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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 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.

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,² 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.³ 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.⁴
- 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.⁵

- “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.⁶

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.⁷ 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,⁸ 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.⁹

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 Act¹⁰ 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.¹¹

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 501.¹² 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.¹³ 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.¹⁴

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.¹⁵ 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.”¹⁶ 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.

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 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.

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

³ 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>

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

⁵ 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)

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

⁷ 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.

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

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

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

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

¹¹ 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>.

¹² 42 U.S.C. 1397m-2(E).

¹³ 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>.

¹⁴ 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).

¹⁵ <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).

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

National Institute of Justice
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LITERATURE REVIEW OF
GUARDIANSHIP ABUSE AND FRAUD

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INTRODUCTION

In the United States, 10.6% of adults ages 18-64 and 35.2% of people age 65 and older live with a disability (Kraus et al., 2018). Four and a half percent of adults ages 18-64 and 8.9% of people age 65 and older have a cognitive disability (Kraus et al., 2018). Certain cognitive disabilities make adults vulnerable to abuse and require the help of a surrogate decision-maker, such as a guardian or an agent under a power of attorney (Gunther, 2011).

A wide spectrum of adults may need the assistance of a guardian, including individuals with serious mental illness, intellectual disability, and traumatic brain injury. The number of adults with serious mental illness increased from 8.3 million in 2008 to 13.1 million in 2019; the greatest increase occurred in young adults ages 18-25 (Lipari, 2020). More than 7 million people in the United States have an intellectual disability, with many requiring assistance (*Population Specific Fact Sheet—Intellectual Disability | National Disability Navigator Resource Collaborative*, n.d.). The Centers for Disease Control and Prevention estimates that each year there are more than 2.87 million visits to emergency departments, hospitalizations, and deaths due to traumatic brain injury; some of these result in long-term disability (*TBI Data | Concussion | Traumatic Brain Injury | CDC Injury Center*, 2021). The U.S. Department of Veterans Affairs reports that more than 400,000 U.S. service members experienced a traumatic brain injury between 2000 and 2019 (*VA Research on Traumatic Brain Injury (TBI)*, n.d.). Individuals with serious mental illness, intellectual disability, and traumatic brain injury may require short- or long-term guardianship depending on the progression and treatment of their disability. Advancements in medical care not only expand the lifespan of older individuals but also enhance the life expectancies of younger individuals with brain injuries, serious mental illness, or intellectual disabilities, who may outlive their family caregivers (Patja et al., 2000).

Terminology for guardianship differs by state. In many but not all states, court-appointed surrogates who make decisions concerning an individual’s finances are referred to as “conservators,” and those who make decisions concerning an individual’s health or personal matters are called “guardians.” For this report, we use the term guardian to refer to both, unless specifically indicated.

Guardians are bound by statutory requirements and case law — as well as ethical principles — to act in the best interests of a vulnerable adult. Guardians are fiduciaries, which means that they must act according to the highest standards of care, accountability, trust, honesty, confidentiality, and avoidance of conflict of interest (*Managing Someone Else’s Money: Help for Court-Appointed Guardian of Property and Conservators*, 2019). Powers given to guardians are often immense — for example, the authority to sell a person’s home and personal property, make contracts on their behalf, and consent to all medical treatments. In addition, guardians may be authorized to charge fees for their services that are payable from an adult’s estate — a situation that, left unmonitored, opens the potential for abuse. Moreover, adults with cognitive impairments may be unable to recognize when guardians are not serving as they should.

Although guardians should provide protection, there is also the risk that a guardian may take advantage of an adult whom they were named to protect. Despite this situation, we currently lack reliable data both on how many guardianships or guardians exist and on the outcomes of these

arrangements. A number of high-profile media exposés (e.g., Aviv, 2017; Day, Stark, & Coscarelli, 2021; Garland, 2017) have highlighted how, in some egregious cases, guardian actions have harmed adults who are at risk.

The Abuse, Neglect, and Exploitation of Vulnerable Adults

Overall, there are significant gaps in knowledge regarding the abuse, neglect, and exploitation of vulnerable adults. We do know that vulnerable adult abuse (e.g., physical, sexual, and psychological abuse; active and passive neglect; and financial exploitation) affects approximately 5 million older Americans each year (Department of Justice, 2014). The personal, financial, and societal impact of this abuse is devastating. It is estimated to cost billions annually, yet only 1 in 24 cases of elder abuse is ever reported (Department of Justice, 2014).

Cases of vulnerable adult abuse go unreported and unabated for multiple reasons. Individuals may be isolated from others; they may be unable to recognize the behavior as abusive, neglectful, or exploitive; or they may remain silent because of shame, self-blame, or fear of retaliation or further loss of independence. They may also fear loss of the support they receive from the person who is being abusive (Acierno et al., 2009; 2010; Gunther, 2011; Hafemeister, 2003). Individuals may feel sympathetic and protective of the abusive person, especially when codependence, substance abuse, and mental illness are involved (Ramsey-Klawnsnik, 2017; Roberto, 2017). It is also important to recognize that the abuse of younger adults may differ from that of older adults. For example, younger adults may experience more or different types of sexual abuse than their older counterparts (Abner et al., 2019; Ramsey-Klawnsnik et al., 2007).

Abuse by guardians is one aspect of abuse by surrogate decision-makers, which also includes agents under powers of attorney, trustees, and representative payees. Abuse by surrogates is, in turn, one part of the full picture of adult abuse of all kinds. A number of related concepts confound an understanding of the scope and nature of abuse by guardians. Below, we explain important distinctions among terms and concepts.

Distinguishing Guardian Criminal Actions, Abuse, and Misconduct

What we know about abuse by guardians is similar to what we know about the abuse of vulnerable adults overall. However, harms to individuals with a guardian also have some unique characteristics. Below we differentiate among the range of harmful 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 (APS) Definition of Abuse.* Criminal actions may overlap with, but are not the same as, actions in substantiated APS reports. These reports include physical, sexual, and psychological abuse; active and passive neglect; and financial exploitation. Although 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 acts that put them out of compliance with various requirements, those acts may not rise to the level of criminal acts or founded APS reports. Examples of guardian misconduct include failing to file reports required by the courts, filing reports that have inaccurate representation or documentation, taking on a caseload so high that the guardian is unable to attend to the needs of the individual, or showing a lack of respect for the individual’s preferences.

Distinguishing Abuse by Guardians and Systemic Guardianship Abuse

There is also a distinction between abuse by guardians and “systemic guardianship abuse.” 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. The actions and inactions below reflect the context of a larger picture of systemic guardianship abuse, including, but not limited to, issues such as:

- Appointment of guardians without sufficient procedural due process, especially representation by counsel for the adult alleged to need a guardian.
- Guardianship orders by judges when a less restrictive option, including supported decision-making, might suffice.
- Guardianship orders by judges that are overbroad and not tailored to individual needs.
- Guardianship “pipelines,” such as the hospital-to-guardianship pipeline and the school-to-guardianship pipeline, in which guardianship appointments are routinely made or assumed to be necessary without a full review of specific needs.
- Appointments of the same guardian repeatedly or without regard to the guardian’s conflict of interest to serve or performance or capability to perform essential functions.
- Appointments of guardians resulting in caseloads that are higher than a 1:20 ratio of guardian-to-individuals needing guardianship.
- Lack of case review to determine if a guardianship continues to be necessary or if rights can be fully or partially restored.
- Failure of courts to sufficiently monitor cases.
- Lack of attention to the appropriateness of guardian fees.
- Lack of background checks for guardians.
- Failure to require bonds for guardians.
- Lack of clear standards for guardian practices.
- Lack of training for both family and professional guardians.

Individuals needing guardians may be especially vulnerable to both types of abuse because they have lost many — if not all — of their civil rights, rely on others for care, and are unable to advocate for themselves.

Need for Environmental Scan of Abuse and Fraud by Guardians

Closely examining the issues of abuse by guardians and systemic guardianship abuse is critical because, as media attention reflects (the most available source of information on the topic to date), there is recurring evidence that some guardians perpetrate abuse (Bolkan et al., 2020; Government Accountability Office, 2010; 2016).

Despite growing awareness and the urgent need to understand the scope of this problem and how to prevent it, little to no reliable, systematized, empirical information exists on the nature and extent of abuse by guardians and systemic guardianship abuse. Without reliable and systematized information on how abuse and fraud are perpetrated, intervention and prevention efforts are significantly compromised or rendered ineffective altogether.

In 2021, the National Institute of Justice (NIJ) requested that the authors conduct a sweeping, four-part environmental scan:

- Part 1: Literature Review of Research on Guardianship Abuse and Fraud
- Part 2: Scan of the Guardianship Abuse and Fraud Data Landscape
- Part 3: Scan of the Legal, Policy, and Practice Context and Considerations for Collecting Data on Guardianship Abuse and Fraud
- Part 4: Summary Overview of the Environmental Scan

Pertinent to this work, we consider “fraud” as an act targeting a vulnerable adult or adults in which there is an attempt or attempts to deceive an adult using promises of goods, services, or financial benefits that do not exist, were never intended to be provided, or were misrepresented. We define “abuse” along a broad continuum. Although criminal abuse is NIJ’s priority, the report also includes a range of other misconduct as well as the imposition of overbroad or unnecessary guardianship that causes a loss of fundamental rights.

This paper — Part 1: Literature Review of Research on Guardianship Abuse and Fraud — examines documentation and research around:

- (1) The scope and prevalence of abuse by guardians.
- (2) The nature of abuse by guardians, including the kinds of abuses committed, the individuals who perpetrate the abuse, the victims, and their relationship.
- (3) Prevention and intervention addressing abuse and fraud by guardians.
- (4) An examination of the lack of data as a barrier to fully understanding abuse by guardians.

The paper also identifies gaps in the research and barriers to conducting systematic research. The appendices include a full list of literature from federal sources, state-based efforts, the media, research projects, case law, national guardianship summits, and guardianship practice resources. The concluding section summarizes our key findings, drawn from intensive review of this vast body of materials.

METHODS

We researched each of the main areas of the literature review in databases such as Lexis/Nexis, Google Scholar, and YouTube, using the following key words and resources: guardian; guardianship; conservator; abuse, neglect, and exploitation; fraud and vulnerable adult; older adult; and capacity. Using data and publications from the internet and our personal repositories of hard-copy documents, we examined and summarized publications from the federal government (e.g., reports from the U.S. Government Accountability Office (GAO), testimony before congressional committees), publications contributing to and resulting from four national guardianship summits, reports on guardianship published by state governments, appellate court

cases involving fiduciary misconduct, peer-reviewed research on guardianship, and more than a decade of media accounts on guardianship abuse.

LITERATURE ON SCOPE AND PREVALENCE OF ABUSE AND FRAUD BY GUARDIANS

Despite efforts by Congress and GAO, research by experts and state-based entities, and inquiries by the media, there remain no reliable estimates of the scope or prevalence of abuse by guardians. Further, there is no credible evidence of the extent of various kinds of misconduct by guardians or other guardianship stakeholders that might be classified as less than abuse. However, multiple resources confirm the existence of abuse by guardians and include case examples.

In reviewing the literature on abuse and fraud by guardians, we first examine (1) what is known about the scope and prevalence of abuse of vulnerable adults generally and (2) what is known about the scope of adult guardianship in the United States today. We then examine federal efforts, media accounts, state-based reports, and other research and present conclusions about the scope and prevalence of abuse and fraud by guardians.

The Scope and Prevalence of Vulnerable Adult Abuse Generally

Various studies — focused on elder abuse and not overall adult abuse — show differing prevalence rates for different types of abuse. Research has found that at least 1 in 10 older adults who dwell in the community experienced some form of abuse in the prior year (Acierno, 2010; Rosay, 2017). One study, relying on self-reports, assigned the following percentages by abuse type: psychological (11.6%), financial (6.8%), neglect (4.2%), physical (2.6%), and sexual (0.9%) (Yon, 2017). Acierno and colleagues (2009) found the following percentages of abuse: financial (stranger: 6.5%), financial (family: 5.2%), neglect (5.1%), emotional (4.6%), physical (1.6%), and sexual (.6%).

The few studies that have investigated the prevalence of mistreatment within institutions have provided wide-ranging, sometimes disparate, estimates. A recent systematic review that collected self-reports of abuse by residents found high levels of institutional abuse. By abuse type, reported prevalence estimates were: psychological (33.4%), physical (14.1%), financial (13.8%), neglect (11.6%), and sexual (1.9%) (Yon, 2019).

The Scope of Adult Guardianship in the United States

To determine the scope and prevalence of abuse by guardians, it is critical to know the total number of cases for which a guardian has been appointed for an adult and the case is subject to court review. In its 1987 report, *Guardians of the Elderly: An Ailing System* (Bayles & McCartney, 1987), the Associated Press produced the earliest estimate, determining that there were 300,000 to 400,000 older people under guardianship.

In 2011, the National Center for State Courts made a best guess estimate of the total number of active cases at 1.5 million nationally, but it cautioned that the variance between states is high,

and the total number could range from fewer than 1 million to more than 3 million (Uekert & Van Duizend, 2011). This number was projected from just four states that were able to differentiate adult guardianship cases, and it did not include conservatorship (guardians of property) cases.

In 2016, the National Center for State Courts reported an estimated 1.3 million open cases. It noted that approximately 176,000 new cases were filed in state courts in 2015 and estimated that \$50 billion in assets was under state courts' watch in conservatorship cases (Montgomery, 2016).

There are many factors that make finding the number of active guardianship cases challenging, as will be discussed later in this paper.

Federal Inquiries

Little Evidence From Congressional Hearings

There have been seven U.S. congressional hearings on guardianship and abuse held over almost 30 years. Although they offer very little information about the scope and prevalence of abuse by guardians, they do show that it has been a long-standing concern.

- “Roundtable Discussion on Guardianship: Workshop Before the U.S. Senate Special Committee on Aging,” U.S. Senate Special Committee on Aging, 1992. Although witnesses described a host of problems about guardianship proceedings, there were no statistics provided. One witness observed that he based his remarks on “impressions, anecdotes, snatches of evidence, not broad-based empirical studies ... which simply don’t exist by and large in this area.”
- “Guardianship Over the Elderly: Security Provided or Freedoms Denied,” U.S. Senate Special Committee on Aging, 2003. Witnesses provided no data, and one asked, “How can anyone know how many victims there are of abuses and injustice in the guardianship system? These individuals, who are likely to be limited by the nature of their physical and mental frailty to begin with, have no way of speaking up, making themselves and their plight visible, or seeking redress or help out of the situation.” Another witness, Diane Armstrong, author of *The Retirement Nightmare*, said that she was speaking “for the hundreds of thousands of men and women whose retirement years have been destroyed” but offered no substantiation for that figure.
- “Protecting Older Americans Under Guardianships: Who Is Watching the Guardian?” U.S. Senate Special Committee on Aging, 2004. GAO presented findings that highlighted the lack of data and the inability of many courts to track the number and kinds of cases of abuse by guardians. One witness noted that there may be cases in which “guardians are found to have committed literal criminal acts of stealing from the estates of wards ... and physically harming or neglecting the very persons they are charged to protect. ... But the question is how prevalent do you think abuse under guardianship is?”

- “Exploitation of Seniors: America’s Ailing Guardianship System,” U.S. Senate Special Committee on Aging, 2006. A witness from GAO explained that it is “very difficult for the federal government or national organizations to devise effective approaches to preventing and detecting abuse when we don’t know much in any kind of comprehensive way about the circumstances of that abuse, or the incidence of that abuse.”
- “Trust Betrayed: Financial Abuse of Older Americans by Guardians and Others in Power,” U.S. Senate Special Committee on Aging, 2016. GAO presented findings showing that the extent of elder abuse by guardians is unknown. The committee chair remarked, “One would hope that abuse would be unusual where guardians or conservators are involved since these fiduciaries are formally appointed and overseen by state courts. But experience has shown that this is not always the case.” The ranking member stated that “we still have limited information on the prevalence of guardianship abuse across the country and data vary widely from state to state....”
- “Ensuring Trust: Strengthening State Efforts To Overhaul the Guardianship Process and Protect Older Americans,” U.S. Senate Special Committee on Aging, 2018. In conjunction with the hearing, the committee sought comments from states, courts, and organizations, and received more than 100 responses, which it incorporated in a report. “Many [comments submitted] detailed stories of guardianship abuse from throughout the country.” The report and hearing highlighted the lack of state and national data, leaving policymakers in the dark.
- “Toxic Guardianships: The Need for Reform,” Senate Committee on the Judiciary Subcommittee on the Constitution, 2021. Senator Richard Blumenthal, subcommittee chair, said that the guardianship system “is rife with abuse” — but none of the witnesses offered data to substantiate or contradict this claim.

GAO Unable To Quantify Extent of Abuse

Even though guardianship is a state issue, GAO completed five reports on adult guardianship over 12 years at the request of the Senate Special Committee on Aging. Four of these reports commented on the need for data on abuse by guardians; however, GAO was not able to determine the scope or prevalence of such abuse.

- *Guardianships: Collaboration Needed To Protect Incapacitated Elderly People*, 2004. The report found that most courts surveyed did not track the number of active guardianships. It also found that data on the incidence of abuse could help courts but are not available: “[T]he incidence of elder abuse involving persons assigned a guardian or representative payee is unknown” (GAO, 2004).
- *Guardianships: Little Progress on Ensuring Protection for Incapacitated Elderly People*, 2006. GAO testimony stated, “While the incidence of elder abuse involving persons assigned a guardian or representative payee is unknown, certain cases have received widespread attention” (GAO, 2006).

- *Guardianships: Cases of Financial Exploitation, Neglect and Abuse of Seniors*, 2010. Congress asked GAO to verify whether allegations of abuse by guardians are widespread. GAO “could not determine whether allegations of abuse by guardians are widespread; however, GAO identified hundreds of allegations of physical abuse, neglect, and financial exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010. In 20 selected closed cases, GAO found that guardians stole or otherwise improperly obtained \$5.4 million in assets from 158 incapacitated victims, many of whom were seniors” (GAO, 2010). GAO cautioned that allegations should not be interpreted as evidence that abuse by guardians occurs on a widespread basis.
- *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, But Some Measures Exist To Help Protect Older Adults*, 2016. To determine whether abusive practices by guardians are widespread, GAO reviewed relevant research and conducted interviews with guardianship stakeholders. GAO found that “the extent of elder abuse by guardians nationally is unknown due to limited data on key factors related to elder abuse by a guardian, such as the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian” (GAO, 2016). GAO identified eight closed cases of elder abuse by guardians in which there was a criminal conviction or finding of civil or administrative liability in the last five years as illustrative of abuse by guardians.

Other Federal Findings

Administrative Conference of the United States (ACUS). The U.S. Social Security Administration asked ACUS to study adult guardianship laws and practices to inform opportunities for potential collaboration between the Social Security Administration and the courts. ACUS contracted with the National Center for State Courts to conduct a survey of state courts. The study found that two-thirds of respondents said the court had “taken actions against at least one guardian for misconduct, malfeasance, or serious failure to fulfill their obligations in the past three years. In these cases, the most serious sanctions applied were the removal and appointment of a successor guardian and issuing a show cause or contempt citation” (*SSA Representative Payee: Survey of State Guardianship Laws and Court Practices*, 2014). In 39% of these cases, the court filed an APS report; in 7% of the cases, the guardian was convicted of a crime against the individual whom they were appointed to serve.

National Council on Disability. Although the main focus of its report is reducing overbroad and unnecessary guardianships through use of less restrictive options, including supported decision-making, the National Council on Disability commented on the significance of the 2010 and 2016 GAO reports regarding the prevalence of abuse:

Notably, both GAO reports are careful to assert that [the cases described] are nongeneralizable examples. Nonetheless, while the examples of abuse GAO uncovered are only illustrative, it is apparent from the totality of available evidence regarding guardianship practices, that courts are not currently able to safeguard individuals against abuse, neglect, and exploitation committed by guardians. While it cannot be said that the findings of GAO report demonstrate that abuse is occurring in the majority of guardianship cases, it would also be a mistake to assume that GAO only found and

reported on the outliers. GAO reports raised significant red flags for Congress, which passed the *Elder Abuse Prevention and Prosecution Act of 2017*. (*Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination for People with Disabilities*, 2018).

Media Accounts

As mentioned above, in 1987, the Associated Press found a “dangerously burdened and troubled system that regularly puts elderly lives in the hands of others with little or no evidence of necessity, then fails to guard against abuse, theft and neglect” (Bayles & McCartney 1987). The report noted that this occurs “in thousands of courts around the nation every week” (Bayles & McCartney 1987). As explained in detail later in this paper, the Associated Press report was replete with examples of individual cases of abuse by guardians and systemic problems with the guardianship system.

Over the next 35 years, other media outlets followed the lead of the Associated Press and spotlighted the maltreatment of individuals subject to guardianship — especially with the rise of professional guardians and guardianship agencies. The appendices for this literature review include more than 30 stories published since 2000.

The popular press has shaped much of the public’s perception of abuse by guardians over the years, rising to a recent pitch with a host of stories about singer and actress Britney Spears. Although such stories can highlight serious problems and spur reform, they may not accurately represent the system as a whole and do not address the scope or prevalence of abuse by both family and professional guardians.

Finally, organizations of family members who have experienced abuse of a vulnerable adult by professional guardians present compelling cases on websites and in press stories. Organizations such as the Center for Estate Administration Reform and Stop Guardianship Abuse have collected numerous egregious cases and helped bring the need for change to the public’s attention (*CEAR- Center for Estate Administration Reform*, n.d.; *NASGA – National Association to Stop Guardianship Abuse*, n.d.). The websites of these organizations do not include information on the scope or prevalence of such cases.

Limited Research

There is very little empirical research on adult guardianship — and even less on abuse by guardians. The few research inquiries concerning abuse by guardians shed limited light on its overall scope or prevalence.

