

2011 SENATE HUMAN SERVICES

SCR 4010

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SCR 4010
2-1-2011
Job Number 13826

Conference Committee

Committee Clerk Signature

PA MBURSON

Explanation or reason for introduction of bill/resolution:

Directing Legislative Management to study the adequacy of governmental services, including judicial services, to respond to issues relating to an aging population, including veterans, and to study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services.

Minutes:

Attached testimony.

Senator Judy Lee opened the hearing on SCR 4010.

Sen. Karen Krebsbach, prime sponsor, introduced SCR 4010 which contains an issue that has been festering in ND with the court system, human service issues, public administrators, guardians, hospitals, etc. It isn't an easy problem to address to solve because it's handled in various ways throughout ND - through counties, non-profit groups, and the private sector. Funding and availability are great concerns. A unified program is needed. Senior citizens need these services because of absence of family members to assist. There is also a growing need amongst younger people due to increase in mental problems, bi polar diseases, etc. The veterans are also addressed in this resolution. This same request made it through both bodies of the legislature last session, was signed by the governor, but was not chosen for study. She pointed out that SB 2079 is asking for the same type of study.

Chief Justice VandeWalle said he didn't know all the issues and didn't have the answer. Taking care of the elderly is a huge issue and he said we need to start on it little by little. He pointed out that the law now requires reports of guardians be filed with the court. There's nothing that says the court should look at it. If the court does look at, they are not prepared to tell if something is wrong or not. That's just one of the issues of concern. He reported that he has had a fair amount of feedback on this.

Aaron Birst, Association of Counties, spoke in support. This is a significant issue. Counties would like to be at the table when this gets put on the calendar.

Senator Dick Dever said that during the interim the State's Attorney from GF County testified to the long term care committee about his efforts in this area and it seems like something that could be expanded across the state. He wondered what the intention of involvement of the counties would be.

Mr. Birst replied that the GF County office has received monies for pilot programs that have been relatively successful. From the counties standpoint, put everything on the table to get the best system. Currently there really is no system. This also comes down to funding issues. If it's the case where it's the right to do to have the county governments take care of their citizens they are willing to do it as long as the system is fair and complete.

Jim Jacobson (ND Protection and Advocacy Project) testified in support. Attachment #1

There was no further testimony. The hearing on SCR 4010 was closed.

Senator Tim Mathern moved a **Do Pass**.

Seconded by **Senator Dick Dever**.

Roll call vote 5-0-0. **Motion carried**.

Carrier is **Senator Tim Mathern**.

Date: 2-1-2011

Roll Call Vote # _____

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. LD10

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Mathern

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

REPORT OF STANDING COMMITTEE

SCR 4010: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS**
(5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4010 was placed on the
Eleventh order on the calendar.

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SCR 4010

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SCR 4010
March 17, 2011
15635

Conference Committee

Committee Clerk Signature

Carmen Hunt

Explanation or reason for introduction of bill/resolution:

Directing the Legislative Management to study the adequacy of governmental services, including judicial services, to respond to issues relating to an aging population, including veterans, and to study efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services

Minutes:

Chairman Bette Grande opened the hearing on SCR 4010.

Senator Karen Krebsbach, District 40, appeared. This issue has been festering in the state of North Dakota for some time. It has created problems for our court systems, human services, public administrators, guardians, hospitals, and many areas. It is time for us as a state to face this challenge and to address the problems that are continuously arising from it. Chief Justice VandeWalle addressed this issue when he spoke to us at the beginning of the 62nd session. It is not an easy problem to address because there are various ways in which these issues are being addressed in our state and in which the cases are being handled. They are assigned by the courts and sometimes the counties handle them through nonprofit groups, private groups, and just a myriad of different ways. I am not suggesting we change and overhaul everything, but I am suggesting that we take a good look and study this because it is such great impact. Funding is of concern and the availability of people to handle the cases. The public administrators and the guardians and so on need to be responsible people. Challenges are growing. We think of the population on our state as that of the seniors who have no family around but need attention and we know that is a growing part of our population. However, we are finding in the areas around the state that are handling these situations that younger people today are in need of these services. They are experiencing severe mental problems and just totally incapable of handling their situations on their own. In addition to these two areas, we also have an area with our veterans and veterans' services are a part of this program as well. It was just brought to my attention prior to this hearing about hospitals being affected by this. They are not able to dismiss a patient without someone signing out for them. At times they had to handle attorneys so that they can make discharges. It is time to do this as a study.

