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Scan of the Guardianship Abuse and Fraud Data Landscape

BY

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Table of Contents

A. Introduction

B. Methods

C. Interview Findings

Collecting Information and Data on Adult Guardianship

1. Collecting and Aggregating Current Case Numbers
 - a. Nuances Among Active, Open, and Closed Cases
 - b. Varying Ability To Pull Number of Cases for Court Review
 - c. States That Cannot Aggregate Number of Cases for Court Review
2. Collecting and Aggregating Information Beyond Case Counts
 - a. Range of Possible Data Elements
 - b. National Center for State Courts Recommended Data Elements
 - c. Data Elements Collected
3. State Systems for Collecting and Aggregating Data Elements
 - a. Trapped in the File
 - b. Importance of Case Management Systems
 - c. Resource Challenges Faced by Courts

Collecting Information and Data on Abuse and Fraud by Guardians

1. How State Courts Learn About Possible Abuse and Fraud by Guardians
 - a. Guardian Reports and Accountings
 - b. Complaints
 - c. Adult Protective Services
 - d. Court Visitor Programs
2. Information That Courts Collect and Aggregate on Abuse and Fraud by Guardians
 - a. Data on Incidence of Abuse Generally Unavailable
 - b. Few Reported Instances of Abuse by Professional Guardians

State Champions and Challenges in Data Systems

1. State Champions for Data Systems on Abuse and Fraud by Guardians
2. State Challenges in Addressing Abuse and Fraud by Guardians
 - a. Lack of Resources; Burdens on the Court
 - b. Burdens on Guardians and Attorneys
 - c. Inaccessible Information
 - d. Classifying, Coding, and Privacy of Information

- e. Multiple Local Systems and Practices
- f. Reluctance To Change

D. Survey Findings

1. Aggregate Number of Cases Subject to Court Review
2. Most Important Data Elements
3. Champions for Data Collection
4. Barriers to Data Collection

E. Conclusion

1. Highlights From the Interviews
2. Highlights From the Survey

A. Introduction

On June 30, 2021, the United States Attorney General and the Secretary of the Department of Health and Human Services received a request for information from Senator Elizabeth Warren and Senator Robert Casey about the roles of the Departments of Justice and Health and Human Services concerning the collection of data on adult guardianship¹ — particularly data on abuse and fraud by guardians. Their request highlighted the role of the federal government in supporting and coordinating information-sharing across states that administer guardianship programs. Their request specifically highlighted the Department of Justice’s efforts to increase data collection on elder abuse in compliance with the Elder Abuse Prevention and Prosecution Act,² but stated that these efforts focused more generally on elder abuse rather than on the scope of guardianship.

In response, the National Institute of Justice contracted with the authors to conduct a four-part environmental scan of abuse and fraud by guardians. This paper — Part 2: Scan of the Guardianship Abuse and Fraud Data Landscape — explains what we learned about state collection of data on adult guardianship generally, because shedding light on a state’s overall guardianship data system is a prerequisite to addressing any abuse and fraud. The paper also focuses on state court administrative approaches to identifying, analyzing, and acting on abuse and fraud by guardians. Finally, the paper highlights state champions for data collection as well as challenges in acquiring the information courts need.

B. Methods

In Part 2 of our research, we conducted a scan of the guardianship abuse and fraud data landscape, including identifying data elements necessary for tracking abuse and fraud by guardians. We sought to describe state judicial case processing and data collection methods and to identify known barriers to improving data collection. To accomplish these objectives, we used a mixed-methods approach in which we sought qualitative information through key informant interviews and quantitative information through a survey. Both were directed at the offices of state court administrators.

State courts are organized under the direction of a state court administrator, who has a staff that “oversees legislative budgets, personnel administration, and court research and planning.”³ Although state court administrative offices have varying relationships with local courts, these offices are the central point of contact at the state level for the judicial information and data we needed to describe the data landscape for abuse and fraud by guardians.⁴

The National Center for State Courts (NCSC) is an independent, nonprofit organization whose mission is to promote the rule of law and improve the administration of justice in state courts.⁵ NCSC manages the Conference of State Court Administrators,⁶ whose membership consists of the state court administrator or equivalent official in each U.S. state and territory. NCSC maintains a directory of these officials and, over several years, has also sought to maintain a list

of staff in each office who specifically oversee guardianship issues and guardianship data. These individuals may be responsible for managing state guardianship database systems, developing such systems, or at least framing the need for such systems.

We targeted state court administrative offices to learn what data and information on guardianship they collect at the state level and what they know about the collection of guardianship data at the local level.

In-Depth Interviews with State Court Administrative Offices

As a first step in exploring the ability of state court administrative offices to collect and produce information, we conducted 20 interviews from January to April 2022 with key experts across the country who specialize in guardianship data and guardianship monitoring. Of those, we conducted 18 interviews with state court administrative office staff who work directly on monitoring guardianship. We interviewed individuals who work in 16 different states, including three separate respondents from one state. Four of the interviews included multiple participants on the call, each serving different roles related to guardianship data. For example, one call included a judge and a court administrative expert in the guardianship database. We also spoke with representatives from two national organizations with expertise in guardianship data and abuse by guardians (see Table 1).

Table 1. Summary of Those Interviewed

Total number of interviews completed	20
Total number of people interviewed	25
Total number of states represented in the interviews	16
Total number of organizations interviewed	2

We sent email invitations to recruit experts knowledgeable about guardianship data in their respective states. We also sought suggestions from the NCSC staff person who has produced the leading publication for courts on guardianship data.⁷

All of the interviews were virtual and were recorded with the permission of the participants. Two members of our project team jointly conducted all interviews; the members varied according to available schedules. We used an interview guide that set out key questions, but we maintained a flexible approach to allow for additional clarifying questions. Interviews lasted approximately 45 minutes. We transcribed the interview recordings and coded them according to patterns and themes that matched the objectives of this phase of the project. We used a deductive coding approach drawing from the questions asked.⁸ We individually coded the interviews and then discussed points of disagreement until the team reached consensus on the themes we saw and the textual examples we used. We used the themes we found during the interviews to help frame our survey questions.

Survey of State Court Administrative Offices

We developed a survey based on the themes of the interviews, conducted a pilot test, and subsequently emailed the survey to points of contact from an NCSC list of state court administrative offices. An NCSC list of additional state guardianship experts was also included in the survey recruitment pool. The two lists totaled more than 200 individuals knowledgeable about guardianship issues, monitoring, and data. The survey remained open from July to September 2022. Fifty-one of those who received the survey invitation opened or initiated the survey. Of that number, 17 answered some or most of the questions, and 17 completed the entire survey. Among those who answered some or all of the questions, responses were representative of 20 different states. Survey questions concerned data collection capacity at both state and local court levels.

Our survey had limitations due to the characteristics of the sampling frame and low response rate. Related to our sampling frame, we were unable to directly access state court administrators through the Conference of State Court Administrators. However, we were able to send the survey to the NCSC list of guardianship stakeholders, which included staff of court administrative offices who were knowledgeable about guardianship issues, as well as other guardianship experts. Some respondents may have had less knowledge of court data systems than the administrative office staff. In some cases, the list also included more than one staff person in a state and their responses may have differed.

We sent our survey twice over a period of three weeks to respondents on this list, yet our return rate was relatively low. It could be that the survey proved too time consuming, lengthy, or detailed — although the survey was only nine questions and was intended to be completed in 15 minutes — or that staff and professionals simply could not reliably provide the requested information. Moreover, the low response rate itself may be indicative of the challenges inherent in collecting guardianship data, and it may reflect how court systems prioritize collecting such data. Regardless, the responses helped inform the landscape of the data elements court systems are able to produce and aspire to produce.

C. Interview Findings

Collecting Information and Data on Adult Guardianship

States cannot effectively tackle abuse and fraud by guardians without knowing the parameters of their system and how it functions. State and local data are foundational to taking action on abuse. Data are essential for courts to track and monitor individual cases, detect abuse, and intervene to sanction or remove the guardian. In addition, data help courts train guardians on key aspects of their fiduciary duties. Finally, data enable courts and policymakers to uncover patterns of abuse that require changes in law or court procedures. NCSC has identified three principles for the collection of guardianship data:

- (1) It is necessary and important to collect information on changes over the life of a case.
- (2) Courts need data to identify problems and responses to those problems.