Conservator Exploitation Background Briefs. In 2018, the National Center for State Courts and partner organizations — with funding from the Department of Justice’s Office for Victims of Crime — produced a series of eight research background briefs on conservator exploitation. The introduction notes that “despite the financial and psychological impact of conservator exploitation on victims and their families, there is little information on its extent and consequences” (National Center for State Courts et. al., Introduction, 2018). The briefs cover

exploitation detection (through court monitoring and other systemic approaches), court actions upon detection, innovative programs to address conservator exploitation, support for victims, and data quality.

The project contains descriptions of 22 recent conservator exploitation cases that had received media attention. It includes an analysis of nine cases and presents the dynamics, processes, and impacts of conservator exploitation on victims and their families (National Center for State Courts et. al., *Examples of Conservator Exploitation: An Overview*, 2018).

The research also includes an issue brief that presents findings from the Minnesota courts' centralized professional auditing team, the Conservator Account Auditing Program (CAAP). CAAP uses a four-point scale to summarize audit results. A level 1 finding means that there are no issues with the accounting, and a level 4 finding shows a "concern of loss." The issue brief explains that a "concern of loss" could include a range of problems, such as comingling of funds or unusually large expenditures without court approval (National Center for State Courts et. al., *Conservator Exploitation in Minnesota*, 2018).

The issue brief focuses on 139 conservatorship cases over three years. It states that of the 139 cases, "only one professional conservator was charged and convicted of violating the Minnesota statute on financial exploitation. By examining only official crimes, financial exploitation would appear to be a rare occurrence in conservatorships. The reluctance to criminally charge conservators, many of whom are family members, requires a more expansive definition of exploitation" (National Center for State Courts et. al., *Conservator Exploitation in Minnesota*, 2018). Therefore, the brief defines exploitation more broadly as any combination of: (1) filing of criminal charges; (2) a judicial finding of monetary loss; (3) a judicial order for repayment; or (4) repayment made to the person with or without a court hearing. Using this definition, 31 of the 139 audit-level-4 cases were classified as exploitation (National Center for State Courts et. al., *Conservator Exploitation in Minnesota*, 2018).

Study of Abuse by Surrogate Decision-Makers. A 2020 study examined substantiated APS reports involving agents under powers of attorney, guardians, and representative payees. Investigators collected data over a 10-month period on community-dwelling older adults in selected counties in California, Florida, North Carolina, New Hampshire, Nevada, and Texas. The study found substantiated reports involving 102 surrogate decision-makers: 90 were agents under powers of attorney, seven were representative payees, and five were guardians (Bolkan, Teaster, & Ramsey-Klawnsnik, 2020).

National Guardianship Summit Paper on Abuse. One of the background articles commissioned for the 2021 Fourth National Guardianship Summit was a landmark paper by Anetzberger and Thurston (2021) on "Addressing Abuse by Guardians: The Role of Adult Protective Services, Law Enforcement, and the Courts." The paper states that there is "no research on the prevalence of abuse by guardians." It highlights misperceptions and lack of collaboration, which block needed interventions. For instance, APS may not pursue reports of abuse by guardians, assuming that the courts are sanctioning bad actors. Courts may not make referrals to APS or law enforcement, and law enforcement may regard abuse by guardians as a civil matter. Moreover,

abuse by guardians is not in the purview of the growing number of multidisciplinary elder justice and elder abuse coalitions.

In their paper, Anetzberger and Thurston (2021) presented the results of interviews with nine judges who regularly handle guardianship cases. None of the judges perceived that abuse by guardians “was a pervasive or prevalent problem,” but almost all the judges described at least one case. As a result of the paper, the National Guardianship Summit recommended promoting state and local policy collaboration to address abuse by guardians.

State-Based Reports

Several states — including Arizona, Florida, Michigan, Nevada, New Mexico, New York, Pennsylvania, Texas, Virginia, and possibly others — have convened task forces, grand juries, and court commissions to examine guardianship practices. These groups have examined systemic issues within guardianship procedures, including those that could advance the detection of misconduct or abuse. Their reports — although acknowledging cases of abuse — have not included statewide empirical studies that would reveal the scope and prevalence of abuse by guardians. However, they may contain relevant information.

For example, in New Mexico, the Adult Guardianship Study Commission noted in its 2017 final report that its work had been influenced by “the pair of federal indictments that were issued this summer against two corporate officers of Ayudando Guardians. These indictments revealed structural weaknesses in the oversight of guardians and conservators in New Mexico. The Commission used these public allegations as a case study to help identify improvements that should be made to prevent similar misconduct in the future” (*Final Report to the New Mexico Supreme Court*, 2017).

In New York, the Commission on Fiduciary Appointments reviews and reports on needed court-system reforms. Of note is a statement in the commission’s 2005 report: “Even as we focus on the weaknesses of the fiduciary oversight system and the relatively few but often well-publicized abuses by individual fiduciaries, it should be kept in mind that most fiduciary appointments are uncontroversial, involve relatively small estates, generate insignificant fees, and provide much-needed assistance to vulnerable people” (*Report of the Commission on Fiduciary Appointment*, 2005, p. 1).

In Texas, specialists at the Guardianship Compliance Project help review cases, audit accountings, and report any concerns of potential abuse, fraud, or financial exploitation to the courts. In a review of more than 55,000 cases, “Texas’ judiciary found that in 5,261 instances, the individual was deceased without the guardian alerting the judge. Forty percent of the cases lacked current required reports, meaning that the court was uninformed about the well-being of the individual or how the guardian was managing the finances of the estate” (Slayton, D., 2021). Such a staggering lack of compliance sets the stage for possible abuse by guardians.

In Virginia, the 2021 report of the Joint Legislative Audit and Review Commission concluded that the “extent of mistreatment of adults under guardianship is unknown” (*Improving Virginia’s Adult Guardian and Conservator System*, 2021). Nonetheless, the report identified 20 guardians

who had been named by APS for allegedly perpetrating substantiated mistreatment between fiscal year 2019 and fiscal year 2021 (19 for neglect and one for financial exploitation). The guardians in all 20 cases were family members or friends. The report recognized that data systems must be updated for an accurate picture. Also, in Virginia, unlike other states, APS reviews guardian reports, and therefore it might be more likely to identify problematic or abusive cases.

Conclusions

A scan of the relevant literature finds the following:

- Overall, elder abuse affects about 5 million older adults each year, and rates of prevalence differ by study and type of abuse. This number does not include vulnerable younger adults with disabilities. Studies have recognized that projections of elder abuse likely underestimate the actual population prevalence.
- The best estimate of the number of adult guardianships in the United States is 1.3 million open cases for court review, but it is based on varying reports by selected states.
- Federal inquiries and a limited amount of research have been unable to determine the scope and prevalence of abuse by guardians. State reports have not revealed such information, although some make useful findings. All of these sources recognize the tragic existence of abuse by guardians and highlight case examples.
- Although press stories have investigated serious problems, they may not accurately represent the system as a whole and do not address the scope and prevalence of abuse by guardians.

LITERATURE ON THE NATURE OF ABUSE BY GUARDIANS

Trying to describe the nature of abuse by guardians is like putting together a puzzle with pieces from different puzzles. One puzzle is what we know about elder abuse and why we do not know more about how it happens, how much occurs, and why we are unsuccessful in preventing it. Another puzzle is whether there are any significant differences between abuse of older adults and the younger population of vulnerable adults. Then there is the complex puzzle of guardianship itself and what it looks like across multiple state systems. When we do not know how many open guardianships there are, the picture is indistinct as to who is currently under a guardianship and how much abuse by guardians is occurring. An additional puzzle is whether the current state guardianship systems can be abusive to those whom they are supposed to protect by creating unnecessary or overbroad guardianships or by permitting guardians to abuse their authority through lax oversight. A final puzzle may be how abuse by a court-appointed fiduciary is different from abuse by any other person.

Caution is necessary because the different puzzles may use differing vocabulary when discussing abuse. APS definitions of abuse, neglect, or exploitation may have distinctly different elements than a state statute's criminal definition of elder abuse or financial exploitation. National and state agencies that license and discipline guardians may look for violations of practice standards that other entities consider misconduct, noncompliance, or breach of a fiduciary duty — none of which constitute what APS would substantiate as abuse, neglect, or exploitation. In deciding whether to remove a guardian, judges may consider the well-being of the adult under a guardianship rather than whether any abuse has occurred.

With these cautions in mind, the diverse array of literature reveals some varying insight into the nature of adult abuse by guardians across a range of populations and settings.

The Nature of Adult Abuse in General Is Complex

Lack of basic knowledge about adult maltreatment — including the number of adults affected, the types of maltreatment, and the characteristics of those perpetrating the abuse — has long impeded the ability of federal, state, and local officials to develop effective policies to combat this issue. A comprehensive review by Mallik-Kane and colleagues (2021) revealed that, in 2010, the Department of Justice’s Bureau of Justice Statistics, contracting with the Urban Institute, made one of the first attempts to assess available data in the protective services system. In 2013, the Department of Health and Human Services began a two-year effort to develop a national collection system based on APS data. After extensive research on information needs and APS capabilities and several years of pilot studies, the Administration on Community Living rolled out the National Adult Maltreatment Reporting System (NAMRS) in 2016.

The most recent NAMRS report illuminates the who, what, and how of substantiated investigations by APS in 2020. More than 70% of APS victims and clients were age 65 or older. That figure may undercount abuse of younger adults because some APS programs serve only older adults who live in community settings. Fifty-six percent of victims were women, and 58% of all victims were white. More than half of the victims (54%) were not Hispanic, and ethnicity was unknown for 32% of victims. More than half of the victims (57%) lived in their own residence or that of a relative or caregiver. The most frequent types of victims’ disabilities were ambulatory (35.2%) and cognitive difficulties (20.8%). For the 30 states reporting data on the relationship between victims and those who perpetrated the maltreatment, two-thirds had a familial relationship. Males (related or not) perpetrated higher percentages of physical, sexual, and emotional abuse, and women perpetrated the abuse more often in cases of abandonment, neglect, and exploitation (McGee & Urban, 2021a).

In 2020, the number of financial exploitation victims (36,862) was almost equal to the number of neglect victims (36,890), with some victims experiencing both (i.e., polyvictims). Emotional and physical abuse — with 25,000 and 21,000 victims respectively — comprised the other significant categories of maltreatment. Excluding self-neglect cases, the exploitation and neglect cases together comprised 54.3% of all cases (McGee & Urban, 2021a).

In 2016, Kathryn Larin, Acting Director of GAO’s Forensic Audits and Investigative Service, testified to the Senate Special Committee on Aging and held out the promise that NAMRS would be able to collect long-sought information about guardians who perpetrate abuse (K. Larin, Testimony, November 30, 2016). Unfortunately, the NAMRS data on individuals who perpetrate abuse are limited, with less than half of the states submitting these data.

NAMRS allows states to provide data on the relationship between the victim and the individual perpetrating the abuse, including whether there is a substitute decision-maker relationship (such as with a health care or financial proxy, a guardian or conservator, or representative payee). According to an **ACL** gap analysis of NAMRS data, among the states that submitted detailed

case-level data on financial exploitation cases in fiscal year 2018, most provided less than half of the 29 requested data elements examined by the gap analysis, and eight of 31 states provided no financial exploitation data. ACL officials acknowledged that, even at the summary data level, data on who perpetrated the abuse are the least complete type of data and a known gap. ACL officials said that many states were initially unsure if they would be able to provide certain data on who perpetrated the abuse because this information may not be captured in the state-level data systems. Some states may also have policy or legal concerns about recording this information before affording the individual due process. Further, state APS programs place their primary focus on the victims, not those perpetrating the abuse. Nevertheless, ACL officials said that the agency has provided technical assistance to states that have requested it to increase the amount of data they provide, and they believe that data on who perpetrates abuse will likely become more complete over time, to the extent that more states continue to provide more data to NAMRS each year (McGee & Urban, 2021).

Although data collected on adult abuse provide some insight, the extensive multi-agency effort to devise a national data collection system of APS reports demonstrates the complexities inherent in identifying the nature of this abuse. NAMRS addressed challenges in variations in elder abuse laws, diverse jurisdictions of APS agencies, and limited data system capacity. Those same challenges are also present for the more diverse state guardianship systems, laws, and lexicon.

The Nature of Misconduct by Guardians Is Complicated

When research shows that courts lack both basic information about how many guardians are under their jurisdiction and the capacity to provide oversight, finding documentation about the nature of misconduct by guardians is challenging. A few pockets of information — as described below — expose breaches of fiduciary duties, mismanagement of assets, and exploitation.

The key factor distinguishing misconduct by guardians from misconduct by others is that guardians have been appointed by a court. This means they have a fiduciary duty to act in the best interests of the individuals whom they are appointed to serve, faithfully manage assets, promote well-being, and honor the limitations of their authority. When guardians breach the public trust by harming those whom they were appointed to protect, their misconduct, however denominated, is of national concern.

Appellate Court Decisions Expose Cases of Misconduct by Guardians

Appellate court decisions in guardianship cases offer some information on how guardians have abused their authority. The National Guardianship Association (NGA) (*National Guardianship Association*, n.d.), a member organization for guardians, court officials, attorneys, and others interested in guardianship matters, has compiled abstracts of all published court cases concerning guardianship and conservatorship matters since 1998. That effort represents 23 consecutive years of case law compilation. Each year, a volunteer panel of attorney members of NGA search Westlaw for all state and federal cases that have a written opinion or decision that raises issues about guardianships, conservatorships, or other fiduciary matters. The panel attorneys then create abstracts of those reported cases, which are compiled into an annual report called the *NGA Legal Review*.

The NGA abstracts of appellate decisions cover a wide range of issues, such as whether there was adequate evidence of incapacity; who should have been appointed as guardian; whether a court had jurisdiction over a particular matter; whether an order is final and ripe for appeal; whether parties received adequate notice; and challenges to actions by a fiduciary, caregiver, family member, guardian, or conservator. Although the vast majority of state court decisions never result in an appeal or a reported decision — and thus escape inclusion in this resource — the *NGA Legal Review* abstracts provide important insights into the nature of guardian conduct and misconduct.

For this paper, we examined *NGA Legal Reviews* from 2015 to 2021, comprising a total of 1,385 reported cases. The panel attorneys categorized 150 of those cases as involving some allegation of fiduciary misconduct (11% of all cases). From those 150 cases, we eliminated cases where the fiduciary misconduct was attributed to trustees, agents with a power of attorney, or family or caregivers who had no court-appointed guardianship role. We coded the resulting 114 guardianship cases according to the role of the party engaging in the alleged misconduct, the type of misconduct, and the case outcome or sanction, including any criminal prosecution. The appendices contain a spreadsheet of the case descriptions.

Some of the actions involved in these “misconduct” cases can be clearly categorized as financial abuse: theft of guardianship assets, excessive fees, false accountings, and comingling of funds. Three-fourths of the cases against guardians pertained to financial mismanagement or breach of fiduciary duty, including failure to file accountings or pay taxes, improper expenditures or accountings, misuse of a restricted account, sale of property without authority, change of a beneficiary to self, and similar difficulties in managing someone else’s money. The other one-fourth of cases concerned personal management: abusive behavior, lack of caregiving, failure to give proper medical attention, moving the individual without authorization, neglect, and sexual abuse.

Two cases involved judges from Mississippi. One judge, who was also a conservator, was sentenced to five months in federal prison for mismanagement of his conservatorship appointment and obstruction of justice. The state judicial commission removed him from office. Another judge, who consistently appointed the same attorney as both guardian ad litem and the conservator’s attorney, received a public reprimand for negligence and inattention.

Forty percent of those who engaged in alleged misconduct were attorneys — 11 were appointed as guardian/conservator, and the others served as attorney for the guardian/conservator, the person alleged to need a guardian, or the petitioner (the high percentage of attorney-involved cases may be attributed to the fact that bar counsel disciplinary actions are searchable in Westlaw). The attorneys appointed as guardians were found to have misused or misappropriated client funds, filed false accounts, or otherwise neglected their duties. Only one case — which concerned mistreatment of a vulnerable adult and bad check writing by a Kansas guardian’s attorney — resulted in criminal convictions. Other actions by attorneys who were not serving as guardian could nonetheless be considered abuses of the guardianship system: charging excessive fees, making frivolous or unsupported filings, submitting false statements or documents, having conflicts among clients, and otherwise abusing the court process. Most of their actions resulted in

disbarment, suspensions, and restitution, primarily through bar counsel opinions. One Montana attorney for the respondent's family was sanctioned and removed from the case for "frivolous, frothful filings" (*p*, 2016) *State v. Williams*, 380 Mont. 445 (MT 2015)

Criminal charges were present in 10 cases involving guardians. In addition to the two Mississippi judges and the Kansas attorney mentioned above, an Ohio attorney was sentenced to two years for theft of guardianship assets. A Nevada attorney for a petitioner was convicted for false statements on the petition; the husband of a Missouri grandmother-guardian was given a seven-year sentence for sexual assault of the individual under her guardianship; and a Montana guardian, who persistently offended and stole a minor's inheritance, was given a 10-year prison term. A grandfather-guardian had 10 felony convictions for gross abuse and neglect, and parent-guardians were convicted of sexual abuse. Sanctions imposed in the noncriminal cases included removal of the guardian, restitution, surcharge of bond, and civil contempt.

The case abstracts showed that guardians who committed misconduct were primarily family members, especially notable given the emphasis by certain advocacy organizations and the media on abuse by professional guardians. In all 91 examined cases categorized as noncriminal misconduct, only one private professional guardian was mentioned. The cases involving another private guardian and a public guardian were dismissed on appeal. Female family members serving as guardian were most frequently identified as having some misconduct allegations: nine cases involved daughters, three involved sisters, two involved mothers, and one involved a grandmother. Four cases identified sons who served as guardian and faced misconduct allegations, brothers were mentioned in two cases, and fathers and grandfathers each were mentioned in one case. Spouses were identified four times. In the remaining 15 cases, the abstract did not identify the relationship between the guardian and the person whom they were named to protect.

Guardians brought four cases against former guardians or family members to obtain accountings, restore assets, or remove an executor for undue influence. Three disgruntled families sought to bring cases in federal courts, alleging wide-ranging challenges to state guardianship court decisions and the guardians, judges, and attorneys involved. Each was dismissed for lack of federal jurisdiction.

GAO Reports Highlight Egregious Actions

Another resource that sheds some light on the nature of abuse by guardians is a 2010 GAO report that identified hundreds of allegations of physical abuse, neglect, and financial exploitation by guardians between 1990 and 2010. As a point of comparison, in 2020 alone, APS programs received 1,327,019 referrals of alleged maltreatment; one-third (258,389) of those allegations were substantiated (McGee & Urban, 2021). Most of the identified allegations in the GAO report involved financial exploitation and misappropriation of assets. Examples of allegations included public guardians who sold a woman's property below market value to the guardian's relative; a lawyer serving as guardian who stole more than \$4 million from 23 adults; a Texas guardian of an older couple who allowed their home to go into foreclosure; and a judge appointed as guardian for a woman who bequeathed him \$250,000 (GAO 2010).

In its 2010 report, GAO also highlighted 20 closed cases involving guardians that resulted in conviction, settlement, plea agreement, or finding of liability for exploitation or abuse. Those cases involved a licensed social worker, taxi driver, three attorneys, two certified public accountants, a professional guardian, a professional guardian agency, and a public guardian office. Six cases resulted in prison terms, and four provided some restitution to the victims. Two professionals lost their certified public accountant or law licenses (GAO 2010).

GAO returned to the question of abuse by guardians in 2016, selecting eight cases in which guardians were convicted of exploitation or neglect. These cases exposed how guardians can abuse their authority or fiduciary duty by spending the adult's money on their own personal expenses, misappropriating funds to support substance use disorders, or diverting funds to personal bank accounts. One of the guardians also neglected the adults they were appointed to serve by failing to contact them for months, withholding monthly benefit stipends, failing to provide clothing, and being nonresponsive to the care facilities where the adults resided. The guardians received jail or prison terms, lost professional licenses or certifications, and were required to pay restitution or administrative costs (GAO 2016).

Professional Certification/Licensing Agencies Have Disciplined Guardians for Misconduct

The disciplinary actions of state or national certification programs contribute to understanding the nature of abuse by guardians. Thirteen states have certification or licensing requirements for professional guardians. In addition to eligibility and education requirements and a qualifying examination, these programs have procedures to receive and review complaints about certified guardians and determine whether the guardian should be disciplined (Seal & Teaster, in press).

For example, the Washington State Certified Professional Guardianship Board develops, adopts, and implements regulations governing certification, minimum standards of practice, training, and discipline of professional guardians. Its goal is to protect the public and facilitate the delivery of competent and ethical guardianship services. When determining any misconduct, the board refers to a set of standards of conduct that cover the range of responsibilities of a professional guardian (*Washington State Courts, Standards of Practice*, 2012).

The board publishes annual reports that track the number of grievances opened and closed; the most recent report was published in 2019. Of the 30 grievances in 2018, 15 were dismissed for no jurisdiction, four were dismissed for insufficient evidence, 10 were dismissed for no actionable conduct, and one was resolved by an advisory letter (*Certified Professional Guardianship Board, Annual Report*, 2019).

In the Washington board report, the most commonly alleged grievance was related to the guardian's management of finances, followed by the guardian's relationship with the client's family and friends. One guardian was reprimanded for failure to file mandatory reports and pay rent in a timely manner. Another guardian received a reprimand for failure to work cooperatively with the client and other professionals, failure to consult with the client and treat his feelings and opinions with respect, failure to arrange for regular preventive medical care, and failure to competently manage the client's property. The board also issued advisory letters regarding conflicts of interest in signing paperwork for the sale of the client's home and failure to take

steps to handle client matters while out of state (*Certified Professional Guardianship Board, Annual Report, 2019*).

