf of the alleged incompetent or disabled person.

Sec. 10. Section 11.88.100, chapter 145, Laws of 1965 and RCW 11.88.100 are each amended to read as follows:

Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited guardianship to the superior court of the county of ....., from time to time as he shall

thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incompetent or disabled person, or his or her property, and render and pay to such incompetent or disabled person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order or adjudge, then this obligation shall be void, otherwise to be and remain in full force and effect.

The bond shall be for the use of the incompetent or disabled person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the inventory filed with the court shows that the incompetent or disabled person has total accumulated assets of a value of less than fifteen hundred dollars, the court may dispense with the requirement of a bond: PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the accumulated assets of the incompetent or disabled person increasing their value to over fifteen hundred dollars: PROVIDED FURTHER, That said guardian or limited guardian shall file a yearly statement showing the monthly income of the incompetent or disabled person if said monthly income is over the sum of two hundred fifty dollars per month for any three consecutive months.

Sec. 11. Section 11.88.105, chapter 145, Laws of 1965 and RCW 11.88.105 are each amended to read as follows:

In cases where all or a portion of the estate consisting of cash or securities or both, has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and a receipt is filed by the guardian or limited guardian in court therefor stating that such corporations hold the same subject to order of court then in such case the court may in its discretion dispense with the giving of a bond or reduce the same by the amount of such deposits of cash or securities, and may order that no further reports by said guardian or limited guardian be required until such time as the guardian or limited guardian desires to withdraw such funds or change the investment thereof.

Sec. 12. Section 11.88.107, chapter 145, Laws of 1965 and RCW 11.88.107 are each amended to read as follows:

In all cases where a bank or trust company, authorized to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required.

Sec. 13. Section 11.88.110, chapter 145, Laws of 1965 and RCW 11.88.110 are each amended to read as follows:

All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians or limited guardians.

Sec. 14. Section 11.88.120, chapter 145, Laws of 1965 and RCW 11.88.120 are each amended to read as follows:

The court in all cases shall have power to remove guardians or limited guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as prescribed in RCW 11.88.100 as now or hereafter amended; and when any guardian or limited guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian or limited guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such incompetent or disabled person, which may be in the possession of such guardian or limited guardian so removed, or of the personal representatives of a deceased guardian, or in the possession of any other person or persons, or in the possession of a stand-by guardian or limited guardian and upon failure, to commit the party offending to prison, until he complies with the order of the court.

Sec. 15. Section 11.88.130, chapter 145, Laws of 1965 and RCW 11.88.130 are each amended to read as follows:

The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian or limited guardian and such notice to an alleged incompetent or disabled person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incompetent or disabled person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred.

Sec. 16. Section 11.88.140, chapter 145, Laws of 1965 and RCW 11.88.140 are each amended to read as follows:

(1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited guardianship is terminated

(a) Upon the attainment of full and legal age, as defined in RCW 11.92.010 as now or hereafter amended, of any person defined as an incompetent or disabled person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding.

(b) By an adjudication of competency.

(c) By the death of the incompetent or disabled person.

(2) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require

(a) If the guardianship or limited guardianship is of the estate and the estate is exhausted;

(b) If the guardianship or limited guardianship is no longer necessary for any other reason.

(3) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates otherwise than by the death of the incompetent or disabled person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incompetent or disabled person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incompetent or disabled person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incompetent's or disabled person's estate shall be determined by the law of decedents' estates.

Sec. 17. Section 11.88.150, chapter 145, Laws of 1965 and RCW 11.88.150 are each amended to read as follows:

Upon the death of an incompetent or disabled person intestate the guardian or limited guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased incompetent or disabled person without further letters unless within forty days after death of the incompetent or disabled person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his letters of guardianship or limited guardianship, he shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which is assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be published in the manner provided in RCW 11.40.010, once each week for three successive weeks, with proof by affidavit of the publication of such notice to be filed with the court. All claims which are not filed within four months after first publication shall be barred against the estate. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his account, and may apply to the complete administration of the estate of the deceased incompetent or disabled person with the consent of the surety. If letters of administration or letters testamentary are granted upon petition filed within forty days after the death of the incompetent or disabled person, the personal representative shall supersede

the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims.

Sec. 18. Section 11.92.010, chapter 145, Laws of 1965 as amended by section 5, chapter 28, Laws of 1971 and RCW 11.92.010 are each amended to read as follows:

Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age when they shall be eighteen years old.

Sec. 19. Section 11.92.035, chapter 145, Laws of 1965 and RCW 11.92.035 are each amended to read as follows:

(1) DUTY OF GUARDIAN TO PAY. A guardian of the estate is under a duty to pay from the estate all just claims against the estate of his incompetent, whether they constitute liabilities of the incompetent which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incompetent or his estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude his personal liability for his own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to prior claims for the care, maintenance and education of the incompetent and of his dependents and existing claims for expenses of administration over other claims.

(2) CLAIMS MAY BE PRESENTED. Any person having a claim against the estate of an incompetent, or against the guardian of his estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations, and, upon proof thereof, procure an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed.

(3) DUTY OF LIMITED GUARDIAN TO PAY. Claims against a limited guardianship estate shall be paid by the limited guardian only to the extent specified in the order appointing the limited guardian.

Sec. 20. Section 11.92.040, chapter 145, Laws of 1965 and RCW 11.92.040 are each amended to read as follows:

It shall be the duty of the guardian and limited guardian

(1) To make out and file within three months after his appointment a verified inventory of all the property of the incompetent or disabled person which shall come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(2) ((~~Unless otherwise directed by the court, to file with the court annually within thirty days after the anniversary date of his appointment, and also within thirty days after termination of his appointment, a written verified account of his administration.~~)) To file annually, within thirty days after the anniversary date of

his appointment, and also within thirty days after termination of his appointment, a written verified account of his administration: PROVIDED, That the court in its discretion may allow such reports at intervals of up to thirty-six months, with instruction to the guardian or limited guardian that any substantial increase in income or assets or substantial change in the incompetent's or disabled person's condition shall be reported within thirty days of such substantial increase or change.

(3) If he is a guardian or limited guardian of the person, to care for and maintain the incompetent, and if the incompetent or disabled person is a minor, to see that the incompetent or disabled person is properly trained and educated and that the incompetent or disabled person has the opportunity to learn a trade, occupation or profession. The guardian or limited guardian of the person may be required to report the condition of his incompetent or disabled person to the court, at regular intervals or otherwise as the court may direct.

(4) If he is a guardian or limited guardian of the estate, to protect and preserve it, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required of him by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incompetent or disabled person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 30.99.070 for periods not exceeding one year from the date of the order.

(5) To invest and reinvest the property of the incompetent or disabled person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 30.24 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian during a period of not exceeding one year following the date of the order to invest and reinvest as provided in chapter 30.24 RCW without further order of the court.

(b) If it is for the best interests of the incompetent or disabled person that a specific property be used by the incompetent or disabled person rather than sold and the proceeds invested, the court may so order.

(6) To apply to the court for an order authorizing any disbursement on behalf of the incompetent or disabled person; provided, however, that the guardian or limited guardian of the estate, or the person, department, bureau, agency or charitable organization having the care and custody of an incompetent or disabled person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency or charitable organization having the care and custody of an incompetent or disabled person, or if the guardian or limited guardian of the estate has the care and custody of the incompetent or disabled person, directing the guardian or limited

guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance and education of the incompetent or disabled person and of his dependents. In proper cases, the court may order payment of amounts directly to the incompetent or disabled person for his maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under such order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

Sec. 21. Section 11.92.050, chapter 145, Laws of 1965 and RCW 11.92.050 are each amended to read as follows:

Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his account with regard to any and all receipts, expenditures and investments made and acts done by the guardian or limited guardian to the date of said interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of such petition and require the service of the petition and a notice of such hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event such a hearing be ordered, the court shall also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at said hearing, in writing. At such hearing on said report of the guardian or limited guardian, if the court be satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incompetent or disabled person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after said incompetent or disabled person attains his majority any such interim account may be challenged by said incompetent or disabled person on the ground of fraud.

Sec. 22. Section 11.92.056, chapter 145, Laws of 1965 and RCW 11.92.056 are each amended to read as follows:

If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited,

shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the incompetent or disabled person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions.

Sec. 23. Section 11.92.060, chapter 145, Laws of 1965 and RCW 11.92.060 are each amended to read as follows:

(1) GUARDIAN MAY SUE AND BE SUED. When there is a guardian of the estate, all actions between the incompetent or the guardian and third persons in which it is sought to charge or benefit the estate of the incompetent shall be prosecuted by or against the guardian of the estate as such. He shall represent the interests of the incompetent in the action and all process shall be served on him.

(2) JOINDER, AMENDMENT AND SUBSTITUTION. When the guardian of the estate is under personal liability for his own contracts and acts made and performed on behalf of the estate he may be sued both as guardian and in his personal capacity in the same action. Misnomer or the bringing of the action by or against the incompetent shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incompetent before the appointment of a guardian of his estate, such guardian when appointed may be substituted as a party for the incompetent. If the appointment of the guardian of the estate is terminated, his successor may be substituted; if the incompetent dies, his personal representative may be substituted; if the incompetent becomes competent, he may be substituted.

(3) GARNISHMENT, ATTACHMENT AND EXECUTION. When there is a guardian of the estate, the property and rights of action of the incompetent shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incompetent or the guardian of his estate as such.

(4) COMPROMISE BY GUARDIAN. Whenever it is proposed to compromise or settle any claim by or against the incompetent or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incompetent, may enter an order authorizing the settlement or compromise be made.

(5) LIMITED GUARDIAN. Limited guardians may serve and be served with process or actions on behalf of the disabled person, but only to the extent provided for in the court order appointing a limited guardian.

Sec. 24. Section 11.92.090, chapter 145, Laws of 1965 and RCW 11.92.090 are each amended to read as follows:

Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of such incompetent or disabled person for the

purpose of paying debts or for the care, support and education of such incompetent or disabled person, or to redeem any property of such incompetent's or disabled person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper.

Sec. 25. Section 11.92.100, chapter 145, Laws of 1965 and RCW 11.92.100 are each amended to read as follows:

Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to such incompetent or disabled person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incompetent's or disabled person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the incompetent or disabled person.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.

(8) The age of the incompetent or disabled person, where and with whom residing.

(9) All other facts connected with the estate and condition of the incompetent or disabled person necessary to enable the court to fully understand the same. If there is no personal estate belonging to such incompetent or disabled person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application.

Sec. 26. Section 11.92.110, chapter 145, Laws of 1965 and RCW 11.92.110 are each amended to read as follows:

The order directing the sale of any of the real property of the estate of such incompetent or disabled person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs.

Sec. 27. Section 11.92.115, chapter 145, Laws of 1965 and RCW 11.92.115 are each amended to read as follows:

The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being

duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incompetent or disabled person and of his estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published.

Sec. 28. Section 11.92.120, chapter 145, Laws of 1965 and RCW 11.92.120 are each amended to read as follows:

No sale by any guardian or limited guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud.

Sec. 29. Section 11.92.130, chapter 145, Laws of 1965 and RCW 11.92.130 are each amended to read as follows:

If any person who is bound by contract in writing to perform shall become incompetent or become a disabled person before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of such incompetent or disabled person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW.

Sec. 30. Section 11.92.150, chapter 145, Laws of 1965 as amended by section 1, chapter 18, Laws of 1969 and RCW 11.92.150 are each amended to read as follows:

At any time after the issuance of letters of guardianship in the estate of any incompetent or disabled person, any person interested in said estate, or in such incompetent or disabled person, or any relative of such incompetent or disabled person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon such guardian or limited guardian, or upon the attorney for such guardian or limited guardian, and file with the clerk of the court wherein the administration of such guardianship or limited guardianship estate is pending, a written request stating

that special written notice is desired of any or all of the following matters, steps or proceedings in the administration of such estate:

(1) Filing of petition for sales, exchanges, leases, mortgages, or grants of easements, licenses or similar interests in any property of the estate.

(2) Filing of all intermediate or final accountings or accountings of any nature whatsoever.

(3) Petitions by the guardian or limited guardian for family allowances or allowances for the incompetent or disabled person or any other allowance of every nature from the funds of the estate.

(4) Petitions for the investment of the funds of the estate.

(5) Petition to terminate guardianship or limited guardianship or petition for adjudication of competency.

Such request for special written notice shall designate the name, address and post office address of the person upon whom such notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with such designation unless and until a new designation shall have been made.

When any account, petition, or proceeding is filed in such estate of which special written notice is requested as herein provided, the court shall fix a time for hearing thereon which shall allow at least ten days for service of such notice before such hearing; and notice of such hearing shall be served upon the person designated in such written request at least ten days before the date fixed for such hearing. The service may be made by leaving a copy with the person designated, or his authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated.

Sec. 31. Section 11.92.160, chapter 145, Laws of 1965 and RCW 11.92.160 are each amended to read as follows:

Whenever any request for special written notice is served as provided in this section and RCW 11.92.150 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any incompetent or disabled person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts.

Sec. 32. Section 11.92.170, chapter 145, Laws of 1965 and RCW 11.92.170 are each amended to read as follows:

Whenever it is made to appear that it would be in the best interests of the incompetent or disabled person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the incompetent or disabled person appointed in another jurisdiction.

Sec. 33. Section 11.92.180, chapter 145, Laws of 1965 and RCW 11.92.180 are each amended to read as follows:

A guardian or limited guardian shall be allowed such compensation for his services as guardian or limited guardian as the court shall deem just and reasonable. Additional compensation may be allowed for his necessary services as attorney and for other necessary services not required of a guardian or limited guardian. He may also be allowed compensation for necessary expenses in the administration of his trust, including reasonable attorney's fees if the employment of an attorney for the particular purpose is necessary. In all cases, compensation of the guardian or limited guardian and his expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed.

Sec. 34. Section 11.92.185, chapter 145, Laws of 1965 and RCW 11.92.185 are each amended to read as follows:

The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of incompetents or disabled persons subject to administration under this title.

Passed the Senate March 20, 1975.
Passed the House May 21, 1975.
Approved by the Governor May 28, 1975.
Filed in Office of Secretary of State May 28, 1975.

CHAPTER 96

[Engrossed Senate Bill No. 2117]

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

AN ACT Relating to state government; amending section 47.12.060, chapter 13, Laws of 1961 and RCW 47.12.060; amending section 47.12.070, chapter 13, Laws of 1961 as amended by section 2, chapter 91, Laws of 1969 and RCW 47.12.070; amending section 47.12.080, chapter 13, Laws of 1961 and RCW 47.12.080; amending section 47.12.130, chapter 13, Laws of 1961 and RCW 47.12.130; amending section 47.12.150, chapter 13, Laws of 1961 and RCW 47.12.150; and amending section 2, chapter 177, Laws of 1973 1st ex. sess. and RCW 47.12.290.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 47.12.060, chapter 13, Laws of 1961 and RCW 47.12.060 are each amended to read as follows:

When a state highway is relocated and the old route is abandoned, and the new route crosses land owned by a person who owns land abutting on the old route, the Washington state highway commission may agree with the owner to convey to him title to the old route or a part thereof as all or part consideration for his land to be taken for the new route.

Whenever the state has abandoned any highway rights of way, pit sites, stock pile sites or owns land not needed for highway purposes, the Washington state highway commission may sell same to abutting owners for the fair market value or exchange with any person as a consideration or part consideration for lands or property rights needed by the state, or may sell same by public auction whenever it is deemed in the public interest to do so: PROVIDED, That whenever the commission finds that it is in the public interest to sell such property to an abutting private owner and there are two or more abutting owners, the commission shall sell the same only by public auction unless every abutting owner but one signs a statement signifying he does not intend to bid on or purchase such property.

The Washington state highway commission shall certify the agreement to the ((governor)) director of highways with a description of the property to be conveyed, and the ((~~governor may execute and the secretary of state shall attest~~)) director of highways shall execute the deed which shall be duly acknowledged and deliver it to the grantee.

Sec. 2. Section 47.12.070, chapter 13, Laws of 1961 as amended by section 2, chapter 91, Laws of 1969 and RCW 47.12.070 are each amended to read as follows:

If the Washington state highway commission deems that any land is no longer required for state highway purposes and that it is in the public interest so to do, said highway commission may negotiate for the sale of the land to a city or county of the state. The state highway commission shall certify the agreement for the sale to the ((governor)) director of highways, with a description of the land and the terms of the sale, and the ((~~governor may execute and the secretary of the state shall attest~~)) director of highways shall execute the deed ((~~and deliver it~~)) which shall be duly acknowledged and deliver it to the grantee.

Any moneys received pursuant to the provisions of this section shall be deposited in the motor vehicle fund.

Sec. 3. Section 47.12.080, chapter 13, Laws of 1961 and RCW 47.12.080 are each amended to read as follows:

Whenever in the construction, reconstruction, location or improvement of any state highway it may become necessary to transfer and convey to the United States, its agencies or instrumentalities, to any municipal subdivision of this state, or to any public utility company, any unused state highway right of way or real property, and in the judgment of the highway commission and the attorney general, such transfer and conveyance is consistent with public interest, the highway commission may enter into agreements accordingly. Whenever the highway commission shall make any such agreement for any such transfer or conveyance, and together with the attorney general, certifies to the ((governor)) director of highways that such agreement has been made setting forth in such certification a description of the lands or premises involved, the ((~~governor may execute and the secretary of state shall attest~~)) director of highways shall execute and deliver unto the United States government, or its agencies or instrumentalities, unto any municipal subdivision of this state, or unto any public utility company, a deed of conveyance, easement or other instrument, duly acknowledged, as shall be necessary to fulfill the terms of the aforesaid agreement. All moneys paid to the state of

APPENDIX 2

shall be paid out of the electrical license fund, upon vouchers approved by the director of labor and industries.