- (3) To protect individuals subject to guardianship or conservatorship, courts must communicate with other courts and entities.⁹

1. Collecting and Aggregating Current Case Numbers

Based on the interviews, we found that one of the most basic data points related to monitoring guardianships at state and local levels is the total number of cases subject to court review. Each case represents one adult for whom the court has appointed a guardian and for which monitoring is required. The congressional inquiry prompting our environmental scan highlighted the importance of knowing this critical number. Interviewees said that determining the statewide total depends on several factors, including the definition of an active case, the state's ability to aggregate the number of active cases, whether the state uses a case management system for guardianship cases, the design of the case management system, and whether the state has a unified court system in which local courts are integrated into an overall statewide judicial system.

a. Nuances Among Active, Open, and Closed Cases

To reach the total number of cases subject to court review, courts need to determine the current status for each case. NCSC has identified four categories of guardianship "current case status":

- (1) Open/Pending: There is a petition pending before the court.
- (2) Inactive: Due to events beyond the court's control, the court can take no further action.
- (3) Disposed/Set for Review: A case for which a guardian or conservator has been appointed, and the case is awaiting regular court review.
- (4) Disposed/Closed: A case in which the petition was denied and no guardian or conservator was appointed; the adult subject to guardianship or conservatorship has died; or the adult has been restored to capacity.¹⁰

However, according to our interviews, the terms "active," "open," and "closed" appear to have different meanings from one state to the next. In practice, the definitions often were blurred, resulting in confusion about case counts and available data. Specifically, few states can pinpoint the number of cases in which a guardian has been appointed and that are currently subject to court oversight. For example, one state expert pointed out that in their state, cases are termed "closed" when a guardian or conservator is appointed, regardless of the fact that the court's oversight responsibility is just beginning. The expert explained, "We all know the challenge regarding the word 'active' cases ... the challenge being that because of time to disposition, which judges are rated against, those cases are closed once the appointment is made." Such case closure upon appointment appears directly counter to the need for court review of guardian actions.

When discussing case numbers, interviewees hesitated to use the word "open" due to "different connotations" among states. Unlike the state above, some states consider a guardianship case open until there is no longer an appointed guardian. As we interviewed more representatives from the states, differences became more apparent. Another interviewee

talked about how “the term ‘active’ referred to cases with a petition pending and ‘open’ cases referred to those for which a guardian had been appointed and therefore required monitoring on an ongoing basis.” Yet another state has a different way of defining “open,” which includes a wider span in the guardianship appointment and monitoring process. The interviewee discussed this in detail:

What we call pending are cases that are open. And that means anything from where the petition is being filed to the guardian being appointed, and the case is just continually open because, you know, we don’t close the cases until the person either gets their rights restored or they pass away. So pending cases for us includes any case that’s open.

One expert from a less densely populated state was concerned about whether the numbers pulled reflect the true volume of cases the courts need to monitor:

We can give numbers of dispositions and guardianship cases, but that doesn’t accurately reflect the work the courts are doing, right? Because unless they’ve set a hearing for a future date, [the case] won’t show up in the numbers. So you’ll see what has been active that year, but not necessarily the total number of open guardianships ...”

Although many states could count the number of “cases,” providing this number does not necessarily translate into accuracy given issues related to case status. To fully understand the volume and associated status of the cases, consistent definitions are needed within and across states. The NCSC case status definitions set out above offer an opportunity for uniformity. The NCSC term “set for review”¹¹ would show the number of cases actually subject to court monitoring. We found that only one of the 16 states in which we conducted interviews had adopted the term, but several states are in the process of incorporating the NCSC data definitions.

b. Varying Ability To Pull Number of Cases for Court Review

There were many differences among and within states related to the ability to produce reports on the statewide number and status of guardianship cases subject to court review.

Statewide case number readily available. One interviewee described having a dashboard that allows them to promptly view the number and current status of active cases. The interviewee described the benefits of this type of continually updated tracking. When asked about how they pull information, they said:

We have a set of data points that we are constantly collecting and updating almost daily. We call it a dashboard. And so, most of the information you’re talking about right now we have, we can really click on a button, and it’s there. [The information on case numbers was] available to our judges and courts at any time they go to those dashboards and they can pull up how many cases and get information that they need at a county level or a judicial district level or whatever they need.

We encountered very few states with such a statewide data tool to view the number and status of active cases. One expert described being “fortunate” in the ability to pull the number of active cases: “While we do not have a unified circuit court system, we have a case management system that is in place, and 22 out of 24 circuit courts are in there.”

Statewide case number available by request. An expert from another state described having the ability to generate the statewide number of active guardianship cases set for review, but the process required a few more steps. The queries for information were not in the format of a data tool with up-to-date information. The request often had to be sent out to data statisticians, and the information would be returned days later. An interviewee from a rural state described their process:

Yes, I pulled it [case numbers] in January. Like I just said, the newspaper this weekend asked for it. I have that available. And what I like to do is pull at the beginning of January for our legislative session. I do it once a year and then I don’t update it unless we really need it... . We get public information requests, and we turn that over on a regular basis, and it’s super simple. And it’s formatted in a nice easy chart, which is also, I think, important [so] they always look the same.

Experts from many other states echoed the need to submit a request for numbers. When asked about pulling the statewide number of active guardianship cases, one interviewee said, “We can track that, yes. I would need to submit a request for a query, and then our data and research people would pull the information, and they’re really pretty quick. The program’s been developed, so it doesn’t take long, but it does take a request.”

A large populous state has a similar process, which the interviewee said was not ideal, since it was not accessible without the extra step:

I can ask them [court IT staff] how many active open active cases there are. It’ll take them a day and a half, two days just based on what resources they have available to get back with me to, to give me those. Those numbers are based on my requests. It’s not at my fingertips, which I feel like it should be.

State court administrators who requested case numbers from clerks or IT departments often received them, but only periodically, unlike a data tool that updates numbers regularly. One state representative explained that the court receives a monthly list of active guardianship cases. In another state, the court interviewee needed to request information quarterly from the clerk’s office, which they saw as a “flaw” in how they keep track of case numbers.

Data reliability limitations. Even for states with available information, there were limitations in data reliability. An expert from a state with an established case management system said, “Yes, we have that number of active cases. Yes, we have it, but it’s not perfect. And the reason why is

because court staff may not properly close out a case, and so it's still sitting out there active." Thus, data quality depends on the accuracy of the data entry and maintenance.

Other issues included the inequities between and within urban and rural areas and the varying ability to pull case numbers easily and accurately. One interviewee said that some of the rural districts were "doing a really good job," yet others lacked "infrastructure and the ability and resources to do it." This variation in capacity to collect information among jurisdictions within a state points to the difficulty that states have in being able to accurately identify the number of cases that are, or need to be, monitored for possible abuse.

c. States That Cannot Aggregate Number of Cases for Court Review

On the spectrum of access, some states are simply unable to produce the statewide number of cases for court review due to a lack of centralization in data collection. An interviewee from a populous state described the lack of both statewide tracking and consistency among the counties:

Sadly, there's no way currently for the state to be able to collect data from each of the counties. There's no interchange of information there where the state could just say, Hey, you know what, we got 5,000 cases or something like that... Each county has its own separate way of handling that.

This frustration was not unique to the state quoted above. Counties are often information silos, and information cannot be retrieved statewide.

Even if an individual county could pull case numbers, the lack of a centralized system often posed concerns around data accuracy. One expert discussed their challenge in pulling case numbers:

Every county we go to, it's the same. So, they give us some numbers they report to us and then it's not the right number. And at the end, the programmer was sending in the wrong stuff. And then you get with the clerk and it's different. And so we're trying to sort through all that and I just don't know what the numbers are. It's really hard. Every county is the same, but different. It's weird. They have the same issues, but they're run differently.

2. Collecting and Aggregating Information Beyond Case Counts

The ability of courts to identify an overall number of active cases does not translate into the ease of aggregating more detailed information about cases under court review. To fulfill their monitoring responsibilities and address abuse by guardians, state and local courts need readily available information on two levels. First, courts need information for managing individual cases. Second, courts need aggregated information to assess the need for systemic changes in law, policy, and practice. Interviewees described the range of possible data elements, the

elements currently collected in their state, and the elements for which aggregated information is available.

a. Range of Possible Data Elements

The range of case data elements helpful for the court to collect includes two types of information: (1) information about the case itself, and (2) information needed to manage the case throughout its possibly extended active period.

Case information. Ideally, courts should be able to access basic information about the adult subject to guardianship, the guardian, and the type of case.

- Information about the adult could include demographic descriptors such as age, gender, and residential status.
- Information about the guardian could include the relationship to the adult, whether the guardian is a family member (or other lay person) or a professional, and whether the guardian is an individual or an entity such as a guardianship agency. It could also include whether the case is a public or private guardianship case.
- Information about the case could include whether it is limited in scope (“a limited guardianship”) or a full order in which all rights except those retained by law are transferred to the guardian. It could also include whether the case is a guardianship (involving decision-making on health care and personal issues) or a conservatorship (involving decision-making on financial matters), or both.

All of these case-level data elements are important not only for the case at hand, but for aggregating through a database system to identify patterns and trends. For example, if most guardians are family members as opposed to professionals, this may suggest the need for training and support developed specifically for their needs. If there are only a negligible number of cases that are limited in scope, the court might respond with training for judges and attorneys.