The Center for Guardianship Certification (CGC) — the only program that provides nationwide certification of guardians — began certifying guardians in 1997. Although guardians in any state can elect to be certified, nine states (Alaska, Idaho, Illinois, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, and Utah) require professional guardians to be certified by the CGC. The CGC examination and disciplinary processes are rooted in the National Guardianship Association’s Standards of Practice (*National Guardianship Association, n.d.*). Between 2012 and 2021, the CGC received 69 complaints against CGC-certified guardians. As a result of those complaints, six certifications were revoked, five guardians received an interim suspension, two were censured, one received a letter of concern, and one received an advisory letter. Predominantly, the standards violated in these cases were management of the estate, conflicts of interest, and fees charged. In addition, standards concerning medical treatment decision-making, relationships with client’s family members, and involvement of the client in decisions were violated and resulted in discipline (*Center for Guardianship Certification, n.d.*).

Media Accounts Highlight Abuse by Guardians

Much of what is known about the nature of abuse by guardians stems from cases featured in the popular press. Although these media accounts spotlight abuse and highlight the unique circumstances both of the victims and of those perpetrating the abuse, they may not be representative of guardianship practices or guardian actions in general or reflective of typical victimization or abuse by guardians.

Mentioned earlier, the 1987 Associated Press report on guardianship heightened the attention of policymakers and the general public alike. The report — a year in the making — was compiled by a team of 67 reporters who covered various aspects of guardianship in the 50 states and the District of Columbia. In addition to interviewing judges, lawyers, academicians, social workers, and individuals under guardianship, the reporters examined more than 2,200 guardianship files. They discovered positive examples of guardianship as well as numerous abuses, including significant instances of exploitation and ageism. The Associated Press report sparked congressional hearings, a national conference, and legislative reforms in all 50 states (Bayles & McCartney, 1987).

Other media highlighted systemic problems, including Wendland-Bower’s “Who’s Watching the Guardians?” (2000). Yeoman (2004) observed that the system was both “a godsend and a gulag” and that the potential for abuse existed because there was little to no uniformity in state records.

More than a decade later, pieces that sounded the alarm about systemic problems included articles by Campo-Flores and Jones (2015) and Diamond (2016). Aviv (2017) published a highly influential article “How the Elderly Lose Their Rights,” which described egregious treatment by paid professional guardian April Parks from Las Vegas, Nevada. Following Aviv’s piece, Leland (2018) penned “I’m Petitioning ... for the Return of My Life” in *The New York Times*.

Investigation Examined Media Reports of Abuse by Guardians

The National Center for State Courts — under a project funded by the Office for Victims of Crime — conducted the most comprehensive analysis to date of media stories on abuse by guardians (*Exploring the Consequences of Conservator Exploitation*, 2016). Researchers searched national online media outlets for reports of the exploitation of older adults from July 1, 2015, through December 31, 2016. Because of the focus of the project, they collected only media stories of financial exploitation and not of any other type of abuse. They retrieved and analyzed a total of 181 media accounts. Of those accounts, 12% (22) concerned guardians, 19% (35) concerned abuse by agents with a power of attorney, and 68% (124) involved exploitation by family members or nonrelated caregivers.

Examining specifically the 22 media articles that concerned exploitation by a guardian, victims were mostly older women residing in care facilities (average age was 82 years). Those perpetrating the exploitation were mostly males (average age was 52 years). Eighteen of the individuals perpetrating the exploitation were nonfamily guardians, six were family members, and two were appointed as fiduciaries only. The media reported that criminal charges were filed against the guardian in nine of the 22 cases; of those nine, three were convicted (*Exploring the Consequences of Conservator Exploitation*, 2016).

Recent Media Stories Continue To Publicize Abuses

A random selection of the most publicized stories in more recent media illustrates some of the endemic problems related to abuse by guardians.

Paul Kormanik. Paul Kormanik served as a professional conservator for more than 400 individuals in Ohio. An investigation by *Columbus Dispatch* reporters uncovered Kormanik's exploitive actions and large caseload. He pled guilty to 10 counts of theft of elderly or disabled persons and tampering with records, but he committed suicide prior to his sentencing date (*Professional Conservator*, 2015).

April Parks. April Parks was a paid professional guardian in Las Vegas, Nevada. She placed individuals under her care in unacceptable facilities, charged unreasonably high fees, and made it impossible for concerned family members or friends to have contact with loved ones. In 2019, Parks was indicted on more than 250 felony counts — one for each person she served (Ferrara, 2019).

Rebecca Fierle. Rebecca Fierle, a Florida private professional guardian, allegedly placed numerous do-not-resuscitate (DNR) orders on adults under her care without family or court permission. In one alleged case, Fierle refused to remove a DNR order even though the client, his family, and his physician asked her to do so. The client subsequently died of asphyxiation; medical staff did not try to revive him because of the DNR order. The Orange County Comptroller found that, over the course of a decade, Fierle had billed one hospital approximately \$4 million for guardian-related services. In some cases, she allegedly billed both the hospital and the client for the same services but at different rates (Fernandez, 2019). As of this writing, Fierle is on trial for aggravated abuse and neglect of an elderly person.

Peter Falk. Although he played the rumple-coated detective Columbo for a decade, in his later years, Falk allegedly suffered from Alzheimer’s disease. His second wife, who was his California court-appointed conservator (California’s term for guardian of an adult), allegedly isolated him from his family and friends. She purportedly prevented Falk’s daughter and other family members from visiting him and allegedly failed to notify them of major changes in his condition. She even allegedly failed to notify them of his death (Enea, n.d.).

Casey Kasem. Allegedly diagnosed with Parkinson’s disease and Lewy Body disease, celebrity Casey Kasem became embroiled in a guardianship. His children accused their stepmother of isolating him and failing to properly care for him. Despite his wife’s efforts, Kasem’s daughter secured a temporary conservatorship; however, his wife spirited Kasem to Washington state. When Kasem was admitted to a hospital, the court ordered separate visitations for the children and his wife. In 2014, at age 82, Kasem died — the immediate cause was deemed to be sepsis from bedsores. At his death, Kasem was worth about \$85 million. His children from his first marriage sued his second wife, alleging elder abuse and wrongful death. The suit was settled in 2019 (Davies, 2021).

Britney Spears. The most recent and highly controversial case of potential abuse by a guardian concerned celebrity Britney Spears. In 2008, Spears’s father was appointed her conservator (California’s term for guardian of an adult) after a series of public struggles and concerns about her mental health and substance use. As early as 2014, Spears objected to her father serving in that role, citing his drinking, among other issues. According to a 2016 court investigator report, Spears maintained that “the conservatorship has become an oppressive and controlling tool against her” and she was “sick of being taken advantage of” (Jacobs, 2021). At the beginning of her conservatorship, she was denied her choice of attorney. Finally, in mid-2021, the court allowed her to select her own attorney, who successfully terminated the conservatorship in November 2021.

Conclusions About the Nature of Abuse by Guardians

The nature of abuse by guardians and by the guardianship system remains an unsolved puzzle due to inconsistent definitions of what constitutes abuse and an abysmal lack of data. From what we can piece together, we can conclude that:

- The National Adult Maltreatment Reporting System (NAMRS) provides a clearer understanding of the nature of adult abuse, but it does not yet capture reliable data on abuse by guardians.
- There are numerous reports by governmental, media, and other sources showing malfeasance by both professional and nonprofessional guardians.
- This malfeasance includes a spectrum of actions, ranging from noncompliance in failing to file reports in a timely manner, to abusive conduct as defined by APS, to criminal conduct for which various sanctions are imposed.
- There are few appellate cases involving misconduct by guardians; these cases expose how guardians abuse their court-ordered authority to exploit the estates they have been entrusted to protect.
- Media exposés tend to focus on the sensational cases of intrafamily disputes carried out in guardianship courts. A systematic review of media stories reveals that financial exploitation

is more likely to happen through misuse of powers of attorney than by guardians and is more likely to be perpetrated by family members or caregivers than by guardians.

- Most guardians who commit financial abuse or neglect are family members.

LITERATURE ON PREVENTION AND INTERVENTION FOR SYSTEMIC ABUSE AND FRAUD BY GUARDIANS

Significant resources from many sectors have addressed the prevention, detection, and remediation of abuse by guardians, as well as the larger abuse inherent in the adult guardianship system. These resources outline helpful approaches to reduce or eliminate such abuse. However, there is a marked gap between guidance on paper and actual practices. Moreover, the strategies have not yet been evaluated empirically.

Early Advocacy Efforts To Improve Guardianship Practice

Early advocacy efforts at adult guardianship reform targeted procedural due process shortcomings, such as effective notice of the guardianship petition and of the potential risk to the respondent of the loss of rights, the presence of the respondent at the hearing, the right to effective legal representation, and a clear and convincing evidence standard of proof (*Guardianship: An Agenda for Reform*, 1989). States also took a hard look at the definition of incapacity and the impairments that were sufficient to trigger guardianship, moving away from medical labels and toward a more functional determination. Additionally, state laws sought to minimize unnecessary or overbroad intervention into a person's life by requiring judges to consider less restrictive alternatives before appointing a guardian and tailoring the order to limit its scope to only what is needed to address the risk of harm (Wood, 2005).

Strengthening Court Oversight of Guardians

Shortcomings in courts' detection or deterrence of abuse by guardians center on their lack of ability, resources, or commitment to provide effective oversight. Every state has statutory provisions addressing steps to monitor guardian actions. These steps include requiring guardians to file forward-looking care plans for how they will meet the needs of the adult, annual reports on care and services, initial inventories of resources the guardian is managing, and annual accountings of monies received and disbursed for the adult's needs. Most courts are directed to review these filings and take action to address any concerns (Hurme & Robinson, 2021).

To help courts carry out these statutory mandates, the National Center for State Courts and the National Association for Court Management have developed extensive guidance and suggested best practices. For example, the National College of Probate Judges, in cooperation with the National Center for State Courts, has promulgated national standards for courts exercising probate jurisdiction. These standards aim to promote uniformity, consistency, and continued improvement in the operations of state probate courts. Most recently revised in 2013, the *National Probate Court Standards* (NPCS, 2013) set out detailed judicial practices for adult guardianship proceedings, including how courts should conduct ongoing oversight of the well-being of the respondent and the status of the estate. According to National Probate Court Standard 3.3.17, courts should:

- Ensure that plans, reports, inventories, and accountings are filed on time.
- Promptly review the contents of all plans, reports, inventories, and accountings.
- Independently investigate the well-being of the respondent and the status of the estate, as needed.
- Assure the well-being of the respondent and the proper management of the estate by improving the performance of the guardian/conservator and enforcing the terms of the guardianship/conservatorship order.
- Consider whether a less restrictive alternative would be appropriate.

Especially relevant, standards for preventing or detecting abuse include requirements for background checks for proposed guardians (NPCS 3.3.12); bonds for guardians of the property (NPCS 3.3.15); a clear and easy-to-use process to communicate concerns about guardians' performance (NPCS 3.3.18); and sanctions, such as removal of bad actor guardians (NPCS 3.3.19). Many of these standards build on Hurme and colleagues' pioneering work *Steps to Enhance Guardianship Monitoring* (Hurme et al., 1991) and Karp and Wood's guide *Guarding the Guardians: Promising Practices for Court Monitoring* (Karp & Wood, 2007). The National Center for State Courts launched a Conservator Accountability Project, which resulted in the 2019 *Implementation Guide for Modernizing Conservatorship Monitoring*, suggesting case management and technological enhancements (Boyko et al., 2019).

Surveys of court personnel and guardians on monitoring practices — by Karp and Wood (2006) and repeated 15 years later by Hurme and Robinson (2021) — found disturbing differences in how proactive courts are in responding to late reports, conducting guardianship reviews, having personnel visit respondents, and sanctioning poor performance. “The lack of organizational capacity and the lack of adequate funding both contribute to a shocking absence of information about how many adults are under guardianship. When courts do not have the systems in place to accurately identify ongoing guardianship cases and resources under their management or know whether court orders are appropriately being carried out, it is impossible to ensure the wellbeing of those the courts have identified as being legally incapacitated and needing the courts' protection” (Hurme & Robinson, 2021).

GAO (2010) found critical shortcomings in court practices:

- Courts fail to adequately screen potential guardians to determine their suitability to care for vulnerable older adults.
- Courts fail to adequately oversee guardians after their appointment, review irregularities in annual accountings, or sanction delinquent guardians, which allows the abuse of adults and their assets to continue.
- Courts fail to communicate with the Social Security Administration and the Department of Veterans Affairs about abusive guardians who may also serve as federal payees or fiduciaries.

Additional Initiatives To Improve Practice and Target Abuse

Additional literature and reform initiatives have sought to improve systemic guardianship practices and reduce abuse by guardians.

- Tracking State Legislative Action. Since 1988, the American Bar Association’s Commission on Law and Aging has been annually tracking state adult guardianship legislation. This information is summarized in a yearly update and posted on the commission’s website (*Guardianship and Supported Decision-Making*, 2021). The commission and Hurme have created numerous state statutory tables, which are also posted on the website and updated annually. These summaries inform researchers and state policymakers about approaches that might help address abuse by guardians.
- Uniform Law Commission Acts. The Uniform Law Commission, established in 1892, “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law” (*Uniform Law Commission*, n.d.). In 2017, the Uniform Law Commission approved the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, which builds on earlier versions and incorporates new provisions, including 10 that directly target abuse by guardians (Karp & Wood, National Center on Elder Abuse, in press).
- National Guardianship Summits. Four national guardianship summits sponsored by National Guardianship Network organizations have helped jumpstart adult guardianship reform over the past 30+ years. The National Guardianship Network includes 13 national organizations (including the American College of Trust and Estate Counsel, the National College of Probate Judges, the National Center for State Courts, and the National Center on Elder Abuse) dedicated to effective adult guardianship law and practice (National Guardianship Network, n.d.). The May 2021 summit, “Maximizing Autonomy and Ensuring Accountability,” commissioned 10 law review articles (along with six concise issue briefs), two of which relate directly to systemic guardianship abuse and abuse by guardians (*The Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability*, 2021).

One summit paper “Addressing Abuse by Guardians: The Role of Adult Protective Services, Law Enforcement, and the Courts,” written by Anetzberger and Thurston (2021) and mentioned above, highlights the misperceptions and lack of collaboration that block needed interventions. A resulting summit recommendation called for the establishment of state and local collaboration and policies focusing on abuse by guardians.

A second summit paper, “The Use and Misuse of Guardianship by Hospitals and Nursing Homes” by Hirschel and Smetanka (2021), outlines the incentives health and long-term care institutions have for petitioning for overbroad or unnecessary guardianship without examining less restrictive options. The results for patients are loss of rights and frequent, ongoing institutionalization — sometimes with poor care — instead of care in home and community-based settings. The paper describes a press investigation in which one hospital routinely selected one petitioning attorney, who then became the guardian and rapidly placed individuals in nursing homes even if willing family members could care for them (Balch, 2019). A resulting summit recommendation urged states to develop guardianship diversion programs to avoid such “guardianship pipelines.”

- Working Interdisciplinary Networks of Guardianship Stakeholders. In 2011, the Third National Guardianship Summit called for states to create Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS). With start-up funding from the State Justice Institute and later the Administration for Community Living, 13 states created WINGS, bringing together a wide range of stakeholders to improve guardianship practices, address abuse, and promote less restrictive options. Additional states have since developed WINGS; currently more than 20 states have some form of collaborative court-community guardianship partnership (*State WINGS*, 2021). Although WINGS have had substantial accomplishments, especially in training and materials, “resource limitations precluded greater achievements where cost is a factor, such as targeting financial exploitation through steps to improve monitoring. For systems change, WINGS need continuing financial and technical assistance support” (*Advancing Guardianship Reform and Promoting Less Restrictive Options: WINGS Briefing Paper for ACL*, 2020).

Limited Research on Guardianship Practices and Maltreatment by Guardians

Empirical research can also promote interventions to address abuse. Research on adult guardianship in general has been scant, with even less of a focus on abuse by guardians. Government records on public guardianship are often available to researchers; however, records of private guardianships are often nonexistent or inaccessible. Therefore, research on public guardianship has taken a lead. The limitations, of course, are that the affected population is narrower, and the fiduciary responsibility rests on government programs rather than family or private professional guardians. Nonetheless, research on any form of guardianship can spur reforms.

Schmidt and colleagues (1981) conducted the first study on public guardians. The study, which included a survey of state public guardianship programs at the time and detailed analysis of programs in five states, found “instances of flagrant abuse of the office of public guardian ... as well as instances of genuine concern and advocacy for the [individuals]” (Schmidt et al., 1981). Nearly 20 years later, Teaster and colleagues (2010) replicated the study. Both studies found that caseloads were far too high in most jurisdictions, too many people under guardianship were in institutional care facilities, and programs were highly underfunded. Teaster and colleagues also found that public guardians were serving far more younger people than 20 years earlier and that the individuals under guardianship had more complex needs. Both studies found that no guardianship was preferable to poor guardianship.

A small number of additional studies help shed light on guardianship systems and problems. A study by Teaster (2002) remains the only United States study that actually included adults subject to guardianship. It revealed that adults with guardians could express preferences and direct aspects of their lives. Other studies have examined guardianship termination and restoration of rights (Wood et al., 2017), the health care of individuals under guardianship (Caitlin et al., 2021; Sager et al., 2019), and the quality of life of people under guardianship (Schmidt et al., 2017). Research on the outcomes of guardianship and the characterization of individuals under guardianship is still needed.

Finally, there are several key writings on abuse by guardians. These are not research pieces and — because of the dearth of data — offer no perspectives on the extent of the problem. Instead, they set out theories, examples, and possible remedies for systemic guardianship abuse. For example, in “Ten Reasons People Get Railroaded into Guardianship,” Dore (2008) explores diverse factors that make guardianship easy to fall into, contributing to “guardianship pipelines.” She alleges that some professional guardians petition for their own appointment in order to take fees from the person’s assets; however, there are no statistics on the frequency of such a practice.

A recent comprehensive article by Heisz (2021), “Beware of the Con in Conservatorships: A Perfect Storm for Financial Elder Abuse in California,” traces the law, practice, and history of conservatorship financial exploitation in the state and emphasizes the lack of data. It concludes that “lack of any kind of data system for conservatorships is the primary problem in identifying and responding to misconduct by conservators” (Heisz, 2021).

A National Center on Elder Abuse issue brief, “Guardianship: Remedy vs Enabler of Elder Abuse,” describes the two opposing roles that guardianship plays in the world of elder abuse (Wood & Karp, 2021). A National Center on Law and Elder Rights webinar background summary by Pogach and Wood (2019), “When the Guardian Is an Abuser,” features four case examples, signs of abuse by guardians, and practice tips for attorneys. Also included in the bibliography is a National Center for State Courts guide on prosecuting elder abuse cases (NCSC, 2012). Although it does not focus on guardianship, it is relevant to identifying elder abuse generally and building effective cases.

Finally, with rising statutory attention to less restrictive options that could reduce or avoid the need for guardianship, including provisions on supported decision-making, there is clearly a need for research on the use and effectiveness of such arrangements and their potential for abuse (*Guardianship and Supported Decision-Making*, 2021). Although there are some writings on abuse of financial powers of attorney (Stiegel, 2008), empirical evidence is limited. There are initial pilot programs on supported decision-making for individuals with intellectual disabilities (Costanza et al., 2021), but broader empirical evidence on its use is also needed.

Barriers to Prevention and Intervention for Abuse by Guardians and Abuse of the Guardianship System

Despite adult guardianship reform efforts over the past three decades, making permanent, systemic improvements is challenging. In its 2020 briefing paper on advancing guardianship reform through WINGS, the American Bar Association’s Commission on Law and Aging listed barriers, including the following (*Advancing Guardianship Reform and Promoting Less Restrictive Options: WINGS Briefing Paper for ACL*, 2020):

- Key data are not available.
- Aging and disability demographics and other pressures are causing strains in state courts.
- Adult guardianship practices differ significantly by court and state.
- Cases are complex, often fraught with mental illness, family conflict, service fragmentation, and more.
- Guardians and judges must walk a fine line, balancing risks, protections, and self-determination.

- Funding for improvements and research is scarce.
- Judges frequently have general jurisdiction caseloads without intensive guardianship experience, and judicial turnover is high.
- Societal biases against adults alleged to need a guardian can lead to unnecessary or overly restrictive guardianships.
- Guardianship is not generally included in elder justice reform efforts.

An important and additional barrier is the transient nature of public attention to the issue, which rises and falls with media focus — especially around celebrities — but is insufficient to sustain real progress.

Conclusions on Prevention and Intervention for Systemic Abuse and Fraud by Guardians

Despite multiple national policy recommendations, substantial legislative revisions and court mandates, national court standards, and court guides for best practices (*Adult Guardianship Guide*, 2022), many gaps exist between the law and practice (Lanier, 2019).

- Ongoing media reports of grave abuses by guardians are an indication that, although standards and statutes may be in place, practices lag behind. There is a gap between the interventions on paper and reality (Hurme & Wood, 2002).
- Early guardianship reform efforts focused on basics, such as procedural protections and determination of capacity.
- Substantial work on guardianship monitoring includes laws, standards, and oversight approaches for courts. However, due to lack of funding, technology, and in some cases political will, much remains to be accomplished to effectively target abuse by guardians and bring about needed changes in the system.
- Uniform laws and guardianship summits offer key tools, but implementation is uneven or only at the formative stages.
- Research that sheds light on guardianship is limited; much more is needed to understand and act on abuse by guardians. Research on the use and possible abuse of less restrictive options, including supported decision-making, is also essential.
- There are substantial barriers to systemic guardianship reform, including barriers to the prevention and intervention of abuse by guardians.

