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# **Summary of the Environmental Scan of Guardianship Abuse and Fraud**

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## **I. 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 Senators Elizabeth Warren and Robert Casey about the roles of the Departments of Justice and Health and Human Services concerning the collection of data on adult guardianship<sup>1</sup>— 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.

In response, the National Institute of Justice contracted with the authors to conduct a four-part environmental scan of guardianship abuse and fraud. This paper — Part 4: Summary of the Environmental Scan of Guardianship Abuse and Fraud — briefly summarizes our research methods and findings.

In Part 1 of our environmental scan, we conducted an extensive literature review. We researched key databases and drew upon our personal repositories of guardianship documents. We examined a full range of publications from the federal government, four national guardianship summits, state guardianship reports, appellate court cases, peer-reviewed research, and more than a decade of media accounts of abuse by guardians.

In Part 2, we examined how states collect data on adult guardianship. Shedding light on a state's overall guardianship data system is a prerequisite to addressing any abuse and fraud. We conducted 20 interviews and a national survey of subject matter experts in state court administrative offices, focusing on state court approaches and capacities to identify, analyze, and act on abuse and fraud by guardians.

In Part 3, we highlighted the difficulties in determining the number of adults with guardians as well as the prevalence of abuse by guardians. We then focused on specific guardianship data elements to detect abuse by guardians that could result in stronger monitoring at the local level. The data elements could also support needed changes in law, policy, and practice. Finally, building on all of this research, we recommended federal actions to help states detect and address abuse.

## **II. Part 1: Literature Review**

Our review of the literature on guardianship, specifically on abuse and fraud by guardians, draws from a variety of disciplines and sources spanning nearly four decades. It represents the most comprehensive body of work on the topic to date. We found the picture of abuse by guardians, including criminal abuse, to be indistinct and incomplete due to a substantial lack of data. The limited information that exists includes reports by government, media, and other sources concerning malfeasance by both professional and nonprofessional guardians that ranges from noncompliance to various levels of abuse and criminal acts. Although there have been substantial efforts to enhance guardianship monitoring by courts,<sup>2</sup> marked gaps exist between what state laws say and how they are implemented, as demonstrated by multiple media accounts. Our findings below show the need for additional work in preventing and addressing abuse and fraud by guardians.

## A. Findings on the Scope and Prevalence of Abuse by Guardians

A scan of the relevant literature reveals the following:

- Elder abuse (in general, not specific to guardianship) affects about one in six community dwelling adults each year, although prevalence rates differ by study and type of abuse.<sup>3</sup> Studies have recognized that projections of elder abuse underestimate actual prevalence. The number fails to account for younger adults with disabilities affected by abuse.
- The best estimate of the number of cases in which a guardian has been appointed for an adult and that are subject to court review is 1.3 million cases, an estimate based on varying reports by selected states.<sup>4</sup>
- Federal inquiries and limited research have been unable to determine the scope and prevalence of abuse by guardians.
- Although press accounts have investigated serious problems, they fail to demonstrate the scope and prevalence of abuse by guardians.

## B. Findings on the Nature of Abuse by Guardians

The nature of abuse by guardians remains an unsolved puzzle due to inconsistent definitions of abuse and a striking lack of data. From our analysis, we found the following:

- Guardian malfeasance includes a spectrum of actions that may affect adults with guardians:
  - Criminal abuse: State statutes define criminal abuse. For example, they define theft, exploitation, fraud, burglary, battery, assault, and criminal neglect. Some states have enacted criminal statutes focusing specifically on actions by fiduciaries or surrogate decision-makers.
  - Adult Protective Services definition of abuse: Criminal actions may overlap with, but are not the same as, actions in substantiated Adult Protective Services reports. These reports include physical, sexual, and psychological abuse; active and passive neglect; and financial exploitation. Although its prevalence is uncertain, many of the cases of abuse by guardians appear to involve exploitation.
  - Misconduct or noncompliance: Although guardians may commit acts of misconduct or noncompliance with various requirements, these acts may not rise to the level of criminal abuse or substantiated/founded Adult Protective Services reports (for example, failing to file reports required by the courts or filing reports that are inaccurate or lack documentation).
- The National Adult Maltreatment Reporting System — coordinated by the Health and Human Services Administration for Community Living — is beginning to clarify the

nature of adult abuse in general, but currently is not able to capture data on abuse by guardians.<sup>5</sup>

