Adult Guardianship Reform: Birdseye National View

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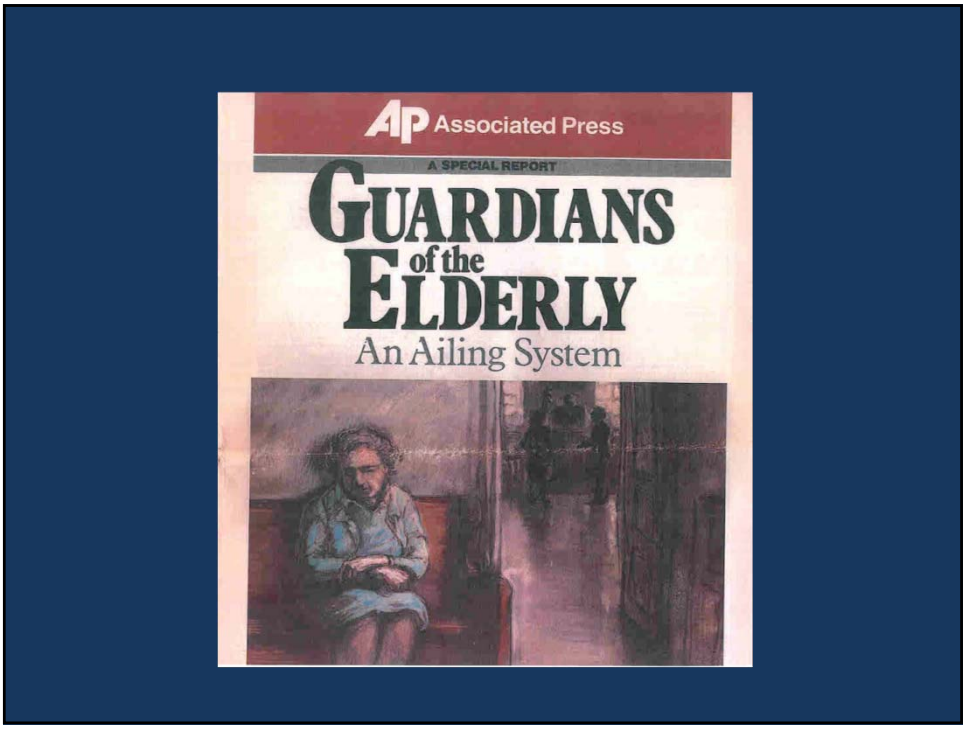
Commission on Law and Aging
American Bar Association
For Montana SJR 22 Study
January 2016

Parens Patriae

- Concept from Fourteenth Century England
- Court to care for those unable to care for selves
- People who have no voice; may be isolated


AP Associated Press
A SPECIAL REPORT
GUARDIANS of the ELDERLY
An Ailing System

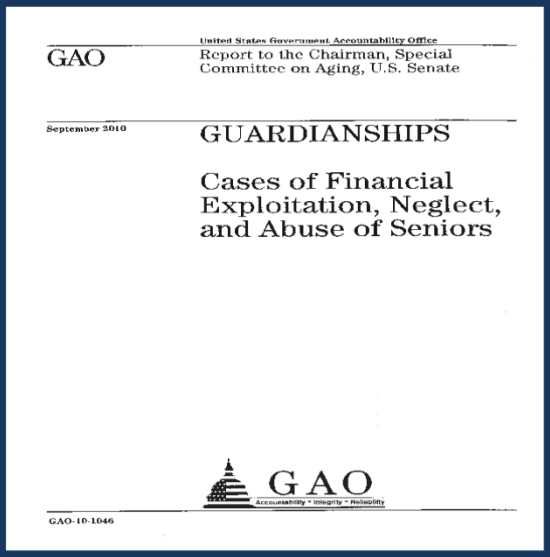

National Guardianship Consensus Conferences
1988 Wingspread
2001 Wingspan
2011 Third National Guardianship Summit