Rep. Lonny Winrich: I don't know whether you want to answer this question or defer it to the person from the attorney general's office. Your second whereas clause speaks of

legislation that was recommended by the interim criminal justice committee but failed to pass the legislature. Do you have any thoughts about what the problems were with that legislation, what we might discover in the study?

Senator Karen Krebsbach: Actually I am not too sure if that is referring to another session I believe. I would let Mr. Ganje answer that if he can do so.

Rep. Vicky Steiner: Is it your understanding that this would require a study or are you thinking it is just a suggestion?

Senator Karen Krebsbach: No, I am suggesting that we do have a study on this issue because as I said, I think we need to get a handle as to how it is being handled throughout the state because it is handled in various ways, sometimes through private concerns. It is always through court appointed but some of the counties have the responsibilities of doing it. We need to just get a handle where and how we are going to do this in a unified system.

Rep. Vicky Steiner: This says directing them to study it or that they have the option to study it. What is your intent?

Senator Karen Krebsbach: If the word says we are directing them to study it, then that is what it is. I have to look at it and see. I think that they have the option but we are certainly hoping that they will pick this as a study.

Jim Ganje, Supreme Court's Office of State Court Administrator, appeared in support. **Attachment 1.** I am going to give you the quick high points of the attached summary. The latest projection suggests that by 2020 20% or more of the state's population will be elderly, 65 or over, and in the rural counties of this state, something approaching 30% or more will have an elderly population. State systems generally seem to be struggling to identify and handle issues involving the elderly and that includes the courts. Senator Krebsbach mentioned the last session this study resolution or one very similar to it was introduced and failed to be selected for study. The same issues that were at the floor then are there now and perhaps may even be greater. The other issue that is particularly problematic for the court system is the status of public administrators. Who serves as a public administrator varies widely. There is a nonprofit organization based here in Bismarck, Guardianship and Protective Services, that covers approximately a 20 county area in providing guardianship services, public administrative services, and the like. The problem that the judicial system has encountered is that the manner in which they are supported differs wildly across the state. By law they are compensated in the same way that a guardian or a conservator is compensated which typically means if there is any money in the estate that is being monitored, they can receive a level of compensation from that. The problem is that in many of the estates that they are working with there is no money.

Rep. Gary Paur: Where do foster care services for aging adults fall into this scenario?

Jim Ganje: I am not quite sure what you mean by foster care services. Normally foster care services are with respect to juveniles, but guardianship or conservatorship services which would typically be those kinds of services that are provided with respect to and otherwise an incapacitated person or elderly person are handled in a variety of ways.

There are nonprofit entities that are contracted through the department of human services to provide guardianship services and conservatorship services. There are people appointed by the court to do that. There are public administrators that do that as part of their normal job.

Rep. Gary Paur: The house passed a bill which specifically stated that the interim committee was going to look at the foster care services of the aging. The house passed a senate bill which had as a section that the interim committee—we passed it so it is on its way which is going to have an interim study—these are bills, not resolutions—for the foster care of aging adults. You are not aware of that at all?

Jim Ganje: I wasn't aware of those. I don't know that there is anything entirely inconsistent with the study resolution and those studies that would be put forward. They surely could be combined. If this study resolution is approved ultimately and those bills were for studies come forward when the legislative management group meets, there is nothing certainly that would prevent them from combining these altogether. The study resolution is much broader than simply foster care services for the elderly. It is addressed to guardianships, conservatorship, and public administrators which has been a long neglected issue that just kind of falls to the wayside. Those folks that are out there working hard to do that are kind of left between a rock and a hard spot in terms of how they perform their functions.

Rep. Gary Paur: I was wondering if the human services considered your terminology to be foster care with the guardianship and etc.

Jim Ganje: I would suspect not because they are three very distinct things.

