

THE MINNESOTA EXPERIENCE

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I am here representing the Minnesota Commissioner of Public Welfare who administers a state guardianship program for 10,741 mentally retarded which has been in existence since 1917 as part of our original Children's Code. I represent a state with a population of three and a half million, covering 80,000 square miles, with a north-south distance of approximately 500 miles and east-west distance of approximately 200 miles. Our average per capita income in 1965 was \$2,625. We rank 24th highest in average per capita income in this country. These facts are given to you since the setting in which a guardianship program is administered has some pertinence to structure and procedures in organizing such a service.

Any consideration of Minnesota's guardianship program must be considered in relationship to total services for the mentally retarded and to the total public welfare program in Minnesota. Minnesota's program for the mentally retarded began in 1851, at the first meeting of the Territorial Legislature. At that time probate court judges were delegated care and custody of the person and property of "idiots, lunatics, and other persons of unsound mind." Subsequent legislatures prohibited placement of the mentally retarded in the state hospitals for the insane, required the Faribault institution to provide the retarded with proper "training and instruction", and established additional schools and hospitals for "idiots and imbeciles", "defectives", and for the "epileptics". In 1910 the Board of Control (whose powers are now exercised by the Commissioner of Public Welfare) employed a well-known psychologist, Dr. Fred Kuhlmann, to devise a mental testing program for the use of state institutions and to provide better classification of retardates. Dr. Kuhlmann became the director of research at Faribault. His views were influential in the subsequent development of Minnesota's retardation program. A 1916 Governor's Commission on Child Welfare recommended legislation authorizing the Board of Control to exercise guardianship of the feeble-minded. The Commission believed that ultimate responsibility for the handicapped should rest with a state agency rather than with private individuals and organizations. In addition, the "commitment" provision was designed to permit the agency to exercise authoritative control of retarded persons.

Minnesota's guardianship law dates back to 1917 when the Children's Code was passed by our legislature. At that time, we had Child Welfare Boards; their functions were taken over in 1939 by county welfare boards.

The Child Welfare statutes do not apply specifically to guardianship but provide the background and supplementary services for a total program for individuals and families where mental retardation may be the problem. I believe that Minnesota's guardianship program for the mentally retarded has been strong since the legal basis:

1. Places responsibility upon the Commissioner of public welfare who, in turn, delegates responsibility (through the county welfare board) to the local community;

2. Provides for an integrated program;
3. Provides for continuity of services;
4. Provides the necessary flexibility to best meet the needs of the mentally retarded, the family, and the community.

Minnesota's public welfare program is administered by the commissioner of public welfare through 87 county welfare boards. These are staffed with approximately 1000 social workers.

A retarded individual may be placed under the guardianship of the Commissioner of Public Welfare in Minnesota through probate court action upon the petition filed by any relative or reputable person. This guardianship remains in effect for the rest of the person's life unless he is restored to capacity or discharged from guardianship by probate court. Our program places responsibility on the county welfare department to see to it that services and programs are provided to meet the varying needs of the mentally retarded.

With responsibility placed upon the county welfare department, this does not mean that the agency provides all the necessary services; however, it is the responsibility of that agency to see to it that the total resources of the local community or of the state are brought to bear upon the needs of or problems presented by the retardate. This means utilization of medical resources, psychiatric and psychological services, educational, vocational, legal, religious, leisure time, child protection, marital and financial services.

We are fortunate that we have a very general legal definition of mentally deficient. Minnesota's Statutes 525.749 states, "Mentally deficient person means any person, other than a mentally ill person, so mentally defective as to require supervision, control, or care for his own or the public welfare".

We also feel that the requirement of a ten days' notice to the Commissioner of Public Welfare prior to the hearing is a strong feature. Since the county welfare department must submit the social history within this ten days' period, the staff of the Commissioner of Public Welfare has an opportunity to review the diagnosis and desirability of commitment. Should there be questions, a request may be made to the county welfare department for a delay in the hearings until further consideration may be given.

