January 11, 2018

Wisconsin Counties Association
22 East Mifflin Street, Suite 900
Madison, WI 53703

To Whom It May Concern:

Enclosed is the following Walworth County resolution:

Resolution No. 48-01/18 – Opposing 2017 Assembly Bill 629
Incorporating the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act into Wisconsin and Authorizing Walworth County Corporation Counsel to Testify Against 2017 Assembly Bill 629

The Walworth County Board of Supervisors requested that these resolutions be forwarded to your office at their January 09, 2018 County Board meeting.

Sincerely,

[Signature]
Kimberly S. Bushey
Walworth County Clerk

KSX/ps

Enclosure
Resolution No. 48 - 01/18
Opposing 2017 Assembly Bill 629 Incorporating the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act into Wisconsin and Authorizing Walworth County Corporation Counsel to Testify Against 2017 Assembly Bill 629

Moved/Sponsored by: Executive Committee

WHEREAS, in 2007, the National Conference of Commissioners of Uniform State Laws approved and recommended the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA") for enactment in all states; and,

WHEREAS, UAGPPJA seeks to provide a uniform system to address and resolve problems that may arise in interstate guardianship matters by defining jurisdiction, creating procedures for transferring uncontroversial guardianships from or to another state, and establishing a system for courts in different states to communicate regarding interstate guardianship matters; and,

WHEREAS, although 45 states have enacted some version of UAGPPJA, Wisconsin has not enacted any version of the UAGPPJA; and,

WHEREAS, the Wisconsin Legislature is considering two proposed bills, 2017 AB 629 and 2017 SB 518, which would incorporate UAGPPJA, with some modifications, into Wisconsin law and 2017 AB 629 is scheduled for a Public Hearing in front of the Committee on Mental Health for 11:00 a.m., on Tuesday, December 12, 2017; and,

WHEREAS, 2017 AB 629 was reviewed and drafted in part by a committee of the Elder Law Section of the State Bar of Wisconsin, Walworth County Assistant Corporation Counsel Peter M. Navis participated in the Elder Law Section committee, and Walworth County Assistant Corporation Counsel Navis reports that there was insufficient time for the Elder Law Section committee to fully review and revise UAGPPJA to fit within the existing guardianship and protective placement framework in Wisconsin; and,

WHEREAS, since July 2015, Walworth County, through its Corporation Counsel, has been involved in at least seven guardianship cases that implicated interstate guardianship rules with Illinois, Iowa, Ohio, New York, Florida, Arizona, and California, several of which featured contesting parties; and,

WHEREAS, 2017 AB 629, as introduced, would repeal some provisions of Chapter 54, Wisconsin Statutes, amend some provisions of Chapter 54, Wisconsin Statutes, and create Chapter 53, Wisconsin Statutes, but does not address any aspects of Chapter 55, Wisconsin Statutes, which is often implicated in interstate guardianship cases; and,

WHEREAS, 2017 AB 629, as introduced, would (1) create exclusive rules for determining personal jurisdiction for guardianship cases in Wisconsin, (2) create procedures to transfer an existing out-of-state guardianship into Wisconsin, and (3) create procedures to transfer an existing Wisconsin guardianship to another state; and,
WHEREAS, a careful review and thoughtful understanding of existing guardianship law in Wisconsin reveals that (1) the rules for personal jurisdiction in guardianship cases, via Wis. Stat. § 805.05(1) and In the Matter of the Guardianship of Jane E. P., 283 Wis. 2d 258 (2005), are well-established and do not require revision; (2) Wis. Stat. §§ 54.34(3), 54.38(1m), 54.44(1)(c), 54.44(3)(b), 54.44(4)(c), 54.46(1m), and 54.46(1r), already provide the procedures for transferring an existing out-of-state guardianship into Wisconsin, and (3) current Wisconsin law does not provide for transferring an existing Wisconsin guardianship to another state; and,