Passed the Senate March 31, 1977.
Passed the House May 16, 1977.
Approved by the Governor May 24, 1977.
Filed in Office of Secretary of State May 24, 1977.

CHAPTER 80

[Substitute Senate Bill No. 2872]

MENTALLY, PHYSICALLY, AND SENSORY HANDICAPPED
——INCOMPETENCY, DISABILITY——TERMINOLOGY——PROCEDURE

AN ACT Relating to social and health services; amending section 11, page 364, Laws of 1854 as last amended by section 74, chapter 292, Laws of 1971 ex. sess. and RCW 4.16.190; amending section 290, page 186, Laws of 1854 as last amended by section 1, chapter 84, Laws of 1927 and RCW 5.60.030; amending section 26, chapter 64, Laws of 1895 and RCW 6.12.300; amending section 27, chapter 64, Laws of 1895 and RCW 6.12.310; amending section 28, chapter 64, Laws of 1895 and RCW 6.12.320; amending section 5, chapter 11, Laws of 1893 as amended by section 7, chapter 292, Laws of 1971 ex. sess. and RCW 7.28.090; amending section 456, page 214, Laws of 1854 as last amended by section 17, chapter 154, Laws of 1973 1st ex. sess. and RCW 7.36.020; amending section 551, page 142, Laws of 1869 as last amended by section 597, Code of 1881 and RCW 7.52.460; amending section 552, page 142, Laws of 1869 as last amended by section 598, Code of 1881 and RCW 7.52.470; amending section 9A.16.020, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.16.020; amending section 11.02.005, chapter 145, Laws of 1965 as amended by section 23, chapter 42, Laws of 1975–'76 2nd ex. sess. and RCW 11.02.005; amending section 11.76.080, chapter 145, Laws of 1965 as last amended by section 45, chapter 117, Laws of 1974 ex. sess. and RCW 11.76.080; amending section 4, chapter 297, Laws of 1957 as last amended by section 12, chapter 302, Laws of 1961 and RCW 13.04.200; amending sections 13 and 14, page 83, Laws of 1866 as last amended by section 29, chapter 154, Laws of 1973 1st ex. sess. and RCW 26.04.210; amending section 419, chapter 249, Laws of 1909 and RCW 26.04.250; amending section 1, chapter 82, Laws of 1970 ex. sess. and RCW 26.36.050; amending section 1, chapter 272, Laws of 1955 and RCW 26.40.030; and RCW 26.40.010; amending section 3, chapter 272, Laws of 1955 and RCW 26.40.030; amending section 1, chapter 13, Laws of 1965 as last amended by section 1, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.010; amending section 2, chapter 13, Laws of 1965 as last amended by section 2, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.020; amending section 3, chapter 13, Laws of 1965 as last amended by section 3, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.030; amending section 4, chapter 13, Laws of 1965 as last amended by section 4, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.040; amending section 5, chapter 13, Laws of 1965 as last amended by section 5, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.050; amending section 6, chapter 35, Laws of 1969 ex. sess. as last amended by section 7, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.070; amending section 28A.58.150, chapter 223, Laws of 1969 ex. sess. as last amended by section 30, chapter 118, Laws of 1975–'76 2nd ex. sess. and RCW 28A.58.150; amending section 30.30.060, chapter 33, Laws of 1955 and RCW 30.30.060; amending section 4, chapter 128, Laws of 1969 ex. sess. and RCW 48.21.150; amending section 1, chapter 128, Laws of 1969 ex. sess. and RCW 48.44.200; amending section 2, chapter 128, Laws of 1969 ex. sess. and RCW 48.44.210; amending section 13, chapter 174, Laws of 1913 as amended by section 13, chapter 16, Laws of 1973 2nd ex. sess. and RCW 49.12.110; amending section 51.08.030, chapter 23, Laws of 1961 as last amended by section 37, chapter 42, Laws of 1975–'76 2nd ex. sess. and RCW 51.08.030; amending section 2, chapter 4, Laws of 1967 ex. sess. and RCW 70.10.040; and RCW 70.10.020; amending section 4, chapter 4, Laws of 1967 ex. sess. and RCW 70.10.050; amending section 1, amending section 5, chapter 4, Laws of 1967 ex. sess. and RCW 70.10.060; amending section 9, chapter 142, Laws of 1973 1st chapter 82, Laws of 1967 and RCW 70.83.010; amending section 1, chapter 199, Laws of 1975 1st ex. sess. and RCW 71.05.040; ex. sess. as last amended by section 65, chapter 292, amending section 71.06.010, chapter 25, Laws of 1959 as last amended by section 11, chapter 71, Laws Laws of 1971 ex. sess. and RCW 71.06.010; amending section 71.12.455, chapter 25, Laws of 1959 and RCW 71.12.455; amending section 1, chapter 84, Laws of 1967 and RCW 71.28.010; amending section 72.05.170, chapter 28, Laws of 1959 and RCW 72.05.170; amending section 72.06.050, chapter 28, Laws of 1959 and RCW 72.06.050; amending section 72.06.060, chapter 28, Laws of 1959 and RCW 72.06.060; amending section 72.23.070, chapter 28, Laws of 1959 as last amended by section 11, chapter 199, Laws of 1975 1st ex. sess. and RCW 72.23.070; amending section 72.25.010, chapter 28, Laws of 1959 as amended by section 1, chapter 78, Laws of 1965 and RCW

72.25.010; amending section 72.25.020, chapter 28, Laws of 1959 as amended by section 2, chapter 78, Laws of 1965 and RCW 72.25.020; amending section 72.25.030, chapter 28, Laws of 1959 as amended by section 3, chapter 78, Laws of 1965 and RCW 72.25.030; amending section 3, chapter 11, Laws of 1965 and RCW 72.29.010; amending section 1, chapter 18, Laws of 1967 ex. sess. and RCW 72.30.010; amending section 2, chapter 18, Laws of 1967 ex. sess. and RCW 72.30.020; amending section 3, chapter 18, Laws of 1967 ex. sess. and RCW 72.30.030; amending section 72.33.020, chapter 28, Laws of 1959 as last amended by section 1, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.020; amending section 2, chapter 246, Laws of 1959 as amended by section 3, chapter 72.33.125; amending section 72.33.130, chapter 28, Laws of 1959 as amended by section 3, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.130; amending section 11, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.165; amending section 72.33.170, chapter 28, Laws of 1959 as amended by section 7, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.170; amending section 72.33.240, chapter 28, Laws of 1959 as last amended by section 10, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.240; amending section 72.33.040, chapter 28, Laws of 1959 as amended by section 3, chapter 56, Laws of 1969 and RCW 72.33.040; amending section 72.33.070, chapter 28, Laws of 1959 and RCW 72.33.070; amending section 72.33.080, chapter 28, Laws of 1959 and RCW 72.33.080; amending section 1, chapter 251, Laws of 1961 as last amended by section 9, chapter 71, Laws of 1974 ex. sess. and RCW 72.33.800; amending section 2, chapter 251, Laws of 1961 as last amended by section 10, chapter 71, Laws of 1974 ex. sess. and RCW 72.33.805; amending section 3, chapter 251, Laws of 1961 as amended by section 11, chapter 71, Laws of 1974 ex. sess. and RCW 72.33.810; amending section 72.40.040, chapter 28, Laws of 1959 as amended by section 1, chapter 39, Laws of 1969 and RCW 72.40.040; amending section 1, chapter 287, Laws of 1959 and RCW 72.70.010; amending section 1, chapter 172, Laws of 1967 and RCW 74.15.010; amending section 2, chapter 172, Laws of 1967 and RCW 74.15.020; amending section 3, chapter 172, Laws of 1967 and RCW 74.15.030; amending section 9, chapter 172, Laws of 1967 and RCW 74.15.090; amending section 11, chapter 115, Laws of 1895 as amended by section 57, chapter 292, Laws of 1971 ex. sess. and RCW 85.06.110; amending section 18, chapter 117, Laws of 1917 and RCW 90.03.150; creating new sections; adding a new section to chapter 8.25 RCW; repealing section 14, chapter 153, Laws of 1907 and RCW 8.12.180; repealing section 1, chapter 174, Laws of 1909, section 1, chapter 16, Laws of 1909 ex. sess., section 1, chapter 149, Laws of 1959, section 27, chapter 154, Laws of 1973 1st ex. sess. and RCW 26.04.030; and repealing section 2, chapter 174, Laws of 1909, section 2, chapter 16, Laws of 1909 ex. sess., section 2, chapter 149, Laws of 1959, section 28, chapter 154, Laws of 1973 1st ex. sess. and RCW 26.04.040.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term "insanity" be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter 11.88 RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability.

Sec. 2. Section 11, page 364, Laws of 1854 as last amended by section 74, chapter 292, Laws of 1971 ex. sess. and RCW 4.16.190 are each amended to read as follows:

If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or ((insane)) incompetent or disabled to such a degree that he or she cannot understand

the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action.

Sec. 3. Section 290, page 186, Laws of 1854 as last amended by section 1, chapter 84, Laws of 1927 and RCW 5.60.030 are each amended to read as follows:

No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility: PROVIDED, HOWEVER, That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, or as the guardian or ((conservator)) limited guardian of the estate or person of any ((insane)) incompetent or disabled person, or of any minor under the age of fourteen years, then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased ((or insane)), incompetent or disabled person, or by any such minor under the age of fourteen years: PROVIDED FURTHER, That this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and have no other or further interest in the action.

Sec. 4. Section 26, chapter 64, Laws of 1895 and RCW 6.12.300 are each amended to read as follows:

In case of a homestead, if either the husband or wife shall be or become ((hopelessly insane)) incompetent or disabled to such a degree that he or she is unable to assist in the management of his or her interest in the marital property, upon application of the husband or wife not ((insane)) so incompetent or disabled to the superior court of the county in which the homestead is situated, and upon due proof of such ((insanity)) incompetency or disability in the severity required above, the court may make an order permitting the husband or wife ((not insane)) applying to the court to sell and convey or mortgage such homestead.

Sec. 5. Section 27, chapter 64, Laws of 1895 and RCW 6.12.310 are each amended to read as follows:

Notice of the application for such order shall be given by publication of the same in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks prior to the hearing of such application, and a copy of such notice shall be served upon the alleged incompetent husband or wife personally, and upon the nearest ((male)) relative of such ((insane)) incompetent or disabled husband or wife other than the applicant, resident in this state, at least three weeks prior to such application being heard, and in case there be no such ((male)) relative known to the applicant, a copy of such notice shall be served upon the prosecuting attorney of the county in which such homestead is situated; and it is hereby made the duty of such prosecuting attorney, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.

Sec. 6. Section 28, chapter 64, Laws of 1895 and RCW 6.12.320 are each amended to read as follows:

Thirty days before the hearing of any application under the provisions of this chapter, the applicant shall present and file in the court in which such application is to be heard a petition for the order mentioned, subscribed and sworn to by the applicant, setting forth the name and age of the ((insane)) alleged incompetent or disabled husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; ((and)) such facts ((in addition to that of the insanity of the husband or wife)) necessary to show that the nonpetitioning husband or wife is incompetent or disabled to the degree required under section 4 of this 1977 amendatory act; and such additional facts relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition.

Sec. 7. Section 5, chapter 11, Laws of 1893 as amended by section 7, chapter 292, Laws of 1971 ex. sess. and RCW 7.28.090 are each amended to read as follows:

RCW 7.28.070 and 7.28.080 shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is a person under eighteen years of age, or ((insane)) incompetent within the meaning of RCW 11.88.010: PROVIDED, Such persons as aforesaid shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land shall, within the time last aforesaid, pay to the person or persons who have paid the same for his or her betterments, and the taxes, with interest on said taxes at the legal rate per annum that have been paid on said vacant and unimproved land.

Sec. 8. Section 456, page 214, Laws of 1854 as last amended by section 17, chapter 154, Laws of 1973 1st ex. sess. and RCW 7.36.020 are each amended to read as follows:

Writs of habeas corpus shall be granted in favor of parents, guardians, limited guardians where appropriate, spouses, and next of kin, and to enforce the rights, and for the protection of infants and ((insane)) incompetent or disabled persons within the meaning of RCW 11.88.010; and the proceedings shall in all cases conform to the provisions of this chapter.

Sec. 9. Section 551, page 142, Laws of 1869 as last amended by section 597, Code of 1881 and RCW 7.52.460 are each amended to read as follows:

The guardian or limited guardian who may be entitled to the custody and management of the estate of an ((insane)) incompetent or disabled person((, or other person)) adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

Sec. 10. Section 552, page 142, Laws of 1869 as last amended by section 598, Code of 1881 and RCW 7.52.470 are each amended to read as follows:

The general guardian of an infant, and the guardian or limited guardian entitled to the custody and management of the estate of an ((insane)) incompetent or disabled person((, or other person)) adjudged incapable of conducting his own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares or parts to which they may respectively be entitled, and upon an order of the court.

NEW SECTION. Sec. 11. Section 14, chapter 153, Laws of 1907 and RCW 8.12.180 are each hereby repealed.

NEW SECTION. Sec. 12. There is added to chapter 8.25 RCW a new section to read as follows:

When it shall appear in any petition or otherwise at any time during the proceedings for condemnation brought pursuant to chapters 8.04, 8.08, 8.12, 8.16, 8.20, and 8.24 RCW, each as now or hereafter amended, that any infant, or allegedly incompetent or disabled person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for such infant or allegedly incompetent or disabled person to appear and assist in his, her or their defense unless a guardian or limited guardian has previously been appointed, in which case the duty to appear and assist shall be delegated to the properly qualified guardian or limited guardian. The court shall make such orders or decrees as it shall deem necessary to protect and secure the interest of the infant or allegedly incompetent or disabled person in the property sought to be condemned or the compensation which shall be awarded therefore.

Sec. 13. Section 9A.16.020, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.16.020 are each amended to read as follows:

The use, attempt, or offer to use force upon or toward the person of another shall not be unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him and acting under his direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an offense against his person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his possession, in case the force is not more than shall be necessary;

(4) Whenever used in a reasonable and moderate manner by a parent or his authorized agent, a guardian, master, or teacher in the exercise of lawful authority, to restrain or correct his child, ward, apprentice, or scholar;

(5) Whenever used by a carrier of passengers or his authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has

first been stopped and the force used is not more than shall be necessary to expel the offender with reasonable regard to his personal safety;

(6) Whenever used by any person to prevent a mentally ((retarded person or a mentally)) ill, mentally incompetent or mentally disabled person from committing an act dangerous to himself or another, or in enforcing necessary restraint for the protection of his person, or his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

Sec. 14. Section 11.02.005, chapter 145, Laws of 1965 as amended by section 23, chapter 42, Laws of 1975–'76 2nd ex. sess. and RCW 11.02.005 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of his issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.

(5) "Degree of kinship" shall mean the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on his death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Wills" includes all codicils.

(9) "Codicil" shall mean an instrument executed in the manner provided by this title for wills, which refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) Words that import the singular number only, may also be applied to the plural of persons and things.

(15) Words importing the masculine gender only may be extended to females also.

Sec. 15. Section 11.76.080, chapter 145, Laws of 1965 as last amended by section 45, chapter 117, Laws of 1974 ex. sess. and RCW 11.76.080 are each amended to read as follows:

If there be any alleged incompetent or disabled person as defined in RCW 11-.88.010 interested in the estate who has no legally appointed guardian or limited guardian, the court:

(1) At any stage of the proceeding in its discretion and for such purpose or purposes as it shall indicate, may, and

(2) For hearings held pursuant to RCW 11.52.010, 11.52.020, 11.68.040 and 11.76.050, each as now or hereafter amended, or for entry of an order adjudicating testacy or intestacy and heirship when no personal representative is appointed to administer the estate of the decedent, shall appoint some disinterested person as guardian ad litem to represent such allegedly incompetent or disabled person with reference to any petition, proceeding report, or adjudication of testacy or intestacy without the appointment of a personal representative to administer the estate of decedent in which the alleged incompetent or disabled person may have an interest, who, on behalf of the alleged incompetent or disabled person, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his services: PROVIDED, HOWEVER, That where a surviving spouse is the sole beneficiary under the terms of a will, the court may grant a motion by the personal representative to waive the appointment of a guardian ad litem for a person who is the minor child of such surviving spouse and the decedent and who is incompetent solely for the reason of his being under eighteen years of age.

Sec. 16. Section 4, chapter 297, Laws of 1957 as last amended by section 12, chapter 302, Laws of 1961 and RCW 13.04.200 are each amended to read as follows:

The ((director)) secretary of the department of ((institutions)) social and health services may designate the Washington state reformatory for the transfer in institutional placement of incorrigible juvenile delinquents over the age of sixteen

years, the custody of such children to remain in the ((director)) secretary, and such children in no event to remain at the Washington state reformatory beyond the time at which they are eligible for a complete release from the state training school ((~~as provided in RCW 13.08.140~~)): PROVIDED, That the term "incorrigible juvenile delinquent" for the purposes of this section shall mean conduct by a juvenile committed to the department by the juvenile court indicating over the course of a reasonable period of time that the rehabilitative program of the department can be of no further benefit to such juvenile, and that he is in need of closer security.

*NEW SECTION. Sec. 17. Section 1, chapter 174, Laws of 1909, section 1, chapter 16, Laws of 1909 ex. sess., section 1, chapter 149, Laws of 1959, section 27, chapter 154, Laws of 1973 1st ex. sess. and RCW 26.04.030 are each hereby repealed.

*Sec. 17. was vetoed, see message at end of chapter.

*NEW SECTION. Sec. 18. Section 2, chapter 174, Laws of 1909, section 2, chapter 16, Laws of 1909 ex. sess., section 2, chapter 149, Laws of 1959, section 28, chapter 154, Laws of 1973 1st ex. sess. and RCW 26.04.040 are each hereby repealed.