Rush to State Statutory & Practice Reform

- Since 1988, revisions in codes of all states
- Majority of states have enacted new or substantially revised code
- State task forces, handbooks, curricula

Challenges to Lasting Adult Guardianship Reform

Need for Public Confidence in Courts



United States Government Accountability Office

GAO

Report to the Chairman, Special Committee on Aging, U.S. Senate

September 2010

GUARDIANSHIPS

Cases of Financial Exploitation, Neglect, and Abuse of Seniors

GAO

Accountability * Integrity * Reliability

GAO-10-1046

Need for Public Confidence in Courts

- ELDERLY, MENTALLY ILL AND CHILDREN TRAPPED IN BROKEN COURT SYSTEM --**Columbus Dispatch 2014**
- GUARDIANSHIP PROBLEMS ARE WIDELY REPORTED BUT SELDOM FIXED – **Las Vegas Review-Journal 2015**
- RAILING AT GUARDIANSHIP – ONE CASE AT A TIME -- **Herald Tribune 2014, Florida**

THE WALL STREET JOURNAL.

http://www.wsj.com/articles/abuse-plagues-system-of-legal-guardians-for-adults-1446235624

U.S.

Abuse Plagues System of Legal Guardians for Adults

Allegations of financial exploitation and abuse are rife, despite waves of overhaul efforts

Court-appointed guardians controlled much of 74-year-old Linda McDowell's life for 30 months. A judge ended the guardianship in 2014, and she now lives in her mobile home with her dog, Bian, much of her savings gone. PHOTO: STUART ISETT FOR THE WALL STREET JOURNAL

By ARIAN CAMPO-FLORES and ASHBY JONES
Oct. 30, 2015 1:18 p.m. ET

One day in March 2012, 71-year-old Linda McDowell received a knock at the door of her small Vancouver, Wash., home. Ms. McDowell needed court-appointed help, the visitor told her.

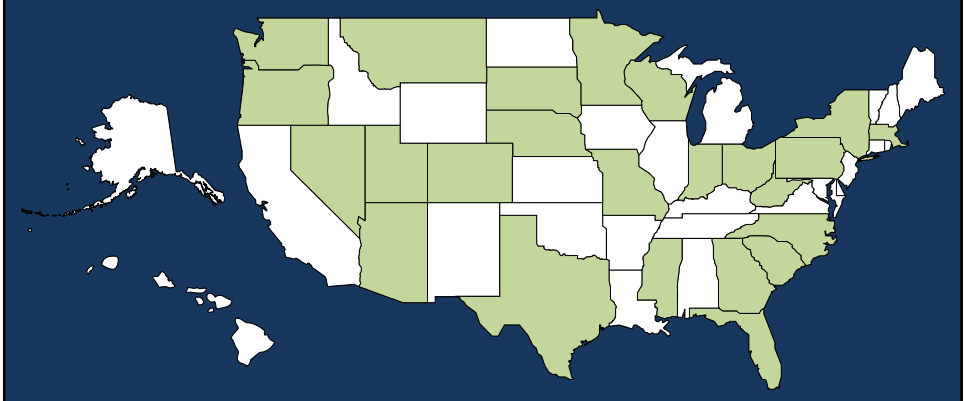
It turned out that Ms. McDowell's former housemate and companion had pushed for a court petition claiming Ms. McDowell was unable to take care of herself. The petition said Ms. McDowell had recently made an unsafe driving maneuver, had been disruptive in a doctor's office and, in a recent phone call, had seemed confused over the whereabouts of some personal papers.

Where Do We Stand?

- Practice remains uneven
- Inadequate data and research
- No state guardianship "systems"

- Substantial legislation over past 25 years
- Revised National Probate Court Standards

Birdseye: States with Significant Guardianship Reform



AZ, CO, DC, FL, GA, IN, MA, MN, MO, MS, MT, NC, NE, NV, NY, OH, OR, PA, SC, SD, TX, UT, WA, WI, WV

What Adult Guardianship Reforms Do We Need?