WHEREAS, 2017 AB 629, as introduced, creates new rules and procedures for personal jurisdiction and for transferring an existing out-of-state guardianship into Wisconsin that are not necessary and, insofar as transferring guardianships into Wisconsin, fails to adequately protect the interests of the public in their respective counties by not providing clear procedures on (1) who can object to the transfer; (2) if a hearing is required when an objection is made to the transfer; (3) the time period during which an objection to the transfer may be made; (4) ensuring that a petition for protective placement is filed when the ward will require protective placement; and (5) does not automatically require the appointment of a guardian ad litem to advise the court whether the proposed transfer is in the best interest of the ward, and, therefore, those provisions are deficient and not necessary in guardianship proceedings; and,

WHEREAS, the provisions of 2017 AB 629, as introduced, creating procedures to transfer an existing Wisconsin guardianship to another state do not provide clear procedures on (1) who can object to the transfer; (2) if a hearing is required when an objection is made to the transfer; (3) the time period during which an objection to the transfer may be made; (4) protections for a ward under protective placement who is the subject of a proposed transfer; and (5) does not automatically require the appointment of a guardian ad litem to advise the court whether the proposed transfer is in the best interest of the ward, and therefore, those provisions are deficient in guardianship proceedings; and,

WHEREAS, 2017 AB 629, as introduced, contains provisions that are deficient in protecting the due process rights of the ward, are unnecessary in light of appropriate, existing law, and, by the virtue of the same, will cause Walworth County to face unnecessary and unavoidable difficulties in handling interstate guardianship cases.

NOW, THEREFORE, BE IT RESOLVED that the Walworth County Board of Supervisors hereby opposes 2017 AB 629, as introduced, as it creates rules that are unnecessary in light of existing guardianship law, that are deficient in protecting the due process rights of the subject individuals, and renders interstate guardianship cases more complicated than the current system.

BE IT FURTHER RESOLVED that the Walworth County Board of Supervisors authorizes Walworth County Corporation Counsel to appear at the Public Hearing on 2017 AB 629 at 11:00 a.m. on Tuesday, December 12, 2017, and to provide testimony in opposition to the bill on behalf of Walworth County.

BE IT FURTHER RESOLVED that the Walworth County Board of Supervisors directs the County Clerk to forward a copy of this resolution to State Legislators representing Walworth
County, State Assembly Persons on the Assembly Committee on Mental Health, and the Wisconsin Counties Association.

Nancy Russell
County Board Chair

Kimberly S. Bushey
County Clerk

County Board Meeting Date: January 9, 2018

Action Required: Majority Vote X Two-thirds Vote ___ Other ___

Policy and Fiscal Note is attached.
Reviewed and approved pursuant to Section 2-91 of the Walworth County Code of Ordinances:

David A. Bretl
County Administrator/Corporation Counsel

Nicole Andersen
Deputy County Administrator - Finance

If unsigned, exceptions shall be so noted by the County Administrator.

Resolution/Ordinance was: 
Passed Roll Call/U.C. Voice
Rejected/Referred/Laid Over

Ycs: Nocs: Absent:
Date January 9, 2018
Policy and Fiscal Note
Resolution No. 48 - 01/18

I. Title: Opposing 2017 Assembly Bill 629 Incorporating the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act into Wisconsin and Authorizing Walworth County Corporation Counsel to Testify Against 2017 Assembly Bill 629

II. Purpose and Policy Impact Statement: The purpose of this advisory resolution is to oppose 2017 Assembly Bill 629 incorporating the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act into Wisconsin as well as authorize Walworth County Corporation Counsel to testify against 2017 Assembly Bill 629 on Tuesday, December 12, 2017.

III. Budget and Fiscal Impact: Passage of this resolution will have no fiscal impact on the county budget.

IV. Referred to the following standing committees for consideration and date of referral:

Committee: Executive
Vote: 5-0
Meeting Date: December 11, 2017

Committee: Health and Human Services Board
Vote: 8-0
Meeting Date: December 13, 2017

County Board Meeting Date: January 9, 2018

Policy and fiscal note has been reviewed and approved as an accurate statement of the probable policy and fiscal impacts associated with passage of the attached resolution.

David A. Bretl
County Administrator/Corporation Counsel

Nicole Andersen
Deputy County Administrator – Finance

If unsigned, exceptions shall be so noted by the County Administrator.