*Sec. 18. was vetoed, see message at end of chapter.

*Sec. 19. Sections 13 and 14, page 83, Laws of 1866 as last amended by section 29, chapter 154, Laws of 1973 1st ex. sess. and RCW 26.04.210 are each amended to read as follows:

The county auditor, before a marriage license is issued, upon the payment of a license fee as fixed in RCW 36.18.010 shall require each applicant therefor to make and file in his office upon blanks to be provided by the county for that purpose, an affidavit ((~~showing that such applicant is not feeble-minded, an imbecile, insane, a common drunkard, or afflicted with pulmonary tuberculosis in its advanced stages: PROVIDED, That in addition, the affidavits of both applicants they are for such marriage license shall show that they are not afflicted with any contagious venereal disease. He shall also require an affidavit of some disinterested credible person showing that neither of said persons is an habitual criminal, and~~)) that the applicants are the age of eighteen years or over: PROVIDED, ((~~FURTHER,~~)) That if ((the)) consent in writing is obtained of the father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female has attained the age of seventeen years or the male has attained the age of seventeen years. Such affidavit may be subscribed and sworn to before any person authorized to administer oaths. Anyone knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this section shall be deemed guilty of perjury and punished as provided by the laws of the state of Washington.

*Sec. 19. was vetoed, see message at end of chapter.

*Sec. 20. Section 419, chapter 249, Laws of 1909 and RCW 26.04.250 are each amended to read as follows:

Every person who shall solemnize a marriage when either party thereto is known to him to be under the age of legal consent, ((~~or to be an idiot, insane person, habitual criminal or common drunkard,~~)) or a marriage to which, within his knowledge, any legal impediment exists, shall be guilty of a gross misdemeanor.

*Sec. 20. was vetoed, see message at end of chapter.

Sec. 21. Section 1, chapter 82, Laws of 1970 ex. sess. and RCW 26.36.050 are each amended to read as follows:

Every person, firm, society, association, or corporation receiving, securing a home for, or otherwise caring for a minor child shall transmit to the prospective adopting parent prior to placement and shall make available to all persons with whom a child has been placed by adoption a complete medical report containing all reasonably available information concerning the mental, physical and sensory handicaps of said child. ((~~This report shall contain, but shall not be limited to, all reasonably available information which would indicate that the child is mentally deficient or physically impaired by reason of heredity, process of birth, disease, or any other cause, but~~)) Said report shall not reveal the identity of the natural parents of the child. RCW 26.36.030 and RCW 26.36.060 shall not apply to any information made available by this section: PROVIDED, HOWEVER, That this section shall not apply to attorneys performing legal services in connection with adoptions.

Sec. 22. Section 1, chapter 272, Laws of 1955 and RCW 26.40.010 are each amended to read as follows:

The purpose of this chapter is to assure the right of every physically, mentally or sensory handicapped child to parental love and care as long as possible, to provide for adequate custody of a handicapped child who has lost parental care, and to make available to the handicapped child the services of the state through its various departments and agencies.

Sec. 23. Section 3, chapter 272, Laws of 1955 and RCW 26.40.030 are each amended to read as follows:

The parents or parent of any child who is temporarily or permanently ((~~retarded~~)) delayed in normal educational processes and/or normal social adjustment by reason of physical, sensory or mental handicap, or by reason of social or emotional maladjustment, or by reason of other handicap, may petition the superior court for the county in which such child resides for an order for the commitment of such child to custody as provided in RCW 26.40.040, as now or hereafter amended.

Sec. 24. Section 1, chapter 13, Laws of 1965 as last amended by section 1, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.010 are each amended to read as follows:

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child ((~~or mentally retarded person~~)) is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children: PROVIDED, That such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions: PROVIDED FURTHER,

That this chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

Adult developmentally disabled persons not able to provide for their own protection through the criminal justice system shall also be afforded the protection offered children through the reporting and investigation requirements mandated in this chapter.

Sec. 25. Section 2, chapter 13, Laws of 1965 as last amended by section 2, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.020 are each amended to read as follows:

For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatry, optometry, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a child who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected child for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age ((~~and shall also include any mentally retarded person regardless of age~~)).

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social worker" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergyman" shall mean any regularly licensed or ordained minister or any priest of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Child abuse or neglect" shall mean the injury, sexual abuse, or negligent treatment or maltreatment of a child by a person who is legally responsible for the child's welfare under circumstances which indicate that the child's health, welfare

and safety is harmed thereby. An abused child is a child who has been subjected to child abuse or neglect as defined herein. "Negligent treatment or maltreatment" shall mean an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare and safety: PROVIDED, That this subsection shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult developmentally disabled persons not able to provide for their own protection through the criminal justice system" shall be defined as those persons over the age of eighteen years with developmental disabilities who have been found legally incompetent pursuant to chapter 11.88 RCW or found disabled to such a degree pursuant to said chapter, that such protection is indicated: PROVIDED, That no persons reporting injury, abuse or neglect to an adult developmentally disabled person as defined herein shall suffer negative consequences if such a judicial determination of incompetency or disability has not taken place and the person reporting believes in good faith that the adult developmentally disabled person needs the protection offered by this chapter.

Sec. 26. Section 3, chapter 13, Laws of 1965 as last amended by section 3, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.030 are each amended to read as follows:

(1) When any practitioner, professional school personnel, registered or licensed nurse, social worker, psychologist, pharmacist, or employee of the department of social and health services has reasonable cause to believe that a child or adult developmentally disabled person has suffered ((child)) abuse or neglect, he shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(2) Any other person who has reasonable cause to believe that a child or adult developmentally disabled person has suffered ((child)) abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040 as now or hereafter amended.

(3) The department or any law enforcement agency receiving a report of an incident of ((child)) abuse or neglect pursuant to this chapter, involving a child or adult developmentally disabled person who has died or has had physical injury or injuries inflicted upon him other than by accidental means or who has been subjected to sexual abuse shall report such incident to the proper county prosecutor for appropriate action.

Sec. 27. Section 4, chapter 13, Laws of 1965 as last amended by section 4, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.040 are each amended to read as follows:

An immediate oral report shall be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, shall be followed by a report in writing. Such reports shall contain the following information, if known:

(1) The name, address, and age of the child or adult developmentally disabled person;

(2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child or the residence of the adult developmentally disabled person;

(3) The nature and extent of the ((child's)) injury or injuries;

(4) The nature and extent of the neglect ((of the child));

(5) The nature and extent of the sexual abuse;

(6) Any evidence of previous injuries, including their nature and extent; and

(7) Any other information which may be helpful in establishing the cause of the child's or adult developmentally disabled person's death, injury, or injuries and the identity of the perpetrator or perpetrators.

Sec. 28. Section 5, chapter 13, Laws of 1965 as last amended by section 5, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.050 are each amended to read as follows:

Upon the receipt of a report concerning the possible occurrence of ((child)) abuse or neglect, it shall be the duty of the law enforcement agency or the department of social and health services to investigate and provide the ((child)) protective services section with a report in accordance with the provision of chapter 74.13 RCW, and where necessary to refer such report to the court. Notwithstanding the provisions of RCW 13.04.130 as now or hereafter amended, the law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child or adult developmentally disabled person for the purpose of providing documentary evidence of the physical condition of the child or disabled person at the time the child or disabled person was taken into custody.

Sec. 29. Section 6, chapter 35, Laws of 1969 ex. sess. as last amended by section 7, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.070 are each amended to read as follows:

The department shall maintain a central registry of reported cases of child abuse or abuse of an adult developmentally disabled person and shall adopt such rules and regulations as necessary in carrying out the provisions of this section. Records in the central registry shall be considered confidential and privileged and will not be available except upon court order to any person or agency except (1) law enforcement agencies as defined in this chapter in the course of an investigation of alleged ((child)) abuse or neglect; (2) to ((child)) protective services workers or juvenile court personnel who are investigating reported incidences of ((child)) abuse or neglect; (3) physicians who are treating the child or adult developmentally disabled person or family; (4) any child or adult developmentally disabled person named in the registry who is alleged to be abused or neglected, or his or her guardian ad litem and/or attorney; (5) a parent, guardian, or other person legally responsible for the welfare and safety of the child or adult developmentally disabled person named in the registry; (6) any person engaged in a bona fide research purpose, as determined by the department, according to rules and regulations, provided that information identifying the persons of the registry shall remain privileged; and (7) any individual whose name appears on the registry shall have access to his own records. Those persons or agencies exempted by this section from

the confidentiality of the records of the registry shall not further disseminate or release such information so provided to them and shall respect the confidentiality of such information, and any violation of this section shall constitute a misdemeanor.

Sec. 30. Section 28A.58.150, chapter 223, Laws of 1969 ex. sess. as last amended by section 30, chapter 118, Laws of 1975–'76 2nd ex. sess. and RCW 28A.58.150 are each amended to read as follows:

In addition to such other duties as a district school board shall prescribe the school district superintendent shall:

(1) Attend all meetings of the board of directors and cause to have made a record as to the proceedings thereof.

(2) Keep such records and reports and in such form as the district board of directors require or as otherwise required by law or rule or regulation of higher administrative agencies and turn the same over to his successor.

(3) Keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the superintendent must present his record book of board proceedings for public inspection, and shall make a statement of the financial condition of the district and such record book must always be open for public inspection.

(4) Take annually in May of each year a census of all persons between the ages of four and twenty who were bona fide residents of the district on the first day of May of that year. He shall designate the name and sex of each child, and the date of its birth; the number of weeks it has attended school during the school year, its post office address, and such other information as the superintendent of public instruction shall desire. Parents or guardians may be required to verify as to the correctness of this report. He shall also list separately all ((defective)) persons with handicapping conditions between the ages of ((four)) three and twenty and give such information concerning them as may be required by the superintendent of public instruction. The board of directors may employ additional persons and compensate the same to aid the superintendent in carrying out such census.

(5) Make to the educational service district superintendent on or before the fifteenth day of October his annual report verified by affidavit upon forms to be furnished by the superintendent of public instruction. It shall contain such items of information as said superintendent of public instruction shall require, including the following: A full and complete report of all children enumerated under subsection (4) above; the number of schools or departments taught during the year; the number of children, male and female, enrolled in the school, and the average daily attendance; the number of teachers employed, and their compensation per month; the number of days school was taught during the past school year, and by whom; and the number of volumes, if any, in the school district library; the number of school houses in the district, and the value of them; and the aggregate value of all school furniture and apparatus belonging to the district. The superintendent shall keep on file a duplicate copy of said report.

(6) Give such notice of all annual or special elections as otherwise required by law; also give notice of the regular and special meetings of the board of directors.

(7) Report to the educational service district superintendent at the beginning of each term of school the name of every teacher and their proposed length of term,

and supply each such teacher with school registers furnished by the educational service district superintendent.

(8) Sign all orders for warrants ordered to be issued by the board of directors.

(9) Carry out all orders of the board of directors made at any regular or special meeting.

Sec. 31. Section 30.30.060, chapter 33, Laws of 1955 and RCW 30.30.060 are each amended to read as follows:

Upon or before the return day any beneficiary of the trust may file his written objections or exceptions to the account filed or to any action of the trustee or trustees set forth therein. The court shall appoint either the legal guardian of a beneficiary, or a guardian ad litem to represent the interests of any such beneficiary who is an infant or ((~~of unsound mind or otherwise legally~~)) incompetent or disabled to such an extent that he or she could not understand the accounting given, or who is yet unborn or unascertained, and such beneficiary shall be bound by any action taken by such representative. Every unborn or unascertainable beneficiary shall be concluded by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of such unborn or unascertainable beneficiary.

Sec. 32. Section 4, chapter 128, Laws of 1969 ex. sess. and RCW 48.21.150 are each amended to read as follows:

Any group disability insurance contract or blanket disability insurance contract, providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of ((~~mental retardation~~)) developmental disability or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer, but not more frequently than annually after the two year period following the child's attainment of the limiting age.

Sec. 33. Section 1, chapter 128, Laws of 1969 ex. sess. and RCW 48.44.200 are each amended to read as follows:

An individual health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of ((~~mental retardation~~)) developmental disability or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is

furnished to the health care service plan corporation by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation but not more frequently than annually after the two year period following the child's attainment of the limiting age.

Sec. 34. Section 2, chapter 128, Laws of 1969 ex. sess. and RCW 48.44.210 are each amended to read as follows:

A group health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of ((~~mental retardation~~)) developmental disability or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation, but not more frequently than annually after the two year period following the child's attainment of the limiting age.

Sec. 35. Section 13, chapter 174, Laws of 1913 as amended by section 13, chapter 16, Laws of 1973 2nd ex. sess. and RCW 49.12.110 are each amended to read as follows:

For any occupation in which a minimum wage has been established, the committee through its secretary may issue to an employer, a special certificate or permit for an employee who is physically or mentally ((~~defective or crippled by age or otherwise~~)) handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market, or to a trainee or learner not otherwise subject to the jurisdiction of the apprenticeship council, a special certificate or permit authorizing the employment of such employee for a wage less than the legal minimum wage; and the committee shall fix the minimum wage for said person, such special certificate or permit to be issued only in such cases as the committee may decide the same is applied for in good faith and that such certificate or permit shall be in force for such length of time as the said committee shall decide and determine is proper.

Sec. 36. Section 51.08.030, chapter 23, Laws of 1961 as last amended by section 37, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 51.08.030 are each amended to read as follows:

"Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, and dependent child in the legal custody and control of the claimant, all while under the age of eighteen years, or under the age of twenty-one years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent ((~~invalid child~~)) as a result of a physical, mental, or sensory handicap.

Sec. 37. Section 2, chapter 4, Laws of 1967 ex. sess. and RCW 70.10.020 are each amended to read as follows:

The term "comprehensive community health center" as used in this chapter shall mean a health facility housing community health, mental health, and ((~~mental retardation~~)) developmental disabilities services.

Sec. 38. Section 4, chapter 4, Laws of 1967 ex. sess. and RCW 70.10.040 are each amended to read as follows:

Any application for federal or state funds to be used for construction of the community health, mental health, or ((~~mental retardation~~)) developmental disabilities facility, which will be part of the comprehensive community health center as defined in RCW 70.10.020, shall be separately processed and approved by the state agency which has been designated to administer the particular federal or state program involved. Any application for federal or state funds for a construction project to establish a community health, mental health, or ((~~mental retardation~~)) developmental disabilities facility not part of a comprehensive health center shall be processed by the state agency which is designated to administer the particular federal or state program involved. This agency shall also forward a copy of the application to the other agency or agencies designated to administer the program or programs providing funds for construction of the facilities which make up a comprehensive health center. The agency or agencies receiving this copy of the application shall have a period of time not to exceed sixty days in which to file a statement with the agency to which the application has been submitted and to any statutory advisory council or committee which has been designated to advise the administering agency with regard to the program, stating that the proposed facility should or should not be part of a comprehensive health center.

Sec. 39. Section 5, chapter 4, Laws of 1967 ex. sess. and RCW 70.10.050 are each amended to read as follows:

The several state agencies processing applications for the construction of comprehensive health centers for community health, mental health, or ((~~mental retardation~~)) developmental disability facilities shall cooperate to develop general procedures to be used in implementing the statute and to attempt to develop application forms and procedures which are as nearly standard as possible, after taking cognizance of the different information required in the various programs, to assist applicants in applying to various state agencies.

Sec. 40. Section 1, chapter 82, Laws of 1967 and RCW 70.83.010 are each amended to read as follows:

It is hereby declared to be the policy of the state of Washington to make every effort to detect as early as feasible and to prevent where possible phenylketonuria and other preventable heritable disorders leading to ((~~mental retardation~~)) developmental disabilities or physical defects.

Sec. 41. Section 9, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 1, chapter 199, Laws of 1975 1st ex. sess. and RCW 71.05.040 are each amended to read as follows:

Persons who are ((~~epileptics, mentally deficient, mentally retarded~~)) developmentally disabled, impaired by chronic alcoholism or drug abuse, or senile shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of

serious harm to self or others: PROVIDED, That a person shall not be subject to the provisions of this chapter if proceedings have been initiated under the provisions of the Washington Uniform Alcoholism and Intoxication Treatment Act, chapter 70.96A RCW.

Sec. 42. Section 71.06.010, chapter 25, Laws of 1959 as last amended by section 65, chapter 292, Laws of 1971 ex. sess. and RCW 71.06.010 are each amended to read as follows:

As used in this chapter, the following terms shall have the following meanings:

"Psychopathic personality" means the existence in any person of such hereditary, congenital or acquired condition affecting the emotional or volitional rather than the intellectual field and manifested by anomalies of such character as to render satisfactory social adjustment of such person difficult or impossible.

"Sexual psychopath" means any person who is affected in a form of psychoneurosis or in a form of psychopathic personality, which form predisposes such person to the commission of sexual offenses in a degree constituting him a menace to the health or safety of others.

"Sex offense" means one or more of the following: Abduction, incest, rape, assault with intent to commit rape, indecent assault, contributing to the delinquency of a minor involving sexual misconduct, sodomy, indecent exposure, indecent liberties with children, carnal knowledge of children, soliciting or enticing or otherwise communicating with a child for immoral purposes, vagrancy involving immoral or sexual misconduct, or an attempt to commit any of the said offenses.

"Psychopathic delinquent" means any minor who is psychopathic, and who is a habitual delinquent, if his delinquency is such as to constitute him a menace to the health, person, or property of himself or others, and the minor is not a proper subject for commitment to a state correctional school, a penal institution, to a state school for the ((~~mentally deficient as a mentally deficient person~~)) developmentally disabled, or to a state hospital as a mentally ill person.

"Minor" means any person under eighteen years of age.

"Department" means department of social and health services.