We believe that in the hearing process the mentally retarded individual has considerable protection. The examining board consists of the probate judge or court commissioner, two doctors--in large cities one would be a psychiatrist-- and generally two lawyers, the county attorney representing the petitioner, and another lawyer, acting as guardian ad litem and attorney for the mentally retarded individual. The requirement of a guardian ad litem to represent the mentally retarded individual has been established through a supreme court decision.

Minnesota Statutes 525.753, subdivision 2, states, "If the patient is found to be mentally deficient or epileptic, the court shall appoint the commissioner guardian of his person and commit him to the care and custody of such commissioner".

Minnesota Statutes 525.762, subdivision 2, states, "Upon commitment of a mentally deficient or epileptic patient, the director may place him in an

appropriate home, hospital, or institution or exercise general supervision over him anywhere in the state outside of any institutions through any child welfare board or other appropriate agency thereto authorized by the director".

Any retarded person presents an individual set of problems requiring individual solutions. Plans and goals are dependent upon the physical and emotional needs of the retarded person, the emotional needs of the various members of the family, and the availability of appropriate resources. The evaluation of the total family problems should clarify the treatment goal and indicate the methods and resources to be utilized. Since the nature of the impairment varies with the age of the person, the process of evaluation and provision of training and treatment plans is a dynamic one, changing with the advancing age and individual needs of each retarded person.

Special attention is being directed to adequacy of plans for the living situation, medical and dental care, education, use of finances, and protection of legal rights. We are making it mandatory that the county welfare department see to it that every retardate under their supervision have an annual medical and dental examination, that medical and dental recommendations are carried through, that all school age children be referred to the school district for educational plans, and that all retardates accused of delinquency or crime have legal representation. Protection from various forms of exploitation is a responsibility in supervision. Where legal advice is required by the county welfare department, the county attorney has such responsibility.

The purpose of guardianship is to supply continuous responsible governance for the individual who needs it "by reason of mental deficiency as that term is defined by law; where it can be clearly shown that such continuous responsible governance cannot otherwise be provided".

The significance of an individual's status as a ward is seen from the fact that the guardianship is of his person and he, therefore, is placed in a relation to the guardian approximating that of a child to parent. Like the parent, the guardian becomes responsible for the care, custody, and control of the individual and is clothed with power to make important decisions and arrangements respecting his well-being, such as those concerning medical care, employment, and marriage.

Thus, in the dimension of civil liberties, not to mention ordinary personal freedom of choice, commitment to guardianship must be regarded as a very serious matter to which personal thought should be given.

Commitment as mentally deficient places a ward in a minority status where there are certain disadvantages as well as advantages. Both the limitations and the responsibilities of minority status are intended to serve protective purposes. The limitations restrain the ward from exercising directly many rights and benefits to which he is entitled under the laws of the State and its democratic tradition, such as:

1. To choose or change his residence, custody, care, education, and employment;
2. To enter into marriage, divorce proceeding, or other contracts;
3. To sue or defend himself or to appoint an agent or attorney to represent him;

4. To receive and manage property or money belonging to him;
5. To buy, sell, mortgage, lease, or otherwise engage in business transactions;
6. To vote.

This restraint is not intended to deprive the ward of his personal rights, but to prevent him from damaging himself and his property by his own improvident acts or fraud of others.

The President's Task Force on Law states, "Liberty is freedom of choice within the general system of laws and social values. The individual's liberty is impaired when he is not permitted the same range of choices as his peers. Many people, in our society, the retarded included, suffer from unauthorized or unsanctioned curtailment of their liberties. It must be our constant concern to correct and offset these, especially since the people directly concerned are often unable to struggle effectively on their own behalf.

Clearly, the intervention of public authorities is not required where social or personal interests can be served by other means."

The following section contains some of the laws relating to guardianship of the mentally deficient.

Guardianship of the mentally retarded is of person only; however Minnesota Statutes provide that the Commissioner of Public Welfare or welfare boards may hold funds in trust for mentally deficient wards.

A mentally deficient individual may be released from the guardianship of the Commissioner of Public Welfare on two bases - restoration to capacity or discharge of guardianship. Where a re-evaluation indicates that an individual is not mentally deficient, the Commissioner of Public Welfare shall petition to probate court for restoration to capacity. This restores the mentally retarded individual to his full civil rights. On the other hand, should the person still have a diagnosis of mental retardation but is not in need of supervision, then the Commissioner of Public Welfare may petition for a discharge of guardianship.