Case processing information. Interviewees indicated that the information needed for case management could include items such as:

- Contact information for the guardian
- Location or address of the adult
- Contact information for any attorneys involved
- Filing dates of petitions or motions
- Due dates for key case events, such as submission of guardian reports, inventories, and accountings
- Indication of whether the reports and accountings have been filed and when
- Asset value at the beginning of the case and over time
- Guardian or conservator fees
- Court interventions, such as removing the guardian or appointing a co-guardian
- Court interventions in response to complaints or concerns raised about the guardianship
- Case closure and reasons for the closure

b. National Center for State Courts Recommended Data Elements

In 2020, NCSC published a set of recommended, uniform data elements for monitoring guardianship and conservatorship cases.¹² This detailed outline of data elements — called a data set — could serve as a “gold standard” for courts in collecting and aggregating information. National data standards facilitate the sharing of data among and between courts, increase transparency of court procedures, provide for state and national consistency in data interpretation, allow for meaningful comparisons across local and state jurisdictions, and reduce the costs for counties or states of producing their own data sets.

The data set is divided into subsets of information to be gathered, with a substantial number of specific items listed under each subset. The subset headings include the following:

- (1) Case information
- (2) Participant information
- (3) Attorney and advocate information
- (4) Case status
- (5) Pleadings, motions, and filings
- (6) Hearings and events
- (7) Orders
- (8) Review and monitoring

A number of interviewees were familiar with the NCSC recommended data set and saw its implementation as their ultimate goal. As one interviewee stated, “[T]he number one recommendation out of [our] task force was data collection. As a result of that, my starting point ... was the National Center for State Courts data elements.”

c. Data Elements Collected

As shown through our interviews, data elements collected at the local and state levels vary widely in practice. Although many of the states collect very little statewide guardianship information, a few have systems that are advanced and are becoming even more so.¹³ We noted that states generally prioritize the tracking of assets and financial transactions over elements of well-being or demographics. We also found that local courts primarily collect case event information critical for monitoring.

A few examples of data that were not consistently available (even among states with advanced data systems that could aggregate the number of active cases) included information on court interventions in problematic cases, full versus limited guardianships, private versus professional guardians, reasons for a closure, and assets under management.

One interviewee with an advanced state case management system observed that they could extract quite a few data points about guardianship cases: “We can tell you how many are ordered, how many are filed, how many are waived for whatever reason, say if a person passes away.” However, there were still limitations. They added, “We can’t yet tell you, though, how many of those result in further court action, if there is a problem.”

Another state interviewee discussed being able, at the state level, to pull the number of guardianship petitions filed last year, how many were open, and how many were set for review. They said, “That takes no time at all.” However, they could not find out through a simple query the number of cases in which the guardian was a family member, a private professional, or a public guardian.

Contact information. In general, courts at the local level require the guardian to provide the guardian’s contact information, place of residence for the adult subject to guardianship, and often the adult’s Social Security number and date of birth. They also require the guardian to notify the court of the adult’s death and to terminate the guardianship. One interviewee emphasized the importance of having current contact information: “There’s nothing worse than not being able to get a hold of a guardian or conservator if you’re the court. I mean, that’s a scary thought.”

According to another interviewee, the individual’s death is the most important data point:

The most important thing is — is the ward alive? I can give you the exact number we’ve found in five years — we found 5,000 deceased wards. And I’m not talking about whether they deceased last week. They’ve been deceased for years and never reported to the court as an act of guardianship, but they’re dead. It’s outrageous.

Case processing information. Predominantly, courts at the local level collect or sought to collect case processing information; some interviewees referred to this as critical dates or “case events.” These information points include due dates and when reporting requirements were met (for example, inventory filings, annual reports, and financial accountings). They reflect information that the courts need to know to process guardianship orders and account for guardian decisions, with an emphasis on how money is disbursed. Many interviewees lamented that they are currently unable to identify key case processing data elements, such as “the asset value [at the] appointment time, associated bonds, and then changes in asset value.” This information is critical to knowing how the guardian manages the case and makes important decisions about the health, safety, and financial security of the person under guardianship.

Demographic information. Our interviews showed that most systems fail to collect demographic data about the person who brought the petition (the petitioner), the adult subject to guardianship, or the guardian. This is consistent with the findings from the survey, in which most respondents said their court could not aggregate demographic information.

Some interviewees suggested the demographic information that they would like to collect and be able to aggregate to better understand their guardianship system and identify areas for improvement. This information included:

- Age of the adult at the time of the order¹⁴
- Race and ethnicity of the adult
- Gender of the adult

- Relationship of the guardian to the adult
- Type of guardian (for example, public or private; family or professional)
- Living arrangement of the adult (for example, own home/private home, group home, nursing home, assisted living)

Other data elements. In addition, we asked interviewees to list other data that they would like to collect. A number of the interviewees had a “wish list” for additional elements they would like to be able to readily extract from files in a query and to aggregate. Examples included:

- Number of case closures by year
- Number of show cause hearings¹⁵ set
- Number of times the court denies a petition based on the use of less restrictive options¹⁶
- Number of restorations of rights¹⁷
- Number of guardianship complaints filed or received by the court¹⁸
- Number of referrals from the court to various entities, such as Adult Protective Services and law enforcement¹⁹
- Number of referrals by Adult Protective Services to the court
- Number of guardian removals for cause²⁰

3. State Systems for Collecting and Aggregating Data Elements

All of the interviewees emphasized the importance of court technology. They described case management systems that enable them to track individual cases by pulling up key case events, such as the due date of a report, date set for a court hearing, or closure of the case in a timely manner. A strong case management system would enable them to effectively monitor the cases they are tasked with reviewing.

Beyond that, data systems that capture and aggregate key elements — such as range of asset value at opening and periodically over the life of the case, number of limited orders, or reasons for case closure — would present a clearer picture of how the guardianship process is working. Many states currently have only rudimentary case management systems, and most are unable to aggregate key data elements.

a. Trapped in the File

The phrases “trapped in the file,” “trapped in the petition,” or “trapped in the report” were commonly used to describe data that exist but cannot not be aggregated. For example, the age of the adult may be shown in a petition, but the document is in PDF form and thus information cannot be extracted or queried. To collect and aggregate the data would require a manual case-by-case search of each petition — an overwhelmingly laborious and expensive task. An interviewee speaking on behalf of a populous county summarized the challenge:

One of the things that we’ve heard from others is that information is out there, but it’s not easily retrievable. It’s not something you can go back into your system and say, oh,

let me pull that real quick. It's going to take hours and hours of manpower to go in and manually pull it.

Extracting data elements through a manual process makes the data virtually inaccessible and creates barriers to effectively tracking guardianship cases. One interviewee discussed being able to pull a person's name and birthdate, as well as other case information, from any individual file, but going beyond that and querying data elements to learn about overall patterns was not currently possible without a massive change in the case management and data collection systems. For instance, the state lacked accessible information on the disability of adults subject to guardianship, as well as the range and overall amounts of money being managed by conservators. Again, as noted by many of our interviewees, the extraction process was considered "manual" and therefore out of reach. Creating more nuanced data collection systems requires the appropriate technology and the staff to implement them, as well as funding to support the changes in procedure.

b. Importance of Case Management Systems

Interviewees reported that when the state got a central guardianship case management system, it improved accuracy and the ability to act. Even though the case management system still seemed new to one state, an interviewee said, "So with new cases filed after that start date [of the case management system], we can get pretty accurate information. The older cases are more problematic." Some states have paper files dating back many years on cases prior to the beginning of the system and have no way of integrating these into the count or actively monitoring them.

Some interviewees commented on the need for alerts or ticklers that would notify the court when a required document is due and remind the guardian of the due date. Such alerts could result in fewer late reports and, more importantly, provide a check on the person subject to guardianship. In addition, staff time could be saved by not having to chase down delinquent reports and show cause orders could be reduced, thus saving judges' time. One interviewee explained, "The order is what triggers ... notification for the 90 days for the inventory and the annual report." Another noted, "We figure it out based on their last order. If there were some ways for those critical dates to have a tickler of some kind, that would be great for our office — [for example] whether there were training requirements met."

Advanced case management systems and database tools can help overcome the "trapped in the file" problem and allow for both (1) effectively tracking and processing individual cases, and (2) aggregating information for a larger view of how the guardianship process is working.

Importantly, interviewees in more than one-third of our states discussed a shift in their ability to pull case counts and other data elements. New case management systems with a change in infrastructure have allowed jurisdictions to pull out these data more readily. States recognize the value added with features offered by data systems, including dashboards, real-time data, and easily changeable data fields. One interviewee explained that, before their state's current

system, “it would have been very hard” to know which cases were active. For another, pulling case numbers was impossible before their case management system:

Well, it was important at first just to know how many cases we’re talking about. I mean, we couldn’t even do that. You know, a few years ago. But I’ll tell you what we have on our dashboard right now, we have the number of cases that have been filed. And we can break that down to the day if we need to or month and all that and by county and everything else. So, all of the data points I’m talking about, we can break down by case type, by year, by county and we can do what we call a drill down, by the tap of a button.