- “Abuse by a guardian” and “systemic guardianship abuse” must be distinguished. Abuse by a guardian concerns harmful or abusive actions by an individual or entity appointed by the court as guardian. Systemic guardianship abuse concerns appointment processes, outcomes, and monitoring. Individuals needing guardians may be especially vulnerable to both types of abuse because they have lost many of their civil rights, rely on others for care, and are unable to advocate for themselves.
- Numerous reports by governmental, media, and other sources show malfeasance by both professional and nonprofessional guardians.
- The few appellate cases involving misconduct by guardians expose how selected guardians have abused their court-ordered authority by exploiting the estates they were entrusted to protect.
- Cases involving guardianship certification disciplinary actions are too few, and thus we cannot draw conclusions from them. The standards violated in these cases were management of the estate, conflicts of interest, and fees charged.
- Media exposés tend to focus on sensational cases of intrafamilial disputes carried out in guardianship courts. A systematic review of media accounts reveals that financial exploitation is more likely to occur through misuse of powers of attorney and is more likely to be perpetrated by family members or caregivers who are not guardians.
- 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.<sup>6</sup>

### **C. Findings on Prevention and Intervention for Abuse by Guardians**

Despite multiple national policy recommendations, substantial state legislative and court mandates, national court standards, and court guides for best practices, many gaps exist between law and practice in addressing abuse by guardians.

- Ongoing media reports of grave abuses by guardians are an indication that, although standards and statutes may be in place, practices lag behind.
- Substantial reforms focusing on guardianship monitoring have included laws, standards, and oversight approaches for courts. However, making permanent, systemic improvements is challenging. Cases are complex and often fraught with issues concerning mental illness, family conflict, and service fragmentation. Funding for reform, technology, and research is scarce. Additionally, guardianship is not generally included in elder justice reform efforts.

## **D. Findings on the Lack of Data as a Barrier To Understanding Abuse by Guardians**

Lack of consistent, reliable data impedes our understanding of the adult guardianship system, including abuse and fraud by guardians.

- Data are needed to clarify the scope, prevalence, and nature of abuse by guardians.
- Data are needed for effective court case management and monitoring.
- Data are needed to inform legal and policy changes, including solutions to address abuse.

## **III. Part 2: Data Landscape**

As shown by our interviews and survey of subject matter experts with knowledge of case management systems, a small but growing number of states can readily identify the total number of adult guardianship cases for which the courts are responsible. However, numerous inconsistencies and barriers hinder both comparability within and across states and the ability to produce national estimates using existing data.

Experts described existing case processing and data collection capabilities and barriers. Only a few states have advanced data systems; most state data systems are rudimentary. None of the state experts said that they could collect information on the prevalence of confirmed abuse by guardians. They pointed to inconsistent terminologies, concerns about data reliability, and local variations in practice. They reported differences due to the extent to which the court system was unified, whether guardianship cases were heard in probate or general jurisdiction court, and whether local courts had adequate case management systems. Often, data are trapped in the case files and cannot be aggregated to show patterns and trends.

### **A. Highlights From the Interviews**

#### **1. State Collection of Data on Guardianship**

- Case numbers: Some states have developed new case management systems, enhancing their ability to extract statewide case numbers. However, challenges in data collection include: (1) type of court system and available infrastructure; (2) lack of consistent definitions on case status (active, open, or closed); (3) dated or noncentralized case management systems; (4) input of data from older cases initiated before electronic systems were available; and (5) data “trapped” in the case file, requiring manual case-by-case review to aggregate needed elements — all of which ultimately affect the state’s ability to act on abuse.
- Data elements: Predominantly, state court administrators collect data related to case processing, especially reporting requirements. Most states are unable to collect demographic data or other key elements to illuminate cases that might involve abuse.

#### **2. State Collection of 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; in practice, these routes are limited:
  - (1) Guardian reports and accountings: Guardian reports and accountings may not be filed, and they may not be fully reviewed by the court. If they are reviewed, they may not be captured in any data system.
  - (2) Complaints: Although a few states have formalized guardianship complaint processes, most do not. Court responses to complaints vary widely. Complaints are generally not tracked and aggregated in any database.
  - (3) Adult Protective Services: States were mixed in the extent to which Adult Protective Services offices report allegations of abuse by guardians to the court.
  - (4) Court visitor programs: 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 manually review the files to identify the prevalence and nature of abuse. For example, very little data exist on the number of complaints received and investigations made, with even less data on their outcomes.