In view of changing concepts of mental retardation and the development of more specialized services for the retarded, I believe that some changes in the administration of our guardianship law may be indicated. At the time that a static concept of mental retardation existed in which many of the retarded were thought to be "hopeless", and when the only service available was the state school and hospital, the tendency developed for some families and counties to abrogate their responsibilities to the retarded. Today, with our belief that basic responsibility for a family member rests with the family, and also because we realize that for many of the retarded the prognosis of a satisfactory adjustment within the community is very likely, we are emphasizing guardianship mainly for those over 18 years of age to whom our child welfare statutes would not apply, and for those who in adulthood would not be able to manage their own affairs.

I believe that our program for the mentally deficient has been a strong one in Minnesota due to its early inception, with responsibility for planning

placed in a specific governmental agency. This guardianship law has led through the years to a responsibility for providing services to the retarded wherever they might be. Perhaps as a consequence there has been a long history of integration of services between state, local, and private agency. Services of health, education, welfare, employment and security, wage and hour, industrial commission, Veteran's Administration, etc., have been developed and utilized.

Ed. Note - Mrs. Ames' paper included quotations of some length from the Minnesota Statutes related to the matters discussed.

STATE PARTICIPATION IN LIFETIME PLANNING FOR THE RETARDED

Gerald F. Walsh, Executive Director
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I have been invited to share with you ideas on the subject of "State Participation in Lifetime Planning for the Retarded". I am sure the reason I have been asked is that we do, in Minnesota, have a law which does result in state involvement in lifetime planning and supervision of about 11,500 mentally retarded children and adults.

It is not my intention to tell you that ours is the only way of doing this, or the only possible plan, or that ours is the best way. Recent studies by our Minnesota Association for Retarded Children show that many improvements are possible and probably needed.

The Minnesota guardianship law was adopted in 1917. It was part of a children's code recommended for passage by the Governor at that time. Dr. Arthur Rogers, who was then superintendent of our Paribault State School and Hospital, Minnesota's first institution for the retarded, had been insisting for a number of years on the need for a guardianship law and also on the need for supervision in the community for those who might return to it after training had been completed. Prior to the passage of our guardianship law, the retarded were committed directly to the custody of the institution superintendent.

The President's Panel on Mental Retardation had a special Task Force on Law as it affects the mentally retarded. This Task Force report had the following to say: "Retarded Children, like normal children, usually enjoy the natural guardianship exercised by parents, but where legal guardianship of any kind is required it should be carefully adapted to the specific requirements of the case".

Of course, when we talk about guardianship, we are talking about supervision, because this is the major function of a guardian.

There needs to be a plan in each state for supervision through a state agency for those who need this kind of service on a lifetime basis.

The important fact in Minnesota is that we do have a method which gives reasonable assurance that the retarded can have lifetime supervision if desired and necessary. For those whose retardation is such that they are placed in an institution, for those for whom it is thought such care may be necessary, and for those who demonstrate by their functioning that they will need long-time supervision, there must be an agency to provide long-time planning and supervision.

I would like to quote at this time from our Minnesota law -- this is probably the main portion of it: "Upon commitment of a mentally deficient or epileptic patient, the director may place him in an appropriate home, hospital, or institution, or exercise general supervision over him anywhere in the state, outside of any institution, through any child welfare board or other appropriate agency thereto authorized by the director."

There is also a provision in the law for release from guardianship if the person is found to be capable of conducting his own affairs and the law says that when it appears to the director that a person committed to his guardianship is no longer in need of such guardianship, he may petition the court of commitment or the court to which the venue has been transferred, for his discharge as guardian. This is the provision for the Commissioner of Welfare to petition for release of guardianship, but the ward himself, or someone representing him, may petition for restoration to capacity. The law says that any reputable person or director may petition the court of commitment or the court to which the venue has been transferred, for restoration to capacity of a patient. Then, upon proof that a patient is not mentally deficient, the court shall order him restored to capacity at the expiration of 30 days from the date of such order.