This statement is from an interviewee in one of the very few states with a strong ability to access real-time guardianship data points, including case number, status, type, year, and location. Other states are in the process of improving or developing a case management system but do not have the same ability to query data. A representative from a less populous, rural state said, “The one [system] we have right now is just kind of a dinosaur. I mean, we’ve done what we can with it, but it’s just requiring a completely new build.” They were hopeful for change and were actively rebuilding their case management system.

c. Resource Challenges Faced by Courts

Establishing a working case management system takes a large investment in staff time and an infusion of special funding. Many people, including the court interviewees and IT specialists, were involved with building, tweaking, and maintaining their enhanced systems.

To help overcome inadequate monetary investments in technology, a few states received guardianship grants from the Administration for Community Living (ACL)²¹ to strengthen and refine their data collection and case management systems. These Elder Justice Innovation grants — awarded to seven states in 2021 and three additional states in 2022 — are made to the highest court of the state to “stimulate improvements in the states’ guardianship systems ... [including] improving courts’ ability to detect fraud and abuse of protected persons [and] improving the performance monitoring of court-appointed guardians.” One interviewee from a court that had received an ACL award noted that “[w]ith the [ACL] grant, we can build out our case management system to be more robust and capture that data.”

Although appropriate monetary investment was necessary, an interviewee from a self-described “poor” state discussed how “you just have to have buy in ... with the understanding that hard work is your foundation.” Their state had received an unusual, one-time funding allocation that could be used for court data and monitoring. The interviewee reflected on the experience: “You know, we don’t get very much [money], and we were able with this magical one-time money [to] configure our data, and we are able to do these changes, which seemed impossible, and it was a long road.”

Collecting Information and Data on Abuse and Fraud by Guardians

In the section above, we described how states collect and aggregate guardianship information in general, which bears on courts' ability to track and monitor cases and improve their oversight capacity. Now we will explore how courts receive information about abuse by guardians and what barriers they face.

1. How State Courts Learn About Possible Abuse and Fraud by Guardians

Court staff said that they learn of possible abuse and fraud by guardians through four main routes: (1) guardian reports and accountings, (2) complaints, (3) Adult Protective Services, and (4) court visitor programs.

a. Guardian Reports and Accountings

Interviewees said that the primary way courts learn of abuse by guardians is through review of guardian annual reports and accountings.²² For a comprehensive overview of guardian reports and accountings and how they fit into the larger picture of guardianship monitoring, see Hurme & Robinson, 2022.²³ Briefly, all states except California²⁴ require guardians to file a periodic report about the personal status of the adult. Typically, the report is required annually and includes information about the adult's current physical and mental condition, services provided, visits by the guardian, and any changes since the prior report. State and local courts generally have a report form that the guardian must use. In the past, guardians filed paper reports with the court; the court might then digitalize the report as a PDF document. Today, an increasing number of courts are allowing or requiring guardians to file electronically. Once the report is filed, the court should have a system to review it and determine if any action is needed. The adequacy and training of court staff to review guardian reports vary widely, as does the court response if no report is filed or if it is filed late.

Conservators (or guardians of the estate) in all states are required to file an inventory of assets shortly after appointment. They are also required to file a periodic (usually annual) accounting that shows the income and expenses for the reporting period and a current statement of assets. Typically, the accountings are filed as a paper or PDF document. Courts are increasingly allowing or requiring electronic filing. The few states that have advanced systems may be able to pull information from the files and make queries. The court should have staff trained to review and audit the inventory and accountings, but often such trained staff are lacking.²⁵

The interviewees commented on the following aspects of guardian reports and accountings.

Submission of reports and accountings. For two of the state interviewees, guardians submit reports and accountings electronically through statewide tracking systems. In one state, e-filing is required, and in the other it is voluntary, although about 85% of guardians submit electronically. These statewide electronic filing and review systems help streamline the filing process and make it more consistent; they also allow for a searchable database of information. The remainder of the states in which we conducted interviews have no such system — reports

and accountings are submitted in paper or are uploaded as a PDF, and the information is not searchable or accessible through queries.

Review of reports and accountings. Once a report is filed, court staff must review and analyze it to determine if follow-up court interventions are needed. Multiple factors affect the adequacy of staff review, including funding, staff qualifications and training, and the consistency of forms used throughout the state.

Interviewees discussed who reviews the reports and accountings and whether these individuals have the training and background to detect abuse. They reported a wide range of processes and personnel who review reports, including:

- A guardianship report review division within the state court administrative office, in which experienced state staff review every filing.
- Trained financial experts who audit the accountings and present information to district court judges.
- A “designated reviewer” in each county; this could be a judge, a clerk, a judicial secretary, or a law clerk. “It depends on the size of the county. Some counties have an entire office devoted to reviewing reports ... it can vary county by county, whatever really fits the business needs of that county.”
- Probate clerks, who “have very little training, although the probate judges association may offer some [training].”
- Regional guardianship monitors, “but they are not accountants by training. We do have two accountants that work for the supreme court who look at those and a third on contract, so we have three other eyes looking at the accounting pieces.”
- Different people who are responsible for “reviewing [the reports and accountings] in the counties, and they probably review differently.”
- Court staff — variously called clerks, trust clerks, or case managers — review reports.
- In one state, Adult Protective Services staff review guardian reports and court-appointed commissioners of accounts review accountings.

In early 2023, NCSC developed a review protocol for guardian reports and conservator accounts that aims to help these reviewers spot potential problems.²⁶

Using red flags in review. Many interviewees stressed the importance of “red flags” in reviewing reports and accountings to detect abuse. In the two states with electronic filing and tracking systems, there was a systemized process for identifying red flags. Certain flags automatically attach to the report or accounting — for example, if the assets are over a certain amount, gifts are made, there are large asset discrepancies from prior reports, spending is more than the funds coming in, or real estate is not listed (but is shown in other databases). One interviewee noted, “We have about 33 financial abuse flags.” These flags signal to reviewers that additional investigation is needed.

Sometimes, red flags are based on comparing the report or accounting with other documents. An interviewee in one state said that they compare the report with what the guardian submitted in previous years. “If it was basically a photocopy and there were no changes whatsoever, that would be a red flag, and we would send out a monitor or ask the guardian to come in.” An interviewee in a local program in another state explained that the program gets information from financial institutions, “and so we compare it to the information the conservator is required to provide and that’s how we find discrepancies.”

Another interviewee gave examples of well-being flags in case processing:

If the guardian ... indicates that [the individual] could be a danger to themselves. And then, if a guardian indicates that there’s been no contact for over a year or if the guardian has placed any additional restrictions on them over the last year. Those are the personal well-being flags that court staff look for when they come through the ... system.

b. Complaints

The National Probate Court Standards provide that courts “should establish a clear and easy-to-use process for communicating concerns about guardianships and conservatorships and the performance of guardians/conservators.”²⁷ We asked interviewees if their state has a guardianship complaint process and if such a process helps courts identify and act on abuse.

Formal guardianship complaint processes. One state has had a formalized complaint process used by local courts for several years. In that state, the judiciary’s website includes a link for filing a complaint, a description of the process, and a complaint form. Anyone can file a complaint. The receiving court must inform the guardian and parties of the complaint. The local court judge reviews the file and may, within a specified deadline, take appropriate action, require a hearing, or decline to take action. The interviewee from that state observed that local court practice in responding to complaints varies. The state court administrative office does not track the number of complaints, but according to an informal estimate, the court’s seven regional guardianship monitors each receive a couple of complaints a month. In some cases, the regional monitor simply talks with the parties and is able to resolve the issue.

In another state, the legislature recently passed a law requiring development of a guardianship complaint process, and the state court created a form and process. “Whether you’re a disgruntled family member or the next-door neighbor, someone from church, a service provider — anybody can file.” Also, local courts could receive a letter or a call, and the state court administrative office trained local clerks to accept these and docket them as complaints. The court has not tracked the number of complaints.

Interviewees from two states reported having a guardianship hotline. The local hotline in one of the states is actively used and often concerns family conflicts. Participants from an additional two states said that although there is no explicit hotline or complaint process, there is a direct dial phone number on the state website that people can use, and the state court administrative office will refer the complaint to the appropriate local court for action.

Interviewees from two other states said that their court is currently developing a complaint system, which they anticipate will help identify abuse. In three additional states, although there is no complaint process per se, the court has developed specific forms to request review of a guardianship case. These are variously called a request for guardianship review, a motion to review guardianship, or an application for intervention on behalf of the welfare of a person under guardianship. However, it may not be easy to find and access these forms. One interviewee described the challenge: “Finding the form on the web? That’s something we don’t make clear enough for people.”

An interviewee noted that it takes court time to sift through the complaints and identify concerns that are potentially actionable. Nevertheless, a complaint system gives the public access to the courts:

I won’t say a majority of our complaints, but many of our complaints that come to us, there is an insinuation of collusion. They feel like they can’t get through the [local] court system, that the judge knows the guardian so well that they work so closely together, and it’s so ... they feel like they can’t get anywhere with it.