LACK OF DATA AS A BARRIER TO UNDERSTANDING ABUSE AND FRAUD BY GUARDIANS

Data Are Needed for Research To Improve the Understanding of Guardianship Practices, Including Abuse and Fraud

Consistently collected and updated data will enable research to clarify:

- The scope of abuse by guardians
- The prevalence of abuse by guardians
- The nature of abuse by various types of guardians
- The settings of abuse by various types of guardians
- The adults most affected as victims, as well as the consequences for their lives

- The effectiveness of various interventions

Courts Need Data for Effective Guardianship Monitoring To Target Abuse by Guardians

To address abuse and fraud by guardians, courts need consistent and timely data and a comprehensive case management system to record, retrieve, and update the data over the life of each case — both while the petition is pending and following the appointment of a guardian. Data are needed on basic case information, case type, the reason a petition was brought (e.g., financial exploitation, abuse, or neglect), the reason the case was closed, the dates of documents due and filed, complaints raised, financial assets, demographic information about the adult and the guardian, residential status of the adult, and relationship of the guardian to the adult. These data should be entered consistently over time.

Policymakers Need Data for Legal and Policy Changes To Address Systemic Guardianship Abuse

Policymakers need data to determine trends and gaps that require changes in laws, regulations, and guidelines, and to develop appropriate training programs for all stakeholders. For example, data might show that family guardians fail to understand their duties or that judges fail to take into account less restrictive options. Data might highlight a high rate of financial exploitation by case type, setting, or individual committing the abuse, or demonstrate that additional court procedures to protect the individual under guardianship would be useful.

Literature Shows Dire Lack of Data, Impeding Efforts To Respond to Abuse

Multiple reports over the past decade have highlighted the dire lack of adult guardianship data — notably the 2010 GAO report stressing that GAO “could not determine whether allegations of abuse by guardians are widespread,” and the 2016 GAO report finding that “the extent of abuse by guardians nationally is unknown due to limited data on key factors related to elder abuse by a guardian” (GAO, 2010; 2016). In 2018, a background brief by the National Center for State Courts determined that “data quality undermines accountability in conservatorship cases” (National Center for State Courts et al., 2018). Also in 2018, the U.S. Senate Special Committee on Aging found that “few states are able to report accurate or detailed guardianship data,” which undermines trust in the guardianship system (*Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older American*, 2018).

Initiatives To Address Lack of Data on Abuse by Guardians

Recent efforts have begun to address the compelling need for guardianship data. In 2020, the National Center for State Courts released two key documents: *National Open Court Data Standards*, which includes probate/guardianship case standards; and *Guardianship/Conservatorship Monitoring: Recommended Data Elements*. Recommendations from the 2021 Fourth National Guardianship Summit urge the highest court in each state to adopt these standards and data elements in ongoing collection of timely guardianship data.

A few jurisdictions have established enhanced data and case management systems:

- Minnesota’s MyMNConservator is an online reporting system that requires conservators to file inventories and accountings electronically and includes alerts for possible problems. Minnesota has now introduced a parallel program for guardianship cases. Indiana has developed a similar online reporting and case management model (*MyMNConservator*, n.d.).
- Pennsylvania has initiated a guardianship tracking system that allows guardians to submit reports, accounts, and inventories online to a centralized system. The court can track compliance and receives alerts when concerns are raised. In one recent example, a guardian was arrested in a case of financial fraud (*Guardianship Tracking System*, n.d.).
- The Palm Beach, Florida, Clerk and Comptroller’s Office developed the Guardian Inventory Reports and Accountings for Florida (GIRAFF) program — a web-based, real-time tool for data collection and use that enables the county to assess its guardianship cases and respond to problems. Replicating such systems in other jurisdictions requires adequate, dedicated funding (*GIRAFF User Guide*, n.d.).

Conclusions About the Lack of Data as a Barrier To Understanding Abuse and Fraud by Guardians

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

- Data are needed for research to clarify the scope, prevalence, and nature of abuse by guardians.
- Data are needed for effective court case management and monitoring.
- Data are needed for legal and policy changes, including solutions for addressing abuse.
- A literature review shows a disturbing and dire lack of data, impeding efforts to respond to abuse by guardians.

SUMMARY AND CONCLUSIONS

This review of the literature on guardian and guardianship abuse and fraud, which draws from a variety of disciplines and sources spanning nearly four decades, represents the most comprehensive body of work on the topic to date. Abundantly clear is that much more work and reform related to abuse and fraud by individual guardians and the guardianship system are required — consistently and immediately. Each section in this review provides a multitude of reasons that support this assertion.

Conclusions About the Scope and Prevalence of Abuse and Fraud by Guardians

A scan of the relevant literature finds the following:

- Overall, elder abuse affects about 5 million older adults each year, although prevalence rates differ by study and type of abuse. This does not include vulnerable younger adults with disabilities. Studies have recognized that projections of elder abuse underestimate the actual prevalence.
- The best estimate of the number of guardianship cases (cases in which a guardian has been appointed for an adult and the case is subject to court review) in the United States is 1.3 million open cases, but that is based on varying reports by selected states.

- Federal inquiries and a limited amount of research have been unable to determine the scope and prevalence of abuse by guardians. State reports have not revealed such information, although some make useful findings. All of these sources recognize the tragic existence of abuse by guardians and highlight case examples.
- Although press stories have investigated serious problems, they may not accurately represent the system as a whole, and they fail to address scope and prevalence.

Conclusions About the Nature of Abuse by Guardians

The nature of abuse by guardians and by the guardianship system remains an unsolved puzzle due to inconsistent definitions of what constitutes abuse and an abysmal lack of data. From what we can piece together, we can conclude that:

- The National Adult Maltreatment Reporting System provides a clearer understanding of the nature of adult abuse, but it does not capture robust and reliable data on abuse by guardians.
- There are numerous reports by governmental, media, and other sources showing malfeasance by both professional and nonprofessional guardians.
- This malfeasance includes a spectrum of actions, ranging from noncompliance in failing to file reports in a timely manner, to abusive conduct as defined by APS, to criminal conduct for which various sanctions are imposed.
- There are few appellate cases involving misconduct by guardians; these cases expose how guardians abuse their court-ordered authority to exploit the estates they have been entrusted to protect.
- Media exposés tend to focus on the sensational cases of intrafamily disputes carried out in guardianship courts. A systematic review of media stories reveals that financial exploitation is more likely to happen through misuse of powers of attorney and is more likely to be perpetrated by family members or caregivers than by guardians.
- Most guardians who commit financial abuse or neglect are family members.

Conclusions About Prevention and Intervention for Systemic Abuse and Fraud by Guardians

Despite multiple national policy recommendations, substantial legislative revisions and court mandates, national court standards, and court guides for best practices (*Adult Guardianship Guide*, 2013), there are many gaps between the law and practice (Lanier, 2019).

- Ongoing media reports of grave abuses by guardians are an indication that, although standards and statutes may be in place, practices lag behind. There is a gap between the interventions on paper and reality.
- Early guardianship reform efforts focused on basics, such as procedural protections and determination of capacity.
- Substantial work on guardianship monitoring includes laws, standards, and oversight approaches for courts. However, due to lack of funding, technology, and in some cases political will, much remains to be accomplished to effectively target abuses by guardians and bring about needed changes in the system.
- Uniform laws and guardianship summits offer key tools, but implementation is uneven or only at the formative stages.

- Research that sheds light on guardianship is limited; much more is needed to understand and act on abuse by guardians. Research on the use and possible abuse of less restrictive options, including supported decision-making, is also essential.
- There are substantial barriers to systemic guardianship reform, including barriers to the prevention and intervention of abuse by guardians.

Conclusions About the Lack of Data as a Barrier To Understanding Abuse and Fraud by Guardians

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

- Data are needed for research to clarify the scope, prevalence, and nature of abuse by guardians.
- Data are needed for effective court case management and monitoring.
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- A literature review shows a disturbing and dire lack of data, impeding efforts to respond to abuse by guardians.

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Appendices

Appendix A. Federal Documents

Federal Legislation Introduced per THOMAS

H.R. 5266 – 100th Congress: National Guardianship Rights Act of 1988 (Rep. Pepper)

S. 2765 – 100th Congress: National Guardianship Rights Act of 1988 (Sen. Glenn)

H.R. 5275 – 100th Congress: Guardianship Rights and Responsibilities Act of 1988 (Rep. Snowe)

S. 235 – 101st Congress: National Guardianship Rights Act of 1989 (Sen. Glenn)

H.R. 372 – 101st Congress: Guardianship Rights and Responsibilities Act of 1989 (Rep. Snowe)

H.R. 1702 – 101st Congress: National Guardianship Rights Act of 1989 (Rep. Pepper)

H.R. 2023 – 102nd Congress: Older Americans Guardianship Assistance Amendments of 1991 (Rep. Snowe)

H.R. 632 – 103rd Congress: Guardianship Rights and Responsibilities Act of 1993 (Rep. Snowe)

H.R. 1354 – 103rd Congress: Standby Guardianship Act (Rep. Maloney)

S. 430 – 104th Congress: Guardianship Rights and Responsibilities Act of 1995 (Sen. Snowe)

H.R. 3005 – 105th Congress: Standby Guardianship Act (Rep. Maloney)

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S. 975 – 113th Congress: Court-Appointed Guardian Accountability and Senior Protection Act (Sen. Klobuchar), to provide for the inclusion of court-appointed guardianship improvement and oversight activities under the Elder Justice Act of 2009.

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S. 591 – 116th Congress: Guardianship Accountability Act of 2019 (Sen. Collings), to assist states in improving guardianship oversight and data collection.

H.R. 5380 – 116th Congress: Senior Guardianship Social Security Protection Act of 2019 (Rep. Crist), to amend Title II of the Social Security Act to require the Commissioner of Social Security to enter into agreements with states to share data related to individuals subject to guardianship, and for other purposes.

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Penelope Hommel

Frank Johns

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Jane Pollack

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https://www.acus.gov/sites/default/files/documents/SSA%2520Rep%2520Payee_State%2520Laws%2520and%2520Court%2520Practices_FINAL.pdf

U.S. Government Accountability Office (GAO)

Guardianships: Collaboration Needed To Protect Incapacitated Elderly People

GAO-04-655

Published: July 13, 2004

GAO was asked to examine: (1) what state courts do to ensure that guardians fulfill their responsibilities, (2) what guardianship programs that have been recognized as exemplary do to ensure that guardians fulfill their responsibilities, and (3) how state courts and federal agencies work together to protect vulnerable adults.

Little Progress in Ensuring Protection for Incapacitated Elderly People

GAO-06-1086T

Published: September 07, 2006

The Senate Special Committee on Aging asked GAO to follow up on its 2004 report *Guardianships: Collaboration Needed To Protect Incapacitated Elderly People* (GAO-04-655). This follow-up study found that some states had strengthened their guardianship programs; however, little progress had been made in increasing coordination between state courts and federal agencies.

Cases of Financial Exploitation, Neglect, and Abuse of Seniors

GAO-10-1046

Published: September 30, 2010

GAO could not determine whether allegations of abuse by guardians are widespread; however, GAO identified hundreds of allegations of physical abuse, neglect, and financial exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010. In 20 selected closed cases, GAO found that guardians stole or otherwise improperly obtained \$5.4 million in assets from 158 victims who were incapacitated, many of whom were seniors. In some instances, guardians also physically neglected and abused their victims. The guardians in these cases came from diverse professional backgrounds and were overseen by local courts in 15 states and the District of Columbia. GAO found several common themes: (1) The courts failed to adequately screen potential guardians, appointing individuals with criminal convictions or significant

financial problems to manage high-dollar estates; (2) the courts failed to oversee guardians once they were appointed, allowing the abuse of vulnerable seniors and their assets to continue; and (3) the courts and federal agencies did not communicate effectively or at all with each other about abusive guardians, allowing the guardian to continue the abuse of the victim or others.

Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement
GAO-11-678

Published: July 22, 2011

The Social Security Administration, Department of Veterans Affairs, and state courts have screening procedures for ensuring that fiduciaries and guardians are suitable, and laws in most states require courts to follow certain procedures for screening guardians. There are also statutes and regulations requiring the Social Security Administration and Department of Veterans Affairs to monitor fiduciary performance. Similarly, most states require courts to obtain annual reports from guardians. There is evidence that guardianship monitoring by state courts, however, needs improving, and promising practices have been proposed to strengthen it. Gaps in information sharing between state courts and federal agencies may adversely affect adults who are incapacitated.

Improving Oversight of Federal Fiduciaries and Court-Appointed Guardians
GAO-11-949T

Published: September 22, 2011

This GAO hearing covered Social Security Administration and Department of Veterans Affairs procedures for screening prospective representative payees and federal fiduciaries and state court procedures for screening prospective guardians. It also covered Social Security Administration and Department of Veterans Affairs monitoring of federal fiduciary performance, state court monitoring of guardian performance, information sharing between the Social Security Administration and Department of Veterans Affairs fiduciary programs and between each of these programs and state courts, and federal support for improving state courts' oversight of guardianships.

The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist To Help Protect Older Adults

GAO-17-33

Published: November 16, 2016

The extent of elder abuse by guardians nationally is unknown due to limited data on key factors related to elder abuse by a guardian, such as the number of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian. This report noted that data limitations prevent courts from being able to provide reliable figures about elder abuse by guardians. In 2017, the Department of Health and Human Services launched the National Adult Maltreatment Reporting System — a national reporting system based on data from state adult protective services (APS) agency information systems. This launch held out promise of the capability to collect information that could help identify cases of elder abuse involving a guardian.

Appendix B. National Guardianship Summits

2021 Fourth National Guardianship Summit

Fourth National Guardianship Summit Recommendation 4.4

[Fourth National Guardianship Summit - Adopted Recommendations \(May 2021\).pdf \(syr.edu\)](#)

Georgia J. Anetzberger & Morgan R. Thurston, [Addressing Guardianship Abuse: The Roles of Adult Protective Services, Law Enforcement, and the Courts \(May 2021\)](#)

NGN Summit Planning Committee, Issue Brief for Working Group #4: Rethinking Monitoring and Addressing Abuse by Guardian

[Issue Brief Working Group 4 Monitoring Abuse final.pdf \(syr.edu\)](#)

Alison Hirschel & Lori Smetanka, [The Use and Misuse of Guardianship and Conservatorship by Nursing Home and Health Care Providers \(May 2021\)](#)

NGN Summit Planning Committee, Issue Brief for Working Group #3:
Limited Guardianship, Protective Arrangements, and Guardianship Pipelines

Robert Dinerstein, Patti Dudek, & Frank Johns, [Conservatorships, Guardianships, Trusts, ADA Integration Mandate, and ABLE Accounts: An Examination of Agglomerate Tensions Between Ensuring Judicial Accountability and Maximizing Trust Beneficiary Autonomy \(May 2021\)](#)

Sally Hurme & Diane Robinson, [“What’s Working in Guardianship Monitoring: Challenges and Best Practices” \(May 2021\) http://law.syr.edu/uploads/docs/academics/Hurme-Robinson.pdf](#)

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Appendix C. State-Based Documents on Guardianship Abuse and Fraud

National Center for State Courts, American Bar Association Commission on Law and Aging, Virginia Tech Center for Gerontology, & Minnesota Judicial Branch, *National Forum on Financial Exploitation by Conservators, Final Draft of Plenary Recommendations*, May 30, 2017

Arizona

David Steelman, Alicia Davis, Daniel Hall, *Improving Protective Probate Processes: An Assessment of Guardianship and Conservatorship Procedures in the Probate and Mental Health Department of the Maricopa County Superior Court*, August 2011. Available from authors as a PDF document.

Michigan

Michigan Supreme Court, State Court Administrative Office, *Interim Report on Investigative Follow-up Review of the Michigan Office of the Auditor General Performance Audit of Selected Probate Court Conservatorship Cases*, October 2003. Available at www.courts.michigan.gov/scao/resources/publications/reports/

Michigan Supreme Court, State Court Administrative Office, *Final Report on Investigative Follow-up Review, Statewide Phase to the Michigan Office of the Auditor General, Performance Audit of Selected Probate Court Conservatorship Cases*, January 2005.

Nevada

Nevada Supreme Court Commission to Study the Administration of Guardianships in Nevada's Courts, September 2016. PDF in folder

New Mexico

New Mexico Adult Guardianship Study Commission, *Final Report to the New Mexico Supreme Court*, December 2017. PDF in folder

New York

Report of the Commission on Fiduciary Appointments, December 2001. Available at <http://www.courts.state.ny.us/ip/gfs/>.

New York State Unified Court System Special Inspector General, *Fiduciary Appointments in New York: A Report to Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman*, 2001. Available at www.nycourts.gov/ip/gfs/igfiduciary.html.

Report of the Grand Jury of the Supreme Court, Queens County (March 2004), available at www.queensda.org/.

Supreme Court of the State of New York: Appellate Division, Second Judicial Department, *Report and Recommendations: The Guardianship Task Force*, November 2004. Available at www.nycourts.gov/courts/ad2/.

Report of the Commission on Fiduciary Appointments, February 2005. PDF in folder

Pennsylvania

Center for Advocacy for the Rights and Interests of the Elderly, *The State of Guardianship in Pennsylvania: Results from the 2012 CARIE Study of Guardianship in the Commonwealth of Pennsylvania*, November 2013.

Pennsylvania Elder Law Task Force, *Overarching Findings and Recommendations of the Elder Law Task Force Concerning Court Administration, Judicial Education, Funding, and Public Awareness*, 2013.

Texas

David Slayton, Texas Office of Court Administration, *Guardianship Compliance Performance Report*, December 2016.

Virginia

Improving Virginia's Adult Guardian and Conservator System (p. 49). (2021). Joint Legislative Audit and Review Commission. <http://jlarc.virginia.gov/pdfs/reports/Rpt553.pdf>

Appendix D. Legal Review of Reported Cases

Date	State	Party	Allegation	Sanction/Disposition	Reference
		Guardianship Matter		Criminal Charges	
		Non-Guardianship Matter		Guardian Moving Party or Federal Case	
2016	OK	Attorney guardian	Use of adult under guardianship funds, professional misconduct, addiction	Disbarred	<i>Oklahoma ex rel. Oklahoma Bar Association v. Mitchell Kevin Leonard</i> , 367 P.3d 498 (OK 2016)
2021	AK	Guardian daughter	Lack of caregiving	Removal	<i>In the Matter of the Protective Proceedings of Tiffany O.</i> , 467 P.3d 1076 (Alaska 2020)
2020	AR	Attorney	Contempt over judicial bias	\$100 fine	<i>In the Matter of the Guardianship of Betty Bevill. Jonathan R. Streit v. State of Arkansas</i> , 576 S.W.3d 27 (AR 2019)
2018	AR	Guardian spouse	Failure to file inventory reports	Transfer funds to the estate of deceased individual	<i>Barbara Rogers v. Florida Martin Ritchie</i> , 528 S.W.3d 272 (AR App. 2017)
2018	CA	Conservator daughter	Comingling funds, improper accounting	Surcharge	<i>Conservatorship of Zedalis</i> , 2017 WL 5508209 (Cal. Ct. App.)
2015	CA	Conservator daughter	No authority to sign gift deed	Removal	<i>Conservatorship of Gums</i> , 2014 WL 3812330 (CA Ct. App. 2014)
2020	CA	Daughter	Financial exploitation	Conservator brought case	<i>Dennis v. Ho</i> , (Cal. Ct. App. Cal. 2020)
2015	CA	Predecessor conservator's attorney	Legal malpractice in allowing conservator to conceal assets	Liable, had privity with successor conservator	<i>Stine v. Dell'Osso</i> , 230 Cal. App. 4th 834 (2014)
2017	CO	Attorney for respondent	Failed to abide by client's request to remove guardianship	Reciprocal suspension of one month from AZ	<i>People v. Miller</i> , 2017 WL 2212041 (Office of Presiding Disciplinary Judge, Colo. 2017)

2016	CO	Attorney and son conservator	Felony theft	Disbarment, \$75,000 restitution	<i>People v. Zarlengo</i> , 367 P.3d 1197 (CO 2016)
2018	CO	Conservator brother	Breach fiduciary duty, civil theft	Surcharge, triple damages	<i>Black v. Black</i> , 2018 WL 549693 (Colo. Ct. App.)
2018	CO	Attorney co-trustee grandson	Improper expenditures	13 counts theft, eight years prison, disbarred	<i>State v. Gregory</i> , 2018 WL 1386832 (Colo. Presiding Disciplinary Judge)
2021	DC	Attorney	Segregation of accounts, recordkeeping	Admonition	<i>In re Quinne Harris-Lindsey</i> , 242 A.3d 613 (D.C. Ct. App. 2020).
2015	DE	Guardian daughter	Breach contract with nursing home, used guardianship funds for own benefit	Action could be heard in civil court	<i>Delaware Health Corporation v. Kelly Ann Grim</i> , 2014 WL 6666570 (Sup.Ct., Del., 2014)
2019	DE	Guardian parents	Sexual abuse	Conviction	<i>In The Matter Of Jane Tyler</i> , 2019 WL 1752618 (Del. 2019)
2021	DE	Guardian son	Failure to pay taxes, failure to report property sale	Sanctions	<i>In the Matter of A.N.</i> , 2020 WL 7040079 (Del. Chan. Ct. 2020).
2017	NJ	Attorney guardian	Sale of condo	Dismissed, no breach	<i>In the Matter of J. F. (Deceased), an Incapacitated Person</i> , 2017 WL 587306 (N.J. Sup. Ct., App. Div., 2017)
2021	FL	Guardian	Unhappy mother	Federal court no jurisdiction	<i>Amy Weissbrod v. Broward County Board of Supervisors</i> , 2021 WL 354199 (US Dist. Ct. S.D. FL 2021)
2020	FL	Guardian son	Failure to follow orders re: restricted account, file plan, inventory, no educational course	Civil contempt and forensic fees affirmed with incarceration, attorney fees reversed as no bad faith	<i>Reginald Hicks, former guardian v. Sharon Hicks, successor guardian and Elgin Polo</i> , 284 So.3d 576 (FL Ct. App. 4th Dist. 2019)
2020	FL	Guardian, judge, attorney	Systemic abuse, racketeering	Vexatious litigant	<i>Barbara Stone v. Nelson Mullins Riley & Scarborough LLP</i> , 2020 WL 3489614 (US Dist. Ct. S.D. FL 2020)
2021	GA	Caregiver daughter	Felony murder	Affirmed	<i>Booth v. State</i> , 858 S.E.2d 39 (GA 2021)
2019	GA	Conservator spouse	Breach of fiduciary duty	Removed, bond surcharged but no punitive damages	<i>In re Estate of Jacqueline Gladestone</i> , 819 S.E.2d 71 (GA App. 2018); and 814 S.E.2d 1 (GA 2018)