As we know, in most cases the retarded will outlive their parents. Someone else must be given supervisory responsibility and planning responsibility for them.

The basis of our Minnesota plan is the law that I mentioned passed in 1917, which makes it possible for Probate Court action to place a retarded person under the personal guardianship of the State Commissioner of Public Welfare. Parents and others can petition to the Probate Court of the county of residence for this state guardianship. The retarded person is examined by a panel of two doctors and, if declared incompetent, is placed under the guardianship of the Commissioner of Welfare. Responsibility for supervision of the retarded person is assigned by the Commissioner of Welfare to the county welfare board of residence. We have in Minnesota 87 county welfare boards who act under the direction of and cooperate with the Commissioner of Welfare. The supervision given by these county welfare boards can vary greatly, depending on the needs of the retarded person. In Minnesota, cases are given priority and either given intensive case-work or only an occasional necessary case review.

In many cases, the retarded person continues to live at home with his parents. Actually, as I said earlier, we have over 10,000 retarded in Minnesota who are under guardianship of the Commissioner; of these, 6,200 are in state institutions. Some of the 10,000+ are people who have been released from institutions and are now receiving supervision from county welfare offices.

In situations where it is not possible for the retarded person to live at home, the county welfare office makes alternate arrangements. This may be a foster home, a group home, or private institution, and, of course, it may also be a state institution. In our state, the counties are becoming increasingly willing to pay all or part of the cost of community care for the mentally retarded. For instance, if a child is placed in a foster or boarding home and the parents cannot pay the cost, the county will pay all or part of it. Likewise, in some counties the county will pay the total cost of day care services for wards. In Hennepin County, they pay \$102 a month for such care in a day activity center. In other instances, counties are supporting day activity centers for the mentally retarded.

One point that I want to make in regard to the above is that a social worker is assigned and responsible for each case of a retarded person who is placed under guardianship.

I think there are a number of advantages to our program and the way it

functions. First, there is a permanent guardianship which can be planned and arranged for while parents are still alive. They have the assurance that, if they both die at once or when they die, the state and the county will continue to give supervision. While the parents are still alive, the responsibility is shared between the parents, the county, and the state. Although the Commissioner is given absolute personal guardianship, the parents are involved and their former rights as parents are respected as long as they do not adversely affect the care of the retarded person. For instance, parents are asked permission if operations are to be performed. Secondly, the county and state welfare offices are involved early and learn the needs of the retarded person. The county welfare office is involved prior to the petition to the probate court for guardianship. They work with the parents, they prepare material for presentation to the probate court. Once, then, the person is placed under guardianship, they do, as I said before, give supervision or whatever service is possible or necessary. Third, I think it is important to realize that in the event of an emergency, fast and wise action is possible because the records are up-to-date; a county welfare office is familiar with the retarded person and his needs. Fourth, it is an advantage that there is a single agency which is responsible for review and adjustment of plans.

To mention a few things that probably could be changed in our Minnesota plan -- One, the Commissioner of Welfare serves as guardian but he is also the caretaker, so to speak, in that he operates the institutions in Minnesota for the retarded. If, as guardian, he has complaints about the care of his wards, he must complain to himself. I feel it would be advisable to have a separation of these two functions. Two, the guardianship law provides that the court "may", in addition to two doctors of medicine, appoint a person skilled in determining mental deficiency to assist the court in arriving at its decision. We feel that this should be a mandatory function and that the entire evaluation system for commitment procedures should be extended and improved. There are other changes which we would feel useful, also.

In Minnesota, we feel that we have a wedding of a number of circumstances that has resulted in a good system. 1) The guardianship law; 2) the 87 county welfare offices that can give supervision; 3) the personnel who are interested in seeing that supervision is given and people who have recognized this as a responsibility of the state.

The President's Panel Report of the Task Force on Prevention, Clinical Services, and Residential Care states that movement of a patient from one level to another, both up and down, with time as circumstances change, is essential. If possible, one professional person should remain responsible for the same patient in or out of a residential facility. Planning for patients after the death of parents requires such a responsibility in part be given to those outside the home. The free flow of patients described requires an organizational structure in which residential and non-residential services are an integrated whole.