"Court" means the superior court of the state of Washington.

"Superintendent" means the superintendent of a state institution designated for the custody, care and treatment of sexual psychopaths or psychopathic delinquents.

Sec. 43. Section 71.12.455, chapter 25, Laws of 1959 and RCW 71.12.455 are each amended to read as follows:

As used in this chapter, "establishment" and "institution" mean and include every private hospital, sanitarium, home, or other place receiving or caring for any ((~~insane, alleged insane,~~)) mentally ill, or mentally incompetent person, or alcoholic.

Sec. 44. Section 1, chapter 84, Laws of 1967 and RCW 71.28.010 are each amended to read as follows:

Any county, or city within a county which is situated on the state boundaries is authorized to contract for mental health and/or ((retardation)) developmental disabilities services with a county situated in either the states of Oregon or Idaho, located on the boundaries of such states with the state of Washington.

Sec. 45. Section 72.05.170, chapter 28, Laws of 1959 and RCW 72.05.170 are each amended to read as follows:

The ((~~division~~)) department may provide professional counseling services to delinquent ((~~and maladjusted~~)) children and their parents, consultative services to communities dealing with problems of children and youth, and may give assistance to law enforcement agencies by means of juvenile control officers who may be selected from the field of police work.

Sec. 46. Section 72.06.050, chapter 28, Laws of 1959 and RCW 72.06.050 are each amended to read as follows:

The department shall cooperate with other departments of state government and its political subdivisions in the following manner:

(1) By disseminating educational information relating to the prevention, diagnosis and treatment of mental illness((~~, mental disorders or mental deficiency~~)).

(2) Upon request therefor, by advising public officers, organizations and agencies interested in the mental health of the people of the state.

Sec. 47. Section 72.06.060, chapter 28, Laws of 1959 and RCW 72.06.060 are each amended to read as follows:

The department is hereby authorized to establish and maintain psychiatric outpatient clinics at such of the several state mental institutions as the director shall designate for the prevention, diagnosis and treatment of mental illnesses, ((~~deficiencies or disorders;~~)) and the services of such clinics shall be available to any citizen of the state in need thereof, when determined by a physician that such services are not otherwise available, subject to the rules of the department.

Sec. 48. Section 72.23.070, chapter 28, Laws of 1959 as last amended by section 11, chapter 199, Laws of 1975 1st ex. sess. and RCW 72.23.070 are each amended to read as follows:

Pursuant to rules and regulations established by the department, a public or private facility may receive any person who is a suitable person for care and treatment as mentally ill, or for observation as to the existence of mental illness, upon the receipt of a written application of the person, or others on his behalf, in accordance with the following requirements:

(1) In the case of a person eighteen years of age or over, the application shall be voluntarily made by the person;

(2) In the case of a person thirteen years of age or under, the application may be voluntarily made by his parents, or by the parent, ((~~conservator~~)) limited guardian as authorized, guardian, or other person entitled to his custody. When such person is more than thirteen years of age, such application must be accompanied by the written consent, knowingly and voluntarily given, of the minor. All such voluntary applications to a public agency shall be reviewed by the county mental health professionals, who shall submit a written report and evaluation with recommendations to the superintendent of such facility to which such application is made stating whether treatment is necessary and proper on a voluntary basis and evaluating the reasons for voluntary commitment. Such person's condition and status shall be reviewed by the professional person in charge of the facility or his designee at least once each one hundred eighty days. A person under eighteen years of age received into a public facility as a voluntary patient shall not be retained after he

reaches eighteen years of age, but such person, upon reaching eighteen years of age, may apply for admission into a public or private facility as a voluntary patient.

(3) No minor over thirteen years of age shall be involuntarily committed to a state or private facility for care and treatment as mentally disordered, or for observation as to the existence of mental disorder, except in accordance with the following requirements:

(a) The facility must be certified by the department of social and health services to provide evaluation and treatment to persons under eighteen years of age suffering from mental disorders: PROVIDED, That a physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility: PROVIDED FURTHER, That a facility which is part of, or a part of, or operated by, the department of social and health services or any federal agency will not require certification.

(b) A petition shall be filed with the juvenile court by the person's parent, parents, ((~~conservator~~)) limited guardian as authorized, guardian, or by the juvenile court itself. The petition shall set forth the reasons why commitment is necessary and what alternative courses of treatment have been explored. The juvenile court shall then conduct a hearing, at which the person under eighteen years of age shall be represented by an attorney, to determine whether commitment is clearly in the best interests of the person sought to be committed, and that no less restrictive alternative exists: PROVIDED, That, if in the opinion of the designated county mental health professional a minor presents an imminent likelihood of serious harm to himself or others, he may be temporarily detained for up to seventy-two hours by a licensed facility pending petition to the juvenile court for further commitment.

(c) If the juvenile court determines that commitment is clearly necessary, it will issue an order approving such petition. If the juvenile court determines that a less restrictive alternative is desirable, it may order that alternatives be followed.

(d) If a person under the age of eighteen years is committed to a state or private facility pursuant to this section, the juvenile court recommending commitment shall require a report from the facility every one hundred eighty days that sets forth such facts as the juvenile court may require. Upon receipt of the report, the juvenile court shall undertake a review of the status of such person to determine whether or not it is still clearly in the best interests of the patient that he remain in the facility. If the juvenile court determines that further commitment is not clearly in the best interests of the patient, it shall order release upon such conditions as it deems necessary.

(e) Every person under the age of eighteen shall have all the rights provided for persons eighteen years of age or over under this chapter as now or hereafter amended except those rights specifically modified by this section: PROVIDED, That the juvenile court rather than the superior court shall be responsible for any proceedings. A voluntarily admitted minor over thirteen years of age shall have the right to release on the next judicial day from the date of request unless a petition is filed in juvenile court by the professional person in charge of the facility or his designee on the grounds that the juvenile is dangerous to himself or others or that it would be in the best interests of the juvenile that he remain in the facility. Furthermore, should the patient and his parent, parents, ((~~conservator~~)) limited

guardian as authorized, or guardian both request his release, he shall be immediately released unless the professional person in charge of the facility objects immediately in writing to the juvenile court on the grounds that the person is dangerous to himself or others and that it would not be in the patient's best interests to be released. Should this occur, the juvenile court shall hold a hearing on the issue within five judicial days and determine whether the person should be released.

(f) Nothing in this section shall prohibit the professional person in charge of the facility in which the person is being treated from releasing him at any time when, in the opinion of said professional person, further commitment would no longer be in the best interests of the patient.

Whenever a person is released by the professional person in charge of a facility under this section, said person shall, in writing, notify the juvenile court which committed the person for treatment.

(4) In the case of a person eighteen years of age or over for whom a ((~~conservator~~)) limited guardian or guardian of the person has been appointed, such application shall be made by said ((~~conservator~~)) limited guardian or guardian, when so authorized by proper court order in the ((~~conservatorship~~)) limited guardianship or guardianship proceedings.

Sec. 49. Section 72.25.010, chapter 28, Laws of 1959 as amended by section 1, chapter 78, Laws of 1965 and RCW 72.25.010 are each amended to read as follows:

It shall be the duty of the ((~~director of institutions~~)) secretary of the department of social and health services, in cooperation with the United States bureau of immigration and/or the United States department of the interior, to arrange for the deportation of all alien sexual psychopaths, psychopathic delinquents, ((~~insane, or feeble-minded~~)) or mentally ill persons who are now confined in, or who may hereafter be committed to, any state hospital for the sexual psychopath, psychopathic delinquent, ((~~insane, or feeble-minded~~)) or the mentally ill in this state; to transport such alien sexual psychopaths, psychopathic delinquents, ((~~insane, or feeble-minded~~)) or mentally ill persons to such point or points as may be designated by the United States bureau of immigration or by the United States department of the interior; and to give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, ((~~insane, or feeble-minded~~)) or the mentally ill in a territory of the United States or in a foreign country. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended.

Sec. 50. Section 72.25.020, chapter 28, Laws of 1959 as amended by section 2, chapter 78, Laws of 1965 and RCW 72.25.020 are each amended to read as follows:

The ((~~director~~)) secretary shall also return all nonresident sexual psychopaths, psychopathic delinquents, ((~~insane, or feeble-minded~~)) or mentally ill persons who are now confined in or who may hereafter be committed to a state hospital for the sexual psychopath, psychopathic delinquent, ((~~insane, or feeble-minded~~)) or the mentally ill in this state to the states or state in which they may have a legal residence. For the purpose of facilitating the return of such persons the ((~~director~~)) secretary may enter into a reciprocal agreement with any other state for the mutual

exchange of sexual psychopaths, psychopathic delinquents, ((~~insane, or feeble-minded~~)) or mentally ill persons now confined in or hereafter committed to any hospital for the sexual psychopath, psychopathic delinquent, ((~~insane, or feeble-minded~~)) or the mentally ill in one state whose legal residence is in the other, and he may give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, ((~~insane, or feeble-minded~~)) or the mentally ill in another state. Such residents may be returned directly to the proper Washington state institution without further court proceedings: PROVIDED, That if the superintendent of such institution is of the opinion that the returned person is not a sexual psychopath, a psychopathic delinquent, ((~~insane, or feeble-minded~~)) or mentally ill person he may discharge said patient: PROVIDED FURTHER, That if such superintendent deems such person a sexual psychopath, a psychopathic delinquent, ((~~insane, or feeble-minded~~)) or mentally ill person, he shall file an application for commitment within ninety days of arrival at the Washington institution.

A person shall be deemed to be a resident of this state within the meaning of this chapter who has maintained his domiciliary residence in this state for a period of one year preceding commitment to a state institution without receiving assistance from any tax supported organization and who has not subsequently acquired a domicile in another state: PROVIDED, That any period of time spent by such person while an inmate of a state hospital or state institution or while on parole, escape, or leave of absence therefrom shall not be counted in determining the time of residence in this or another state.

All expenses incurred in returning sexual psychopaths, psychopathic delinquents, ((~~insane, or feeble-minded~~)) or mentally ill persons from this to another state may be paid by this state, but the expense of returning residents of this state shall be borne by the state making the return. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended.

Sec. 51. Section 72.25.030, chapter 28, Laws of 1959 as amended by section 3, chapter 78, Laws of 1965 and RCW 72.25.030 are each amended to read as follows:

For the purpose of carrying out the provisions of this chapter the ((~~director~~)) secretary may employ all help necessary in arranging for and transporting such alien and nonresident sexual psychopaths, psychopathic delinquents, ((~~insane, or feeble-minded~~)) or mentally ill persons, and the cost and expense of providing such assistance, and all expenses incurred in effecting the transportation of such alien and nonresident sexual psychopaths, psychopathic delinquents, ((~~insane, or feeble-minded~~)) or mentally ill persons, shall be paid from the funds appropriated for that purpose upon vouchers approved by the department. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended.

Sec. 52. Section 3, chapter 11, Laws of 1965 and RCW 72.29.010 are each amended to read as follows:

After the acquisition of Harrison Memorial Hospital, the department of ((~~institutions~~)) social and health services is authorized to enter into contracts for the

repair or remodeling of the hospital to the extent they are necessary and reasonable, in order to establish a multi-use facility for the mentally or physically ((~~deficient~~)) handicapped or the mentally ill. The ((~~director of the department of institutions~~)) secretary of the department of social and health services is authorized to determine the most feasible and desirable use of the facility and to operate the facility in the manner he deems most beneficial to the mentally and physically ((~~deficient~~)) handicapped, or the mentally ill, and is authorized, but not limited to programs for out-patient, diagnostic and referral, day care, vocational and educational services to the community which he determines are in the best interest of the state.

Sec. 53. Section 1, chapter 18, Laws of 1967 ex. sess. and RCW 72.30.010 are each amended to read as follows:

The ((~~director of institutions~~)) secretary of the department of social and health services is authorized to utilize at the eastern state hospital, surplus physical facilities as an institution for ((~~mentally deficient~~)) handicapped persons eligible for admission or admitted to a state institution. The institution authorized by this chapter shall be known as the "Interlake School".

Sec. 54. Section 2, chapter 18, Laws of 1967 ex. sess. and RCW 72.30.020 are each amended to read as follows:

The ((~~director of institutions~~)) secretary of the department of social and health services is authorized to designate and select such buildings and facilities and tracts of land at the Eastern State Hospital, which are surplus to the needs of the department ((~~of institutions~~)) for mentally ill persons, and which are reasonably necessary and adequate for a school for ((~~mentally deficient~~)) handicapped persons. The ((~~director of institutions~~)) secretary shall also designate those buildings, equipment and facilities which are to be used jointly and mutually by both the Eastern State Hospital and the Interlake School for ((~~mentally deficient~~)) handicapped persons.

Sec. 55. Section 3, chapter 18, Laws of 1967 ex. sess. and RCW 72.30.030 are each amended to read as follows:

The superintendent of the Interlake School for ((~~mentally deficient~~)) handicapped persons shall be appointed by the ((~~director~~)) secretary and shall have such administrative experience and possess such qualifications as shall be determined by the state personnel board subject to the advice and approval of the ((~~director~~)) secretary.

Sec. 56. Section 72.33.020, chapter 28, Laws of 1959 as last amended by section 1, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.020 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Mental ((~~deficiency~~)) handicap" is a state of ((~~subnormal~~)) limited development ((~~of the human organism~~)) in consequence of which the individual affected is mentally incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.

(2) "Physical ((~~deficiency~~)) handicap" is a state of physical impairment ((~~of the human organism~~)) in consequence of which the individual affected is physically

incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.

(3) "Parent" is the person or persons having the legal right to custody of a child by reason of kinship by birth or adoption.

(4) "State school" shall mean any residential school of the department established, operated and maintained by the state of Washington for the education, guidance, care, treatment and rehabilitation of ((~~mentally and/or physically deficient~~)) handicapped persons as defined herein.

(5) "Resident of a state school" shall mean a person, whose ((~~mental and/or physical involvement~~)) handicapping condition requires the specialized care, treatment and educational instruction therein provided, and who has been admitted upon parental or guardian's or limited guardian's application, or found in need of residential care by proper court and duly received.

(6) "Court" shall mean the superior court of the state of Washington.

(7) "((~~Division~~)) Department" shall mean the ((~~division of children and youth services of the~~)) department of ((~~institutions~~)) social and health services or its successor.

(8) "Resident of the state of Washington" shall mean a person who has acquired his domicile in this state by continuously residing within the state for a period of not less than one year before application for admission is made: PROVIDED, That the residence of an unemancipated minor shall be imputed from the residence of the parents if they are living together, or from the residence of the parent with whom the child resides, and if the parental rights and responsibilities regarding a minor have been transferred by the court, then the residence of such minor shall be imputed from the person to whom such have been awarded.

(9) "Superintendent" shall mean the superintendent of Lakeland Village, Rainier school and other like residential schools that may be hereafter established.

(10) "Custody" shall mean immediate physical attendance, retention and supervision.

(11) "Placement" shall mean an extramural status for the resident's best interests granted after reasonable notice and consultation with the parents or guardian or limited guardian and such resident.

(12) "Discharge" shall mean the relinquishment by the state of all rights and responsibilities it may have acquired by reason of the acceptance for admission of any resident.

(13) "Residential placement" is any out-of-home placement providing domiciliary type care among other services for which the state makes payment in whole or in part including, but not limited to, state residential schools, group homes, group training homes, boarding homes and nursing homes, but does not include placement in a state juvenile or adult correctional facility without consultation as provided for in RCW 72.33.160.

(14) "Domiciliary care services" shall mean the furnishing of necessary room, board, laundry, clothing, housekeeping, and other personal care services.

(15) "Secretary" means the secretary of social and health services or his designee.

Sec. 57. Section 2, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.125 are each amended to read as follows:

(1) In order to provide ongoing points of contact with the ((~~mentally deficient and/or physically deficient~~)) handicapped individual and his family so that they may have a place of entry for state services and return to the community as the need may appear; to provide a link between those individuals and services of the community and state operated services so that the individuals with ((~~mental or physical deficiencies~~)) handicapping conditions and their families may have access to the facilities best suited to them throughout the life of the individual; to offer viable alternatives to state residential school admission; and to encourage the placement of persons from state residential schools, the secretary of social and health services or his designee, pursuant to rules and regulations of the department, shall receive applications of persons for care, treatment, hospitalization, support, training, or rehabilitation provided by state programs or services for the ((~~mentally and/or physically deficient~~)) handicapped. Written applications shall be submitted in accordance with the following requirements:

(a) In the case of a minor person, the application shall be made by his parents or by the parent, guardian, limited guardian where so authorized, person or agency legally entitled to custody, which application shall be in the form and manner required by the department; and

(b) In the case of an adult person, the application shall be made by such person, by his ((~~parents, or by a parent;~~)) or her guardian, or limited guardian where so authorized, or agency legally entitled to custody, which application shall be in the form and manner required by the department.

(2) Upon receipt of the written application the secretary shall determine if the individual to receive services has a ((~~mental deficiency and/or a physical deficiency~~)) handicapping condition as defined in RCW 72.33.020 qualifying him for services. In order to determine eligibility for services, the secretary may require a supporting affidavit of a physician or a clinical psychologist, or one of each profession, certifying that the individual is ((~~mentally and/or physically deficient~~)) handicapped as herein defined.

(3) After determination of eligibility because of ((~~mental and/or physical deficiency~~)) a handicapping condition, the secretary shall determine the necessary services to be provided for the individual. Individuals may be temporarily admitted, for a period not to exceed thirty days, to departmental residential facilities for observation prior to determination of needed services, where such observation is necessary to determine the extent and necessity of services to be provided.