2019	GA	Conservator	Will change	Dismissed as ante-mortem will contest	<i>Kellar v. Davis</i> , 2019 WL 2428462 (GA Ct. App. 2019)
2017	GA	Guardian spouse	Looting conservatorship assets	Judgment and punitive damages	<i>In re Estate of Jacqueline Gladstone</i> , 798 S.E.2d 660 (GA Ct. App. 2017)
2017	GA	Residential caregiver	Felony murder	Affirmed	<i>Smith v. State</i> , 801 S.E.2d 18 (GA 2017)
2017	IL	Bank and caregivers	Fraudulent opening of bank account	Bank not liable, did not know was incapacitated	<i>Estate of Polchanin v. Selfreliance Ukrainian American Federal Credit Union et al</i> , 2017 IL (1st) 160641 (2017)
2017	IL	Bank and guardians	Thefts from accounts	Dismissed, not bank's fault	<i>Cook County Public Guardian v. Fifth Third Bank, N.A.</i> , 2016 IL App (1st) 151101-U (2016)
2016	IL	Guardian daughter	Lien on daughter's house for unauthorized repairs	Dismissed	<i>Estate of Herard</i> , 2015 IL App. (1st) 143074-U
2017	IN	Guardian grandfather	Gross abuse, neglect	10 felony convictions, 24-year sentence	<i>Sells v. State</i> , 2017 WL 819742 (IN Ct. App. 2017)
2017	IN	Guardian sister	No accounting, funds not used for adult under guardianship	Removal and reimburse estate	<i>In re Estate of Hall</i> , 2017 WL 1034542 (IN Ct. App. 2017)
2021	IA	Attorney	Frivolous filings in trust	Sanctions	<i>Matter of Teresa Kasparbauer Revocable Living Trust</i> , 949 N.W.2d 660 (Iowa Ct. App. 2020)
2018	IA	Attorney	False statements to court in guardianship	Revoke	<i>Iowa Supreme Court Attorney Disciplinary Board v. Suarez-QUILTY</i> , 912 N.W.2d 150 (Iowa 2018)
2018	KS	Attorney	Client conflict in guardianship	Disbarred	<i>Jarvis v. Wood</i> , 429 P.3d 909 (KS Ct. App. 2018)
2015	KS	Attorney	Theft of client funds in guardianship	Indefinite suspension	<i>In re Jarvis</i> , 349 P.3d 445 (KS 2015).
2018	KS	Attorney for guardian	Mistreatment of dependent adult, violation of orders, bad check	Criminal charges, probation restitution	<i>State v. Ball</i> , 414 P.3d 753 (KS Ct. App. 2018)
2016	KS	Guardian father	Dispute between parents on care and visitation, misinterpretation of	Removal	<i>In the Matter of Guardianship of LeVota</i> , 353 P.3d 470 (KS Ct. App. 2015)

			court orders, no accurate records		
2021	KS	Guardian mother	False pretenses	Conviction reversed	<i>State v. Mayfield</i> , 481 P.3d 818 (KS Ct. App. 2021)
2015	KY	Attorney	File false documents in guardianship	Permanently disbarred	<i>Kentucky Bar Association v. Arnett</i> , 463 S.W.3d 338 (KY 2015)
2019	MA	Conservator spouse	Final account disallowed, record keeping	Affirmed	<i>DiPietro v. Healy</i> , 94 Mass. App. Ct. 1119 (2019)
2017	ME	Public conservator	Breach fiduciary duty, sale of residence below market value	Dismissed on sovereign immunity	<i>Perry v. Dean</i> , 2017 ME 35 (2017)
2018	MI	Attorney for spouse of adult under guardianship	Release of confidential guardian ad litem report	Criminal contempt order reversed	<i>Hanson v. Alpena Probate Judge</i> , 2017 WL 5615880 (Mich. Ct. App.)
2016	MI	Successor conservator	No error in sale of home	Dismissed	<i>Grimm v. PW Services Inc.</i> , 2016 WL 3767473 (MI Ct. App. 2016)
2021	MI	Private guardian	Too many cases to supervise adequately	Dismissed	<i>Smith v. Jones</i> , 2020 WL 5761000 (US Dis. Ct., E.D. Michigan)
2015	MN	Attorney guardian	Misappropriation, excessive fees	Disbarred	<i>In re Disciplinary Action Against Moe</i> , 851 N.W.2d 868 (Minn. 2014)
2017	MO	Caregiver and grandmother guardian	Husband of guardian sexually assault adult under guardianship and impregnate	Husband: 7 year, guardian 30% at fault on \$3M compensatory damages	<i>Jane Doe v. Hughes</i> , 2016 WL 7364704 (MO Ct. App. 2017)
2015	MS	Conservator judge	Mismanagement of estate, attempted influence of witness	Removed from office and taxed costs, five months in federal prison for witness tampering	<i>Mississippi Commission on Judicial Performance v. Chancery Court Judge Joe Dale Walker</i> , 172 So.3d 1165 (2015)
2018	MS	Guardian daughter's boyfriend	Comingling of fund, opened joint bank account	Contempt	<i>In the Matter of the Conservatorship of Margarette Smith</i> , 237 So.3d 852 (MS App. 2018)

2016	MS	Judge	Negligence and inattention in ex parte orders when same attorney was guardian ad litem and attorney for conservator	Public reprimand, 30-day suspension	<i>Mississippi Commission on Judicial Performance v. Judge David Shoemake</i> , 2016 WL 1459109 (MS 2016)
2017	MT	Attorney for family	Interference with guardian and harming the health of the adult under guardianship	Restrictions on family, sanction against attorney “frivolous, frothful filings”	<i>Guardianship of AMM</i> , 384 Mont. 413 (2016)
2016	MT	Guardian	Theft of minor’s inheritance	Persistent offending, 25-year prison, 15-year suspended, restitution	<i>State v. Williams</i> , 380 Mont. 445 (2015)
2021	NC	Attorney	Bullying re: power of attorney, guardianship petition	Disbarred	<i>North Carolina State Bar v. Erica Marie Erickson</i> , 850 S.E.2d 622 (NC App. 2020)
2015	NC	Attorney executor	Undue influence	Sued by guardian, removed as executor	<i>In the Matter of the Estate of Harold Luther Mills</i> , 765 S.E.2d 122 (NC App. 2014)
2015	NC	Attorney grandson on pay on death account	Breach fiduciary duty, constructive trust	Won summary judgment but no Rule 11	<i>Clevell S. Roseboro, Sr. v. John P. Roseboro</i> , 2015 WL 3490059 (NC App. 2015)
2015	ND	Attorney	No misconduct in helping client revoke power of attorney, Rule 1.14	Dismissed	<i>Runge v. Disciplinary Board of North Dakota</i> , 858 N.W.2d 901 (ND 2015)
2018	ND	Son	Undue influence in trust	Summary judgment	<i>Riskey v. Riskey</i> , 917 N.W.2d 488 (ND 2018)
2014	NE	Attorney	Contempt	Sanction	<i>Nebraska v. Connor</i> , 856 N.W.2d 570 (Neb. 2014)
2018	NE	Attorney guardian	Neglecting duties	One-year suspension	<i>State ex rel Counsel for Discipline of Supreme Court v. Halstead</i> 298 Neb. 149 (2017)
2015	NE	Attorney guardian	Late inventory, accounts, breach of duty of competence and diligence	30-day suspension	<i>State of Nebraska v. Connor</i> , 856 N.W.2d 570 (Neb. 2014).
2017	NE	Son	Financial exploitation of vulnerable adult and theft	Conviction five years for financial exploitation, five years for theft	<i>State v. Dehning</i> , 894 N.W.2d 331 (NE 2017)

2020	NJ	Guardian brother	Exploitation	Affirmed	<i>In the Matter of B.M.</i> , 2020 WL 2179052 (N.J. Super. Ct., App. Div. 2020)
2016	NV	Attorney for guardian and trustee of special needs trust	Failure to inform court that guardian and adult under guardianship left state, sold trust assets without permission, failure to file annual accounts, waste of trust assets	One-year suspension	<i>Discipline of Schultz</i> , 2015 WL 9484739 (NV 2015)
2018	NV	Attorney for petitioner	False statement in guardianship petition, petition to appoint self as guardian	Rejected conditional plea as insufficient	<i>Matter of Discipline of Smith</i> , 406 P.3d 958 (NV 2017)
2021	NV	Family	Misappropriation	Guardian brought case	<i>In re Benveniste</i> , 2021 WL 1688696 (Nev. 2021)
2018	NY	Attorney guardian	Self-dealing	Disbarred	<i>Matter of D'Angelo</i> , 158 A.D.3d 107 (N.Y. App. Div. 2nd 2017)
2017	NY	Attorney guardian	Legal malpractice	Dismissed	<i>Celeste Sieen, Administratrix, C.T.A. of the Estate of Virginia Lenzovich v. Lisa Mevorach, as Guardian for Virginia Lenzovich and as attorney for Virginia Lenzovich</i> , 2016 N.Y. Misc. Lexis 4849, N.Y. S. Ct. 2016
2020	NY	Guardian	Son sought 1983 action against mother guardian	Dismissed	<i>Zavalidroga v. Hester</i> , 2020 WL 210812 (U.S.D.C., N.Y.N.D. 2020) (magistrate's recommendation)
2016	NY	Guardian	Abusive behavior to adult under guardianship	Removed on request of adult under guardianship	<i>Matter of Helen S.</i> , 130 A.D.3d 834 (NY 2nd Dept. 2015)
2015	NY	Guardian	Failure to file accountings, follow court orders	Civil and criminal contempt	<i>In re Patricia H.</i> , 46 Misc.3d 1207(A) (N.Y. S. Ct., Suffolk County 2015)
2018	NY	Guardian daughter	Failed to notify family of hospice and funeral	\$15,000 sanction plus attorney fees	<i>Matter of Kornicki</i> , 2018 N.Y.L.J. Lexis 2904 (S.Ct., Nassau County, N.Y., 2018)
2020	NY	Guardian, judge, attorney	42 U.S.C. 1984 civil rights	No federal jurisdiction	<i>Zavalidroga v. Hester</i> , 2020 WL 210812 (U.S.D.C., New York, 2020)

2015	OH	Attorney guardian	Theft of client funds, guardian for 400 clients	Resignation of bar license	<i>In re Resignation of Kormanik</i> , 32 N.E.3d 476 (OH 2015)
2019	OH	Attorney	Theft	Two-year sentence, dismissed appeal	<i>Disciplinary Counsel v. Harmon</i> , 158 Ohio St.3d 248 (2019)
2018	OH	Attorney for previous guardian	Irregular inventories, unsupported motions	Sanction	<i>In re Estate of Arbraitis</i> , 2017 WL 2815202 (OH Ct. App. 2017)
2016	OH	Co-guardians	Sloppy accounting	Remanded as no finding of civil concealment	<i>In re Guardianship of Lindsey</i> , 2015 WL 5934635 (OH Ct. App. 2015)
2020	OH	Guardian	Misuse of restricted account	Bank not liable	<i>Matter of B.M.</i> , 2020 WL 1492579 (2020 Ohio)
2016	OH	Guardian	Failure to file acceptable accounting	Removal and surcharge brought by successor guardian	<i>In the Matter of Disciplinary Proceedings Against Gatzke</i> , 878 N.W.2d 668 (WI 2016)
2018	OH	Guardian daughter	Concealed or embezzled assets, change life insurance beneficiary to self	Judgment	<i>Hundley v. Sparkes</i> , 2017 WL 4877008 (Ohio Ct. App. 2017)
2017	OH	Guardian daughter	Not getting medical attention, medications	Removal	<i>In the Matter of the Guardianship of Thomas</i> , 2016 WL 6805338 (OH Ct. App. 2016)
2017	OH	Guardian daughter	Move without order, menacing behavior at nursing home	Removed	<i>Guardianship of Carey</i> , 2016 WL 5871158 (OH Ct. App. 2016)
2018	OR	Attorney	Improper communication	Public reprimand	<i>In re Conduct of Klemp</i> , 363 Or. 62 (2018)
2018	OR	Attorney conservator	Excessive fee, abuse of process	18-month suspension	<i>In re Conduct of McGraw</i> , 362 Or. 667 (2018)
2017	PA	Family guardian, brother and sister co-guardians	Ignored best interest	Removed and independent guardian appointed	<i>In the Matter of: Genevieve Bush</i> , 2017 WL 679952 (Pa. Sup. Ct. 2017)
2020	PA	Guardian	Misuse of funds	Surcharge	<i>In Re Cecelia Kline</i> , 2019 WL 2564661 (Pa. Super. Ct.2019)
2021	PA	Guardian sister	Imprudent investing	Sanctions	<i>Estate of: Nancy Stapler-Elias</i> , 241 A.3d. 425 (Pa. Sup. Ct. 2020)
2018	RI	Attorney for respondents	Not notify court of joint account	Suspended for 90 days	<i>Matter of Martin S. Malinou</i> , 172 A.3d 774 (RI 2017)

			deposited to own account		
2016	RI	Guardian sister	Joint account with adult under guardianship before appointment	Not breach of fiduciary duty to not disclose account, "close relatives preferred," no misuse of money	<i>In Re Estate of William B. Ross</i> , 131 A.3d 158 (RI 2016)
2020	SD	Attorney	Misconduct	One-year suspension	<i>Matter of Discipline of Swier</i> , 939 N.W.2d 855 (SD 2020)
2019	TN	Caretaker	Theft	Two-year suspended sentence, restitution	<i>State of Tennessee v. Ricky Jan Stevison</i> , 2019 WL 4739229 (TN Crim. Ct. App. 2019)
2017	TN	Guardian mother	Acting against best interest of adult under guardianship re: medications	Removal	<i>In re Conservatorship of Sophia Elaine Taylor</i> , 2017 WL 957801 (TN Ct. App. 2017)
2017	TX	Attorney trustee, who represented adult under guardianship in guardianship, counsel to daughter	Adverse clients	Void trust, funds to court registry	<i>Ross v. Sims</i> , 2017 WL 672458 (Tex. App. – Austin 2017)
2015	TX	Caregiver will beneficiary	Deception in will procurement	Conviction	<i>Melissa Adler v. State of Texas</i> , 2014 WL 5421050 (TX App. Waco 2014, rev. ref'd 2015)
2018	TX	Guardian son	Transfer funds to trust to benefit self	Removal	<i>In the Guardianship of Nancy Simo</i> , 2017 WL 6047706 (TX App. 2017)
2020	TX	Hospice administrator beneficiary of will	Capital murder	Life sentence affirmed	<i>Monica Melissa Patterson v. State of Texas</i> , 2020 WL 373069 (TX Ct. App. 2020)
2020	TX	Hospital	Class action on rape	Class certification denied	<i>Anisha H. Ituah by Her Guardian Angela McKay, on her behalf and those similarly situated v. Austin State Hospital</i> , 2020 WL 354949 (W.D. Tex. 2020)
2019	TX	Neighbor	Misappropriation	Five-year sentence	<i>Slobodan Vidakovic v. State of Texas</i> , 2019 WL 1388363 (TX App. 2019)

2020	TX	Private investigator	Undue influence in wills	Wills set aside	<i>In re Estate of Buford Scott, Jr.</i> , 2020 WL 1685419 (TX Ct. App. 2020)
2021	TX	Regular bus driver	Sexual assault	Affirmed	<i>Edgar Lane Sharp v. State of Texas</i> , 2020 WL 6750815 (TX App. 2020)
2019	TX	Stepfather	Sexual battery	Convicted	<i>Douglas Harry Young v. State of Texas</i> , 2019 WL 1120125 (TX App. 2019)
2021	WA	Attorney	Baseless claim in guardianship proceeding	Sanctions	<i>In re Sanction Order Against Critchlow</i> , 2021 Wash. App. LEXIS 381, 2021 WL 734777 (Wash. App. 2021)
2017	WA	Attorney	Insert in guardianship proceedings after disqualified, potential witness	Rule 11 sanctions	<i>Guardianship of Cudmore</i> , 197 Wash. App. 1052 (2017)
2017	WA	Attorney for petitioner	Representative of respondent and petitioner, conflict of interest	Disqualified	<i>In re Cudmore and Belt</i> , 195 Wash. App. 1003 (2016)
2019	WA	Certified professional guardian	Not in opinion	One-year suspension from all cases by Professional Guardian Board	<i>Matter of Guardianship of Holcomb</i> , 5 Wash.App.2d 1044 (2018)
2017	WA	Guardian	Excessive fees, violation fiduciary duties, violation standards of practice	Pay investigator fee and disgorge fee	<i>Guardianship of Fowler</i> , 198 Wash. App. 1023 (2017)
2016	WI	Attorney	Used estate funds for real estate where was partner, no consent in settling insurance claim, living expenses from trust account	Three-year suspension	<i>In the Matter of Disciplinary Proceedings Against Gatzke</i> , 878 N.W.2d 668 (WI 2016)
2016	WI	Attorney	Theft by power of attorney	Conviction upheld	<i>State v. Elverman</i> , 873 N.W.2d 528 (WI Ct. App. 2015)
2015	WI	Attorney	Comingling, false accounting	Suspension, restitution	<i>In re Disciplinary Proceedings Against Voss</i> , 850 N.W.2d 190 (WI 2014)
2017	WI	Attorney guardian	Theft of guardianship funds	18-month suspension	<i>In the Matter of Disciplinary Proceedings Against Meisel</i> , 893 N.W.2d 558 (WI 2017)

2016	WI	Guardian son	Plaintiff guardian failed to answer admission	Guardian's failure to answer admissions used to grant summary judgment	<i>Estate of Traxler v. Traxler</i> , 874 N.Wd.2d 347 (WI Ct. App. 2015)
2021	WV	Group home worker	Sexual assault	Affirmed	<i>State of West Virginia v. Joshua Ray Lell</i> , 2021 WL 365231 (WV Sup. Ct. App. 2021)
2020	WV	Used car dealer	Exploitation	Suit by family against APS for gross negligence	<i>Jerry Markham, Administratrix of the Estate of Selwyn Vanderpool and Joseph Boswell, III, v. West Virginia Dept. of Health and Human Services</i> , 2020 WL 2735435 (WV 2020)
2020	WY	Attorney	Will drafting, id of client	90-day suspension	<i>Board Professional Responsibility, Wyo. St. Bar v. Pretty</i> , 462 P.3d 446 (Wyo. 2020)
2020	WY	Attorney	Client conflict, misrepresentation	Five-year suspension	<i>Discipline of List</i> , 453 P.3d 390 (Wyo. 2019)
2015	MS	Former guardian	Failure to file accounting, which would reveal embezzlement	Sued by current guardians against court clerk, dismissed statute of limitations	<i>Benvenuto, as Conservator of the Estate of Soon San Pak v. John McAda, Chancery Clerk of Harrison County, Mississippi</i> , 162 So.3d 808 (MS 2015)
2020	MS	Romantic partner	Theft via confidential relationship, undue influence	Cancel deed and recover funds, case brought by conservators	<i>John L. Ward v. Estate of Mary S. Cook by and through Lynn E. Cook, III, Charles J. Cook, and Jean Cook Arick, Conservators</i> , 294 So.3d 1252 (MS Ct. App. 2020)

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- Supporting Victims of Conservator Exploitation
- Key Resources on Conservator Exploitation
- Examples of Conservator Exploitation: An Overview
- Conservator Exploitation in Minnesota

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Scan of the Guardianship Abuse and Fraud Data Landscape

BY

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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 Mihas, & 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>.

**Scan of the Legal, Policy, and Practice Context and Considerations for
Collecting Data on Guardianship Abuse and Fraud**

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I. Introduction

This paper — Part 3: Scan of the Legal, Policy, and Practice Context and Considerations for Collecting Data on Guardianship Abuse and Fraud — builds upon the first two papers in our environmental scan.¹

In this paper, we summarize our key guardianship² data findings in the context of national resources on data collection, monitoring, and reporting of suspected abuse and fraud. We explain the types of guardian misconduct, delineating general misconduct from criminal conduct. We also highlight why it is so difficult to answer questions about the number of adults with guardians and the prevalence of abuse by guardians.

In addition, we include a detailed section on how courts and other stakeholders can use specific guardianship data elements — both to strengthen monitoring at the case level and to inform changes in law, policy, and practice. We list dozens of data elements over the life of a case and show the relevance of each in addressing abuse and fraud. We stress that individual court systems should prioritize the complete set of data elements, adapting it to meet their most pressing problems and gaps in knowledge.

Finally, we make several recommendations on federal actions to enhance guardianship data collection and to address abuse and fraud by guardians. Although guardianship law and policy are created at the state level, there are opportunities for the federal government to help states protect individuals with a guardian from abuse either through unnecessary or overboard guardianships or by under-monitored guardians. We organize our recommendations for federal action into four categories: supporting greater uniformity, allocating federal resources for state courts, expanding federal data sources to include guardianship, and focusing on federal approaches to increase collaboration and support adults subject to guardianship.