Rep. Karen Rohr: You indicated that 20% of the population is elderly by 2020. What percentage of that are we talking about for population here that we have a concern about?

Jim Ganje: That is a difficult question to answer. I am not so sure that anybody knows because so many times issues involving the elderly particularly in areas of abuse, neglect, and exploitation things are not known for some time. They kind of occur under the radar. I know that it certainly has emerged as a national issue. The conference of chief justices in December of this past year adopted a white paper urging state court systems and their state agency allies to address issues involving guardianships, conservatorships, and what not. It is an issue that certainly is present and I don't think that is new to anybody here.

Rep. Karen Rohr: I was wondering if you knew of any counties within North Dakota that are more problematic than others in terms of this topic. That probably is for the study.

Jim Ganje: No, I don't. There have been some counties in which there have been some very untoward things happen but thankfully those have been relatively isolated. I don't think there is one that has an inherent issue.

Vice Chairman Randy Boehning: What is the definition of elderly?

Jim Ganje: When the census data center is analyzing issues with respect to elderly population, they typically look at ages of 65 or over. I think that is probably fairly standard.

Vice Chairman Randy Boehning: I wasn't sure because a lot of people that are 65 and older work until 70. I didn't know if there was a true definition of that.

Jim Ganje: I know some folks who are 65 or over that would object to being called elderly.

Rep. Lonny Winrich: My response to Rep. Boehning would be anyone older than me. Do you have any information or recollection of the bill that is referred to in the second whereas clause?

Jim Ganje: The work of the interim committee in 2003-2004 was fairly substantial in looking at guardianship issues and conservatorship issues. The principal result of that was legislation recommending an appropriation to implement further programs with respect to guardianships and conservatorships. That recommended appropriation was substantially reduced. The study material which is in the report to the 2005 legislative session from the legislative council is very informative. It has a wealth of information about the current status then and the inadequacies that they found then. The issue at that time was primarily money and getting resources to the department in its aging services division to do what the interim committee thought needed to be done.

Jim Jacobson, Director of Program Services, ND Protection and Advocacy Project (P&A), appeared. **Attachment 2.** I could potentially respond somewhat to Rep. Paur's question about the foster care. There are really two systems of foster care in North Dakota. There is the foster care that is provided to children and it is through the children and family services licensed by the department of human services. There also are adult foster care homes. They are licensed through the department of human services generally supervised by county social services. Our experience is that they function as more of a day to day support residential service type of provider to vulnerable adults who are staying with them, but they will not have the court order responsibility or authority to make decisions on behalf of those people. When we are looking at guardianship, we are talking about people who then have the court ordered authority to make decisions. The systems are connected but very different in their function.

Rep. Gary Paur: Very seldom is a facility that is providing foster care also a guardian?

Jim Jacobson: That is correct. That would probably present a concern in that there would be a much higher potential conflict of interest so that the individual's resources, income would be much more readily exploited than when you have the two different entities providing the two different types of service.

Rep. Glen Froseth: Two years ago I sponsored a bill that would require than an administrator of an estate and an attorney of an estate must be two separate people. One person couldn't serve as both. So often when we sponsor legislation and it is passed, we never hear if it has any results. I was wondering if you are aware of that and if that bill has had any effect or done any good?

Jim Jacobson: No, that is not something I am aware of. It does sound like a potential protection for the conflicts of interest. It also sounds like you are talking about a situation where you are insuring that both a person's best interests and expressed wishes are represented which is also an issue with the guardianship. If a guardian is appointed, they are mandated by the court to respond to the individual's best interests. One of the things our agency does is sometimes step in and try to make sure that the person's expressed wishes are also addressed. I can't speak of any specific case where I have seen that particular legislation surface as having a direct impact.

There was no one opposed or neutral to this bill.

The hearing was closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SCR 4010
March 24, 2011
15944

Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Directing the Legislative Management to study the adequacy of governmental services, including judicial services, to respond to issues relating to an aging population, including veterans, and to study efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services

Minutes:

Vice Chairman Randy Boehning opened the discussion on SCR 4010. This is a study. I think they tried to get this one studied for the last session. It is an old issue. There is a lot of need out there with the aging population. He gave some examples of some seniors having difficulty with transportation problems and even his situation of the difficulty of getting a ride home after some knee surgery on Monday. In Fargo it isn't as big of an issue because they do have taxis and public transportation, but in a rural area they don't have access to those types of services.