Another interviewee commented on the value of a complaint system to spot potential abuse, noting, “So people who are loved ones have a way to report when they suspect abuse because that’s frankly the best way to catch it, because it’s just it’s stuff that’s really hard to catch in an annual report or an annual accounting.”

Varying court practices short of formal complaint systems. In some states, the court administrative office may refer complaints to local courts. Although the state office may have an “expectation” that local courts will respond to problems brought to their attention, the process is uneven and varies by locality. One interviewee stated that “practices differ, and there is not a formalized channel to have any sort of access.” Another explained, “judges all have different ways of doing things. Some judges will respond to phone calls or emails, while others require a formal motion.” A third noted that “typically, we expect [the complainant] to file something in the court, but sometimes just a phone call works.”

Complaints through certification process. The entities that certify and discipline professional guardians serve as additional channels for information about abuse and fraud. The Center for Guardianship Certification (CGC)²⁸ administers a national guardianship certification program based on an exam measuring “core competencies,” including knowledge of national professional standards.²⁹ Although certification can be voluntary for any guardian, 14 states require some process of certification for professional guardians. Of those states, three (Arizona, Florida, and Texas) have their own guardian certification process. The other states mandate that professional guardians be certified by CGC.³⁰ Nationally, most guardians are not required to be certified.

We interviewed an individual who is familiar with CGC's complaint and discipline process. The interviewee described the process as "robust" — the person complaining must submit proof of any allegations and state the specific standards of practice violated. The complaint then goes through several levels of review with findings for possible disciplinary action. CGC receives four to nine complaints a year. Many of the complaints concern financial management, and many are from angry family members. CGC has tracked complaints concerning improper guardian practices since 2011.

We also interviewed individuals from two states that have certification programs required for professional guardians. In one state, certification is administered through the public guardianship program, which has a system of auditors to investigate complaints against certified guardians. An interviewee from that state said that 86% of allegations ultimately could not be substantiated — the investigators were unable to collect enough evidence or the facts were wrong. The remainder of the allegations against the certified professional guardians in that state concerned a wide spectrum of problems, ranging from late reports or other technical noncompliance to severe harm. Technical violations are "red flags" signaling something that could be more serious. To date, 11 professional guardians have been removed from being able to accept appointments in that state.

The second state operates a professional guardianship certification program through a state court commission. If the court receives a complaint against a certified guardian, the court sends it to the commission for investigation as well as to the relevant local court. "We've taken certifications from guardians and from attorneys who are certified with us for not doing what they're supposed to be doing. We take it very seriously." The commission receives 15 to 20 complaints a year and has revoked certifications in the past few years based on six to eight of the complaints.

c. Adult Protective Services

Adult Protective Services (APS) is "a social service program authorized by law in every state to receive and investigate reports of elder or vulnerable adult maltreatment and to intervene to protect the victims to the extent possible."³¹ APS receives reports of alleged abuse, neglect, self-neglect, or financial exploitation; investigates the allegations; and if necessary, addresses the adult's health and safety needs. We asked if APS contacts the court to take action in cases involving mistreatment allegations against a guardian.³² Answers were mixed; interviewees from just five states said that APS contacts the court when receiving a report involving a guardian:

- "APS will reach out to my office; they are involved."
- "We work with APS closely; they report to us on things that need to be looked at."
- "We get several referrals a month from APS."
- "If APS is concerned about a guardian or conservator, they request a court visitor."
- "APS probably files half the petitions for review to request court action."

In addition, an interviewee with a county conservatorship management program explained that the state has established county vulnerable adult protection investigative teams that are led by county district attorneys and involve APS. If a team meeting concerns the actions of a guardian, the conservatorship management program participates and reports to the court.

Others said that local practice varies related to APS contacts with the court:

- “It depends on the county, but it is not common.”
- “APS can submit letters to the court, and they are accepted with varying degrees.”
- “The hope is that if there is a concern, APS contacts the individual court, but nothing in the code specifically requires it.”
- “We don’t have a way to know [about a guardian under APS investigation] unless somebody reaches out to the courts ... but there isn’t that level of information sharing. It is possible that a court will have no idea that an investigation is pending.”

A few state interviewees said that APS generally does not contact the courts:

- “No, usually not; but we have a meeting set up with APS.”
- “No, APS has no way to determine whether [the report they receive on alleged abuse] involves a guardian” — although further investigation might reveal the appointment.

Notably, none of the interviewees described any law enforcement contact with the court concerning guardian actions.³³

d. Court Visitor Programs

A growing number of jurisdictions use court visitor programs to extend the court’s monitoring capacity. In court visitor programs, trained visitors — whether volunteer or paid — acting under the supervision of a coordinator, visit adults subject to guardianship where they live, interview the adult and the guardian, assess the living environment, and report back to the court.³⁴ Historically, court visitors have primarily been used to assist the court during the pre-adjudication process; however, in some jurisdictions, the role of court visitors has been extended to post-adjudication cases under the court’s review. In our interviews, several court representatives cited visitor programs as a way to learn about possible abuse or fraud by a guardian.

One state has a long-standing, statewide visitor program in which the court may request a trained volunteer visitor to conduct a well-being investigation and report on the adult’s welfare and condition. In another state, a trained visitor is appointed to personally visit and review each guardianship every three years and report to the court.

In one state, the guardianship code requires the larger county probate courts to have visitor programs. Visitors “may find something wrong and report to court. One thing is to make sure [the adult is] alive and to find out about their well-being. Court visitors actually go out and see them in their environment and report back.” However, most of the counties in this large state do not have probate courts and thus do not have visitor programs.

Other interviewees described additional ways in which visitors could help the court detect and act on abuse and fraud. One said that the state partners with a program that provides trained volunteers in seven counties to visit adults and evaluate cases. Another state has one county with a visitor program. One state court administrative office is set to pilot a visitor program. In another variation, in one county, vulnerable adult protection investigative teams led by county district attorneys send social work visitors to conduct welfare visits for all adult guardianship cases.

2. Information That Courts Collect and Aggregate on Abuse and Fraud by Guardians

a. Data on Incidence of Abuse Generally Unavailable

Significant data on the incidence of abuse by guardians are unavailable. Even representatives from states with comprehensive data capabilities and aggressive monitoring said that they could not confidently gather data reflecting the prevalence of confirmed abuse in their jurisdictions.

A few interviewees said that they would have to conduct manual searches of the files or request information from another entity to assess the incidence of abuse. For example, one interviewee reported not having any data to track abuse by guardians. The best way they could find out would be to examine the number of cases in which a guardian had been removed; however, that would not necessarily identify the reason for removal — which could be illness or incapacity of the guardian, rather than abuse by the guardian.

Lack of data on complaints. Interviewees in jurisdictions with complaint systems said that they were not able to provide data on the number or types of complaints. Several said that many of the complaints were from disgruntled family members or the adult subject to guardianship. “A lot of times, it’s from the protected individual; they think someone’s taking or stealing or misusing their money. It could be family members who feel something’s not going right or they’re not being given information.” Complaints may also come from service providers, attorneys, or other third parties. In one state, the interviewee was in contact with the bar disciplinary grievance committee, which had a number of complaints against attorney guardians, primarily from unhappy family members.

One interviewee expressed frustration at not having a good grasp on the number of complaints the court received or the outcome. They reported that they were able to get a tally of the number of reports that raised a concern and were returned to the local court, but the outcome was difficult to obtain. They explained that if a conservator was removed, the case event would be a readily available data element. However, if something happened to the case other than removal, they would be unable to track the outcome: “Outcomes are kind of hard for data to pick it up.”

Little data on outcome of investigations. When asked if their state had numbers on cases involving abuse by a guardian, an interviewee in a state with an advanced case management system said bluntly, “We don’t.” The system cannot report how many cases reviewed by auditors resulted in local judicial action. Once the state auditors send a report with a concern to the local court, the auditors do not know what happens next. The court does not have the time or resources to manually track the outcome or any process that notifies the auditors if an order was entered in the case. The interviewee expressed frustration that judges approved accounts that the auditors flagged and explained that the auditors could only make recommendations to the court. Then, it was in the hands of the local judges.

b. Few Reported Instances of Abuse by Professional Guardians

One state with a unique program of dedicated statewide fraud investigators has detailed data on the number of complaints received and cases the courts referred for investigation. In those cases, a finding is made on whether the complaint is legally sufficient. If so, the case will be referred to APS. If the guardian is a professional, the case will be referred to the office that regulates professional guardians.

In this state, of 1,800 allegations statewide against professional guardians, investigators determined that the guardian’s conduct violated a statute or standard of practice in 13% of cases. Violations fell along a spectrum of seriousness or risk of harm to the adult, ranging from a technical accounting violation to theft and manslaughter. “The vast majority of the violations are technical offenses in which the professional guardian gets a letter of concern or some other sanction.” Eight professional guardians were removed from their cases over a five-year period. For court referrals investigated by state fraud investigators, the outcome is unknown after the case is reported back to the court. The investigators’ role is merely to make a recommendation, and judges then have discretion in any follow up or sanctions.