II. Summary of Key Guardianship Data Considerations

In this section, we summarize the key findings from the first two phases of our research and highlight why it is so difficult to answer what seem to be two basic questions: How many adults have a guardian, and what is the prevalence and nature of abuse by guardians?

a. Summary of Part 1 Research

In Part 1 of our environmental scan, we conducted a review of the literature on guardianship systems and abuse by guardians, drawing from a variety of disciplines and sources spanning nearly four decades. Our review of the literature found that no comprehensive, reliable data exist about the nature or extent of abuse by guardians, despite numerous efforts to quantify concerns about widespread abuse. To determine the scope and prevalence of abuse by guardians, it is critical to know — but difficult to ascertain — the number of cases for which a guardian has been appointed by the court and for which the court is responsible for monitoring. However, despite attempts to estimate the number, there is no definitive data source. It is abundantly clear that there are substantial gaps that need to be filled to effectively address abuse and fraud by individual guardians and the guardianship system.

i. What We Found About Abuse by Guardians, Including Criminal Charges

Existing research shows that courts lack both basic information about how many guardians are under their jurisdiction and the capacity to provide oversight, which presents a significant barrier to finding documentation about the nature of abuse by guardians. In our research, we identified limited pockets of information that expose breaches of fiduciary duties, mismanagement of assets, and exploitation.

We examined state appellate court opinions reported in Lexis/Nexis involving a wide range of guardianship issues as a source of information on types of misconduct (for example, financial or personal management), the relationship of the guardian to the adult (for example, family or attorney), and the resolution (for example, criminal charges).³ However, these represent only those cases that reached state appellate courts.

The disciplinary actions of state or national certification programs also help contribute to understanding the nature of abuse by guardians. Thirteen states have certification or licensing requirements for professional guardians; these include procedures for receiving and reviewing complaints and determining whether the guardian should be disciplined.⁴ Nine states require guardians to be certified by the Center for Guardianship Certification, the only entity that provides nationwide certification of guardians. The Center for Guardianship Certification, which has been certifying guardians since 1997, receives complaints about guardians.⁵ Although illustrative, this information does not provide thorough coverage of the nature of abuse, as it includes only cases in which a filed complaint involved certified professional guardians. As a result, the number of cases provides only a limited picture of a small group of guardians.

Studies have attempted to gather information on abuse by guardians, but similar to state court appellate cases and complaints to certification bodies, these fail to capture the totality of cases. The National Center for State Courts (NCSC), for example, conducted a comprehensive analysis of media stories on abuse by guardians from July 1, 2015, to December 31, 2016, to learn about instances of financial exploitation and case outcomes.⁶ NCSC also presented findings from a 2018 research study of the Minnesota court's centralized professional auditing team.⁷ A separate study examined substantiated Adult Protective Services (APS) reports over a 10-month period at sites in six states.⁸ Although these studies provide important insight into the nature of abuse by guardians, they include a small subset of cases and thus do not provide an understanding of the national scope of the problem.

ii. What We Found About the Nature of Abuse by Guardians

The nature of abuse by guardians and by the guardianship system remains an unsolved mystery due to both inconsistent definitions of what constitutes abuse and a significant lack of data. From the information that exists, we found that:

- Overall, elder abuse affects about one in six community dwelling adults each year, although prevalence rates differ by study and type of abuse.⁹ This estimate does not include vulnerable younger adults with disabilities, and it may or may not include older adults with a guardian. Studies have recognized that projections of elder abuse underestimate actual prevalence.

- The best estimate of the number of adult guardianships in the United States is 1.3 million open cases, but that is based on varying reports by selected states.¹⁰
- There are numerous reports by governmental, media, and other sources showing malfeasance by both professional and nonprofessional guardians. This malfeasance includes a spectrum of actions, ranging from noncompliance in failing to file reports in a timely manner, to abusive conduct as defined by APS, to criminal conduct for which various sanctions are imposed.
- There are few appellate cases involving misconduct by guardians; these cases expose how guardians abuse their court-ordered authority to exploit the estates they have been entrusted to protect.
- Although press stories have reported serious problems, they may not accurately represent the issues, and they fail to address scope and prevalence. Media exposés tend to focus on sensational cases of intrafamily disputes carried out in guardianship courts.
- A systematic study of APS in six states revealed that financial exploitation is more likely to occur through misuse of powers of attorney rather than guardians.¹¹
- 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.¹²

Substantial advocacy work on guardianship monitoring has resulted in revisions to state laws, promulgation of standards of practice for guardians and courts, development of a model uniform act, and enhanced oversight approaches applied in some courts. However, due to lack of funding, technology, and, in some cases, political will, much remains to be accomplished to effectively target abuse by guardians and bring about needed changes in the ways in which courts impose and monitor guardianships. Many gaps exist between law and practice. Ongoing media reports of grave abuses by guardians are an indication that, although standards and statutes may be in place, practices lag behind them. A gap exists between processes on paper and in reality.

b. Summary of Part 2 Research

In Part 2 of our research, we interviewed and surveyed subject matter experts in state court systems. They offered firsthand knowledge of what data state courts and local courts are able to collect and then aggregate about guardianship cases, which could help answer the question of the nature and prevalence of abuse by guardians. Through our interviews, we found that there is scant capacity to help answer that question; however, we were able to identify existing state judicial case processing and data collection capabilities, along with known barriers to improving data collection.

All interviewees emphasized the importance of court data technology. They agreed that states cannot effectively prevent or address abuse and fraud by guardians without knowing the parameters of their system and how it functions. Data are essential for courts to track and monitor individual cases to detect abuse and intervene with sanctions or removal of the guardian. Data also enable courts and policymakers to uncover patterns of abuse or system limitations that require changes in law or court procedures.

Based on our interviews, a key data point is the total number of cases subject to court review. Each case represents one adult for whom the court has appointed a guardian and monitoring is

required. NCSC has recommended that courts use “set for review” to provide uniformity in identifying a case in which a guardian has been appointed and the case is awaiting regular court review. However, according to our interviews, courts use a mix of terms such as “active,” “open,” and “closed,” which appear to have different meanings from one state to the next. Definitions are often blurred in practice, resulting in confusion about case counts and available data. For example, in some states, cases are coded “closed” when a guardian is appointed, even though the court’s oversight responsibility is just beginning.¹³

In addition to inconsistent terminology, the interviewees had concerns about data reliability because court staff may not properly code case status and events during the time the case is subject to review. Other issues raised during the interviews were inequities between and within different local courts and their varying ability to extract case numbers easily and accurately.

Some states are simply unable to produce a statewide number of cases for court review due to the lack of a centralized data collection system. 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 raises concerns around the accuracy of any statewide data.

i. Complex Local Court Systems

One challenge to answering the basic questions on abuse by guardians is the complex nature of local 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 they cannot dictate what data the locally funded courts should collect. Others have what are called “unified” court systems, in which there are varying levels of centralized management, rulemaking, budgeting, and financing at the state level.

In all but 17 states, guardianship cases are heard in general jurisdiction courts, which hear all civil and criminal matters at the municipal, county, circuit, or district level. There are approximately 1,780 general jurisdiction courts with more than 7,000 assigned judges.¹⁴ Some general jurisdiction courts may have special dockets or judges dedicated to probate matters, including estates of deceased individuals and guardianship cases. On a day-to-day basis, these 7,000 judges hear a wide variety of cases, ranging from felonies and misdemeanors to juvenile matters, traffic cases, divorces, estates of deceased individuals, civil tort, and contract cases — and a small fraction of the docket may be guardianship cases. Even in the 17 states with specialized probate courts, some are locally administered and thus are not under the authority of the state court administrative office, and some may oversee only estates of deceased individuals and not guardianship matters.

Courts do use some technology to track cases as they move through the court system. Court clerks are responsible for recording dates on which lawsuits or motions are filed, scheduling matters for hearings, arranging for jury panels, assigning judges to cases, and attending to a multitude of other details to move the cases through the court system. In general, case management systems are like giant calendars that record events in the case: motions filed, orders entered, and verdicts given by a jury. Although case management systems gather

important information, most are not intended or designed to be able to aggregate case details. Instead, the details can be found in the documents of the court filings.

Guardianship cases are unique in that, unlike almost all other cases on a civil or criminal docket, the 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 the court filing system. In some jurisdictions, judges have incentives to close a case as quickly as possible to indicate their efficiency in deciding cases.

Our research identified very few states with advanced case management and database systems that allow for both effectively tracking individual cases and aggregating information for a larger view of how the guardianship process is working. Data elements that would shed light on abuse by guardians appear largely inaccessible. Currently, many states have only a rudimentary case management system, and most are unable to aggregate key data elements. The conundrum facing most states is how to collate or synthesize the existing but presently inaccessible information to detect and prevent abuse. To collect and aggregate the data would require a manual case-by-case search of each petition — an overwhelmingly laborious and expensive task. Even when courts have the ability to identify an overall number of active cases, they often cannot aggregate specific information about cases under court review. Among states with comprehensive data capabilities and aggressive monitoring, none said that they could confidently gather data reflecting the prevalence of confirmed abuse in their jurisdictions.

Few courts have the ability to set up special database systems specifically designed to collect and aggregate data about the unique circumstances of guardianship cases, especially when guardianship matters are a small part of the overall court docket. The lack of funding and the high cost to implement improvements are contributing factors to the lack of technology capacity.¹⁵

ii. Complex Nature of Abuse by Guardians

An additional challenge is the complex nature of abuse by guardians. Describing the nature of abuse by guardians is like putting together a puzzle with pieces from different puzzles. Those puzzles include:

- What we do not know about elder abuse, how it happens, how much occurs, and how to identify it.
- Whether there are significant differences between the abuse of older adults and the abuse of the younger population of vulnerable adults.
- Whether there are 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 any common definition of what actions or inactions constitute abuse by a guardian.

Caution is necessary when trying to identify whether a guardian is committing abuse or exploitation because the different puzzles may use different vocabulary:

- APS definitions of abuse, neglect, or exploitation may have distinctly different elements than a state statute’s criminal elements of elder abuse, theft, or financial exploitation.
- National and state agencies that license and discipline guardians may look for violations of practice standards that other entities consider misconduct, noncompliance, or breach of a fiduciary duty.
- Courts’ monitoring of guardianship cases may concentrate on whether required reports are filed in a timely manner, whether accountings are complete, and whether the adult is in appropriate housing or receiving necessary services — which are important but not necessarily indicators of possible abuse, neglect, or exploitation.

III. How Will Courts and Other Stakeholders Use Guardianship Data?

a. Data Are Needed To Improve the Understanding of Guardianship Practices, Including Abuse and Fraud

There is much we do not know about how well the guardianship system functions. With data, we may be able to shine a light on the perplexing questions that currently have no answers:

- 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?

b. Courts Need Data for Effective Guardianship Monitoring To Detect Abuse

Data are needed on basic case information, case type, the reason(s) a petition was brought and by whom (for example, financial exploitation, abuse, or neglect), the reason the case was closed, the dates of documents due and filed, complaints raised and resolved, financial assets, demographic information about the adult and the guardian, residential status of the adult, and relationship of the guardian to the adult. This information helps courts assess whether the guardian is meeting their fiduciary duty and whether the adult is at risk of harm — and helps determine court actions, such as increasing the bond, appointing a co-guardian, limiting guardian access to the accounts, and removing the guardian.

c. Policymakers Need Data for Legal and Policy Changes To Address Abuse

Carefully and consistently collected and updated data can enable state and federal entities to clarify the scope, prevalence, and nature of abuse by guardians. It will also provide information about the adults most affected and the consequences for their lives, the settings where abuse happens, and the effectiveness of various court interventions.

Data are important for policymakers to determine trends and gaps that require changes in laws, regulations, and guidelines, and to develop appropriate training programs for all stakeholders. For example, data might show that family guardians fail to understand their duties or that judges fail to consider less restrictive options prior to appointment. Data might highlight a high rate of financial exploitation by case type, setting, or individual committing the abuse, or demonstrate that additional court procedures stand to enhance the well-being of the adult and protect their rights.

d. Important Data Elements To Collect After Appointment

There are dozens of data elements that courts could collect to improve case monitoring and highlight needed changes in law or policy. Rather than collecting all elements, courts would most likely need to prioritize those elements most effective for addressing abuse or changing systems. The selection of these top data elements requires careful thought and collaboration and should be determined in consultation with an advisory user group, as suggested by NCSC.¹⁶ Below is a universe of data elements, as well as questions that collection of these data elements could answer. Each state or local court system would select those elements most needed and most accessible to collect.

i. Data Elements at Case Initiation

- Respondent (the adult who is the subject of a guardianship petition)
 - Age or birthdate
 - Is the respondent a minor or an adult? Many courts have separate statutory procedures for minors and adults. Data need to distinguish between minor and adult cases at the initial filing.
 - Is the respondent transitioning as a young adult into adult guardianship? Data can identify the need for additional education for parents of individuals with intellectual or developmental disabilities about alternatives, such as supported decision-making.
 - Race/ethnicity; gender
 - Is the adult receiving appropriate services?
 - Is gender and race/ethnicity a factor in service provision?
 - Is there domestic violence involved in the case or in an associated case involving the same parties?
 - Contact information
 - Where is the respondent currently residing (so they can receive all notices and filings throughout the case to stay informed)?
 - Where will the respondent be living if a change of residence is necessary (so that court monitors will be able to locate them)?
 - Is the respondent living or will they be living out of state, and does this require court approval or suggest that the petition be brought in another state?
 - Accommodations; investigations

- What is the respondent's preferred language (so that an interpreter can be arranged)? Does failure to accommodate language barriers affect the assignment of a guardian?
- What assistance will the respondent need to attend and participate in any proceedings?
- Who is the respondent's preference(s) for a guardian?
- Does the respondent wish to attend the proceedings?
- Petitioner (the individual or entity filing the petition)
 - Is the petitioner a nursing home, hospital, proposed guardian, APS, or other role that presents a conflict of interest?
 - Is the petition contested by the respondent or other family members (which highlights the need for a thorough review of the need for guardianship or the appropriateness of the proposed guardian)?
- Guardian/conservator
 - What is the age, race, ethnicity, and gender of the guardian?
 - What is the guardian's contact information (including email, text, and telephone, so they can receive notices, reminders of due dates of important filings, and inquiries from the court)?
 - What qualifies the person to be the best choice for guardian? Data reflecting the difficulty in finding qualified guardians could indicate a need for more education and training for potential guardians or the development of a volunteer guardian program.
 - Has the guardian completed any state-required education?
 - Is the guardian certified or licensed?
 - What is the relationship of the guardian to the respondent? Data could reveal a history of family conflict and suggest mediation or other services.
 - Is the guardian an individual, professional, attorney, an agency, volunteer, APS, or public guardian? Aggregated data on who has been appointed will tell the court where enhanced monitoring would be most effective.
 - Was a background or credit check conducted to determine if there was reason to disqualify the proposed guardian/conservator? If a criminal or bankruptcy history was disclosed, why did the court waive the disqualification? Is closer monitoring appropriate to protect the security of the respondent's estate? Aggregated data could determine if background checks are effective in deterring or identifying abuse.
 - Is the guardian also serving as representative payee (so that the Social Security Administration can be notified if discharged for cause as guardian)?
 - Where is the guardian physically located with respect to the person for whom they have been appointed? Data could identify guardians' difficulty in carrying out visitation requirements.
 - How many appointments does a guardian have? Data would identify if an individual guardian has more appointments than they can responsibly serve.
- Attorney for respondent

- Has the attorney received any necessary training on the role of counsel according to state law?
- Has the attorney taken actions to vigorously advocate for the wishes of the adult?
- Has the attorney taken action to identify less restrictive options?
- Was the attorney appointed by court or secured by the respondent?
- Who paid for the attorney representation?
- Court visitor/guardian ad litem¹⁷
 - Was a visitor or guardian ad litem appointed?
 - Was the visitor or guardian ad litem randomly selected from a pool or rotation schedule, or chosen by the petitioner? Data about who are selected as guardian ad litem can indicate the need for training more individuals to serve in this role.
 - What was the nature of the visitor or guardian ad litem visit?
 - Did the court visitor or guardian ad litem seek to identify supports and less restrictive options?
 - Were the findings of the court visitor or guardian ad litem reflected in the findings and order of the court?
 - Who paid for the guardian ad litem or court visitor?
- Precipitating cause for petition
 - Was the respondent a victim of or at risk for abuse or exploitation, necessitating closer monitoring?
 - Was the respondent a victim of self-neglect, necessitating closer monitoring?
 - What problem(s) does the appointment of a guardian resolve?
 - What were the leading causes of incapacity? Could the perceived incapacity be temporary, suggesting a temporary order? Data about the nature of incapacity may affect the care plan and other treatment.
 - Is there an emergency that statutorily permits fewer due process protections? Data would indicate the frequency and reasons for which emergency petitions are granted and whether they are being misused.
 - If an emergency guardianship is necessary, how long is the emergency authority in force? Is the order limited to the circumstances of the perceived emergency?
- Elements of the order
 - Did the order set out specific findings on which the determination of incapacity was based?
 - Which less restrictive interventions did the court consider before appointing a guardian?
 - What rights did the respondent retain? In what aspects was the order limited? Specifically, did the respondent retain the right to vote? Data would quantify the courts' success in tailoring orders to respondents' specific needs.
 - Was a protective arrangement instead of a guardianship ordered?

ii. Data Elements After Appointment

The following data can help establish a baseline of expectations for the guardian. A tickler system that reminds guardians of various filing dates can help them make timely filings, and it can help the court track filings. The due dates should be automatically calculated and included in the letters of office so that both the court and the guardian are aware of the due dates.

- Inventory due date
- First accounting due date
- Financial plan due date
- Guardian plan due date
- Well-being status report due date

Once the inventory is filed, data about the assets under protection of the court can help the court track the security of the adult's resources. Updating these amounts over the life of the guardianship enables the court to adjust the amount of the bond as necessary.

- Financial assets at start
- Real and personal property at start
- Total assets at start

Information about the bond should be maintained and updated as appropriate to ensure that the adult's estate is protected from any misuse.

- Date bond posted
- Amount of bond
 - Reason for any waiver of bond
 - Order entered for restricted account
- Review of bond adequacy
- Modification of bond amount and reason
- Surcharge on bond and cause

Information on whether reports and accounts are filed in a timely manner is the first step in the court's ability to supervise the guardian and keep abreast of the adult's well-being.

- Date inventory filed
- Date financial plan filed
- Date guardian plan filed
- Date accounting filed
- Date status report filed
- Notice of late filing sent
- Show cause ordered and outcome

Once the court has received the required reports and accounts, it should track the flow and outcome of the review. Such data provide valuable information about investigations needed to detect abuse, as well as the court staffing needed to manage the monitoring process.

- Reviewed by a court official
- Issues noted
 - Indicators or red flags of abuse or exploitation
 - Dates and location of visits by the guardian and if they were in person or remote. Infrequent visits could suggest the need for investigation.
- Action taken by the court
- Appointment of guardian ad litem/visitor/magistrate to investigate or interview
- Referral to APS/Long-Term Care Ombudsman for investigation; investigation and outcome
- Investigator or auditor appointed
 - Audit finding
 - Investigator substantiation

When the investigation or audit raises concerns, data can assist in monitoring and identifying themes or gaps in the court system, the need for training various stakeholders, and the effectiveness of the court's interventions.

- Show cause hearing
- Removal or substitution of the guardian
 - Notice to licensing or certifying entity
 - Notice to other jurisdictions
 - Qualifications of any new guardian
- Modification of bond
- Surcharge of bond
- Protections and services provided to the person with a guardian or conservator¹⁸
- Referral to APS/Long-Term Care Ombudsman
- Referral to law enforcement

Data on complaints communicated to the court can help the court find and respond to problems and abuse, as well as evaluate the effectiveness of the complaint process.

- Receipt of complaint
 - Complaint source
 - Who reviewed
 - Issues noted
- Action taken on complaint
 - Resolution

Data on subsequent proceedings during the life of the guardianship can alert the court to events that could indicate potential for abuse.

- Motions filed
 - Sale of property
 - Visitation restrictions
 - Authority for estate planning
 - Request for instructions
 - Medical consent outside the scope of the order
 - Placement in restrictive setting
 - Moving an individual out of state
- Appointment of an attorney for a person with a guardian
- Transfer of the guardianship to another state
- Modification of order
 - Petitioner
 - Rights restored or restricted, including the right to vote
- Substitution of guardian/conservator
 - For cause (abuse, neglect, or exploitation)
 - Not for cause (best interest of the adult, relocation, or resignation)
- Ending of the guardianship/conservatorship
 - Death of the adult
 - Transfer of the guardianship out of state
 - Full restoration of rights

These data elements over the life of a case reveal the complexity of designing a system to both improve court oversight of cases and clarify systemic changes that are needed. Each state court system and each local court will select priorities that may need to be refined as the system is implemented and the court gains experience.

IV. Recommendations: Federal Actions To Enhance Guardianship Data Collection

The previous sections have shown how better data can be used to help prevent and address abuse and fraud by guardians. This section suggests specific opportunities for the federal government to enhance data on guardianship and the misuse of the guardianship system. These recommendations are organized into four categories: (a) supporting uniformity in guardianship law, policy, and data governance; (b) allocating additional resources for guardianship reform, including state court technology and monitoring capacity of staff; (c) expanding federal data sources to include guardianship; and (d) exploring ways the U.S. Department of Justice (DOJ) can help address abuse by guardians and support adults subject to guardianship.

a. Supporting Uniformity in Guardianship Law, Policy, and Data Governance

As we found in our Part 2 report, guardianship terminology and law vary from state to state, and practice varies not only by state but also from court to court. Moreover, state court data systems range widely in their case management protocols, key elements, and technological capacity. States also differ in the extent to which the court system is centralized, with lower courts

reporting to the highest state court in a unified court system. Even in states with unified court systems, guardianship processes and data collection are often inconsistent across local courts. Greater uniformity in both law and data governance would strengthen access to data on abuse and fraud by guardians, as well as monitoring approaches.