Sec. 58. Section 72.33.130, chapter 28, Laws of 1959 as amended by section 3, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.130 are each amended to read as follows:

In the event a minor person under the age of eighteen years shall be found under the juvenile court law to be "dependent" or "delinquent" and ((~~mentally and/or physically deficient~~)) handicapped as herein defined, and that placement for care, custody, treatment, or education in a state school is to the minor's welfare, the secretary shall receive such minor upon commitment from the superior court pursuant to such terms and conditions as may therein be set forth for placement by the department in a facility most appropriate to his needs, subject to the provisions of RCW 72.33.070.

Sec. 59. Section 11, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.165 are each amended to read as follows:

The secretary of social and health services is authorized to make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of ((~~mentally and/or physically deficient~~)) handicapped persons, upon application pursuant to RCW 72.33.125. The department shall adopt rules and regulations determining the extent and type of care and training for which the department will pay all or a portion of the costs.

Sec. 60. Section 72.33.170, chapter 28, Laws of 1959 as amended by section 7, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.170 are each amended to read as follows:

Whenever in the judgment of the secretary a person no longer needs the services provided by the department for ((~~mentally and/or physically deficient~~)) handicapped persons, he or she may be discharged from services after reasonable notice and consultation with the person to be discharged and any available parent, guardian, limited guardian, or other court appointed personal representative.

Sec. 61. Section 72.33.240, chapter 28, Laws of 1959 as last amended by section 10, chapter 246, Laws of 1975 1st ex. sess. and RCW 72.33.240 are each amended to read as follows:

Any parent ((~~or~~)), guardian, limited guardian, or other court appointed personal representative feeling aggrieved by an adverse decision pertaining to admission, placement, or discharge of his ward may apply to the secretary in writing within thirty days of notification of the decision for a review and reconsideration of the decision. An administrative hearing shall be held within ten days from the date of receipt of the written request for review. In the event of an unfavorable ruling by the secretary, such parent ((~~or~~)), guardian, limited guardian, or other court appointed personal representative may institute proceedings in the superior court of the state of Washington in the county of residence of such parent or guardian, otherwise in Thurston county, and have such decision reviewed and its correctness, reasonableness, and lawfulness decided in an appeal heard as in initial proceeding on an original application. Said parent ((~~or~~)), guardian, limited guardian, or other court appointed personal representative shall have the right to appeal from the decision of the superior court to the supreme court or the court of appeals of the state of Washington, as in civil cases.

Sec. 62. Section 72.33.040, chapter 28, Laws of 1959 as amended by section 3, chapter 56, Laws of 1969 and RCW 72.33.040 are each amended to read as follows:

The superintendent of a state school appointed after June 12, 1957 shall be a person of good character, ((~~over the age of thirty years, in good physical health,~~)) and either a physician licensed to practice in the state of Washington or has attained a minimum of a master's degree from an accredited college or university in psychology, social science, or education, and in addition shall have had suitable experience in an administrative or professional capacity in the residential care, treatment and training of ((~~mentally deficient~~)) handicapped persons.

The superintendent shall have custody of all residents and control of the medical, educational, therapeutic and dietetic treatment of all persons resident in such state school: PROVIDED, That the superintendent shall cause surgery to be performed on any resident only upon gaining the consent of a parent ((~~or~~)), guardian, or limited guardian as authorized, except, if after reasonable effort to locate the parents ((~~or~~)), guardian, or limited guardian as authorized, and the health of such resident is certified by the attending physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary.

The superintendent shall have control of the internal government and economy of the state school and shall appoint and direct all subordinate officers and employees: PROVIDED, That the powers and duties conferred upon the superintendent shall be subject to the rules and regulations of the department and the state personnel board.

The superintendent shall have authority to engage the residents of the state school in beneficial work programs but shall not abuse such therapy by excessive hours or for purposes of discipline or punishment.

Sec. 63. Section 72.33.070, chapter 28, Laws of 1959 and RCW 72.33.070 are each amended to read as follows:

The department of ((~~health~~)) social and health services shall determine by the application of proper criteria the maximum number of ((~~children~~)) persons to reside in the residential quarters of the state schools and the superintendent shall adhere to such standards unless written permission is granted by the department to exceed such rated capacities.

Sec. 64. Section 72.33.080, chapter 28, Laws of 1959 and RCW 72.33.080 are each amended to read as follows:

The department of ((~~public assistance~~)) social and health services shall aid the superintendents of the state schools in the placement of residents in suitable foster homes, those to be assisted and the method thereof to be defined in a mutually approved interdepartmental agreement.

Sec. 65. Section 1, chapter 251, Laws of 1961 as last amended by section 9, chapter 71, Laws of 1974 ex. sess. and RCW 72.33.800 are each amended to read as follows:

The secretary of the department of social and health services is hereby authorized to enter into agreements with any person, or with any person, corporation or association operating a day training center or group training home or a combination thereof approved by the department, for the payment of all, or a portion of the cost of the care, treatment, maintenance, support and training of ((~~mentally retarded or other~~)) developmentally disabled persons.

For the purpose of RCW 72.33.800 through 72.33.820, as now or hereafter amended, the terms "day training center" and "group training home" shall have the following meanings:

(1) "Day training center" shall mean a facility equipped, supervised, managed and operated at least three days per week by any person, association or corporation on a nonprofit basis for the day-care, treatment, training and maintenance of ((~~mentally retarded or other~~)) developmentally disabled persons, and approved in accordance with RCW 72.33.800 through 72.33.820, as now or hereafter amended,

and the standards of the department of social and health services as set forth in the rules and regulations promulgated by the secretary.

(2) "Group training home" shall mean a facility equipped, supervised, managed and operated on a full time basis by any person, association or corporation on a nonprofit basis for the full time care, treatment, training and maintenance of ((~~mentally retarded or other~~)) developmentally disabled persons, and approved in accordance with RCW 72.33.800 through 72.33.820, as now or hereafter amended, and the standards of the department of social and health services as set forth in rules and regulations promulgated by the secretary.

Sec. 66. Section 2, chapter 251, Laws of 1961 as last amended by section 10, chapter 71, Laws of 1974 ex. sess. and RCW 72.33.805 are each amended to read as follows:

All payments made by the secretary of the department of social and health services pursuant to RCW 72.33.800 through 72.33.820, as now or hereafter amended, shall be, insofar as possible, supplementary to payments to be made to a day training center or group training home or combination thereof by the ((~~parents or guardians of such mentally retarded or other~~)) developmentally disabled persons resident therein. Payments made by the secretary in accordance with the authority of RCW 72.33.800 through 72.33.820, as now or hereafter amended, shall not exceed actual costs for the care, treatment, support, maintenance and training of any ((~~mentally retarded or~~)) developmentally disabled person whether at a day training center or group training home or combination thereof or otherwise.

Sec. 67. Section 3, chapter 251, Laws of 1961 as amended by section 11, chapter 71, Laws of 1974 ex. sess. and RCW 72.33.810 are each amended to read as follows:

Any person, corporation, or association may make application to the secretary of the department of social and health services for approval and certification of the applicant's facility as a day training center, or a group training home for ((~~mentally retarded or~~)) developmentally disabled persons or a combination of both. The secretary may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the health, safety and the care, treatment, maintenance, training and support of ((~~mentally retarded or~~)) developmentally disabled persons, in accordance with standards as set forth in rules and regulations promulgated by the secretary.

Sec. 68. Section 72.40.040, chapter 28, Laws of 1959 as amended by section 1, chapter 39, Laws of 1969 and RCW 72.40.040 are each amended to read as follows:

The ((~~institutions~~)) schools shall be free to residents of the state between the ages of six and twenty-one years, and who are blind or deaf, or otherwise sensory handicapped, and who are free from loathsome or contagious diseases: PROVIDED, That children under the age of six, who are otherwise qualified may be admitted to the ((~~institution~~)) school, if in the discretion of the superintendent they are proper ((~~subjects~~)) persons to receive the training given in the ((~~institution~~)) school

and the facilities are adequate for proper care, education, and training: PROVIDED FURTHER, That students over the age of twenty-one years, who are otherwise qualified may be retained at the ((~~institution~~)) school, if in the discretion of the superintendent in consultation with the faculty they are proper ((~~subjects~~)) persons to receive further training given at the ((~~institution~~)) school and the facilities are adequate for proper care, education, and training.

Sec. 69. Section 1, chapter 287, Laws of 1959 and RCW 72.70.010 are each amended to read as follows:

The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

ARTICLE I——Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II——Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, ((~~the Territory of Hawaii;~~)) or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility ((~~including but not limited to a facility~~)) except facilities for the mentally ill or mentally ((~~defective~~)) handicapped in which inmates may lawfully be confined.

ARTICLE III——Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV——Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the ending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her

record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V——Acts Not Reviewable In Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly

accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI——Federal Aid

Any state party to this compact may accept federal aid for use in connection with an institution or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII——Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII——Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX——Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X——Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Sec. 70. Section 1, chapter 172, Laws of 1967 and RCW 74.15.010 are each amended to read as follows:

The purpose of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 is:

(1) To safeguard the well-being of children, expectant mothers and ((~~adult retarded~~)) developmentally disabled persons receiving care away from their own homes;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups.

(4) To provide consultation to agencies caring for children, expectant mothers or ((~~adult retarded~~)) developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and ((~~adult retarded~~)) developmentally disabled persons.

Sec. 71. Section 2, chapter 172, Laws of 1967 and RCW 74.15.020 are each amended to read as follows:

For the purpose of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of ((~~public assistance~~)) social and health services;

(2) "((~~Director~~)) Secretary" means the ((~~director~~)) secretary of the state department of ((~~public assistance~~)) social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers or ((~~adult retarded~~)) developmentally disabled persons for control, care or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers or ((~~adult retarded~~)) developmentally disabled persons for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or ((~~adult retarded~~)) developmentally disabled persons for services rendered:

(a) "Group-care facility" means an agency which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours; and

(e) "Foster-family home" means an agency which regularly provides care during any part of the twenty-four hour day to one or more children, expectant mothers or ((~~adult retarded~~)) developmentally disabled persons in the family abode of the person or persons under whose direct care and supervision the child, expectant mother or ((~~adult retarded~~)) developmentally disabled person is placed.

"Agency" shall not include the following:

(a) Persons related by blood or marriage to the child, expectant mother or ((~~adult retarded~~)) developmentally disabled persons in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin;

(b) Persons who are legal guardians of the child, expectant mother or ((~~adult retarded~~)) developmentally disabled persons;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person does not engage in such activity on a regular basis, or where parents on a mutually cooperative basis exchange care of one another's children, or persons who have the care of an exchange student in their own home;

(d) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(e) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(f) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(j) Facilities approved and certified under RCW 72.33.810;

(k) Any agency having been in operation in this state ten years prior to June 8, 1967 and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund.

(4) "Requirement" means any rule, regulation or standard of care to be maintained by an agency.

Sec. 72. Section 3, chapter 172, Laws of 1967 and RCW 74.15.030 are each amended to read as follows:

The director shall have the power and it shall be his duty:

(1) In consultation with the child welfare and day care advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the child welfare and day care advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or ((~~adult retarded~~)) developmentally disabled persons;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or ((~~adult retarded~~)) developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served.

(3) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(4) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 and to require regular reports from each licensee;

(5) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 and the requirements adopted hereunder;

(6) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the child welfare and day care advisory committee; and

(7) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and ((~~adult retarded~~)) developmentally disabled persons.

Sec. 73. Section 9, chapter 172, Laws of 1967 and RCW 74.15.090 are each amended to read as follows:

It shall hereafter be unlawful for any agency to receive children, expectant mothers or ((~~adult retarded~~)) developmentally disabled persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031.

Sec. 74. Section 11, chapter 115, Laws of 1895 as amended by section 57, chapter 292, Laws of 1971 ex. sess. and RCW 85.06.110 are each amended to read as follows:

A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed to be benefited by such improvement, and stating the court wherein said petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. Said summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode, or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporations, said service shall be made upon the president, secretary or other director or trustee of such corporation; in case of persons under eighteen years of age, on their guardians; or in case no guardian shall have been appointed, then on the person who has the care and custody of such person; in the case of ((~~idiots, lunatics or insane~~)) mentally ill or mentally incompetent persons, on their guardian or limited guardian; or in case no guardian or limited guardian shall have been appointed, then on ((the)) such person and on the person in whose care or charge ((~~they are~~)) such person is found. In case the land, real estate, premises or other property sought to be appropriated,

or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in such real or other property is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of one or more of the commissioners of said district shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper published in the county where such lands are situated, once a week for three successive weeks; and in case no newspaper is published in such county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated, or which it is claimed will be benefited by said improvement. Such publication shall be deemed service upon each nonresident person or persons whose residence is unknown. Such summons may be served by any competent person eighteen years of age or over. Due proof of service of such summons by affidavit or publication shall be filed with the clerk of such court before the court shall proceed to hear the matter. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for service of notice, order and other papers in the proceedings authorized by this chapter may be made as the superior court, or the judge thereof, may direct: PROVIDED, That personal service upon any party outside of the state shall be of like effect as service by publication.

Sec. 75. Section 18, chapter 117, Laws of 1917 and RCW 90.03.150 are each amended to read as follows:

Whenever any defendant in any proceeding instituted under this chapter is an infant, ((~~insane or incompetent person, the court shall, on application of any party thereto, appoint a guardian ad litem for such person as in civil actions. If such infant, insane or incompetent person has a general guardian, such general guardian shall be appointed guardian ad litem~~)) or an alleged incompetent or disabled person for whom the court has not yet appointed either a guardian or a limited guardian, the court shall appoint a guardian ad litem for such minor or alleged incompetent or disabled defendant.

NEW SECTION. Sec. 76. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the Senate May 4, 1977.
Passed the House May 16, 1977.
Approved by the Governor May 24, 1977, with the exception of sections 17, 18, 19 and 20 which are vetoed.
Filed in Office of Secretary of State May 24, 1977.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to several sections, Substitute Senate Bill No. 2872 entitled:

"AN ACT Relating to social and health services."

In making much needed revisions in the law to eliminate language offensive to certain of our citizens, the legislature has inadvertently made substantial changes in the law relating to marriage by repealing, in sections 17, 18, 19 and 20 of this bill, the basic prohibitions to be set forth by affidavit of persons desiring to marry. These alterations go far beyond the intent of this bill and should be given close attention by the legislature at some future date.

For the foregoing reasons, I have determined to veto sections 17, 18, 19, and 20. With the exception of those sections, I have approved the remainder of Substitute Senate Bill No. 2872."

CHAPTER 81

[Senate Bill No. 2014]

INDIANS

AN ACT Relating to Indians; amending section 95, page 117, Laws of 1854 as last amended by section 1069, Code of 1881 and RCW 10.52.020; amending section 1, chapter 177, Laws of 1903 and RCW 27.28.010; amending section 1, chapter 187, Laws of 1925 ex. sess. as amended by section 1, chapter 35, Laws of 1973 and RCW 27.32.010; repealing section 29.85.150, chapter 9, Laws of 1965 and RCW 29.85.150; and repealing section 2, page 500, Laws of 1890 and RCW 64.20.020.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 95, page 117, Laws of 1854 as last amended by section 1069, Code of 1881 and RCW 10.52.020 are each amended to read as follows:

Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession and character((~~, Indians shall be competent witnesses as hereinbefore provided, or in any prosecutions in which an Indian may be a defendant~~)).

Sec. 2. Section 1, chapter 177, Laws of 1903 and RCW 27.28.010 are each amended to read as follows:

The Washington state historical society, a corporation existing under the laws of the state of Washington, be and the same is hereby created the trustee of the state for the intent and purposes hereinafter mentioned, viz.:

It shall be the duty of the said society

(1) To collect books, maps, charts, papers, and materials illustrative of the history of this state, and of its progress and development.

(2) To procure from pioneers authentic narrative of their experiences and of incidents relating to the early settlement of this state.

(3) To gather data and information concerning the origin, history, language, and customs of ((our)) native Indian tribes.

(4) To procure and purchase books, papers and pamphlets for the several departments of its collections; climatic, health and mortuary statistics, and such other books, maps, charts, papers and materials as will facilitate the investigation of the historical, scientific and literary subjects.

(5) To bind, shelf, store and safely keep the unbound books, documents, manuscripts, pamphlets and newspaper files now or hereafter to come into its possession.

(6) To catalogue the collections of said society for the convenient reference of persons having occasion to consult same.

(7) To prepare biennially for publication a report of its collections and such other matters relating to the work of the society as may be useful to the state and the people thereof.

(8) To keep its rooms open at all reasonable hours of business days for the reception of citizens and visitors without charge.

Sec. 3. Section 1, chapter 187, Laws of 1925 ex. sess. as amended by section 1, chapter 35, Laws of 1973 and RCW 27.32.010 are each amended to read as follows:

The Eastern Washington state historical society, a corporation existing under the laws of the state of Washington, be and the same is hereby created a trustee of the state of Washington for the intent and purposes hereinafter mentioned:

It shall be the duty of the said society

(1) To collect books, maps, charts, papers and materials illustrative of the history of this state, and of its progress and development.

(2) To procure from pioneers authentic narrative of their experiences and of incidents relating to the early settlement of this state.

(3) To gather data and information concerning the origin, history, language, and customs of ((our)) native Indian tribes.

(4) To procure and purchase books, papers and pamphlets for the several departments of its collections, climatic, health and mortuary statistics, and such other books, maps, charts, papers and materials as will facilitate the investigation of the historical, scientific and literary subjects.

(5) To bind, shelf, store and safely keep the unbound books, documents, manuscripts, pamphlets and newspaper files now or hereafter to come into its possession.

(6) To catalogue the collections of said society for the convenient reference of persons having occasion to consult same.

(7) To prepare biennially for publication a report of its collections and such other matters relating to the work of the society as may be useful to the state and people thereof.

(8) To keep its rooms open at all reasonable hours of business days for the reception of citizens and visitors, without charge.