Rep. Glen Froseth: One way is to support a one and one mill levy match for senior services.

Vice Chairman Randy Boehning: Would you benefit from that?

Rep. Roscoe Streyle: That was directed at me.

Rep. Lonny Winrich: I just want to remind the committee of the testimony from the Supreme Court. This goes well beyond the issues of transportation and so on. The court is wrestling with elder abuse. I know that there are controversial issues regarding conservatorships for older people. The chief justice requested this study. I think we should respect that.

Vice Chairman Randy Boehning: It is an issue. You get a lot of older people that are not able to take care of their finances.

Rep. Karen Rohr: I agree that we do need to do something like this because even in my industry we spend hours looking for the guardians and the conservatorships and all that. I think this would be a really good service to our elderly.

Rep. Gary Paur: I move we adopt the resolution as we received it.

Vice Chairman Randy Boehning: There were no amendments that I know of on this. Is there a second to the motion?

Rep. Vicky Steiner: Second.

DO PASS, 11 YEAS, 0 NAYS, 2 ABSENT. Rep. Vicky Steiner is the carrier of this bill. It will be placed on the consent calendar.

Date: 3-24-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4010

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Paur Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman	✓	
Vice Chairman Randy Boehning	✓		Ron Guggisberg	✓	
Glen Froseth	✓		Lonny Winrich	✓	
Karen Karls	✓				
Lisa Meier	✓				
Gary Paur	✓				
Karen Rohr	✓				
Mark Sanford					
Vicky Steiner	✓				
Roscoe Streyle	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Steiner

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

*Placed on
Consent
Calendar*

REPORT OF STANDING COMMITTEE

SCR 4010: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR**
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SCR 4010 was placed on the
Tenth order on the calendar.

2011 TESTIMONY

SCR 4010

#1

Senate Concurrent Resolution 4010

Senate Human Services Committee

February 1, 2011
Testimony of Jim Jacobson
ND Protection and Advocacy Project

Chair Lee and members of the Senate Human Services Committee, I am Jim Jacobson, Director of Program Services for the ND Protection and Advocacy Project (P&A). P&A is Federal and State funded disability rights protection agency. I am here today to testify in support of Senate Concurrent Resolution 4010.

In September of 2010 the United States Government Accounting Office (GAO) reported to the Chairman of the Special Committee on Aging, U.S. Senate. The report was the result of a study, beginning in 1990, of cases of financial exploitation, neglect, and abuse of seniors. This study identified "hundreds" of cases of financial exploitation, neglect, and abuse. In 20 select cases the GAO found that "...guardians stole or otherwise improperly obtained \$5.4 million in assets from 158 incapacitated victims, many of whom were seniors. In some instances guardians also physically neglected and abused their victims. The guardians in these cases came from diverse professional backgrounds and were overseen by local courts in 15 states and the District of Columbia. GAO found several common themes. In 6 of 20 cases, the courts failed to adequately screen potential guardians, appointing individuals with criminal convictions or significant financial problems to manage high-dollar estates. In 12 of 20 cases, the courts failed to oversee guardians once they were appointed, allowing the abuse of vulnerable seniors and their assets to continue. Lastly, in 11 of 20 cases, courts and federal agencies did not communicate effectively or at all with each other about abusive guardians, allowing the guardian to continue the

abuse..." An example of this last situation, experienced in North Dakota, is a finding by the Social Security Administration of exploitation by a representative payee who is also a guardian. There is no mechanism within the Social Security Administration's process to then inform the court or other state agencies of this abuse.

P&A has investigated several allegations of abuse, neglect, or exploitation by public administrators appointed guardians. Through these investigations P&A has validated or substantiated exploitation of the ward in two cases involving thousands of dollars in misappropriated funds. It should also be said that there are many examples of public administrators in ND providing effective guardianship for their wards. In many of these situations the public administrator is receiving minimal compensation for the time and effort required to provide effective guardianship services.