Pre-adjudication	Post-adjudication	Resources
✓ Routine check for less restrictive alternatives	✓Limited orders	✓ Education and training for all stakeholders
✓ Procedural due process	✓ Standards for guardians	✓ Assistance and support for family guardians/ conservators
✓ Selection of guardian/ conservator	✓ Guardian accountability; court oversight	✓Resources for public guardianship

Key Aspects of Guardianship Reform

- Less Restrictive Decision-Making Options
- Procedural Safeguards
- Determination of Capacity
- Limited Orders
- Guardian Standards & Qualifications
- Court Monitoring
- Public Guardianship

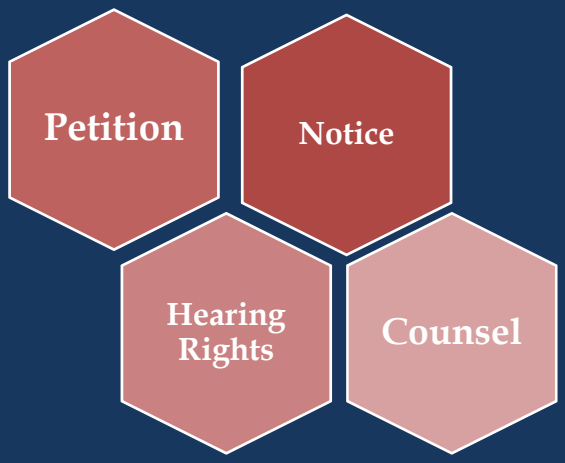
Promote Use of Less Restrictive Decision-Making Options

PRACTICAL & LEGAL OPTIONS

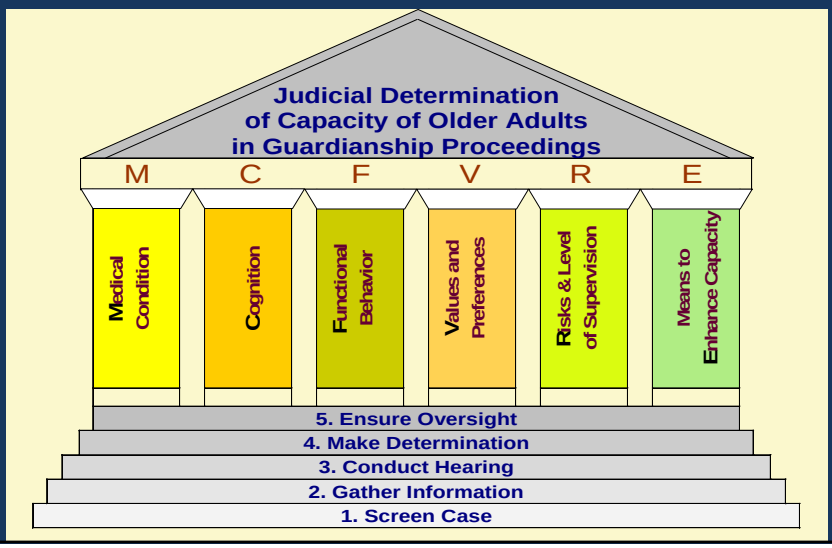
- -Family support; supportive environments, services & accommodations
- -Care management
- -Money management
- -Advance health care directives
- -Financial powers of attorney
- -Representative payees
- -Joint accounts
- -Trusts

Guardianship

Procedural Safeguards;



Six Pillars of Capacity Assessment



Limited Orders

Guardian assigned only selected duties & powers

Highlighted in UGPPA

Highlighted in National Probate Court Standards

Language included in virtually every state statute.