Adult guardianship is the responsibility of state courts, deriving from the ancient legal concept of *parens patriae*, the government’s duty to take care of those who cannot care for themselves.¹⁹ Guardianship administration falls to the states under the Tenth Amendment to the U.S. Constitution, which reserves to the states all powers not expressly delegated to the federal government.²⁰ That means there will inevitably be some variability. However, the federal government can take action to encourage uniformity of effective practices. One way is to support enactment of uniform state statutory provisions. Another is to support uniformity of key data elements.

i. The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act

Formed in 1892, the Uniform Law Commission (ULC) is a quasi-governmental entity that develops model statutes for state legislatures. The ULC “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”²¹ State legislatures can choose to pass an entire uniform act, take key provisions, or adapt terms and provisions to best suit local needs.

The ULC first addressed adult guardianship in 1969 in Article V of the Uniform Probate Code. At the time, Article V was forward-looking because it separated guardianship of the person (“guardianship”) from guardianship of property (“conservatorship”) and allowed conservators to engage in a wide range of transactions without seeking court approval.²² In 1982, the ULC amended Article V and created a separate Uniform Guardianship and Protective Proceedings Act, which authorized limited court orders.²³ In 1997, the ULC amended the Uniform Guardianship and Protective Proceedings Act to highlight the principle that “a guardian or conservator should be appointed only when necessary, only for so long as necessary, and only with such powers as are necessary.”²⁴

In 2017, prompted by the 2011 National Guardianship Network’s Third National Guardianship Summit, the ULC adopted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (“the Act”).²⁵ The Act includes many innovations that, taken together, result in:

a comprehensive guardianship statute for the twenty-first century ... [It] promotes person-centered planning to incorporate an individual’s preferences and values into a guardianship order and requires courts to order the least restrictive means necessary for protection of persons who are unable to fully care for themselves.²⁶

Especially relevant to this report, the Act offers a range of tools to reduce abuse and better protect the rights of adults subject to guardianship. Key among them are the following:²⁷

- Section 127 of the Act creates a process for anyone concerned about the welfare of an adult to bring a grievance about a guardian to the attention of the court without a formal

petition. The court must review the grievance and hold a hearing if the grievance supports a reasonable belief that removal of the guardian or termination of the order may be appropriate. The court may take a range of corrective actions.

- Section 310(e) requires the court order to give anyone who cares about the welfare of the adult subject to guardianship the opportunity to receive copies of essential documents in the case. Such family members and friends may have important information about the adult’s condition and changing circumstances and may bring these to the attention of the court. “These individuals can then act as an extra set of eyes and ears for the court to prevent or remedy abuse.”²⁸
- Section 315(c) of the Act limits a guardian’s ability to restrict the adult’s interaction with others. Short of a court order, a guardian who believes that interaction with a specific person poses a risk of harm may restrict contact for no more than seven days if it involves family or a pre-existing relationship, and for no more than 60 days if it is not family or there is no pre-existing relationship.
- Section 317 addresses submission of the guardian’s report and lists 14 elements that must be included. Section 423 addresses submission of the conservator’s accounting. The adult and others designated by the court have the right to receive a copy of the report. The court must review each report at least annually and may appoint a court visitor to investigate. Section 318 authorizes the court to remove a guardian for cause.
- Section 418 mandates that the court require a conservator to furnish a bond or make an alternative arrangement for protecting assets, such as restricting conservator access to an account above a specified amount.
- Section 120 sets out key factors for the court’s consideration in determining a “reasonable” guardian fee. This section aims to reduce exploitation through inappropriate charges that erode assets of the adult under care.
- Article 5 of the Act creates a new, less restrictive alternative to guardianship called a “protective arrangement.” Such an arrangement targets particular needs of an adult and is “narrower in scope and shorter in time than an ongoing guardianship or conservatorship order ... Such specific court authorizations may target possible abuse or exploitation.” For example, the court’s protective arrangement could order or restrict visits by a specified individual, or it could direct certain financial transactions to avoid exploitation.

The federal Elder Abuse Prevention and Prosecution Act at Section 505 directs the U.S. Attorney General to publish “model legislation relating to guardianship proceedings for the purpose of preventing elder abuse.”²⁹ The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act meets the objective of Section 505. The U.S. Senate Special Committee on Aging endorsed the Act in its 2018 report, urging “nationwide adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.”³⁰ DOJ has not expressed whether the Act meets the objective of Section 505, but it has pointed to the Act as a good source of guidance for states.³¹

The 2021 Fourth National Guardianship Summit, sponsored by the National Guardianship Network, recommended that “[s]tates should adopt and implement the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.”³² To date, only two states — Maine and Washington — have done so.³³ However, some states, such as New Mexico, have considered or adopted parts of the Act. Staff from the ULC have noted that at least three states would likely adopt the Act if it were not for its budgetary implications.³⁴

Recommendation: 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 to implement key sections of the Act that would target abuse and fraud by guardians. This would serve as an incentive for states to adopt or adapt the Act and would provide resources to implement key initiatives to identify and address abuse and fraud.

ii. NCSC Data Elements Recommended for Guardianship or Conservatorship Monitoring

NCSC produced the National Open Court Data Standards “to support the creation, sharing and integration of court data by ensuring a clear understanding of what court data represent and how court data can be shared in a user-friendly format.”³⁵ In 2020, using this framework, NCSC published a set of recommended data elements specifically for guardianship and conservatorship monitoring.³⁶

As we found in our Part 2 report, the NCSC guardianship/conservatorship data set, with its subsets of elements, represents a “gold standard” for courts to collect and aggregate information most useful for monitoring — and for addressing abuse and fraud by guardians. The data set makes it easier to share information among courts, enhance data consistency, and compare data across jurisdictional lines. The more states that adopt and implement the NCSC data set, the clearer our national picture will be of the extent, nature, and prevalence of abuse by guardians. Specific examples of how courts could use the data — both at the case level and the systemic level — to address abuse and fraud by guardians are discussed above.

Aggregating key data elements and conducting statistical analyses could reveal much about the scope, prevalence, and nature of abuse and fraud by guardians. For instance, courts could see what percentage of guardians who have been suspended or removed were family members. Courts could also determine the proportion of cases filed due to alleged abuse and whether it was abuse against an older adult or a younger adult with disabilities.

Recommendation: 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 will identify patterns and trends, as through the NCSC data standards.

b. Allocating Federal Resources for State Court Reform Practices, Technology, and Staff

The interviews and survey in Part 2 of our environmental scan found that the key barriers to improving guardianship data to better address abuse are the lack of court resources and burdens on court staff, including insufficient staffing for data management.

In addition to funding to encourage uniformity in guardianship law and data governance, state courts need funding to thoroughly and broadly assess their current guardianship systems, identify state-specific goals and objectives, and implement reforms within general nationally articulated principles. These broad principles target the need to: increase use of less restrictive options and supports; ensure procedural due process; limit the scope of guardianship orders to only what is necessary; provide strong court oversight that uses a case management system; monitor and sanction guardians who violate the law and breach their fiduciary duties; and enhance the potential for restoration of rights.³⁷ Within this framework, allowing state courts discretion in their priorities for guardianship reform increases buy-in and encourages innovation. There are three channels for federal support of broad-based guardianship improvements.

i. Elder Abuse Prevention and Prosecution Act

The Elder Abuse Prevention and Prosecution Act of 2017³⁸ seeks to prevent elder abuse and improve the justice system's response to victims in elder abuse cases. Section 501 focuses on court-appointed guardianship oversight activities. This section authorizes the Secretary of the U.S. Department of Health and Human Services to make demonstration grants to the highest courts of states to "assess the fairness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings" and to implement changes as a result of the assessment. Section 501 specifically references:

systems to enable the annual accountings and other required conservatorship and guardianship filings to be completed, filed, and reviewed electronically in order to simplify the filing process for conservators and guardians and better enable courts to identify discrepancies and detect fraud and the exploitation of protected persons.³⁹

In awarding the grants, the Secretary must consider the recommendations of the U.S. Attorney General and the State Justice Institute. State courts that are awarded grants must collaborate with the State Unit on Aging and the APS agency for the state.⁴⁰ Congress has not appropriated any funds for grants under Section 501 of the Elder Abuse Prevention and Prosecution Act.

Recommendation: Federal agencies should urge Congress to appropriate funding for Section 501 of the Elder Abuse Prevention and Prosecution Act.

ii. ACL Guardianship Grants to State Courts

Prompted by the National Guardianship Network's 2011 Third National Guardianship Summit,⁴¹ the State Justice Institute and the Administration for Community Living (ACL) provided initial funding for state courts to improve adult guardianship in collaboration with community partners.

The State Justice Institute, a federally authorized agency to improve the quality of justice in state courts,⁴² awarded small grants for selected states to pilot the Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) project in 2013 and 2015. In 2016, ACL awarded a grant to the American Bar Association (ABA) Commission on Law and Aging to determine whether WINGS could advance guardianship reform.⁴³ The ABA Commission made subgrants to seven states to establish, enhance, or expand WINGS. At the end of the grant period, the ABA Commission concluded in its 2020 briefing paper to ACL that:

while the project WINGS, and indeed all state WINGS, have advanced adult guardianship reform, their modestly funded efforts are not enough to significantly improve outcomes for adults subject to, or potentially subject to, guardianship ... WINGS require ongoing support and technical assistance to realize their potential for creating long lasting systemic change.⁴⁴

The ABA Commission recommended that “ACL, in coordination with other federal entities, should provide funding to support WINGS through systems change grants,” including five-year systems change grants, along with programmatic requirements for monitoring guardians. It also urged ACL to create a WINGS capacity-building or technical assistance entity.⁴⁵

Building on the initial WINGS project, ACL made two-year Elder Justice Innovation Guardianship Grants to the highest courts in seven states in 2021. The grants sought to “assess the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings, and develop innovations to improve the experiences of individuals at risk of guardianship/conservatorship.”⁴⁶ The state court proposals included a broad range of guardianship improvement objectives, among them several that directly address abuse and fraud by guardians and the need for data:⁴⁷

- The Alaska State Courts, to “improve monitoring of financial issues.”
- The Massachusetts Administrative Office of Trial Courts, to “create an Office of Adult Guardianship and Conservatorship Oversight within the Administrative Office of the Probate and Family Court to increase court oversight ... and protect older adults and adults with disabilities from abuse, financial exploitation, and neglect.”
- The Maryland Court of Appeals, to “conduct a comprehensive statewide assessment ... and develop a response to that assessment.” (The Maryland project includes a focus on the hospital-to-guardianship “pipeline” that results in overbroad or unnecessary guardianship.)
- The Minnesota Judicial Branch, to “design and implement a guardian/conservator grievance/investigation process to alert the court of potential maltreatment and fraud.”
- The Judiciary Courts of Nevada, to examine “ways to improve data collection of the district courts.”
- The New York Unified Court System, to “implement a uniform, modern data tracking system.”
- The Oregon Office of the State Court Administrator, to “establish processes that will enable courts to better detect financial mismanagement of protected persons’ assets.”

In September 2022, ACL awarded close to \$2 million for three additional Elder Justice Innovation Guardianship Grants. Again, aspects of these grant awards include the need for data to address abuse:⁴⁸

- The Administrative Office of Pennsylvania Courts, to “improve the data collected through Pennsylvania’s Guardianship Tracking System (GTS) to monitor guardians more effectively.”
- The District of Columbia Courts, to “enhance the court’s ability to monitor guardianships.”
- The Supreme Court of Virginia, to “improve data collection and data standards; enhance monitoring practices; and ... strengthen case management processes; facilitate data and information sharing.”

These grants will help bolster the capacity of courts to collect and aggregate data to improve monitoring and address abuse. The funded states can provide models for adaptation by other states. NCSC is working with several of the grant recipients specifically on data issues.

Recommendation: ACL should continue to support the Elder Justice Innovation Guardianship Grant program, giving selected states a jump-start to improve their data systems and their approaches to addressing abuse, as well as more broadly improving guardianship and promoting less restrictive options. DOJ should explore ways to collaborate with ACL to enhance this program.

iii. Guardianship Court Improvement Program

Programs like WINGS and the ACL Elder Justice Innovation Guardianship Grants are beginning to make inroads to create meaningful reform. Still, more is required. Such programs should exist in every state, with a national infrastructure for technical assistance and support, and with ongoing rather than piecemeal funding.

A model for such an approach can be found in the child welfare system. Each year since 1993, Congress has provided targeted funding to state courts through the child welfare Court Improvement Program (CIP),⁴⁹ which conducts assessments of the role of the courts in child welfare cases and implements necessary changes. The Department of Health and Human Services Children’s Bureau administers CIP, and funding is allocated to each state court on a formula basis. Congress provided \$5 million the first year; it has provided \$10 million each subsequent year.⁵⁰ In 2005, Congress appropriated an additional \$10 million for state grants on training and \$10 million for state grants on data and has continued those appropriations annually.⁵¹

The Children’s Bureau has also provided funding for a national capacity-building and technical assistance resource for the courts, through which the ABA Center on Children and the Law provides training and facilitates communication among the state CIPs.

Since its inception, CIP “has achieved significant results, including developing court projects that have improved court processes ... establishing close collaboration and data sharing between

courts and child welfare agencies.”⁵² CIP has “not only provided direct funding for its intended goals such as judicial training and data collection and analysis, it also helped to leverage major state investments to implement CIP plans for improvement such as ... court case management systems.”⁵³ It is particularly notable that a 1998 study of state CIP efforts found a striking need to improve case management systems to collect data, and by 2005, analyzing data to effect improvements “had become an integral and ongoing national effort.”⁵⁴

There are many parallels between the child welfare system and the adult guardianship system — including the lack of data and the potential for abuse. Both are court-based but require collaboration and specialized interdisciplinary knowledge beyond the courts. Both involve at-risk populations that may receive funding through a number of federal Health and Human Services programs. Both have often been perceived as low priority in the courts,⁵⁵ and both have been targeted by the press.

As early as 2012, guardianship reform advocates began to call for a national adult guardianship CIP. These advocates have included the Conference of Chief Justices/Conference of State Court Administrators,⁵⁶ the ABA House of Delegates,⁵⁷ and the National Council on Disability.⁵⁸ Advocates point out that there is a solid rationale for federal funding of a guardianship CIP — the federal government provides services and benefits to many adults with (or who are at risk of having) guardians through Social Security, Medicare, Medicaid, the Older Americans Act, veterans benefits, and more. Guardians control many estates with assets from federal retirement programs.

In 2021, the Fourth National Guardianship Summit passed a recommendation supporting a guardianship CIP:

Congress should establish a Guardianship Court Improvement Program modelled on the successful Child Welfare Court Improvement Program and provide funding directly to the highest court in each participating state in order to enhance the rights and well-being of adults subject to, or potentially subject to, guardianship.⁵⁹

The Summit recommendation listed effectuating consistent and meaningful data collection as a key aspect of the program. Two closely-related Summit recommendations urged that a guardianship CIP should feature interdisciplinary and interagency collaboration, build upon WINGS, be supported by federal funding authorized at a level similar to the \$30 million currently authorized for the child welfare CIP, and give courts wide latitude to set priorities.⁶⁰ The related recommendations also noted that the guardianship CIP should have a national, nonprofit capacity-building or resource center to provide training and technical assistance and to build a national network.⁶¹

Recommendation: Building on Parts 1 and 2 of our environmental scan, we endorse the Summit recommendation urging Congress to create an ongoing guardianship CIP, which would include support for state efforts to collect and aggregate guardianship data to address abuse and fraud. Relevant federal agencies, such as DOJ and the Department of Health and Human Services, should explore the role and benefits of such a guardianship CIP and mechanisms for implementation.

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 that might offer opportunities to include or strengthen elements on guardianship. In addition to funding state initiatives as addressed above, federal agencies could explore some of these databases to see if they could shed light on the scope and prevalence of abuse by guardians. The database with perhaps the greatest potential for capturing information about abuse by guardians is the National Adult Maltreatment Reporting System. There are additional databases that might be modified to include guardianship or abuse by guardians in their data set.

i. National Adult Maltreatment Reporting System

In 2013, the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, began a two-year effort to design, develop, and pilot a national reporting system based on data from state APS agency information systems. The goal of the data collection system was to provide consistent, accurate, national data on the exploitation and abuse of older adults and adults with disabilities, as reported to state APS agencies. By 2017, state APS agencies began voluntarily providing data to the National Adult Maltreatment Reporting System (NAMRS).⁶²

Constructing the data system was a complicated task. APS programs had little prior experience with collecting and reporting data. It took four years of design and testing to address challenges in developing the database, data elements, and definitions, as well as accommodating differences in the characteristics of the populations served (some programs serve only those over 60 or 65, and others serve younger vulnerable adults) and in state statutory definitions of types of abuse. The pilot also had to overcome both the wide range of technological skills and capabilities in the states and their local offices and the need to design a system that did not overwhelm the reporting offices.⁶³

The development of NAMRS held out the promise that this national abuse database would be an important advancement in collecting data on abuse by guardians.⁶⁴ In practice, however, NAMRS data on individuals who perpetrate abuse are very limited; only 30 states are able to submit data on any kinship relationship (spouse, child, parent, etc.) between the victim and the individual perpetrating the abuse. Although the database was designed to capture whether the person who perpetrated the abuse was in a fiduciary relationship with the victim, the most recent ACL report on NAMRS data (2020) does not have any data on whether they are a court-appointed guardian or other fiduciary.⁶⁵ The report stated that “less than half of states submit the perpetrator data elements to NAMRS.”⁶⁶ ACL officials acknowledged that, even at the summary data level, these data are the least complete type of data and a recognized gap.⁶⁷

In a 2021 investigation, the Government Accountability Office found that APS officials have difficulty collecting data on those who perpetrate abuse in general and especially on the costs of financial exploitation.⁶⁸ The Government Accountability Office report confirmed that over half of states were still not providing detailed case-level data elements on financial exploitation or on the relationship between victims and those perpetrating the abuse.

State APS reporting difficulties include the following: (1) lack of data on individuals who perpetrate abuse collected in the state-level data systems; (2) concerns about due process in recording this type of information; (3) a primary APS focus on victims and not on those perpetrating the abuse; (4) the staff hours needed to add additional data elements; (5) the lack of a single statewide adult abuse data system in some states; and (6) data entry errors by caseworkers who are required to perform multiple jobs and therefore work quickly.

To help overcome technological difficulties in reporting NAMRS data, ACL provided grant funding to the state APS agencies to improve their data systems in 2015, 2016, 2018, and 2019. ACL has also supported the APS Technical Assistance Resource Center, which provides ongoing guidance and support to the state agencies.⁶⁹

Although the data currently collected through NAMRS on adult abuse provide valuable insight about many aspects of abuse, the extensive multiagency effort to devise, maintain, and support a national data collection system of APS reports demonstrates the complexities inherent in identifying the nature of abuse by guardians. NAMRS addressed challenges in variations in elder abuse laws, diverse jurisdictions of APS agencies, and limited data system capacity. Those same challenges are also present for the even more diverse state guardianship systems, laws, and lexicon.

Recommendation: The federal government should strengthen data collection on those who perpetrate adult abuse in NAMRS. The federal government should also continue to provide grants to state APS offices to enhance their ability to collect and report data on any relationship between the victim and individual perpetrating the abuse, specifically fiduciary relationships such as guardianship.

ii. Other Potential Federal Sources of Data on Abuse and Fraud by Guardians

Aside from NAMRS, there are several other federal databases that could be modified to further our understanding of abuse by guardians.

1. Federal Fiduciary Program Data

There are two major federal fiduciary program databases — the Social Security representative payee database and the U.S. Department of Veterans Affairs fiduciary program database — along with smaller programs such as the Office of Personnel Management.

a. Social Security Administration Electronic Representative Payee System

The Social Security Administration (SSA) appoints representative payees to receive and manage benefit payments on a beneficiary's behalf if it determines the beneficiary is incapable of managing their own payments. Sometimes SSA appoints a guardian as payee. SSA has approximately 5.6 million payees (but 52% of beneficiaries with payees are minors).⁷⁰ Guardians are high on the SSA order of preference list for payee selection because the court has already appointed them in a fiduciary role. SSA field office staff are to appoint as payee only those

guardians “with custody or who demonstrate strong concern.”⁷¹ Information about whether a payee is a guardian is included in the SSA Electronic Representative Payee System (eRPS), which is a web-based application that includes all payee-related information, including findings of misuse.

The Government Accountability Office found that although state courts with guardianship jurisdiction and the SSA payee program serve essentially the same population, there is very little coordination or information sharing between the two systems.⁷² This lack of coordination may put beneficiaries at risk of harm. For instance, if the same person is payee and guardian and the court removes the guardian for exploitation, the SSA field office is not informed to make a change in the payee. Conversely, if the payee is changed due to misuse of benefit funds, the court is not generally notified to trigger review of the guardian’s conduct.⁷³

SSA has maintained that it cannot share information about representative payee cases with courts because of the federal Privacy Act.⁷⁴ In 2018, the federal Strengthening Protections for Social Security Beneficiaries Act required SSA to commission a study by the Administrative Conference of the United States on information sharing between state courts and the SSA representative payee program. For the study, the Administrative Conference of the United States partnered with the National Academy of Public Administration. Their 2020 report provides an analysis of the legal and practical barriers to information sharing and makes suggestions to SSA on overcoming these barriers.⁷⁵ For example, the report suggests that disclosure of payee information to courts may be allowed under the “routine use exception” in the Privacy Act.

b. Department of Veterans Affairs Fiduciary Program Database

The Department of Veterans Affairs (VA) fiduciary program allows for the appointment of a fiduciary for a VA beneficiary who is not able to manage their own affairs.⁷⁶ In fiscal year 2019, the fiduciary program served more than 170,000 beneficiaries.⁷⁷ A 2021 report by the Department of Veterans Affairs Office of Inspector General found approximately 12,000 allegations of fiduciary misuse of funds in 2018-2019.⁷⁸ An unknown number of these cases may have been instances in which the VA fiduciary also served as a guardian appointed by a state court. As with the SSA payee program, the Government Accountability Office found a lack of coordination between the VA fiduciary program and state courts.⁷⁹

Recommendation: To address abuse and fraud by guardians and enhance guardianship data, SSA 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.