ND law provides a preference to family members as guardians. There is no requirement for certification, training, or any other type of verification of that family member's appropriateness in assuming the role of guardian. Even though ND law requires annual reporting by court appointed guardians, in 20 years I have seen no action by the court for failure to comply. The Guardianship Association of ND, an affiliate of the National Guardianship Association, is a resource for guardians in ND but there is no certification, licensure or registration requirement in ND law for professionals appointed as guardians.

P&A is aware of the need for qualified individuals to act as guardians for ND citizens who are unable to protect their interests. The ability to address that need effectively also requires training and adequate oversight of court appointed guardians. Therefore, P&A supports SCR 4010.

Thank you for your opportunity to testify in support of SCR 4010 and I will be glad to try to answer any questions the Committee has.

Attachment 1

SENATE CONCURRENT RESOLUTION NO. 4010
- SUMMARY -

SCR 4010

Senate Concurrent Resolution 4010 was introduced at the request of Chief Justice Gerald VandeWalle. Chief Justice VandeWalle extends his thanks to Senator Krebsbach for her willingness to serve as prime sponsor, and his thanks to Representatives Nancy Johnson and Andy Maragos and Senators Judy Lee, Joan Heckaman, and John Warner for agreeing to sign on as sponsors of the resolution.

SCR 4010 is directed at an important issue addressed in the Chief Justice's State of the Judiciary message: the aging of North Dakota's population and the complex and compelling issues related to elder abuse, neglect, and exploitation, all of which result in matters to be addressed in the courts and in society generally.

SCR 4010 notes that the scope and adequacy of guardianship services generally, and public guardianship services in particular, are unclear and there is a question whether such services will be sufficient to respond in the future to the state's aging population. The study resolution recognizes the important work done during the 2003-04 interim by the Interim Criminal Justice Committee. The interim committee recommended legislation to address several issues concerning guardianship services and recommended a significant amount of funding to support the provision of those services. However, the funding was severely reduced and questions concerning the methods of providing guardianship services and the adequacy of those services remain. And during the intervening time, more issues have almost certainly arisen, including those associated with the use of representative payees and powers of attorney agreements.

Uncertainties concerning public administrator services are particularly acute. The provision of public administrator services is governed by N.D.C.C. Ch. 11-21, a copy of which is attached. The presiding judge of the judicial district in which a particular county is located is authorized to appoint a public administrator for that county. By law, the public administrator is the guardian and conservator for the county and must take charge of the estates of incapacitated persons, minors, and others when there is no one to care for those persons and they cannot care for themselves. State law provides that public administrators are compensated in the same manner as others who serve as a guardian or conservator, meaning compensation can be paid through the estate. Many times, the majority of times, there is no money in the estate to pay the public administrator. Some public administrators receive compensation from the county in which they provide services. Historically, most public administrators received no compensation except, for example, for minor sums authorized from Social Security payments received by the ward in their charge. Some public administrators are provided office space in the county in which they provide services.

Historically, most provided their own office space or worked out of their homes. Most public administrators have covered expenses such as telephone and postage out of their own pockets.

The kinds of cases handled by public administrators vary greatly but the numbers have been steadily increasing over recent years. The level of support provided for public administrators, both in the form of compensation and administrative support, remains a continuing concern.

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

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

Submitted by:

Jim Ganje

Office of State Court Administrator

CHAPTER 11-21 PUBLIC ADMINISTRATOR

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

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

1. Faithfully discharge all the duties of the office.
2. Account annually to the judge of the district court for all estates and property under the public administrator's official control and care, or whenever required so to do by the judge.
3. Turn over to the successor in office all property and estates in the public administrator's official care and control, and truly account for the same.
4. Turn over all property and estates in the public administrator's official care and control to any other administrator, executor, or guardian designated by the judge of the district court, and truly account for the same.
5. Perform such other acts and duties properly relating to the office as may be ordered by the district judge.

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

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

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

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

1. When a person dies intestate in the county without relatives or known heirs.
2. When a person dies testate and the executor named in the will is absent or fails to qualify and there is no heir, legatee, or devisee available to act as personal representative.