Guardian Screening & Qualifications

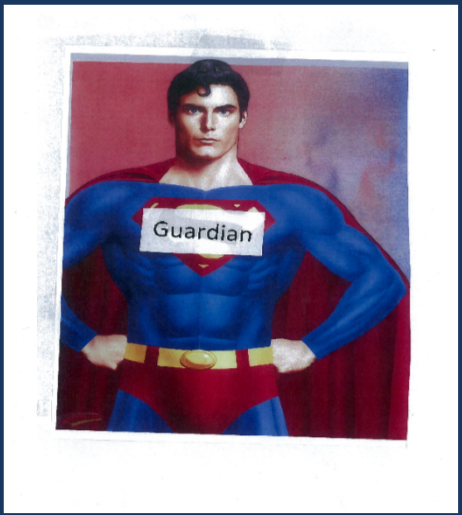
Background Checks

- **State requirements**
- **Who to check; what crimes**
- **Absolute bar; court discretion**

Guardian Certification

- **Center for Guardianship Certification**
- **Approx 12 state certification programs**

Guardian Standards



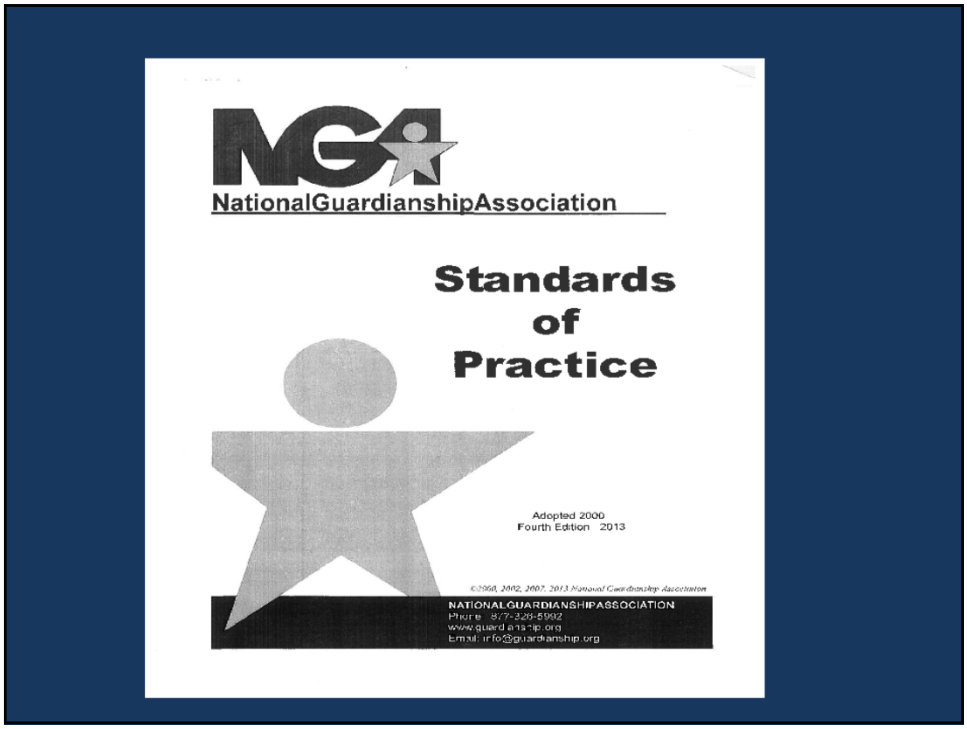
Guardian Standards

Broad statutory requirements –

- *"provide for the care, comfort and maintenance of the ward"*

Standards flesh out code provisions –

- How guardians related to court, person, family, professionals
- Informed consent, decision-making process; supports & services
- Residential decisions
- Medical decisions
- Visitation
- Development of guardianship plan
- Maintaining files
- Avoiding conflict of interest
- Conducting inventory; making financial plan, preparing accounting
- Managing property
- Fees



Court Monitoring Objectives

- Help guardians; identify community resources
- Assess need for modification
- Safeguard against abuse

Court Monitoring Elements

Ensure reports, accountings filed

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Review reports, accountings – look for "red flags"