### **3. State Champions for Data Systems To Address Abuse by Guardians**

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

### **4. State Challenges in Data Systems To Address Abuse by Guardians**

- Inaccessible information: Courts do not have the tools or systems that allow them to aggregate significant information about guardianship cases.
- Lack of resources and burdens on courts: Human and monetary resources are the primary challenges in trying to develop effective systems to track the life of guardianship cases and to detect and deter abuse. Court clerks and other staff are already fully leveraged, and adding more tasks is difficult.
- Coding complications and privacy concerns: Electronically classifying cases can be challenging, especially without reading the petition. Data quality is dependent on the quality of data entry. Additionally, 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.
- Burdens on guardians and attorneys: Additional reporting requirements may deter guardians and their attorneys from serving.
- Reluctance to change: Local courts are sometimes resistant to the changes that the state court administration seeks to impose.

## **B. Highlights From the Survey**

Key takeaways from the survey include the following:

- Total number of cases: Respondents from at least 14 states said that their court system could readily produce an aggregate number of guardianship cases subject to court review. This appears to be a recent advancement. In just 2018, the U.S. Senate Special Committee on Aging noted that very few states appear to be able to track the total number of individuals with a guardianship.<sup>7</sup> The remainder of the states we surveyed still cannot readily determine the total number of cases for which the court system is responsible.
- Common data elements: Survey respondents said that the most common data elements their courts are able to aggregate are case type and timeliness of the inventory, accounting, and annual reports. Other data elements that could provide information on monitoring and abuse by guardians are largely inaccessible — for instance, the number of complaints received and investigated, whether a guardian has been removed for cause, or whether a guardian was criminally prosecuted. Respondents emphasized the importance of having a “red flag” alert when there is an issue in the inventory or accounting.
- Barriers to data collection: Respondents listed concerns about overburdening court staff and insufficient staffing for data management as the top barriers to data collection.

## **IV. Part 3: Legal, Policy, and Practice Contexts**

Our Part 3 report drew together findings from the literature review and the data landscape in a comprehensive scan of the legal, policy, and practice contexts for collecting guardianship data — and specifically for addressing data on abuse by guardians.

### **A. Unique Nature of Guardianship Cases**

Guardianship cases are unique in that, unlike almost all other cases on a civil or criminal docket, adjudication of the petition with the appointment of a guardian is only the beginning of the case. Once a guardian is appointed, ongoing monitoring must occur to ensure the well-being of the adult. In other types of cases, once the case has been adjudicated, it is closed and no longer needs to be tracked. In some jurisdictions, judges have incentives to close a case as quickly as possible to indicate their efficiency in deciding cases.

## **B. Complexity of State and Local Court Systems**

One challenge to answering the basic questions on abuse by guardians is the complex nature of state and local court systems.

1. Unified vs. nonunified court systems: Every state has some type of state administrative office for the judicial branch, typically led by the state chief justice and state court administrator. However, some state administrative offices do not have authority over the judicial officers in the local courts who hear guardianship cases, and some do not have the authority to dictate what data the locally funded courts collect. Others have more “unified” systems in which there are varying levels of centralized management, rulemaking, budgeting, and financing at the state level — theoretically facilitating consistent data collection.
2. Probate vs. general jurisdiction courts: In all but 17 states,<sup>8</sup> guardianship cases are heard in courts of general jurisdiction that hear all civil and criminal matters at the municipal, county, circuit, or district level. On a day-to-day basis, general jurisdiction judges hear a wide variety of cases ranging from felonies and misdemeanors to juvenile matters, traffic cases, divorces, estates of deceased individuals, tort cases, and contract cases — a small fraction of the docket is guardianship cases. Even in the 17 states with specialized probate courts, some are locally administered or may oversee only estates of deceased individuals and not guardianship matters. Few local courts are able to set up special database systems for guardianship, which is only a very limited part of the overall docket.

## **C. Multifaceted Nature of Abuse by Guardians**

Key unanswered questions highlight the complex nature of abuse by guardians:

- Whether there are significant differences between the abuse of older adults and the abuse of the younger population of vulnerable adults.
- Whether there are any significant differences between the abuse that occurs in the general population and the abuse occurring to those with a guardian.
- Whether state guardianship systems are abusive by creating unnecessary or overbroad guardianships or by permitting guardians to abuse their authority through lax oversight.
- Whether there is a common definition of what actions constitute abuse by guardians.

Caution is necessary when trying to identify whether a guardian is committing abuse or exploitation because different entities — Adult Protective Services, licensure and certification agencies, and courts — have different purposes, definitions, and terminology.