(9) To develop, purchase, and acquire through gift, loan, or otherwise, collections of history and art, which through exhibit and exhibition, will promote a better understanding of the cultural development of the state, and to otherwise encourage the application of history and art.

NEW SECTION. Sec. 4. The following acts or parts of acts are each repealed:
(1) Section 29.85.150, chapter 9, Laws of 1965 and RCW 29.85.150; and
(2) Section 2, page 500, Laws of 1890 and RCW 64.20.020.

Passed the Senate March 14, 1977.
Passed the House May 16, 1977.
Approved by the Governor May 26, 1977.
Filed in Office of Secretary of State May 26, 1977.

APPENDIX 3

chapter 11.92 RCW; and repealing section 8, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.035.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.005 are each amended to read as follows:

It is the intent and purpose of the legislature to recognize that ((~~mentally retarded, developmentally disabled, and other allegedly mentally incompetent~~)) disabled persons have special and unique abilities and competencies with varying degrees of disability.

Such persons must be legally protected without the necessity for determination of total incompetency and without the attendant deprivation of civil and legal rights that such a determination requires.

Sec. 2. Section 11.88.010, chapter 145, Laws of 1965 as amended by section 2, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.010 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of incompetent persons ((~~resident of the county~~)), and guardians for the estates of all such persons who are nonresidents of the state but who have property in such county needing care and attention.

An "incompetent" is any person who is either;

(a) Under the age of majority, as defined in RCW 11.92.010, or

(b) Incompetent by reason of ((~~insanity;~~)) mental illness, ((~~mental retardation~~)) developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his property or caring for himself or both.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of disabled persons, who by reason of their disability have need for protection and assistance, but who cannot be found to be fully incompetent, upon investigation ((~~by the court or any agency jointly designated by the mental health board and mental retardation board (or county social service administrative board where applicable) of the county where such person resides~~)) as provided by RCW 11.88.090 as now or hereafter amended. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and disabilities on a disabled person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incompetent nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

For the purposes of chapters 11.88 and 11.92 RCW the term "disabled person" ((~~includes, but is not limited to, an individual who is mentally retarded, mentally ill, developmentally disabled, or is gravely disabled~~)) means an individual who is in need of protection and assistance by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, but cannot be found to be fully incompetent.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incompetent or disabled person is domiciled, or if such person is a resident of a state institution for developmentally disabled persons, in either the county wherein such institution is located, the county of domicile, or the county wherein a parent of the alleged incompetent or disabled person is domiciled.

Sec. 3. Section 11.88.030, chapter 145, Laws of 1965 as amended by section 4, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.030 are each amended to read as follows:

(1) Any interested person or entity may file a petition for the appointment of himself or some other qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as now or hereafter amended as the guardian or limited guardian of an incompetent or disabled person. A petition for guardianship or limited guardianship shall state:

((~~(1)~~)) (a) The name, age, residence, and post office address of the incompetent or disabled person;

((~~(2)~~)) (b) The nature of his alleged incompetency in accordance with RCW 11.88.010;

((~~(3)~~)) (c) The approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

((~~(4)~~)) (d) Whether there is, in any state, a guardian or limited guardian for the person or estate of the alleged incompetent or disabled person;

((~~(5)~~)) (e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

((~~(6)~~)) (f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the alleged incompetent or disabled person;

((~~(7)~~)) (g) The name and address of the person or institution having the care and custody of the alleged incompetent or disabled person;

((~~(8)~~)) (h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

((~~(9)~~)) (i) The nature and degree of the alleged disability and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

((~~(10)~~)) (j) The requested term of the limited guardianship to be included in the court's order of appointment((~~; PROVIDED, That~~)).

(2) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship ((~~unless~~)) if the petition alleges that the alleged incompetent or disabled person has ((~~an estate valued in excess of fifteen hundred~~)) total assets of a value of less than three thousand dollars.

(3) All petitions filed under the provisions of this section shall be heard within ((~~thirty~~)) forty-five days unless an extension of time is requested by a party within such forty-five day period and granted for good cause shown.

Sec. 4. Section 11.88.040, chapter 145, Laws of 1965 as last amended by section 5, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.040 are each amended to read as follows:

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APPENDIX 4

(3) In the absence of receipt of notice from the insured that coverage will not be continued with the existing insurer, an insurer whose agency contract has been terminated by an independent agent, or by the mutual agreement of the insurer and the agent, that elects to renew or lacks a reason not to renew, shall give the renewal notice required by chapter 48.18 RCW to affected insureds, and continue renewed coverage in accordance with the methods specified in subsection (2)(b) of this section. Agents affected by this subsection may provide the notice to an insurer that an insured does not intend to continue existing coverage with the insurer, after receiving written authority to do so from an insured.

(4) For purposes of this section an "independent agent" is a licensed insurance agent representing an insurer on an independent contractor basis and not as an employee. This term includes only those agents not obligated by contract to place insurance accounts with a particular insurer or group of insurers.

(5) This section does not apply to (a) agents or policies of an insurer or group of insurers if the business is not owned by the agent and the termination of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance; (b) general agents, to the extent that they are acting in that capacity; (c) life, disability, surety, ocean marine and foreign trade, and title insurance policies; (d) situations where the termination of the agency contract results from the insolvency or liquidation of the terminating insurer.

(6) No insurer may terminate its agency contract with an appointed agent unless it complies with this section.

(7) Nothing contained in this section excuses an insurer from giving cancellation and renewal notices that may be required by chapter 48.18 RCW.

NEW SECTION. Sec. 2. Section 1, chapter 286, Laws of 1986 and RCW 48.17.590 are each repealed.

Passed the Senate February 13, 1990.
Passed the House March 2, 1990.
Approved by the Governor March 21, 1990.
Filed in Office of Secretary of State March 21, 1990.

CHAPTER 122

[Substitute Senate Bill No. 6868]

GUARDIANSHIP

AN ACT Relating to guardianship; amending RCW 11.88.005, 11.88.010, 11.88.020, 11.88.030, 11.88.040, 11.88.045, 11.88.080, 11.88.090, 11.88.100, 11.88.105, 11.88.107, 11.88.120, 11.88.125, 11.88.130, 11.88.140, 11.88.150, 11.92.035, 11.92.040, 11.92.050, 11.92.053, 11.92.056, 11.92.060, 11.92.090, 11.92.100, 11.92.110, 11.92.115, 11.92.130, 11.92.140, 11.92.150, 11.92.160, 11.92.170, 11.92.180, and 11.92.185; adding new sections to chapter 11.88 RCW; adding new sections to chapter 11.92 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 95, Laws of 1975 1st ex. sess. as amended by section 1, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.005 are each amended to read as follows:

It is the intent ((~~and purpose~~)) of the legislature to ((~~recognize that disabled persons have special and unique abilities and competencies with varying degrees of disability~~)) protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

((~~Such persons must be legally protected without the necessity for determination of total incompetency and without the attendant deprivation of civil and legal rights that such a determination requires.~~))

Sec. 2. Section 11.88.010, chapter 145, Laws of 1965 as last amended by section 176, chapter 149, Laws of 1984 and RCW 11.88.010 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates((~~, or either thereof,~~)) of ((~~incompetent~~)) incapacitated persons, and guardians for the estates of ((~~all such persons who are~~)) nonresidents of the state ((~~but~~)) who have property in ((~~such~~)) the county needing care and attention.

((~~An "incompetent" is any person who is either:~~

~~(a) Under the age of majority, as defined in RCW 11.92.010, or~~

~~(b) Incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his property or caring for himself or both.~~))

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of ((disabled)) incapacitated persons, who by reason of their ((disability)) incapacity have need for protection and assistance, but who ((~~cannot be found to be fully incompetent, upon investigation as provided by RCW 11.88.090 as now or hereafter amended~~)) are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and ((disabilities)) restrictions on ((~~a disabled~~)) an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be ((incompetent)) incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

((~~For the purposes of chapters 11.88 and 11.92 RCW the term "disabled person" means an individual who is in need of protection and assistance by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, but cannot be found to be fully incompetent.~~))

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged ((incompetent or disabled)) incapacitated person is domiciled, or if such person ((~~is a resident of a state institution for developmentally disabled persons~~)) resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where ((~~in such institution~~)) the facility is located, the county of domicile prior to residence in the supported facility, or the county ((~~wherein~~)) where a parent or spouse of the alleged ((incompetent or disabled)) incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if ((~~protective~~)) guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) When a court imposes a full guardianship for an incapacitated person, the person shall be considered incompetent for purposes of rationally exercising the right to vote and shall lose the right to vote, unless the court specifically finds that the person is rationally capable of exercising the franchise. Imposition of a limited guardianship for an incapacitated person may result in the loss of the right to vote when in the courts discretion, the court determines that the person is incompetent for purposes of rationally exercising the franchise.

Sec. 3. Section 11.88.020, chapter 145, Laws of 1965 as last amended by section 3, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.020 are each amended to read as follows:

Any suitable person over the age of eighteen years, or any parent under the age of eighteen years may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an ((~~incompetent or disabled~~)) incapacitated person; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian or limited guardian of the estate of an ((~~incompetent or disabled~~)) incapacitated person; and any nonprofit corporation may act as guardian or limited guardian of the person and/or estate of an ((~~incompetent or disabled~~)) incapacitated person if the articles of incorporation or bylaws of such corporation permit such action and such corporation is in compliance with all applicable provisions of Title 24 RCW. No person is qualified to serve as a ((~~domiciliary~~)) guardian who is

(1) under eighteen years of age except as otherwise provided herein;

(2) of unsound mind;

(3) convicted of a felony or of a misdemeanor involving moral turpitude;

(4) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(5) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(6) a person whom the court finds unsuitable.

Sec. 4. Section 11.88.030, chapter 145, Laws of 1965 as last amended by section 3, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.030 are each amended to read as follows:

(1) Any ((~~interested~~)) person or entity may ((~~file a~~)) petition for the appointment of ((~~himself or some other~~)) a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as now or hereafter amended as the guardian or limited guardian of an ((~~incompetent or disabled~~)) incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the ((~~incompetent or disabled~~)) alleged incapacitated person;

(b) The nature of ((~~his~~)) the alleged ((~~incompetency~~)) incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of ((~~his~~)) property, including any compensation, pension, insurance, or allowance, to which ((~~he~~)) the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged ((~~incompetent or disabled~~)) incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the alleged ((~~incompetent or disabled~~)) incapacitated person;

(g) The name and address of the person or ((~~institution~~)) facility having the care and custody of the alleged ((~~incompetent or disabled~~)) incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both, and why no alternative to guardianship is appropriate;

(i) The nature and degree of the alleged ((~~disability~~)) incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(j) The requested term of the limited guardianship to be included in the court's order of appointment;

(k) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2) (a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged ((~~incompetent or disabled~~)) incapacitated person has total assets of a value of less than three thousand dollars.

((~~(3)~~)) (4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than fifteen days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE

PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE ... COUNTY SUPERIOR COURT BY ..... . IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY OR DIVORCE;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

(5) All petitions filed under the provisions of this section shall be heard within forty-five days unless an extension of time is requested by a party within such forty-five day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

Sec. 5. Section 11.88.040, chapter 145, Laws of 1965 as last amended by section 177, chapter 149, Laws of 1984 and RCW 11.88.040 are each amended to read as follows:

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given personally to the alleged ((~~incompetent or disabled~~)) incapacitated person, if over fourteen years of age.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged ((~~incompetent, disabled~~)) incapacitated person, or minor, if under fourteen years of age;

(2) A parent, if the alleged ((~~incompetent or disabled~~)) incapacitated person is a minor, all known children not residing with a notified person, and the spouse of the alleged ((~~incompetent or disabled~~)) incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged ((~~incompetent or disabled~~)) incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for ((~~his~~)) appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition ((~~be~~)) is accompanied by the written consent of a minor of the age of fourteen years or upward, ((~~consenting~~)) who consents to the appointment of the guardian or limited guardian asked for, or if the petition ((~~be~~)) is by a nonresident guardian of any minor or ((~~incompetent or disabled~~)) incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged ((~~incompetent or disabled~~)) incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged ((~~incompetent or disabled~~)) incapacitated person and conduct the final hearing in the presence of the alleged ((~~incompetent or disabled~~)) incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged ((~~incompetent or disabled~~)) incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

Sec. 6. Section 7, chapter 95, Laws of 1975 1st ex. sess. as amended by section 5, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.045 are each amended to read as follows:

(1) ((~~An alleged incompetent or disabled person is entitled to independent legal counsel at his own expense to represent him in the procedure: PROVIDED, That if the alleged incompetent or disabled person is unable to pay for such representation or should such payment result in substantial hardship upon such person the county shall be responsible for such costs: PROVIDED FURTHER, That when, in the opinion of the court, the rights and interests of an alleged or adjudicated incompetent or disabled person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person.~~

~~(2)~~)) (a) Alleged incapacitated individuals shall have the right to be represented by counsel at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated, shall enter a notice of appearance for appointment to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged ((~~incompetent or disabled~~)) incapacitated person is further entitled upon request to a jury trial on the issues of his or her alleged ((~~incompetency or disability~~)) incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

((~~(3)~~)) (4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a ((~~medical~~)) written report ((~~in writing~~)) from a physician or psychologist selected by the guardian ad litem

((~~appointed pursuant to RCW 11.88.090 as now or hereafter amended~~)) ~~taining to the alleged incompetent or disabled persons' degree of incompetency or disability including the medical history if reasonably available, the effects of any current medication on appearance or the ability to participate fully in the proceedings, and a medical prognosis specifying the estimated length and severity of any current disability~~)). The physician or psychologist shall have personally examined and interviewed the alleged incapacitated person within thirty days of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

(a) The name and address of the examining physician or psychologist;

(b) The education and experience of the physician or psychologist pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, psychological, or psychiatric history of the alleged incapacitated person as known to the examining physician or psychologist;

(e) The findings of the examining physician or psychologist as to the condition of the alleged incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician or psychologist has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or psychological report meeting the above requirements is filed.

Sec. 7. Section 11.88.080, chapter 145, Laws of 1965 and RCW 11.88.080 are each amended to read as follows:

When either parent is deceased, the surviving parent of any minor child may, by ((~~his~~)) last will in writing appoint a guardian or guardians of the person, or of the estate or both, of ((~~his~~)) a minor child, whether born at the time of making ((~~such~~)) the will or afterwards, to continue during the minority of such child or for any less time((~~, and~~)). Every ((~~such~~)) testamentary guardian of the estate of ((~~such~~)) a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed ((~~as aforesaid~~)) under this chapter. The court shall confirm the parent's

testamentary appointment unless the court finds, based upon evidence presented at a hearing on the matter, that the individual appointed in the surviving parent's will is not qualified to serve.

Sec. 8. Section 11.88.090, chapter 145, Laws of 1965 as last amended by section 6, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.090 are each amended to read as follows:

(1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92-.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11-.92.180, as now or hereafter amended, shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any ((~~incompetent or disabled~~)) incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

(2) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged ((~~incompetent or disabled~~)) incapacitated person, who shall be a person found or known by the court to

(a) be free of influence from anyone interested in the result of the proceeding;

(b) have the requisite knowledge, training, or expertise to perform the duties required by this section.

((~~In making this determination the court shall give due consideration to the type of incompetency or disability alleged and to any recommendations made to the court by public or private agencies having appropriate experience or expertise. PROVIDED, That~~))

No guardian ad litem need be appointed ((~~if~~)) when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child ((~~if~~)) and the minority of the child, as defined by RCW 11.92-.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection ((~~(3)~~)) (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged ((~~incompetent or disabled~~)) incapacitated person and ((~~such appointment~~)) shall not overcome the presumption of competency or full legal and civil rights of the alleged ((~~incompetent or disabled~~)) incapacitated person.

(3) (a) The superior court of each county shall develop by September 1, 1991, a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardians ad litem only persons whose names appear on the registry, except in extraordinary circumstances.

(b) To be eligible for the registry a person shall:

(i) Present a written statement of qualifications describing the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapter 11.88 and 11.92 RCW; and

(ii) Complete a training program approved by the court.

(c) The superior court of each county shall approve training programs designed to:

(i) Train otherwise qualified human service professionals in those aspects of legal procedure and the requirements of chapters 11.88 and 11.92 RCW with which a guardian ad litem should be familiar;

(ii) Train otherwise qualified legal professionals in those aspects of medicine, social welfare, and social service delivery systems with which a guardian ad litem should be familiar.

(d) The superior court of each county shall approve a guardian ad litem training program on or before June 1, 1991. The department of social and health services, aging and adult services administration, shall convene an advisory group to develop a model guardian ad litem training program. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal, court administration, and other interested parties.

(e) Any superior court that has failed to adopt a guardian ad litem training program by September 1, 1992, shall use the model program developed by the advisory group convened by the department of social and health services, aging and adult services administration.

(4) The guardian ad litem's written statement of qualifications required by RCW 11.88.090(3)(b)(i) shall be made part of the record in each matter in which the person is appointed guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged ((~~incompetent or disabled~~)) incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged ((~~incompetency or disability~~)) incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of ((~~incompetency or disability~~)) incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

((~~(ii)~~)) (iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

((~~(iii) In the event the limited guardianship is ordered, its appropriate duration, and the limits~~)) (iv) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the ((~~disabled~~)) incapacitated person; ((~~and~~

~~(iv)~~)) (v) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vi) Any expression of approval or disapproval made by the alleged ((~~incompetent or disabled~~)) incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship((~~.~~));

((~~Such report shall also include a recommendation as to whether or not counsel should be appointed to represent the alleged incompetent or disabled person, and the reasons for such recommendation.~~

~~The investigation and report shall be made and forwarded to the court, with copies to the alleged incompetent or disabled person, and his attorney, if any has appeared, and to the petitioner, or his attorney within twenty~~

~~days after appointment, unless an extension of time has been granted by the court for good cause shown;~~

~~(c) To arrange for a written medical report pursuant to RCW 11.88.045 as now or hereafter amended.~~

~~(4)~~)) (vii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(viii) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within twenty days after appointment of the guardian ad litem, and at least ten days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her spouse, all children not residing with a notified person, those persons described in (d) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150;

(f) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem ((~~and any other qualified person or organization~~)) to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to RCW ((~~11.88.090(3)(b)~~)) 11.88.090(5)(e) as now or hereafter amended.