2. Other Federal Databases

There are a host of other federal databases that hold varying degrees of potential for learning more about the scope, prevalence, and nature of abuse by guardians. A 2006 white paper for the National Center on Elder Abuse explored using these databases, with adjustments, to collect information on elder abuse.⁸⁰ These databases could also be examined for possible use in collecting information on guardianship, specifically abuse and fraud by guardians.

The white paper described approximately 30 federal databases. From those, we selected databases that appeared to have the most potential for adding information on guardianship. We list DOJ crime and criminal justice databases first, followed by others.

- Bureau of Justice Statistics National Crime Victimization Survey: The Bureau of Justice Statistics National Crime Victimization Survey is “the nation’s primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of about 240,000 persons in about 150,000 households. Persons are interviewed on the frequency, characteristics, and consequences of criminal victimization in the United States.”⁸¹ Among many other elements, the survey collects information on the relationship between the victim and the individual perpetrating the offense. The Bureau of Justice Statistics could examine the survey results to see if they include any information on abuse by guardians. It could also consider adding a question about guardians. The white paper lists survey limitations.
- Federal Bureau of Investigation National Incident-Based Reporting System (NIBRS): “Implemented to improve the overall quality of crime data collected by law enforcement, NIBRS captures details on each single crime incident — as well as on separate offenses within the same incident — including information on victims, known offenders, relationships between victims and offenders, arrestees, and property involved in crimes.”⁸² Since NIBRS includes the relationship between the victim and the individual perpetrating the offense, this could possibly include guardianship, and if not, the Federal Bureau of Investigation could consider adding it. However, this survey targets only crimes reported to police, and many incidents of malfeasance by guardians — which could be crimes — are not reported to law enforcement.
- Bureau of Justice Statistics National Survey of Prosecutors: According to the survey website, the last survey — conducted in 2007 — included 2,330 prosecutors’ offices.⁸³ The Bureau of Justice Statistics could consider adding a question on the prosecution of guardians.
- National Ombudsman Reporting System: The Older Americans Act requires states to collect long-term care complaint data.⁸⁴ Ombudsman programs report the aggregate data to ACL through the National Ombudsman Reporting System (NORS).⁸⁵ Under NORS “Residents Rights” is an element on “abuse, gross neglect, exploitation.” As of 2006, categories P.117 and P.121 were for complaints of abuse, neglect, and exploitation by family members, friends, and others “whose actions the facility could not reasonably be expected to oversee or regulate.”⁸⁶ These categories could be amended to note whether the individual perpetrating the abuse was a guardian appointed by the court. In addition to formal complaints, ombudsman programs also receive informal calls concerning abuse of facility residents, and these contacts are captured in another part of NORS. The white paper lists limitations, yet NORS has the potential to uncover new information about abuse by guardians.

- Other long-term care databases: The white paper describes a number of other databases concerning certified nursing facilities. According to the white paper, nursing home enforcement data were collected through the Online Survey, Certification and Reporting System (OSCAR), which had a field for abuse, but did not indicate the kind of abuse or the individual perpetrating the abuse. In 2012, OSCAR was replaced by the Certification and Survey Provider Enhanced Reporting (CASPER) system and the Quality Improvement Evaluation System (QIES). These are part of a large database within CMS, the Automated Survey Processing Environmental (ASPEN).⁸⁷ The nursing home “Minimum Data Set” reports on the required annual assessment of residents.⁸⁸ In past versions, it may have specified whether the resident had a surrogate decision-maker, including a guardian,⁸⁹ but it likely would not yield much data on abuse by guardians.
- Health care databases: The white paper describes 10 separate health care surveys, including seven administered by the National Center for Health Statistics. Some rely on the World Health Organization International Classification of Diseases to code and classify conditions. There is an International Classification of Diseases code for adult and child abuse, neglect, and other maltreatment (“suspected T76”).⁹⁰ However, the white paper speculated that physicians rarely used it, as they would more likely use a diagnosis of the presenting condition, rather than what caused it — or who was involved. In addition, the code does not indicate who committed the maltreatment.
- Legal services databases: The Legal Services Corporation is a private, nonprofit corporation established by Congress to seek equal access to justice by providing civil legal assistance to low-income individuals. It provides federal funding to over 130 independent, nonprofit legal aid programs with more than 800 offices.⁹¹ The Legal Services Corporation maintains a reporting system on cases to measure program services. It is possible that some current codes relate to “abuse” or “guardianship” and might add a limited amount of information to what we know about guardians and abuse by guardians.
- American Community Survey: Conducted by the United States Census Bureau, the American Community Survey is “a nationwide survey designed to provide communities with reliable and timely social, economic, housing, and demographic data every year.”⁹² The survey has an annual sample size of about 3.5 million. It includes data sets to which guardianship might potentially be added — specifically one on disability and one on demographic characteristics.

Recommendation: Where feasible, federal agencies should modify their current crime, criminal justice, health, and long-term care databases to include information on guardianship and abuse by guardians.

d. Exploring Ways DOJ 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 other ways DOJ could directly target abuse by guardians. Although these are not data initiatives, they would help inform data in valuable ways.

i. Fostering Collaboration Among Courts, Law Enforcement, and Adult Protective Services

Although state courts must strengthen their guardianship databases and monitoring, there are other systems in place that could detect abuse by guardians and protect adults.⁹³ APS, law enforcement, and other agencies throughout the nation are charged with protecting individuals from abuse and exploitation.⁹⁴ Moreover, an increasing number of state and local multisystem collaborative networks address adult abuse and could play a role in targeting abuse by guardians.

However, there is little structured communication and collaboration among courts, APS, and law enforcement in targeting abuse by guardians. A coordinated response is needed.⁹⁵ The Fourth National Guardianship Summit recommended promotion of “state and local collaborations at the policy level concerned about adult abuse or guardianship (i.e., adult/elder abuse multi-disciplinary and multi-system networks and teams and Working Interdisciplinary Networks of Guardianship Stakeholders) to address abuse by guardians.”⁹⁶ The Summit recommendation directed ACL to take the lead in this effort “in partnership with other federal agencies [and others].”⁹⁷

Adult Protective Services: APS receives, identifies, and investigates reports of abuse, neglect, or exploitation of vulnerable and older adults, as described in state law, and provides needed services. APS intersects with guardianship in a number of ways — a guardian may report abuse; someone may report abuse by the guardian; APS may petition for guardianship services for an adult in need; or APS may serve as guardian in selected cases, at least temporarily. However, in some instances, APS may receive a report but may not pursue it, presuming that the court is monitoring the guardian. Moreover, the court may suspect abuse by a guardian but may not always report it to APS, viewing such reporting as outside the court’s responsibilities or authority. In our Part 2 report, court officials who were interviewed had mixed responses on the extent of communication between the court and APS. They said local practice varies, but often there is a lack of information sharing — for example, “it is possible that a court will have no idea that an [APS] investigation on a guardian is pending.”

Law enforcement: Law enforcement may also play a role in targeting abuse by guardians, but there are several obstacles to its intervention. For example, it may be difficult for a court, APS, or anyone else to make a referral because there are multiple and varying law enforcement agencies, and jurisdiction may be confusing. A 2021 paper prepared for the Fourth National Guardianship Summit stated that “judges interviewed indicated it was their belief they could make law enforcement referrals; however, such referrals are not frequent.”⁹⁸ Moreover, the victim — judged by the court as “incapacitated” — may be seen as unable to assist in prosecution. Victims may fear retaliation or be reluctant to have family members prosecuted and may not want law enforcement involved. Law enforcement personnel often lack training about guardianship, elder abuse, and disability rights.

A key obstacle is the presumption by law enforcement that abuse by guardians is primarily a civil matter and not a criminal activity. In recent years, states have passed new or expanded statutes making abuse of older persons or incapacitated persons — especially by those in trusted positions such as guardians — a crime or providing for enhanced penalties.⁹⁹ To be effective,

these statutes must be widely understood through public outreach and training of judges, police, prosecutors, and others — and such training must cover the role of guardians.

Multidisciplinary systems: The field of elder abuse has long recognized the need for a multidisciplinary or multi-systems approach.¹⁰⁰ Multidisciplinary collaborations could occur for either case review or systemic improvements. Using elder justice collaborations for systemic improvements appears to have potential for addressing abuse by guardians. However, current multidisciplinary elder abuse or elder justice coalitions do not exist everywhere. Also, they have not focused on abuse by guardians — and it would require significant education and training to do so.¹⁰¹ Finally, a perception of conflict of interest may limit court involvement, especially if there is not a clear line between individual case review and systems change.

Recommendation: Working in partnership with ACL, DOJ should take the lead in convening key stakeholders in the state court system, law enforcement, and state APS to build an infrastructure for communication and coordination to target abuse by guardians.

ii. **Court-Appointed Special Advocates Program for Adults Subject to Guardianship**

DOJ’s Office of Juvenile Justice and Delinquency Prevention administers and funds the 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.”¹⁰² The office awards grants through the National CASA/GAL Association for Children, which supports a network of 950 state CASA/GAL (court-appointed special advocates and guardians ad litem) organizations and local programs in 49 states and the District of Columbia.¹⁰³ Trained CASA volunteers develop a relationship with a child over time through regular visits. The volunteer learns about the child and the child’s life, speaks up for the child’s best interests in court, and makes recommendations about the child’s placement and services. The volunteer reports to the court. These volunteers make remarkable differences in the lives of children:

Trusting that an adult will show up for them consistently can be a difficult concept to grasp for many children in the foster care system. Positive changes for children occur when the CASA volunteer is able to build a trusting, consistent relationship with the child.¹⁰⁴

The CASA concept originated in 1977 and has grown into a nationwide program. The Office of Juvenile Justice and Delinquency Prevention provides training and professional development for staff and volunteers, standards for local programs, technical assistance in program operation, and outreach help.¹⁰⁵ In fiscal year 2021, the National CASA/GAL Association received more than \$11 million in funding.¹⁰⁶

Although there are many similarities between the child welfare system and the adult guardianship system, CASA has no analog in the guardianship world. Some states and localities have volunteer guardianship monitoring programs, in which a trained volunteer visits an adult subject to guardianship and reports back to the court — but it is a one-time visit, and no trusting relationship is developed over time. Older adults and adults with disabilities need the type of

support they could receive from a guardianship CASA program — and such volunteers could help prevent or identify abuse and bring it to the attention of the court.

Recommendation: The federal government should pilot and evaluate an adult guardianship CASA program for individuals subject to guardianship.

V. Conclusion

This paper draws together findings from our previous literature review and data landscape in a comprehensive scan of the legal, policy, and practice contexts for collecting guardianship data — and specifically for addressing data on abuse and fraud by guardians. Our groundbreaking scan forms the basis for recommendations for federal action to assist states in improving guardianship data collection and confronting abuse and fraud.

In Part 1 of our environmental scan, we found the picture of abuse by guardians — including criminal abuse — to be blurry and incomplete. The scope, prevalence, and nature of such abuse remain unclear due to inconsistent definitions, the limited number of litigated cases that reach the appellate level, the limited number of complaints about certified guardians that reach the disciplinary level, and the limited number of research studies.

The scant information that does exist shows that there are numerous reports of malfeasance by both professional and nonprofessional guardians, ranging from noncompliance to various levels of abuse and criminal acts. At the same time, agents under power of attorney or caregivers may be as likely or more likely to commit financial exploitation than court-appointed guardians. Some reports show that guardians who engage in abusive acts are more commonly family members as opposed to professional guardians. Although courts have done substantial work on guardianship monitoring, there are marked gaps between the law and practice, as well as insufficient funds, as demonstrated by ongoing media stories.

In Part 2, we reported on the results of our interviews and survey of subject matter experts in state court systems with knowledge of guardianship data collection. They discussed existing case processing and data collection capabilities and barriers and said that they are not able to collect data showing the nature and prevalence of abuse by guardians. They described inconsistent terminologies, concerns about data reliability, and local variations in practice. They reported differences due to whether 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 in the case files but cannot be aggregated to show patterns and trends. 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.

This Part 3 report includes a deep dive into the universe of possible guardianship data elements and explains how courts and policymakers could use these elements to improve guardianship practice and address abuse. Courts should prioritize and select the elements most informative for their stakeholders.

Finally, this paper suggests specific opportunities for the federal government to enhance data on guardianship and abuse by guardians. Although guardianship is the responsibility of state courts, there are approaches that the federal government could take to assist states. We make the following recommendations:

- Support Uniformity. First, the federal government could support uniformity in guardianship law, policy, and data governance through grant opportunities to support the implementation of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act and the NCSC data standards for guardianship and conservatorship cases.
- Support Guardianship Reform. Second, the federal government could support guardianship reform practices, which include better monitoring and data collection, through: (1) funding Section 501 of the Elder Abuse Prevention and Prosecution Act; (2) continuing support for Elder Justice Innovation Guardianship Grants; and (3) creating an ongoing Guardianship Court Improvement Program that includes support for state efforts to collect and aggregate guardianship data to address abuse and fraud.
- Include Guardianship in Federal Data Sources. Third, the federal government could expand federal data sources to include guardianship. The existing National Adult Maltreatment Reporting System for state APS data could potentially include data on those who perpetrate abuse, including fiduciaries such as guardians. Additionally, federal fiduciary data could be strengthened and shared with state courts for better coordination. Specifically, the Social Security Administration and the Department of Veterans Affairs should address barriers to information sharing on how the representative payee system and the VA fiduciary system relate to state court guardianships. Also, there is a host of other federal databases in health, long-term care, and criminal justice that, with adjustments, hold varying degrees of potential for learning more about guardianship and the scope, prevalence, and nature of abuse by guardians.
- Explore DOJ Actions To Address Abuse by Guardians. Finally, there are two ways in which the federal government could directly target abuse by guardians. First, little structured communication and collaboration currently exist among courts, APS, and law enforcement on guardianship issues. The federal government could convene key stakeholders to build an infrastructure for improved interaction and protocols to address abuse and fraud by guardians. Second, an active CASA program exists to ensure that abused and neglected children receive the ongoing advocacy and individualized attention they need in court proceedings and in the child welfare system, but there is no similar program for adult guardianship. The federal government could pilot and evaluate an adult guardianship CASA program.

Notes

- ¹ Part 1: Literature Review of Research on Guardianship Abuse and Fraud, and Part 2: Scan of the Guardianship Abuse and Fraud Data Landscape.
- ² For purposes of this report, the terms “guardian” and “guardianship” include “conservator” and “conservatorship.”
- ³ See the table of cases in Appendix D in Part 1 Report. National Guardianship Association, *Legal and Legislative Review* (2005-2021).
- ⁴ Catherine Seal & Pamela Teaster, *The Time has Finally Come: An Argument and a Roadmap for Regulating the Court-appointed Professional Fiduciary*, 72 Syracuse L. Rev. 469-494 (2022).
- ⁵ Center for Guardianship Certification, <http://www.guardianshipcert.org>.
- ⁶ National Center for State Courts, *Exploring the Consequences of Conservator Exploitation*, Brief No. 4 (2016).
- ⁷ National Center for State Courts et al., *Financial Exploitation by Conservators: A Series of Background Briefs* (U.S. Dept. Justice, 2018), <https://www.eldersandcourts.org/other-resources>.
- ⁸ Bolkan, Teaster, & Ramsey-Klawnsnik, *Abuse of Vulnerable Older Adults by Designated Surrogate Decision Makers*, 4 Innovation in Aging 702-703 (2020), <https://doi.org/10.1093/geroni/igaa057.2467>.
- ⁹ Yongje Yon, Christopher R. Mikton, Zachary D. Gassoumis, & Kathleen H. Wilber, *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>.
- ¹⁰ L. Montgomery, *State court leaders strive to improve guardianship and conservatorship oversight*. National Center for State Courts (2016).
- ¹¹ Bolkan, Teaster, & Ramsey-Klawnsnik, *Abuse of Vulnerable Older Adults by Designated Surrogate Decision Makers*, 4 Innovation in Aging 702-703 (2020), <https://doi.org/10.1093/geroni/igaa057.2467>.
- ¹² DOJ Part 2 Report, Scan of the Guardianship Abuse and Fraud Data Landscape, Interview Highlights, p. 32.
- ¹³ National Center for State Courts, *National Open Court Data Standards*, <http://www.ncsc.org/nods>.
- ¹⁴ State Court Organization Data, <https://ncsc.org/sco>.
- ¹⁵ 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.
- ¹⁶ National Center for State Courts, *National Open Court Data Standards, NODS: Leadership Guide*, https://www.ncsc.org/__data/assets/pdf_file/0015/34026/NODS-Leadership-Guide.pdf; also see Diane Robinson et al, *Trends 2022: National Open Court Data Standards (NODS)*, <https://issuu.com/statecourts/docs/ncstrends2022/s/16422124>.
- ¹⁷ A guardian ad litem (“guardian for the suit”) is an attorney appointed by the court to assist the court in investigating the circumstances of a case and to look out for the best interests of the respondent. The role of the guardian ad litem is very different from that of an attorney in the traditional role of advocating for the wishes of the respondent.
- ¹⁸ Prior to appointment of a guardian, many (but not all) states use the term “respondent” for the adult alleged to need a guardian. Once an appointment has been made, the term for the individual served varies. Here we use the terms “person with a guardian” or “person subject to guardianship.”
- ¹⁹ Erica Wood, “History of Guardianship,” in Mary Joy Quinn (ed.) *Guardianship of Adults: Achieving Justice, Autonomy, and Safety*, Springer (2005).
- ²⁰ U.S. Const. amend. X.
- ²¹ Uniform Law Commission, <https://www.uniformlaws.org/aboutulc/overview>.
- ²² Nina Kohn & David English, *Protective Orders and Limited Guardianships: Legal Tools for Sidelining Plenary Guardianship*, 72 Syracuse L. Rev. 223-254 (2022).
- ²³ *Id.*
- ²⁴ David English & Rebecca Morgan, *The Uniform Guardianship and Protective Proceedings Act (1997)*, 11(2) NAELA Quarterly (1998).
- ²⁵ Uniform Law Commission, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (2017), <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c>.
- ²⁶ *Id.*
- ²⁷ Unless otherwise noted, data in the bullets below come from Naomi Karp & Erica Wood, *Ten Ways to Reduce Guardianship Abuse Through Enactment of the Uniform Guardianship, Conservatorship, and Other Protective*

- Arrangements Act (UGCOPAA)*, National Center on Elder Abuse (2022), https://ncea.acl.gov/NCEA/media/Publication-4.0/NCEA_UGCOPAA_GuardianshipBrief.pdf. Some of the Act's provisions cited in this Report for guardianship have counterpoints for conservatorship.
- ²⁸ Uniform Law Commission, Commentary to §310(E), Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (2017).
- ²⁹ PL 115-70, 115th Congress (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/178>.
- ³⁰ 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.
- ³¹ Personal communication with Andy Mao, National Elder Justice Coordinator, Department of Justice, October, October 31, 2022.
- ³² National Guardianship Network, Fourth National Guardianship Summit, Recommendation 3.1 (2021), <http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability/>.
- ³³ Uniform Law Commission, UGCOPAA Enactment Map, <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c>.
- ³⁴ Personal communication with Ben Orzeske, Chief Counsel, Uniform Law Commission, October 24, 2022.
- ³⁵ 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>.
- ³⁶ Diane Robinson, Katherine Holt & Cate Boyko, *Guardianship/Conservatorship Monitoring: Recommended Data Elements* (National Center for State Courts 2020), https://www.eldersandcourts.org/_data/assets/pdf_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf.
- ³⁷ For a full list of such nationally recognized tenets for reform, see American Bar Association Commission on Law and Aging, *WINGS Briefing Paper: Advancing Guardianship Reform and Promoting Less Restrictive Options* (2020), https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-wings-briefing-paper.pdf.
- ³⁸ Elder Abuse Prevention and Prosecution Act, P.L. 115-70, <https://www.congress.gov/bill/115th-congress/senate-bill/178/text>.
- ³⁹ 42 U.S.C. 1397m-2(E).
- ⁴⁰ 42 U.S.C. 1397m-3.
- ⁴¹ Four national guardianship summits, held roughly every 10 years (1988, 2001, 2011, and 2021) have driven a national agenda for guardianship reform. These summits were convened by national organizations dedicated to guardianship reform, which came together in the National Guardianship Network, consisting of 13 organizations, https://www.naela.org/NGN_PUBLIC/Home/NGN_PUBLIC/Home.aspx?hkey=8627da61-bd28-46b0-b7e1-f43b9878a39d.
- ⁴² State Justice Institute, <https://www.sji.gov/>.
- ⁴³ ABA Commission, *WINGS Briefing Paper*, *supra* note 37.
- ⁴⁴ *Id.*
- ⁴⁵ *Id.*
- ⁴⁶ 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>. Along with 7 adult protective services awards, the grants totaled \$5.9 million.
- ⁴⁷ *Id.*
- ⁴⁸ Administration for Community Living, *Over \$2.6 Million in 2022 ACL Elder Justice Innovation Grants Address Guardianship; Opioids and Substance Use*, (September 28, 2022), <https://acl.gov/news-and-events/announcements/over-26-million-2022-acl-elder-justice-innovation-grants-address#:~:text=ACL%20is%20proud%20to%20award,involving%20opioids%20and%20substance%20use>.
- ⁴⁹ P.L. 103-66.
- ⁵⁰ Dari Pogach & Chris Wu, *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. 491-536 (2022), <http://law.syr.edu/uploads/docs/academics/Pogach-Wu.pdf>.
- ⁵¹ *Id.*
- ⁵² *Id.*
- ⁵³ *Id.*

- ⁵⁴ *Id.*
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