In another state, the county official in charge of monitoring conservatorships tracks the number of cases the court referred to their office for further investigation when initial monitoring identifies reports that are late, missing, or raise concerns. In the past three years, there have been only two trials resulting in the removal of a conservator.

State Champions and Challenges in Data Systems

1. State Champions for Data Systems on Abuse and Fraud by Guardians

Securing case management systems, database systems that can aggregate information, staff to effectively use these tools, and funding support is critical for addressing abuse and fraud by guardians. Interviewees repeatedly related how key state champions made an important difference.

Uniformly, interviewees lauded the support they received from state and local judicial leadership in developing data systems to detect abuse. Below are some of their comments:

Our state court administrator and our chief justice at some point said, yes, this is important to us, and we need to collect this data. The amount of time and resources that have gone into building these dashboards and really evaluating the data we have across the court system is just incredible. I think it was leadership saying, “this is important and we’re going to devote resources to doing it.”

One interviewee remarked that many people were involved: “Kudos to our Supreme Court who literally got behind this and said that you’re going to develop this in-house. And then we have some real stars in our IT department who have made the system work as well as it does.”

Another interviewee raised the potential issue when an official who has been a champion leaves their position:

I have a champion with my judge. And unfortunately, he’s retiring this year, but I’m sure I’ll have a champion in whoever replaces him because the courts need our office to find certain things that we can uncover that the clerk’s office doesn’t have the time to uncover. I imagine that the next judge will be our champion too.

In the view of one interviewee, public opinion and the media have driven reform, with their focus on the headline cases. “The good thing about the bad news is it’s driving reforms that are necessary.” This interviewee said, “We need to move out of the Stone Age of data collection to utilize technology to understand the system better. The media and the public eye skew the lens of the system. Even if it’s 10 bad guardians who are moved out of the system, it’s certainly not reflective of the all the good guardians.”

An additional interviewee noted, “[Without good data], we don’t have anything empirical to support the good news. That’s why I am pushing so hard to have the ability to empirically understand the system so those reforms can be more data driven, less knee jerk reactions to Britney [Spears].”

2. State Challenges in Addressing Abuse and Fraud by Guardians

States recognize many barriers to effectively addressing abuse by guardians. Various interviewees said: (1) obtaining additional information about the cases can result in significant burdens on court staff, (2) additional collection or reporting requirements may deter guardians and their attorneys from serving, (3) courts do not have the tools or systems that allow them to aggregate significant information about guardianship or conservatorship cases, (4) multiple systems across the state are incompatible or difficult to change, (5) there may be privacy concerns, and (6) stakeholders are reluctant to change.

a. Lack of Resources; Burdens on the Court

Human and monetary resources are the primary challenges our interviewees faced in trying to develop effective systems to track the life of guardianship cases and detect and deter abuse.

Nearly every interviewee mentioned the need to be mindful of placing any additional burden on the court clerks. Some comments from interviewees included:

Clerks understand the value of collecting this information, but they also have to do their day-to-day job. That's a real struggle for us. I'm going to be dead in the water if the clerks don't buy into it or don't have the capacity.

It will be a hard sell to say to the clerks, you have these 10 extra steps you need to do on every guardianship petition that comes in.

It's this hard balance of what do we need from a data standpoint and what's reasonable to ask of the clerks, because somebody has to code. The clerks have a lot of other case types that they have to capture information about ... We have to be really mindful about what we ask them to do in addition to what they're already doing.

b. Burdens on Guardians and Attorneys

Concerns about overburdening court personnel are matched by concerns about driving away guardians and their attorneys. Interviewee comments included:

If we make it too difficult for them to report, it might deter them from serving or staying on. And for the attorneys, they're getting so many of these cases now. It's a lot of work ... for which they're not getting their hourly rate. They're having to help fill out all these complicated forms and collect all this documentation and have systems in place.

We rely on attorneys to do this work. But if we make it too difficult or risky for them, it puts us in a really tough place.

Another interviewee noted the need to make it easier for guardians to file their reports, "because as we've heard, it's harder to find guardians today. That's why we have people on waiting lists [to have a guardian appointed]."

Electronic filing holds some promise to save court resources "because you get the information electronically rather than the clerk entering it manually." One state relies on attorneys to input information — such as where the person is living, if they are in a facility or in the community, and the relationship between the person under guardianship and the guardian — because they need to put this information into their annual reports in any event. It takes the burden off the clerks to manually import or code that information.

However, as several interviewees pointed out, the e-filing system must be integrated into the case management system. For example, in one state with e-filing, an image of the petition or other report is filed electronically, but it still needs to be coded manually. "It's just an image in our case management system. It doesn't collect the data so that we can extrapolate and then push out a report," one interviewee in that state noted.

Further, even if parties are e-filing, a filer may miscode something. The clerks have to confirm that the code is accurate, so they have a lot of responsibility. The quality of the data is only as good as what is entered into the system.

c. Inaccessible Information

As emphasized above in the discussion about information “trapped in the file,” a refrain throughout many interviews was that courts have a significant amount of information about their guardianship cases but no effective mechanism to capture or analyze it. The conundrum facing most states is how to collate or synthesize the existing but presently inaccessible information to detect and prevent abuse.

Important information — such as the total number of cases to be monitored, the reason for the guardianship or conservatorship, the relationship between the guardian and the adult, the age of the adult, the amount of assets under conservatorship, and the guardian’s or conservator’s compliance — cannot be aggregated or searched. Some interviewees noted:

There is no query that we can run that will help us say X number of complaints were filed in guardianship cases in any particular period.

We don’t have a way for the guardians or conservators to be able to electronically file this information, and we don’t have a way to store the information electronically. I don’t have a way to store bank accounts for the ward and how much money they had and what was last year’s balance as opposed to this year’s balance.

d. Classifying, Coding, and Privacy of Information

Coding raises many complications. One problem is trying to figure out how to electronically classify some of the cases. For example, a person may need a guardian because of AIDS-related issues, but they also might need a guardian because they have mental health issues — or it could be a combination of both. “What do you do if the reasons are multiple?” one interviewee asked. “There’s a lot of difficulty in gathering that sort of data.” Another interviewee explained that it is critical to read the petitions to understand the narrative behind the reasons for the guardianship.

An interviewee from a state with an advanced data collection system noted, “Unfortunately, what we have found ... is we’re really at the mercy of what the conservator enters, and sometimes they’re entering the incorrect category.”

Several interviewees from different states raised the issue of the adult’s privacy: Anything you put into the system is available to everyone as a public document unless it is sealed. One state has addressed this concern by noting that they have confidential data elements to protect information such as bank statements, account numbers, and sensitive medical information.

e. Multiple Local Systems and Practices

Challenges arise for states without a unified court system. “We have 254 counties and a lot of chaos — 254 different ways to doing things, 254 different case management systems,” one interviewee explained.

One of the states that is trying to develop a statewide data system recognizes that it will have to make it as easy as possible for county courts to connect with the state system — that they will need outreach and incentives to join. Another state is hoping that providing needed resources will help mitigate any reluctance to change.

A third state is offering to provide three different systems, thus narrowing the number of systems the local courts can use but still giving them a choice. An interviewee from a rural state noted that access to technology and internet connections just does not exist in some smaller and more rural counties.

f. Reluctance To Change

Interviewees in several states also cited reluctance to change from old ways of doing things. An interviewee in one state said, “[W]orking with courts who don’t want oversight or don’t want people in their business is going to be a challenge.” In another, the counties were very resistant to what they see as state oversight: “There’s probably a little bit of autonomy there with the county probate judges who just have their own little fiefdom in some ways. And they like how they do it, and they’re not really interested in spending the money or resources or time necessary to change.”

D. Survey Findings

1. Aggregate Number of Cases Subject to Court Review

The number of adults subject to guardianship was a key question in the Senate request and the National Institute of Justice statement of work for our environmental scan. Our survey asked if the respondent’s state court administrative office could readily produce an aggregate number of cases for which a guardian or conservator was appointed for an adult (that is, cases subject to court review). We left the term “readily” to be defined by the respondents. The survey question recognized that such data might not include cases adjudicated prior to the implementation of the court’s data management system.

Among the respondents from the 20 states represented, 14 unique states indicated that they could produce an aggregate number of cases, and four unique states indicated that they could not. Among five states represented in the survey findings, more than one respondent from that state completed our survey and their answers were congruent with one another. However, this was not the case for all states — for two states, there was a mix of yes and no answers from

multiple respondents as to whether aggregate numbers could be readily produced, highlighting the confusion concerning whether guardianship data are available.