((~~(5)~~)) (7) The court appointed guardian ad litem shall have the authority, in the event that the alleged ((~~incompetent or disabled~~)) incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to ((~~incompetence or disability~~)) incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged ((~~incompetent or disabled~~)) incapacitated person.

((~~(6)~~)) (8) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged ((~~incompetent or disabled~~)) incapacitated person unless the court finds that such payment would result

in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That if no guardian or limited guardian is appointed the court may charge such fee to the petitioner or the alleged ((~~incompetent or disabled~~)) incapacitated person, or divide the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public ((~~or nonprofit~~)) agency.

(9) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

NEW SECTION. Sec. 9. A new section is added to chapter 11.88 RCW to read as follows:

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) When the next report of the guardian is due;

(d) Whether the guardian ad litem shall continue acting as guardian ad litem;

(e) Whether a review hearing shall be required upon the filing of the inventory;

(f) The authority of the guardian, if any, for investment and expenditure of the ward's estate; and

(g) Names and addresses of those persons described in RCW 11.92.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship.

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a

guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) If a court determines that the person is incapacitated and that a guardian or limited guardian should be appointed, the court shall determine whether the incapacity is a result of a developmental disability as defined by RCW 71A.10.020, and if so, determine whether the incapacity due to the developmental disability can be expected to continue indefinitely.

Sec. 10. Section 11.88.100, chapter 145, Laws of 1965 as last amended by section 1, chapter 271, Laws of 1983 and RCW 11.88.100 are each amended to read as follows:

Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited guardianship to the superior court of the county of ....., from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such ((~~incompetent or disabled~~)) incapacitated person, or his or her property, and render and pay to such ((~~incompetent or disabled~~)) incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order ((~~or adjudge~~)), then this obligation shall be void, otherwise ((~~to be and~~)) it shall remain in ((~~full force and~~)) effect.

The bond shall be for the use of the ((~~incompetent or disabled~~)) incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged ((~~incompetent or disabled~~)) incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars:

PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the ((incompetent or disabled)) incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That ((said)) the guardian or limited guardian shall file a yearly statement showing the monthly income of the ((incompetent or disabled)) incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of ((four)) five hundred dollars per month for any three consecutive months.

Sec. 11. Section 11.88.105, chapter 145, Laws of 1965 as amended by section 11, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.105 are each amended to read as follows:

In cases where all or a portion of the estate consisting of cash or securities ((or both,)) has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court ((therefor)) stating that such corporations hold the ((same)) cash or securities subject to order of court ((then in such case)), the court may in its discretion dispense with the ((giving of a)) bond or reduce the ((same)) amount of the bond by the amount of such deposits ((of cash or securities, and may order that no further reports by said guardian or limited guardian be required until such time as the guardian or limited guardian desires to withdraw such funds or change the investment thereof)).

Sec. 12. Section 11.88.107, chapter 145, Laws of 1965 as last amended by section 8, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.107 are each amended to read as follows:

In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be ((dispensed with)) waived.

NEW SECTION. Sec. 13. A new section is added to chapter 11.88 RCW to read as follows:

For guardianships involving veterans see chapter 73.36 RCW.

Sec. 14. Section 11.88.120, chapter 145, Laws of 1965 as last amended by section 9, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.120 are each amended to read as follows:

((The court in all cases shall have power to remove guardians or limited guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may

die, who shall give bond ... RCW 11.88.100 as now or hereafter amended ... tics as prescribed in RCW 11.88.100 as now or hereafter amended ... when any guardian or limited guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian or limited guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such incompetent or disabled person, which may be in the possession of such guardian or limited guardian so removed, or of the personal representatives of a deceased guardian or limited guardian, or in the possession of any other person or persons, or in the possession of a stand-by guardian or limited guardian and upon failure, to commit the party offending to prison, until he complies with the order of the court.)) (1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall present the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

(5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in

accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

Sec. 15. Section 6, chapter 95, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 32, Laws of 1979 and RCW 11.88.125 are each amended to read as follows:

(1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an ((~~incompetent or disabled~~)) incapacitated person, shall file in writing with the court, a designated standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal ((~~incompetency or disability~~)) incapacity of the court-appointed guardian or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to section 9(2)(g) of this act. Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of ((~~incompetency or disability~~)) incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW 11.92.040 as now or

hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

Sec. 16. Section 11.88.130, chapter 145, Laws of 1965 as amended by section 15, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.130 are each amended to read as follows:

The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian ((~~or~~)), limited guardian, or incapacitated person and such notice to an alleged ((~~incompetent or disabled~~)) incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged ((~~incompetent or disabled~~)) incapacitated person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred.

Sec. 17. Section 11.88.140, chapter 145, Laws of 1965 as last amended by section 11, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.140 are each amended to read as follows:

(1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW ((~~11.92.010~~)) 26.28.010 as now or hereafter amended, of any person defined as an ((~~incompetent or disabled~~)) incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding;

(b) By an adjudication of ((~~competency~~)) capacity or an adjudication of termination of ((~~disability~~)) incapacity;

(c) By the death of the ((~~incompetent or disabled~~)) incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a

minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the ..... day of ....., 19..; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an Order

terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this ..... day of ....., 19...

.....
GUARDIAN

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require((:

~~(a) If the guardianship or limited guardianship is of the estate and the estate is exhausted;~~

~~(b)~~)) if the guardianship or limited guardianship is no longer necessary ((~~for any other reason~~)).

((~~(3)~~)) (4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates ((~~otherwise~~)) other than by the death of the ((~~incompetent or disabled~~)) incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the ((~~incompetent or disabled~~)) incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the ((~~incompetent or disabled~~)) incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the ((~~incompetent's or disabled~~)) incapacitated person's estate shall be determined by the law of decedents' estates.

Sec. 18. Section 11.88.150, chapter 145, Laws of 1965 as last amended by section 12, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.150 are each amended to read as follows:

(1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those

funds under the control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW 68.50.160. If no person authorized by RCW 68.50.150 accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an ((~~incompetent or disabled~~)) incapacitated person intestate the guardian or limited guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased ((~~incompetent or disabled~~)) incapacitated person without further letters unless within forty days after death of the ((~~incompetent or disabled~~)) incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his letters of guardianship or limited guardianship, he shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which ((~~is~~)) was assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be given and published in the manner provided in ((~~RCW 11.40.010, once each week for three successive weeks, with proof by affidavit of the publication of such notice to be filed with the court. All claims which are not filed within four months after first publication or within four months after the date of filing of the copy of such notice to creditors with the clerk of the court, whichever is later, shall be barred against the estate~~)) chapter 11.40 RCW. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his account, and may apply to the complete administration of the estate of the deceased ((~~incompetent or disabled~~)) incapacitated person with the consent of the surety. If letters of administration ((~~or letters testamentary~~)) are granted upon petition filed within forty days after the death of the ((~~incompetent or disabled~~)) incapacitated person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the

publication of notice to creditors and other interested persons and the barring of creditors claims.

Sec. 19. Section 11.92.035, chapter 145, Laws of 1965 as amended by section 19, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.035 are each amended to read as follows:

(1) DUTY OF GUARDIAN TO PAY. A guardian of the estate is under a duty to pay from the estate all just claims against the estate of ((~~his incompetent~~)) the incapacitated person, whether they constitute liabilities of the ((~~incompetent~~)) incapacitated person which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the ((~~incompetent~~)) incapacitated person or his or her estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude ((~~his~~)) the guardian's personal liability for his or her own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to (a) the expenses of administration including guardian's fees, attorneys' fees, and court costs; (b) prior claims for the care, maintenance and education of the ((~~incompetent~~)) incapacitated person and of ((~~his~~)) the person's dependents ((~~and existing claims for expenses of administration~~)) over other claims. Subject to court orders limiting such powers, a limited guardian of an estate shall have the same authority to pay claims.

(2) CLAIMS MAY BE PRESENTED. Any person having a claim against the estate of an ((~~incompetent~~)) incapacitated person, or against the guardian of his or her estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations((~~, and,~~)). After ten days' notice to a guardian or limited guardian, a hearing on the claim shall be held, at which upon proof thereof((~~, procure~~)) and after consideration of any defenses or objections by the guardian, the court may enter an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed.

((~~(3) DUTY OF LIMITED GUARDIAN TO PAY. Claims against a limited guardianship estate shall be paid by the limited guardian only to the extent specified in the order appointing the limited guardian.~~))

Sec. 20. Section 9, chapter 30, Laws of 1985 and RCW 11.92.040 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of an estate:

(1) To ((~~make out and~~)) file within three months after ((~~his or her~~)) the guardian's appointment a verified inventory of all the property of the ((~~incompetent or disabled~~)) incapacitated person which comes ((~~to his or~~

her)) into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within thirty days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, a written verified account of the administration((~~: PROVIDED, That~~)), which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets. The court in its discretion may allow reports at intervals of up to thirty-six months((~~, with instruction to~~)) for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption: Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian ((~~that~~)) shall report any substantial ((~~increase~~)) change in income or assets ((~~or substantial change in the incompetent's or disabled person's condition shall be reported~~)) of the guardianship estate within thirty days of the ((~~substantial increase or~~)) occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(3) ((~~Consistent with the powers granted by the court, if he or she is a guardian or limited guardian of the person, to care for and maintain the incompetent or disabled person, assert his or her rights and best interests, and provide timely, informed consent to necessary medical procedures, and if the incompetent or disabled person is a minor, to see that the incompetent or disabled person is properly trained and educated and that the incompetent or disabled person has the opportunity to learn a trade, occupation, or profession. As provided in RCW 11.88.125 as now or hereafter amended, the standby guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. The guardian or limited guardian of the person may be required to report the condition of his or her incompetent or disabled person to the court, at regular intervals or otherwise as the court may direct. PROVIDED, That no guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incompetent or disabled person who is, himself or herself, unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapters 71.05 or 72.23 RCW are followed. PROVIDED FURTHER, That nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:~~

~~(a) Therapy or other procedure which induces convulsion;~~

~~(b) Surgery solely for the purpose of psychosurgery;~~

~~(c) Amputation;~~

~~(d) Other psychiatric or mental health procedures which are intrusive on the person's body integrity, physical freedom of movement, or the rights set forth in RCW 71.05.370.~~

~~A guardian, limited guardian, or standby guardian who believes such procedures to be necessary for the proper care and maintenance of the incompetent or disabled person shall petition the court for an order unless the court has previously approved that procedure within thirty days immediately past. The court may make such order only after an attorney is appointed in accordance with RCW 11.88.045, as now or hereafter amended, if none has heretofor appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040, as now or hereafter amended~~)) If the court has made a finding as provided in section 9(5) of this 1990 act, that the person is incapacitated as a result of a developmental disability that is expected to continue indefinitely and the incapacitated person's estate has a value, exclusive of real property, of not more than twice the homestead exemption, the court, in its discretion, may allow reports at intervals up to thirty-six months and may modify or waive certain reporting requirements in subsection (2) of this section that the court considers unduly burdensome or inapplicable. The court may not waive the requirement that the guardian or

limited guardian report any substantial change in the incapacitated person's income or assets;

(4) ((~~If he or she is a guardian or limited guardian of the estate,~~)) To protect and preserve ((it)) the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the ((~~incompetent or disabled~~)) incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(5) To invest and reinvest the property of the ((~~incompetent or disabled~~)) incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian during a period not exceeding one year following the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer, to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the ((~~incompetent or disabled~~)) incapacitated person that a specific property be used by the ((~~incompetent or disabled~~)) incapacitated person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court ((~~for~~)) no later than the filing of the inventory for an order authorizing ((~~any~~)) disbursements on behalf of the ((~~incompetent or disabled~~)) incapacitated person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an ((~~incompetent or disabled~~)) incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an ((~~incompetent or disabled~~)) incapacitated

person, or if the guardian or limited guardian of the estate has the care and custody of the ((~~incompetent or disabled~~)) incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the ((~~incompetent or disabled~~)) incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the ((~~incompetent or disabled~~)) incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

NEW SECTION. Sec. 21. A new section is added to chapter 11.92 RCW to read as follows:

It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92-.040, a report on the status of the incapacitated person, which shall include:

(a) The address and name of the incapacitated person and all residential changes during the period;

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period.

If the court has made a finding as provided in section 9(5) of this 1990 act, that the person is incapacitated as a result of a developmental disability that is expected to continue indefinitely, the court in its discretion, may allow reports at intervals up to thirty-six months and may modify or waive certain reporting requirements in this subsection, that the court considers inapplicable or unduly burdensome. The court may not waive the requirement that the guardian or limited guardian report any substantial change in the incapacitated person's condition.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

(a) Therapy or other procedure which induces convulsion;

(b) Surgery solely for the purpose of psychosurgery;

(c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.370.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

NEW SECTION. Sec. 22. A new section is added to chapter 11.92 RCW to read as follows:

(1) All banks and trust companies as defined in RCW 30.04.010, all savings banks as defined in RCW 32.04.020, all savings and loan associations as defined in RCW 31.12.005, all insurance companies holding a certificate of authority under chapter 48.05 RCW, or any agent who constitutes a salesperson or broker–dealer of securities under the definitions of RCW 21.20.005 shall, upon receipt of documentation that a guardian has

been appointed and has authority over assets held by a client or depositor of the company or agent, provide the guardian access and control over the asset; and shall at that time forward a report to the court which includes the following: (a) Cause number; (b) name of the incapacitated person; (c) account number or numbers; (d) name and address of client or depositor owning assets; (e) name of the guardian being provided assets or access to assets; (f) value of the asset or assets; and (g) the date the guardian assumed control over the assets. The report shall be signed by a representative of the agent or company and sent by the individual or organization to the clerk of the court.

(2) Any company or agent described in subsection (1) of this section that provides a guardian with access to a safe deposit box shall make an inventory of the contents of the box and attach this inventory to the report sent to the clerk of the court before releasing the contents of the box to the guardian.

Sec. 23. Section 11.92.050, chapter 145, Laws of 1965 as amended by section 21, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.050 are each amended to read as follows:

(1) Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his account with regard to any and all receipts, expenditures and investments made and acts done by the guardian or limited guardian to the date of said interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of such petition and require the service of the petition and a notice of such hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event such a hearing be ordered, the court shall also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at said hearing, in writing. At such hearing on said report of the guardian or limited guardian, if the court be satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the ((~~incompetent or disabled~~)) incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after said ((~~incompetent or disabled~~)) incapacitated person attains his majority any such interim account may be challenged by said ((~~incompetent or disabled~~)) incapacitated person on the ground of fraud.

(2) The procedure established in subsection (1) of this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under section 21 of this act.

Sec. 24. Section 11.92.053, chapter 145, Laws of 1965 and RCW 11.92.053 are each amended to read as follows:

Within ninety days after the termination of a guardianship for any reason other than the death of the ((~~incompetent~~)) incapacitated person intestate, the guardian or limited guardian of the estate shall petition the court for an order settling his account as filed in accordance with RCW 11.92.040(2) with regard to any and all receipts, expenditures and investments made and acts done by the guardian to the date of said termination. Upon such petition being filed, the court shall set a date for the hearing of such petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to such petition or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved.

At such hearing on said petition of the guardian or limited guardian, if the court be satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the ((~~incompetent~~)) incapacitated person, subject only to the right of appeal as upon a final order: PROVIDED, That within one year after said incompetent attains his majority any such account may be challenged by ((~~said incompetent~~)) the incapacitated person on the ground of fraud.

Sec. 25. Section 11.92.056, chapter 145, Laws of 1965 as amended by section 22, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.056 are each amended to read as follows:

If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the

right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the ((~~incompetent or disabled~~)) incapacitated person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions.

Sec. 26. Section 11.92.060, chapter 145, Laws of 1965 as amended by section 23, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.060 are each amended to read as follows:

(1) GUARDIAN MAY SUE AND BE SUED. When there is a guardian of the estate, all actions between the ((~~incompetent~~)) incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the ((~~incompetent~~)) incapacitated person shall be prosecuted by or against the guardian of the estate as such. ((~~He~~)) The guardian shall represent the interests of the ((~~incompetent~~)) incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

(2) JOINDER, AMENDMENT AND SUBSTITUTION. When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate ((~~he~~)) the guardian may be sued both as guardian and in his or her personal capacity in the same action. Misnomer or the bringing of the action by or against the ((~~incompetent~~)) incapacitated person shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the ((~~incompetent~~)) incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the ((~~incompetent~~)) incapacitated person. If the appointment of the guardian of the estate is terminated, his or her successor may be substituted; if the ((~~incompetent~~)) incapacitated person dies, his or her personal representative may be substituted; if the ((~~incompetent becomes competent, he~~)) incapacitated person is no longer incapacitated the person may be substituted.

(3) GARNISHMENT, ATTACHMENT AND EXECUTION. When there is a guardian of the estate, the property and rights of action of the ((~~incompetent~~)) incapacitated person shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the ((~~incompetent~~)) incapacitated person or the guardian of ((~~his~~)) the persons' estate as such.

