In Support of S133 – a bill by Senator Hooker to add § 3082 to Title 14 Vermont Statutes Annotated to provide for the reconsideration by the Probate Court of its prior decisions and orders in adult guardianships to correct or remedy instances of manifest injustice

Presentation by David Searles of Rutland City

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To: Senator Sears and the Vermont Senate Judiciary Committee

A probate court's authority to revisit its decisions is governed by the specific time limitations found in court rule 60(b). This bill allows that in an adult guardianship the probate court may reconsider a prior decision beyond the rule 60(b) time limitations where the decision results in a manifest injustice. For example, under rule 60(b) in the case of a mistake there is one year to submit a motion for the court to reconsider.

In a civil matter and even in some probate matters such as contested wills there are parties with opposing claims, in these proceedings the rule 60(b) time limits serve the legitimate purpose of bringing the contest to a close between the parties. However, there are other types of proceedings where the prevention or correction of injustice becomes a more important consideration. For instance, concerning the rules for reopening a family matter the Vermont Supreme Court has noted that issues concerning parental rights and responsibilities do not always lend themselves readily to rigid legal rules. (Godin v. Godin, 168 Vt. 514, 1998) There is also a type of case where the legislature has determined the normal rule 60 time provisions were too long, that to better protect the interests of children involved in adoption proceedings 15A V.S.A. § 3-706 was enacted to reduce the normal 1 year time limit to 6 months. However, where a person is incarcerated, paroled or even under a sentence of probation, there is no time limit under habeas corpus for the person to be able to petition for a reconsideration of the legality of the proceedings leading up to that condition. Also, when applicable, the legislature

sets no upper time limit within which a person convicted of a criminal offense may apply for expungement pertaining to that offense.

Accordingly, if there is ever an oversight by the probate court in an adult guardianship proceeding where, for example, a person was found to be mentally incompetent who should not have been, or where an involuntary guardianship was established where the court did not consider a voluntary guardianship, the probate court ought to have the flexibility to revisit even a closed guardianship case in order to remedy a manifest injustice because of the recognized stigma attached to findings of mental incompetency or that an involuntary guardianship was established in the first place.

These last parts, about the probate court possibly improperly finding a person incompetent or creating an involuntary guardianship where it did not consider a voluntary guardianship, were stated as hypotheticals. This was done so as to avoid a discussion in this setting of any case in particular where these things may have happened. But I suggest to you that because it was not that many years ago when Vermont by statute barred persons from obtaining voluntary guardianships because they were labeled as having a particular disability type, and for example because Vermont by statute still provides public guardianship services to people who have had involuntary guardianships established but not voluntary guardianships[1], it does not seem to be that remote of a likelihood that these errors and oversights have in fact occurred.

Thank you for your consideration,

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[1] To cure this the legislature ought to remove the words "subchapter 12 of" from 14 V.S.A. § 3092(a) but that is a discussion for another day.