We asked respondents for which data elements their state court administrative office could produce an aggregate number of cases in which a guardian or conservator was appointed for an adult. Of the 17 respondents who answered affirmatively (across 14 different states), all 17 said that the court could identify the case type, and nearly all (14) could determine whether the annual guardian report and the inventory or accounting were filed in a timely manner (see Table 2). The top three data elements that respondents (13) were unable to aggregate were whether the adult has a representative payee, whether a guardian or conservator was removed for cause, and whether a current or prior guardian or conservator was criminally prosecuted.

Table 2. Aggregate Case File Information

Case Information	Yes	No	Don't Know
Case type (guardianship, conservatorship, both)	17	0	0
Annual report was filed on time	14	3	0
Inventory or accounting was filed on time	14	3	0
Current asset value	9	6	2
Type of guardian (professional, attorney, public, family, friend)	8	7	2
Powers granted (full or limited)	7	9	1
Adult Protective Services initiated the case	6	10	1
Reason for petition or condition of the adult	5	11	1
A "red flag" was raised concerning the inventory or accounting	5	11	1
Demographic information about the adult (age, gender, race, ethnicity)	4	12	1
Complaint or concern was made about the guardian or conservator	3	12	2
A guardian or conservator has been removed for cause	3	13	1
Adult has a representative payee	2	13	2
A current or prior guardian or conservator was criminally prosecuted	2	13	2

Note: Results are from individual responses, not by state.

2. Most Important Data Elements

We asked respondents to select the five data elements they regarded as most important for their *state court system* to enhance their guardianship or conservatorship system. The top five selected elements are below, along with the number of respondents.

1. A "red flag" has been raised concerning the inventory or accounting: 11 respondents
2. Case type (guardianship, conservatorship, both): 10 respondents

3. A guardian or conservator has been removed for cause: 10 respondents
4. There is or has been a complaint or concern about the guardian or conservator: 10 respondents
5. The annual report was filed on time: 8 respondents

These priorities for state level data elements could help improve monitoring and assess the need for changes in state law or policy.

We also asked respondents to select the five data elements most important for *local courts* to detect, track, and monitor guardianship or conservatorship cases to address abuse. Selection of red flags is consistent with our interview findings above:

1. The annual report was filed on time: 12 respondents
2. There is or has been a complaint or concern about the guardian or conservator: 11 respondents
3. A “red flag” has been raised concerning the inventory or accounting: 11 respondents
4. The inventory or accounting was filed on time: 8 respondents
5. Current asset value: 7 respondents

The most respondents selected “annual report was filed on time.” However, when asked to rank in order of priority, respondents most frequently selected “whether there is or has been a complaint or concern about the guardian or conservator” as their number one data element. The ranking does not reveal the court’s ability to provide information about the complaint; only three respondents said that the court is able to collect and aggregate information on the number of complaints or concerns, which is consistent with our interview findings.

The survey asked whether the state court administrative office could produce aggregate numbers on disposition of a case. Sixteen respondents answered this question. Of these, eight said their court could aggregate the number of cases for which a petition was denied, six said the court could aggregate the number of cases closed due to the death of the adult, and six said the court could aggregate the number of cases closed due to restoration to capacity.

3. Champions for Data Collection

We asked respondents to identify the top three champions for improving guardianship or conservatorship data collection to address abuse by guardians. Respondents identified the director and staff of the administrative office of the courts (13), the chief justice (10), and national organizations such as NCSC (7). When asked to select the champion most important for improving data collection to address abuse by guardians, respondents most frequently selected the chief justice (6). These same champions were reflected in our interview findings above.

4. Barriers to Data Collection

Top barriers to data collection faced by state court administrative offices were, in descending order, concerns of overburdening court staff (12); insufficient staffing for data management and analysis (9); and technology does not include needed fields and documents are PDF, not accessible for queries (6 each). These are consistent with our interview findings, which showed

that key barriers to guardianship data collection are concerns about overburdening the court staff and insufficient staffing for data management.

The top three barriers that local courts face in collecting data to track and monitor cases for abuse or noncompliance by guardians or conservators, in descending order, were concerns of overburdening court staff (14); insufficient staffing for data management and analysis (7); and technology does not include needed fields (7). Not surprisingly, staffing issues stood out first at both the state and local levels.

Other than data collection, respondents indicated that the top three barriers statewide to tracking and monitoring abuse or noncompliance by guardians or conservators were: competing priorities of court, legislative, or administrative leadership (11); insufficient training and education of judges and court staff (8); and insufficient training, education, and assistance for guardians or conservators (7) and inconsistent public understanding of and attention to abuse by guardians.

E. Conclusion

As shown by both the interviews and the survey, a growing number of states can readily identify the total number of adult guardianship cases for which the court system is responsible for monitoring. But comparability across states and the ability to eventually produce national estimates are hindered by numerous inconsistencies.

Beyond case counts, courts seek to collect the data elements they need to monitor individual cases, thereby addressing abuse and fraud, and to aggregate data elements to support needed changes in law, policy, and practice. Most courts can aggregate only a minimal number of data elements, with the most frequent elements being the type of case and timeliness of filings. Interviewees indicated that case processing information was the most important to gather, as well as “red flags” related to inventories or accounting and complaints concerning the conduct of the guardian. Barriers to collecting data included concerns about overburdening court staff, insufficient staffing for data management and analysis, technology that does not include needed fields, and competing priorities of the court that could detract from resources for addressing abuse and fraud by guardians.

As shown in the interviews and the survey, one important key to bolstering guardianship data is the advocacy of champions, who push to have better data collection systems and adequate funding to support such systems. These champions were frequently the chief justice, the directors of state court administrative offices and their staff, and national organizations such as NCSC.

1. Highlights From the Interviews

State collection of data on guardianship

- Case numbers. Achievements and challenges in pulling statewide case numbers highlight the need for consistent, retrievable, and reliable data as a tool to monitor guardianship cases for abuse and fraud. The type of court system and available infrastructure to manage cases vary, as does the ability of states to aggregate case numbers. Some states have developed and adopted new case management systems. Challenges include lack of consistent definitions on case status (active, open, closed), dated or noncentralized case management systems, difficulties in obtaining data queries, input of data from older cases initiated before electronic systems were available, and data trapped in the paper case file. These problems diminish a state's ability to track cases, understand status, and report reliable data — which ultimately affects the state's ability to identify and act on abuse.
- Data elements. State court administrators predominantly collect data related to case processing, especially reporting requirements. Most states are not able to collect much demographic information or other key elements that would help shed light on cases that might involve abuse.

State collection of information and data on abuse and fraud by guardians

- How states learn of abuse and fraud by guardians. States learn of possible abuse and fraud by guardians through four main routes: (1) guardian reports and accountings, (2) complaints, (3) Adult Protective Services, and (4) court visitor programs. There are substantial challenges with each of these routes. Guardian reports and accountings may not be filed. If they are filed, the court may not fully review them, and they may not be captured in any data system. Although a few states have formalized guardianship complaint processes, most do not, and court responses to complaints vary widely or are not tracked. States are mixed in the extent to which Adult Protective Services offices report allegations of abuse to the court. Although a few states and a number of localities have court visitor programs that check on the well-being of adults with a guardian, most do not.
- Information courts collect and aggregate on abuse and fraud by guardians. Data on the incidence of abuse by guardians are largely unavailable. Interviewees said that they would have to conduct manual reviews of the files to identify the prevalence and nature of abuse. Very little data exist on the number of complaints received, and even less exist on the outcome of cases in which complaints or investigations have revealed problems — it is hard to find out what, if any, interventions the court has taken.
- Prevalence of reported abuse. Although we do not know the nature or prevalence of abuse by guardians, some interviewees reported that a majority of potential fraud cases that were investigated involved family guardians. One said that most of the identified concerns with professional guardians involved technical violations, and few professional guardians were removed due to abuse.

State champions for data systems to address abuse and fraud by guardians

- Judicial leadership. State and local judicial leadership have been champions of developing data systems to detect abuse by guardians.
- Media. In some states, media stories of abuse by guardians have driven reform, including development of better data and case management systems.

State challenges in data systems to address abuse and fraud by guardians

- Lack of resources; burdens on court. Human and monetary resources are the primary challenges our interviewees and survey respondents faced in trying to develop effective systems to track the life of guardianship cases and detect and deter abuse. Court clerks and other staff already have full plates, and adding more tasks is difficult.
- Burdens on guardians and attorneys. Additional information collection or reporting requirements may deter guardians and their attorneys from serving.
- Inaccessible information. Courts do not have the tools or systems that allow them to aggregate significant information about guardianship or conservatorship cases.
- Coding complications and privacy concerns. It can be challenging to determine how to electronically classify some of the cases, especially without reading the petition. Also, data quality is only as good as what the filer enters. Some states are concerned with privacy in collecting sensitive information about the adult or unsubstantiated complaints.
- Multiple local systems and practices. Local jurisdictions within a state often have systems that are incompatible or difficult to change.
- Reluctance to change. Local courts are sometimes resistant to the changes that the state court administration seeks to impose.