(4) COMPROMISE BY GUARDIAN. Whenever it is proposed to compromise or settle any claim by or against the ((~~incompetent~~)) incapacitated person or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the ((~~incompetent~~)) incapacitated person, may enter an order authorizing the settlement or compromise be made.

(5) LIMITED GUARDIAN. Limited guardians may serve and be served with process or actions on behalf of the ((~~disabled~~)) incapacitated person, but only to the extent provided for in the court order appointing a limited guardian.

Sec. 27. Section 11.92.090, chapter 145, Laws of 1965 as amended by section 24, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.090 are each amended to read as follows:

Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of ((~~such incompetent or disabled~~)) the incapacitated person for the purpose of paying debts or for the care, support and education of ((~~such incompetent or disabled~~)) the incapacitated person, or to redeem any property of ((~~such incompetent's or disabled~~)) the incapacitated person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper.

Sec. 28. Section 11.92.100, chapter 145, Laws of 1965 as amended by section 25, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.100 are each amended to read as follows:

Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to ((~~such incompetent or disabled~~)) the incapacitated person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the ((~~incompetent's or disabled~~)) incapacitated person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the ((~~incompetent or disabled~~)) incapacitated person.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is ((~~prayed~~)) requested for the liquidation thereof.

(8) The age of the ((~~incompetent or disabled~~)) incapacitated person, where and with whom residing.

(9) All other facts connected with the estate and condition of the ((~~incompetent or disabled~~)) incapacitated person necessary to enable the court to fully understand the same. If there is no personal estate belonging to ((~~such incompetent or disabled~~)) the incapacitated person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application.

Sec. 29. Section 11.92.110, chapter 145, Laws of 1965 as amended by section 26, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.110 are each amended to read as follows:

The order directing the sale of any of the real property of the estate of ((~~such incompetent or disabled~~)) the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs.

Sec. 30. Section 11.92.115, chapter 145, Laws of 1965 as amended by section 27, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.115 are each amended to read as follows:

The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the ((~~incompetent or disabled~~)) incapacitated person and of ((~~his~~)) the persons' estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published.

Sec. 31. Section 11.92.130, chapter 145, Laws of 1965 as amended by section 29, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.130 are each amended to read as follows:

If any person who is bound by contract in writing to perform shall become ((~~incompetent or become a disabled person~~)) incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of ((~~such incompetent or disabled~~)) the incapacitated person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11-.60 RCW.

Sec. 32. Section 10, chapter 30, Laws of 1985 and RCW 11.92.140 are each amended to read as follows:

The court, upon the petition of a guardian of the estate of an ((~~incompetent or disabled~~)) incapacitated person ((~~(collectively hereafter referred to in this section as "incompetent"),~~)) other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96 RCW, may authorize the guardian to take any action, or to apply funds not required for the ((~~incompetent's~~)) incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the ((~~incompetent's~~)) incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the ((~~incompetent~~)) incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the ((~~incompetent's~~)) incapacitated person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the ((~~incompetent's~~)) incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the ((~~incompetent's~~)) incapacitated person's estate which may extend beyond the ((~~incompetent's~~)) incapacitated person's disability or life, the exercise of options of the ((~~incompetent~~)) incapacitated person to purchase securities or other property, the exercise of the ((~~incompetent's~~)) incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies

for their cash value, the exercise of the ((~~incompetent's~~)) incapacitated person's right to any elective share in the estate of the ((~~incompetent's~~)) incapacitated person's deceased spouse, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the ((~~tax~~)) savings expected to accrue. The proposed action or application of funds may include gifts of the ((~~incompetent's~~)) incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the ((~~incompetent~~)) incapacitated person, or may be made to individuals or charities in which the ((~~incompetent~~)) incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the ((~~incompetent~~)) incapacitated person under the ((~~incompetent's~~)) incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the ((~~incompetent~~)) incapacitated person insofar as the intentions can be ascertained, and if the ((~~incompetent's~~)) incapacitated person's intentions cannot be ascertained, the ((~~incompetent~~)) incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the ((~~incompetent's~~)) incapacitated person's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the ((~~incompetent~~)) incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties.

Sec. 33. Section 11, chapter 30, Laws of 1985 and RCW 11.92.150 are each amended to read as follows:

At any time after the issuance of letters of guardianship in the estate of any ((~~incompetent or disabled~~)) person and/or incapacitated person, any person interested in the estate, or in the ((~~incompetent or disabled~~)) incapacitated person, or any relative of the ((~~incompetent or disabled~~)) incapacitated person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon the guardian or limited guardian, or upon the attorney for the guardian or limited guardian, and file with the clerk of the court where the ((~~administration of the~~)) guardianship or limited guardianship of the person and/or estate is pending, a written request stating ((~~that special written notice is desired of any or all of the following matters, steps or proceedings in the administration of the estate:~~

~~(1) Filing of petition for sales, exchanges, leases, mortgages, or grants of easements, licenses, or similar interests in any property of the estate.~~

~~(2) Filing of all intermediate or final accountings or accountings of any nature whatsoever.~~

~~(3) Petitions by the guardian or limited guardian for family allowances or allowances for the incompetent or disabled person or any other allowance of every nature from the funds of the estate.~~

~~(4) Petitions for the investment of the funds of the estate.~~

~~(5) Petition to terminate guardianship or limited guardianship or petition for adjudication of competency.~~

~~(6) Petition for judicial proceedings under chapter 11.96 RCW~~)) the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide copies of all documents filed with the court and advance notice of his or her application for court approval of any action in the guardianship.

The request for special written notice shall designate the name, address and post office address of the person upon whom the notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with the designation unless and until a new designation has been made.

When any account, report, petition, or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing. The service may be made by leaving a copy with the person designated, or that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated.

Sec. 34. Section 11.92.160, chapter 145, Laws of 1965 as amended by section 31, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.160 are each amended to read as follows:

Whenever any request for special written notice is served as provided in this section and RCW 11.92.150 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any ((~~incompetent or disabled~~)) incapacitated person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts.

Sec. 35. Section 11.92.170, chapter 145, Laws of 1965 as last amended by section 16, chapter 309, Laws of 1977 ex. sess. and RCW 11.92.170 are each amended to read as follows:

Whenever it is made to appear that it would be in the best interests of the ((~~incompetent or disabled~~)) incapacitated person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the ((~~incompetent or disabled~~)) incapacitated person appointed in another jurisdiction, or to a person or institution having similar authority with respect to the ((~~incompetent or disabled~~)) incapacitated person.

Sec. 36. Section 11.92.180, chapter 145, Laws of 1965 as amended by section 33, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.180 are each amended to read as follows:

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at public expense. Additional compensation may be allowed for ((~~his necessary~~)) other administrative costs, including services ((~~as~~)) of an attorney and for other ((~~necessary~~)) services not ((~~required of a~~)) provided by the guardian or limited guardian. ((~~He may also be allowed compensation for necessary expenses in the administration of his trust, including reasonable attorney's fees if the employment of an attorney for the particular purpose is necessary.~~)) Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny ((~~him~~)) the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed.

Sec. 37. Section 11.92.185, chapter 145, Laws of 1965 as amended by section 34, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.185 are each amended to read as follows:

The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his or her possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of ((~~incompetents or disabled~~)) incapacitated persons subject to administration under this title.

NEW SECTION. Sec. 38. This act shall take effect on July 1, 1991.

Passed the Senate March 6, 1990.
Passed the House March 1, 1990.
Approved by the Governor March 21, 1990.
Filed in Office of Secretary of State March 21, 1990.

CHAPTER 123

[Substitute Senate Bill No. 6700]

MOTOR FREIGHT CARRIERS OF RECOVERED MATERIALS

AN ACT Relating to regulation of motor freight carriers transporting recovered materials; adding new sections to chapter 81.80 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 81.80 RCW to read as follows:

(1) It is unlawful for a motor vehicle transporting recovered materials to perform a transportation service for compensation upon the public highways of this state without first having received a permit from the commission. The permits shall be granted upon a finding that the motor carrier is fit, willing, and able to provide transportation of recovered materials, and upon payment of the appropriate filing fee authorized by this chapter for other applications for operating authority, including payment of the annual regulatory fee imposed by RCW 81.80.320. The carriers are subject to the safety of operations and insurance requirements of the commission, but are not subject to rate regulation by the commission.

(2) The provisions of this section apply to motor vehicles when:

(a) Transporting recovered materials from a site generating ten thousand or more tons of recovered materials per year to a reprocessing facility or an end-use manufacturing site;

(b) Transporting recovered materials from a reprocessing facility to another reprocessing facility or to an end-use manufacturing site; or

(c) Transporting recovered mixed waste paper from a reprocessing facility to an energy recovery facility.

(3) For the purposes of this section, the following definitions shall apply:

(a) "Recovered materials" means those commodities collected for recycling or reuse, such as papers, glass, plastics, used wood, metals, yard waste, used oil, and tires, that if not collected for recycling would otherwise be destined for disposal or incineration. "Recovered materials" shall not include any wood waste or wood byproduct generated from a logging, milling, or chipping activity;

(b) "Reprocessing facility" means a business registered under chapter 82.32 RCW or a nonprofit corporation identified under chapter 24.03 RCW

that accepts or purchases recovered materials and prepares those materials for resale;

(c) "Mixed waste paper" means assorted low-value grades of paper that have not been separated into individual grades of paper at the point of collection; and

(d) "Energy recovery facility" means a facility designed to burn mixed waste paper as a fuel, except that such term does not include mass burn incinerators.

NEW SECTION. Sec. 2. (1) The department of trade and economic development, in conjunction with the utilities and transportation commission and the department of ecology, shall evaluate the effect of exempting motor vehicles transporting recovered materials from rate regulation as provided under section 1 of this act. The evaluation shall, at a minimum, describe the effect of such exemption on:

(a) The cost and timeliness of transporting recovered materials within the state;

(b) The volume of recovered materials transported within the state;

(c) The number of safety violations and traffic accidents related to transporting recovered materials within the state; and

(d) The availability of service related to transporting recovered materials from rural areas of the state.

(2) The department shall report the results of its evaluation to the appropriate standing committees of the legislature by October 1, 1993.

(3) The commission shall adopt rules requiring persons transporting recovered materials to submit information required under RCW 70.95.280. In adopting such rules, the commission shall include procedures to ensure the confidentiality of proprietary information.

NEW SECTION. Sec. 3. A new section is added to chapter 81.80 RCW to read as follows:

Nothing in this act shall be construed as changing the provisions of RCW 81.77.010(8), nor shall this act be construed as allowing any entity, other than a solid waste collection company authorized by the commission or an entity collecting solid waste from a city or town under the provisions of chapter 35.21 or 35A.21 RCW, to collect solid waste which may incidentally contain recyclable materials.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 6, 1990.
Passed the House March 1, 1990.
Approved by the Governor March 21, 1990.
Filed in Office of Secretary of State March 21, 1990.

APPENDIX 5

SB 2868

SPONSORS: Senators von Reichbauer, North, Sellar and Fleming

COMMITTEE: Local Government

Providing for new boards of commissioners for merged fire districts.

ISSUE:

Present law does not, as to the manner of constituting boards of fire commissioners, provide for certain mergers of fire protection districts. For example, as to the merger of two fire protection districts, it provides only for mergers of two districts with three commissioners apiece. This is not always the case, as some fire protection districts have five commissioners and others may have over three commissioners if they were formed by a recent merger. Under present law, when two three-member districts are merged, the new board consists of the six members from the old board. That number is reduced to three by electing only one instead of two commissioners in each of the three subsequent elections. (Fire commissioners normally are elected for six year terms.)

Also, the law as to merger of more than two fire protection districts sets out a procedure for merger that is completely different from that for merger of two districts. As to mergers of more than two fire protection districts, one commissioner from each district is selected by the present commissioners of each district to serve until the next general election. At this election three commissioners are elected, the number of votes received by each determining whether he shall serve six, four or two years, with normal procedures for reelection occurring thereafter.

SUMMARY:

The bill adopts procedures for mergers identical to those set forth for the merger of two districts. Thus, no matter how many districts are merged or the respective number of commissioners on each of the old boards, all of the commissioners from the old districts serve on the new board until the next election. At that election and thereafter, notwithstanding the number of commissioners whose terms expire (the terms of all will expire naturally over a six year period), only one position is filled until the board is reduced to the proper number, whether it be five or three members.

Senate: (a)	44	0	Effective: Sept. 21, 1977
House:	88	0	C 121 L 77 1st ex. sess.

SSB 2872

PARTIAL VETO

SPONSORS: Committee on Judiciary (Originally sponsored by Senator Marsh)

COMMITTEE: Judiciary

Revising out-dated and offensive language pertaining to the physically, mentally and sensory handicapped and providing a defined process to determine mental status due to incompetency or disability.

ISSUE:

State laws contain numerous out-dated and offensive references to mentally and physically handicapped individuals. They are often referred to in the statutes as idiots, imbeciles, feeble-minded or defective persons. Such references are not only objectionable, but also imprecise in that they do not refer to any specific legal standard or definition.

SUMMARY:

The bill deletes offensive references to the handicapped throughout the Revised Code of Washington and substitutes terminology which has a specific meaning in state law. The new terminology adopted includes "incompetent or disabled persons" which is defined in the guardianship and limited guardianship statutes, "developmentally disabled" which is defined in the law providing services for mentally retarded persons, and "mental, physical, or sensory handicap" which is used in the human rights law.

Senate:	46	0	Effective: Sept. 21, 1977
House:	91	0	C 80 L 77 1st ex. sess.

VETO SUMMARY:

The Governor vetoed several sections of the bill which would have eliminated the present prohibition against certain persons marrying unless procreation is impossible. In her message, she stated that she felt that the effects of these sections went far beyond the intent of the bill. The persons subject to the prohibition in these sections include common drunkards, habitual criminals, imbeciles, feeble-minded persons, idiots and insane persons. (See VETO MESSAGE)

SSB 2873

SPONSORS: Committee on Constitution and Elections (Originally sponsored by Senators Goltz, Bailey, Sellar and Newschwander)

APPENDIX 6

4.16.190. Statute tolled by personal disability

If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action. [1993 c 232 § 1; 1977 ex.s. c 80 § 2; 1971 ex.s. c 292 § 74; Code 1881 § 37; 1877 p 9 § 38; 1869 p 10 § 38; 1861 p 61 § 1; 1854 p 364 § 11; RRS § 169.]

Historical and Statutory Notes

Purpose—Intent—1977 ex.s. c 80: "It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term 'insanity' be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter 11.88 RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability." [1977 ex.s. c 80 § 1.]

Severability—1977 ex.s. c 80: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 80 § 76.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Laws 1971, Ex.Sess., ch. 292, § 74, lowered the age of disability from twenty-one years to eighteen years.

Laws 1977, Ex.Sess., ch. 80, § 2 substituted the phrase "incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW" for the word "insane."

Laws 1993, ch. 232, § 1, near the end of the section, preceding ", the time of such disability shall not be a part" substituted "prior to sentencing" for ", or in execution under the sentence of a court for a term less than his natural life".

Source:

Laws 1854, p. 364, § 11.
Laws 1861, p. 61, § 1.
Laws 1869, p. 10, § 38.
Laws 1877, p. 9, § 38.
RRS § 169.

Cross References

Adverse possession, personal disability, limitation tolled, see § 7.28.090.

Decedent's estates, claims against decedent, notice to creditors, statute of limitations without regard to tolling provisions of this section, see § 11.42.050.

Law Review and Journal Commentaries

Jurisdictional survey of tort provisions of Washington's 1986 Tort Reform Act. Tim Donaldson, Stephen J. Hensen and Mark V. Jordan, 22 Gonz. L.Rev. 47 (1986/1987).

Products liability: useful safe life. 57 Wash.L.Rev. 503 (1982).

Statutory lowering of age of majority to eighteen years, and effect on civil procedure. 47 Wash.L.Rev. 377 (1972).

Library References

Limitation of Actions ⟹72, 74, 75. Westlaw Topic No. 241.

C.J.S. Limitations of Actions §§ 112 to 118.

Research References

ALR Library

1 ALR 6th 407, Effect of Appointment of Legal Representative for Minor on Running of State Statute of Limitations Against Minor.
9 ALR 5th 321, Running of Limitations Against Action for Civil Damages for Sexual Abuse of Child.
11 ALR 5th 588, Emotional or Psychological "Blocking" or Repression as Tolling Running of Statute of Limitations.
111 ALR 5th 159, Effect of Appointment of Legal Representative for Person Under Mental Disability on Running of State Statute of Limitations Against Such Person.
77 ALR 3rd 735, Imprisonment of Party to Civil Action as Tolling Statute of Limitations.

Treatises and Practice Aids

15A Wash. Prac. Series § 4, Tolling and Estoppel.
15A Wash. Prac. Series 4.16.350, Action for Injuries Resulting from Health Care or Related Services—Physicians, Dentists, Nurses, Etc.—Hospitals, Clinics, Nursing Homes, Etc.
15A Wash. Prac. Series 11.40.051, Claims Against Decedent—Time Limits.
15A Wash. Prac. Series 11.96A.070, Statutes of Limitation.
16 Wash. Prac. Series § 9.14, Professional Malpractice.
16 Wash. Prac. Series § 9.3, Tolling.
16 Wash. Prac. Series § 15.26, Statute of Limitations.
17 Wash. Prac. Series § 8.4, Statutes of Limitation—Tolling.
19 Wash. Prac. Series § 22.13, Litigation Involving Minors.
27 Wash. Prac. Series § 5.72, Statute of Limitations.

Westlaw Electronic Research

See Westlaw Electronic Research Guide following the Preface.

United States Supreme Court

Limitations periods, tolling during imprisonment, see Hardin v. Straub, U.S.Mich.1989, 109 S.Ct. 1998, 490 U.S. 536, 104 L.Ed.2d 582, on remand 878 F.2d 382.

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