## **D. How Will Courts and Other Stakeholders Use Guardianship Data?**

There is much we do not know about how well the guardianship system functions. Data are needed to answer many key questions and drive improvements in the guardianship system:

- Does guardianship improve the well-being of the adult?
- Is guardianship used in appropriate cases?
- Are guardianship orders overly restrictive of the adult’s rights?
- Does granting limited authority to guardians reduce the amount of abuse by guardians?
- What monitoring practices are most effective in detecting abuse?
- What deterrents or safeguards are most effective in preventing abuse by guardians?

Our Part 3 report included a deep dive into the universe of possible guardianship data elements and explained how courts and policymakers could use the elements to improve guardianship practice and address abuse. Data can be actively used to identify and stop abuse. For instance, if case data reveal a sudden steep drop in assets, the court can investigate for possible exploitation. If aggregated data show multiple complaints about one guardianship agency, the court can audit the agency to determine if there is wrongdoing.

We listed dozens of data elements that courts could collect both at the initiation of a case and after the appointment of a guardian. Over the life of a case, these data elements reveal the complexity of designing a system to improve court oversight of cases and clarify needed systemic changes. Each state court system and each local court can select and refine data priorities. An existing model of guardianship data elements is the National Center for State Courts National Open Court Data System for monitoring guardianships and conservatorships.<sup>9</sup>

## **V. Recommendations for Federal Action**

Our comprehensive scan forms the basis for recommendations for federal action to help states improve guardianship data collection and confront abuse and fraud. Although guardianship is the responsibility of state courts, there are approaches that the federal government can take to assist states.

### **A. Supporting Uniformity in Guardianship Law, Policy, and Data Governance**

Because guardianship is a responsibility of the states, some variability will exist. However, the federal government can encourage uniformity of effective practices.

1. The federal government should initiate a grant program for the highest court in states that have, in whole or in substantial part, enacted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act<sup>10</sup> to implement key sections of the Act that would target abuse and fraud by guardians.
2. The federal government should create grant opportunities for the highest state courts to support staff and develop technology to manage guardianship cases and aggregate data that identify patterns and trends, such as those identified by the National Center for State Courts data standards.<sup>11</sup>

### **B. Allocating Federal Resources for State Court Reform of Practice, Technology, and Staff**

The interviews and survey in Part 2 of our environmental scan revealed that the key barriers to improving guardianship data to better address abuse are lack of court resources and overburdening of court staff. Interviewees emphasized that funding for better data could provide the information needed to prompt state appropriations and legislative improvements. At least three channels exist for federal support of broad-based guardianship improvements.

1. The Elder Abuse Prevention and Prosecution Act of 2017, which seeks to prevent elder abuse, includes a focus on improving state guardianship systems in Section 501.<sup>12</sup> Congress has not appropriated any funds for grants under Section 501. Federal agencies should urge Congress to appropriate such funding.
2. The Administration for Community Living has made Elder Justice Innovation Guardianship Grants to the highest courts in 10 states.<sup>13</sup> It should continue to support such elder justice guardianship grants, including improvement of state data systems and approaches to addressing abuse. The Department of Justice should explore ways to collaborate with the Administration for Community Living to enhance this program.
3. Congress should create an ongoing guardianship Court Improvement Program, which would include continuing support for state court efforts to collect and aggregate guardianship data to address abuse and fraud. Relevant federal agencies — such as the Departments of Justice and Health and Human Services — should explore the benefits of such a program and mechanisms for implementation, drawing on the experience of the existing child welfare Court Improvement Program.<sup>14</sup>

### **C. Expanding Federal Data Sources To Include Guardianship**

The federal government collects information through key databases on health, long-term care, criminal justice, fiduciary, and legal services networks. These databases might offer opportunities to include or strengthen data elements on guardianship.

1. The federal government should strengthen data collection on those who perpetrate adult abuse in the National Adult Maltreatment Reporting System.<sup>15</sup> The federal government should also continue to provide grants to state Adult Protective Services offices to enhance their ability to collect and report data on any relationship between the victim and individual perpetrating the abuse, including fiduciary relationships such as guardianship.
2. To address abuse and fraud by guardians and enhance guardianship data, the Social Security Administration and the Department of Veterans Affairs — working in collaboration with other federal agencies as well as with state courts — should address barriers to information-sharing on representative payee and fiduciary cases.
3. Other federal databases hold varying degrees of potential for learning more about guardianship and the scope, prevalence, and nature of abuse by guardians. Where feasible, federal agencies should modify their current crime, criminal justice, health, long-term care, and legal service databases to include information on guardianship and abuse by guardians.

## D. Exploring Ways the Department of Justice Can Help Address Abuse by Guardians and Support Adults Subject to Guardianship

In addition to encouraging uniformity, funding states for guardianship reform, and enhancing federal data collection on guardianship, there are ways the Department of Justice could directly target abuse by guardians. Although these are not data initiatives, they will help inform data in valuable ways.