2. Highlights From the Survey

Challenges in constructing the survey, disseminating the survey, and interpreting the mixed — and somewhat meager — results underscore the confusion concerning guardianship data across the country. States use different terms in their case management and database systems. In addition, state court administrative offices and local courts have different data needs, and any one respondent may not be knowledgeable about both. Despite this, key takeaways from the survey include the following:

- Total number of cases. At least 14 state respondents said that their court system could readily produce an aggregate number of guardianship cases subject to court review. If

this is correct — or even if this is a less-than-solid “best guess” — it appears to be an advance in the past several years. As recently as 2018, the U.S. Senate Special Committee on Aging stated, “Few states appear able to track the total number of individuals subject to guardianship, let alone record demographic information, the types of guardianship being utilized, or the extent of a guardian’s authority.”³⁵ Perhaps the progress is due to improved court technology over the past five years, or perhaps there is a greater awareness of the need for such data in addressing abuse by guardians. Nonetheless, the remainder of the states surveyed still cannot readily pull up the total number of cases that the court system is responsible for monitoring.

- **Common data elements.** The most common data elements that states are able to aggregate are case type and timeliness of the inventory or accounting and annual report. These elements are critical for monitoring. Yet other data elements that would shed light on monitoring and abuse by guardians still appear largely inaccessible — for example, the number of complaints, whether a guardian has been removed for cause, and whether a guardian was criminally prosecuted. When we asked respondents to select the most important data elements, the top choice for state court systems was “whether there has been a red flag concerning the inventory or accounting.” States need to build some type of notification system into their data systems that alerts staff to possible problems. (Our interviews showed that some states have begun to implement or plan for such notification systems.)
- **Barriers to data collection.** The top barriers that respondents named were concerns about overburdening court staff and insufficient staffing for data management. This indicates that court budgets should place a higher priority on guardianship data to make the monitoring system function as it should — and better address abuse and fraud.

Notes

¹ Guardianship terminology varies by state. In many states and in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the term “guardian” means a surrogate appointed by court to make health care and personal decisions for an adult, and the term “conservator” means a surrogate appointed by court to make financial decisions for an adult. Other states use different terms such as “conservator of the person” and “conservator of the estate.” In this paper, we use the general term “guardianship” to cover both, unless indicated otherwise.

² P.L. 115-70, “S.178 Elder Abuse Prevention and Prosecution Act,” November 18, 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/178/text>.

³ Cornell Law School, Legal Information Institute, “Judicial Administration: An Overview,” https://www.law.cornell.edu/wex/judicial_administration#:~:text=State%20courts%20are%20usually%20organized,to%20that%20of%20court%20administrator.

⁴ All states have some type of office of state court administration. The responsibilities of those offices vary depending on the overall state court structure. Some states have “unified court systems” in which

state court administrative offices coordinate, manage, and fund local courts. In other states, the local courts are independent of the state court system. Additionally, in some states, guardians are appointed and monitored by specialized probate courts, whereas in other states, guardianship is located in general jurisdiction courts.

⁵ National Center for State Courts, <https://www.ncsc.org/about-us>. See especially NCSC Center for Elders and the Courts, <https://www.eldersandcourts.org>.

⁶ Conference of State Court Administrators, <https://cosca.ncsc.org/>.

⁷ National Center for State Courts, *Guardianship/Conservatorship Monitoring: Recommended Data Elements*,

https://www.eldersandcourts.org/__data/assets/pdf_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf

⁸ Bingham, A. J., & Witkowsky, P. (2021). Deductive and inductive approaches to qualitative data analysis. *Analyzing and interpreting qualitative data: After the interview*, (pp. 133-146). In Charles Vanover, Paul Mihás, & Johnny Saldana (Eds.). *Analyzing and Interpreting Qualitative Research*. Thousand Oaks, CA.

⁹ Robinson, D., Holt, K., & Boyko, C., *Guardianship/Conservatorship Monitoring: Recommended Data Elements* (2020), p. 4,

https://www.eldersandcourts.org/__data/assets/pdf_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf

¹⁰ Robinson, D., Holt, K., & Boyko, C., *Guardianship/Conservatorship Monitoring: Recommended Data Elements* (2020), p. 7,

https://www.eldersandcourts.org/__data/assets/pdf_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf

¹¹ National Center for State Courts, National Open Court Data Standards. 2022.

<https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>;

¹² National Center for State Courts, National Open Court Data Standards. 2020.

<https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>

¹³ Hurme, S. & Robinson, D., “What’s Working in Guardianship Monitoring: Challenges and Best Practice,” Fourth National Guardianship Summit, 2021,

<http://law.syr.edu/uploads/docs/academics/Hurme-Robinson.pdf> ; also see National Association for Court Management, *Adult Guardianship Guide: A guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program* (2022), https://nacmnet.org/wp-content/uploads/AdultGuardianshipGuide_withCover.pdf

¹⁴ Young adults with a guardian may have very different risks of abuse than older adults. Many states have separate statutory provisions for the appointment of guardians for minors, see e.g., Colo. Rev. Stat. §§15-14-201 to 122.

¹⁵ A “show cause hearing” is a court hearing at which the guardian must explain why an order was not followed or a fiduciary duty was breached. For example, if a guardian fails to file an annual report by the due date, the court might issue an order to show cause.

¹⁶ A less restrictive option is a legal tool for decision-making that, in some cases, could be used instead of guardianship, without removing rights — for example, a financial power of attorney, health care advance directive, or a supported decision-making agreement.

¹⁷ If a court finds that an adult no longer needs a guardian, the court can end the guardianship and restore the adult’s rights.

¹⁸ This information could assist the court in evaluating the usefulness of a hotline or online complaint procedure in bringing to the court’s attention actionable concerns about any guardianship.

¹⁹ Tracking these referrals could strengthen collaboration and cooperation with other entities that also may be involved in abuse cases.

²⁰ A removal for cause is a sanction following a court determination that a guardian has violated the law or breached fiduciary duties, as through abuse, neglect, or exploitation of the adult. This is distinct from removals because the guardian is ill, has become incapacitated, or has died.

²¹ <https://acl.gov/grants/elder-justice-innovation-grants-improving-guardianship-fy2022> .

²² Part 3 of our environmental scan will highlight legal, policy, and practice responses once courts learn of abuse and fraud. This section simply addresses how courts learn of the abuse and fraud.

²³ Hurme, S. & Robinson, D., “What’s Working in Guardianship Monitoring: Challenges and Best Practices,” for the Fourth National Guardianship Summit, in press, *Syracuse Law Review* (2022), <http://law.syr.edu/uploads/docs/academics/Hurme-Robinson.pdf>

²⁴ California uses probate court investigators instead of annual guardian reports.

²⁵ Hurme & Robinson, 2022.

²⁶ See <https://www.ncsc.org/newsroom/at-the-center/2023/ncsc-releases-new-guardianship,-conservatorship-review-protocols>

²⁷ National College of Probate Judges, National Center for State Courts, *National Probate Court Standards*, Standard 3.3.18 2013), <https://ncsc.contentdm.oclc.org/digital/collection/spcts/id/240/> .

Also see “Establishing a Complaint Process” in National Association for Court Management, *Adult Guardianship Guide* (2022), at 33-36, https://nacmnet.org/wp-content/uploads/AdultGuardianshipGuide_withCover.pdf and The Judicial Response Protocol for Guardianship and Conservatorship Abuses, [Responses to Allegations of Wrongdoing | Elders and Courts](https://www.ncsc.org/newsroom/at-the-center/2023/ncsc-releases-new-guardianship,-conservatorship-review-protocols)

²⁸ <https://guardianshipcert.org/>

²⁹ National Guardianship Association Standards of Practice, <https://guardianship.org/standards/>

³⁰ <https://guardianshipcert.org/become-certified/state-specific-information/>

³¹ National Center on Elder Abuse & National Adult Protective Services Association, *Adult Protective Services, What You Must Know*, Fact Sheet, <https://ncea.acl.gov/NCEA/media/publications/APS-Fact-Sheet.pdf>

³² We also asked interviewees whether the court makes referrals to APS and to what extent there is collaboration between APS and the courts generally. See Part 3 of our environmental scan.

³³ Some interviewees described initiatives taken by courts to contact law enforcement, as highlighted in Part 3 of our environmental scan.

³⁴ American Bar Association Commission on Law and Aging, *Volunteer Guardianship Monitoring and Assistance: Serving the Court and the Community* (2011), https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/court_volunteer_guardianshipmonitoring/

³⁵ U.S. Senate Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans*, (November 2018), https://www.aging.senate.gov/imo/media/doc/SCA_Aging%20Report-%20Ensuring%20Trust%20Guardianship2018.pdf . See also, Brenda K. Uekert & Richard Van Duizend, *Adult Guardianships: A “Best Guess” National Estimate and the Momentum for Reform*, (National Center for State Courts 2011) (only four states could provide data on active pending adult guardianship cases), <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1846/rec/17>.