3. When an unknown person dies or is found dead in the county.
4. When money, property, papers, or other estate is left in a situation exposed to loss or damage, and no other person administers the estate.
5. When any estate of any person who dies intestate in the county or elsewhere is left in the county and is liable to be injured, wasted, or lost, and the intestate does not leave a known spouse or heirs in this state.
6. When a minor is under the age of fourteen years, the minor's parents are dead, and the minor has no guardian or conservator.
7. When any estate is left in the county belonging to a minor whose parents are dead, or whose parents, if living, refuse or neglect to qualify as guardian or conservator, or who, having qualified, have been removed as guardians or conservators, or from any cause are incompetent to act as guardians or conservators, when such minor has no one authorized by law to take care of and manage the minor's estate.
8. When the estate or person and estate of an incapacitated person shall be left in the county and there is no legal guardian or conservator for such incapacitated person and no competent person who will qualify to take charge of such estate or to act as guardian or conservator known to the court having jurisdiction.
9. When for any other good cause, the court shall order the administrator to take possession of an estate to prevent its being injured, wasted, stolen, or lost.

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

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

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

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

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

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

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

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

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

Senate Concurrent Resolution 4010

House Government and Veteran's Affairs Committee

March 17, 2011

Testimony of Jim Jacobson
ND Protection and Advocacy Project

Chair Grande and members of the House Government and Veteran's Affairs Committee, I am Jim Jacobson, Director of Program Services for the ND Protection and Advocacy Project (P&A). P&A is Federal and State funded disability rights protection agency. I am here today to testify in support of Senate Concurrent Resolution 4010.

In September of 2010 the United States Government Accounting Office (GAO) reported to the Chairman of the Special Committee on Aging, U.S. Senate. The report was the result of a study, beginning in 1990, of cases of financial exploitation, neglect, and abuse of seniors. This study identified "hundreds" of cases of financial exploitation, neglect, and abuse. In 20 select cases the GAO found that "...guardians stole or otherwise improperly obtained \$5.4 million in assets from 158 incapacitated victims, many of whom were seniors. In some instances guardians also physically neglected and abused their victims. The guardians in these cases came from diverse professional backgrounds and were overseen by local courts in 15 states and the District of Columbia. GAO found several common themes. In 6 of 20 cases, the courts failed to adequately screen potential guardians, appointing individuals with criminal convictions or significant financial problems to manage high-dollar estates. In 12 of 20 cases, the courts failed to oversee guardians once they were appointed, allowing the abuse of vulnerable seniors and their assets to continue. Lastly, in 11 of 20 cases, courts and federal agencies did not communicate effectively or at all with each other

about abusive guardians, allowing the guardian to continue the abuse..." An example of this last situation, experienced in North Dakota, is a finding by the Social Security Administration of exploitation by a representative payee who is also a guardian. There is no mechanism within the Social Security Administration's process to then inform the court or other state agencies of this abuse.

P&A has investigated several allegations of abuse, neglect, or exploitation by public administrators appointed guardians. Through these investigations P&A has validated or substantiated exploitation of the ward in two cases involving thousands of dollars in misappropriated funds. It should also be said that there are many examples of public administrators in ND providing effective guardianship for their wards. In many of these situations the public administrator is receiving minimal compensation for the time and effort required to provide effective guardianship services.

ND law provides a preference to family members as guardians. There is no requirement for certification, training, or any other type of verification of that family member's appropriateness in assuming the role of guardian. Even though ND law requires annual reporting by court appointed guardians, in 20 years I have seen no action by the court for failure to comply. The Guardianship Association of ND, an affiliate of the National Guardianship Association, is a resource for guardians in ND but there is no certification, licensure or registration requirement in ND law for professionals appointed as guardians.

P&A is aware of the need for qualified individuals to act as guardians for ND citizens who are unable to protect their interests. The ability to address that need effectively also

requires training and adequate oversight of court appointed guardians. Therefore, P&A supports SCR 4010.

Thank you for your opportunity to testify in support of SCR 4010 and I will be glad to try to answer any questions the Committee has.