1. There is little structured communication and collaboration among courts, Adult Protective Services, and law enforcement in targeting abuse by guardians. A coordinated response is needed. Working in partnership with the Administration for Community Living, the Department of Justice should take the lead in convening key stakeholders in the state court system, law enforcement, and state Adult Protective Services to build an infrastructure for communication and coordination to target abuse by guardians.
2. The Office of Juvenile Justice and Delinquency Prevention administers and funds a Court-Appointed Special Advocate (CASA) program “to ensure that abused and neglected children receive high-quality best interest advocacy in dependency court and the child welfare system.”<sup>16</sup> Although there are many similarities between the child welfare system and the adult guardianship system, CASA has no analog in the guardianship world. The federal government should pilot and evaluate an adult guardianship CASA program for adults subject to guardianship.

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<sup>1</sup> 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 the court to make health care and personal decisions for an adult; the term “conservator” means a surrogate appointed by the 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.

<sup>2</sup> Hurme, S. & Robinson, D., *What’s Working in Guardianship Monitoring: Challenges and Best Practices*, 72 *Syracuse L. Rev.* 369 (2022).

<sup>3</sup> Yon, Yongje, Mikton, Christopher R., Gassoumis, Zachary D., & Wilber, Kathleen H. Elder Abuse Prevalence in Community Settings: A Systematic Review and Meta-Analysis, *Lancet Global Health*, 5(2), pp/ e147-e156 (2017). Also see Acierno, R. et al, National Elder Mistreatment Study (2009), National Institute of Justice (2009), <https://www.ojp.gov/pdffiles1/nij/grants/226456.pdf>

<sup>4</sup> Montgomery, L., (2016). State court leaders strive to improve guardianship and conservatorship oversight. *National Center for State Courts*.

<sup>5</sup> Government Accountability Office, “HHS Could Do More to Encourage State Reporting on the Costs of Financial Exploitation,” GAO-21-90 (Dec. 2020). With respect to data on who perpetrates abuse, Administration for Community Living officials acknowledged that, even at the summary data level, these data are the least complete type of data and a known gap. (p. 13)

<sup>6</sup> DOJ Part 2 Report, Scan of the Guardianship Abuse and Fraud Data Landscape, Interview Highlights, p. 32.

<sup>7</sup> U.S. Senate Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans* (2018), [https://www.aging.senate.gov/imo/media/doc/Guardianship\\_Report\\_2018\\_gloss\\_compress.pdf?utm\\_source=rss&utm\\_medium=rss](https://www.aging.senate.gov/imo/media/doc/Guardianship_Report_2018_gloss_compress.pdf?utm_source=rss&utm_medium=rss).

<sup>8</sup> National College of Probate Judges, “Abuse NCPJ,” <https://ncpj.org/about-ncpj/>

<sup>9</sup> Robinson, D., Holt, K. & Boyko, C., National Center for State Courts, *Guardianship and Conservatorship Monitoring: Recommended Data Elements* (2020),

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[https://www.eldersandcourts.org/\\_data/assets/pdf\\_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf](https://www.eldersandcourts.org/_data/assets/pdf_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf) .

<sup>10</sup> Uniform Law Commission, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c>.

<sup>11</sup> National Center for State Courts, “National Open Court Data Standards (NODS)”, <https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>.

<sup>12</sup> 42 U.S.C. 1397m-2(E).

<sup>13</sup> Administration for Community Living, “New Elder Justice Grants Address APS Training, Guardianship, APS to Community Services Transitions” (September 28, 2021), <https://acl.gov/news-and-events/announcements/new-elder-justice-grants-address-aps-training-guardianship-aps>.

<sup>14</sup> Pogach, D. & Wu, C., *The Case for a Guardianship Court Improvement Program: Federal Funding to State Courts Could Improve Guardianship Systems and the Lives of Millions of Older Adults and People with Disabilities*, 72 *Syracuse L. Rev.* 495 (2022).

<sup>15</sup> <https://acl.gov/programs/elder-justice/national-adult-maltreatment-reporting-system-namrs>. See Government Accountability Office, *HHS Could Do More to Encourage State Reporting on the Costs of Financial Exploitation*, GAO-21-90 (2021).

<sup>16</sup> Office of Juvenile Justice and Delinquency Prevention, <https://ojjdp.ojp.gov/tta-provider/national-casagal-association-membership-and-accreditation-and-training-and-technical>.