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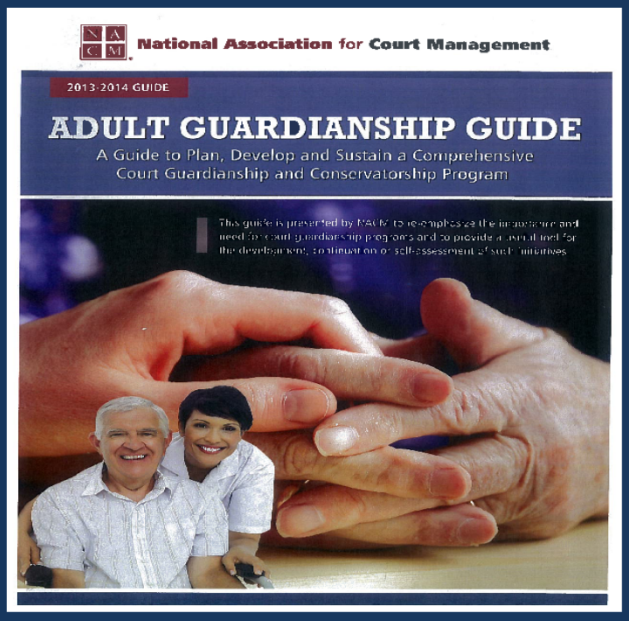
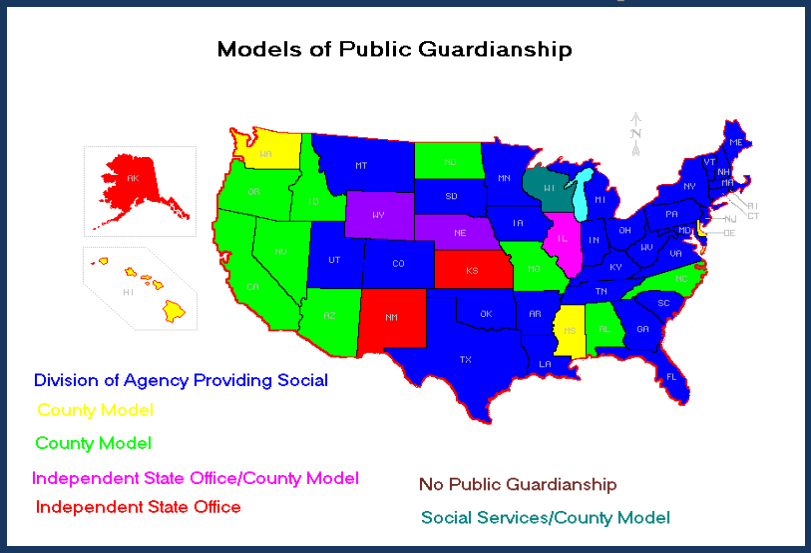
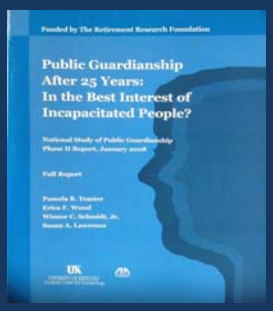
Investigate; safeguard assets; sanction



Public Guardianship



Public Guardianship Study Conclusions: Functions



- Many programs serve as guardian of the person and property.
- Wide variability exists in terms of educating the public.
- There are (often unrecognized) conflict of interest problems with petitioning.
- Court costs are a significant barrier.

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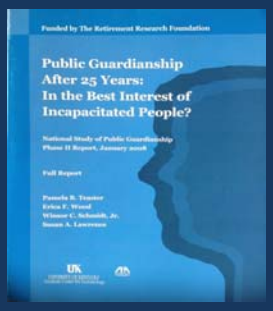
Public Guardianship Study Conclusions: Funding & Staffing



- Variability in size of staff.
- Frequently understaffed and under-funded.
- Few caps on numbers.
- Funding from a patchwork of sources.

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Court-Community Partners

Courts should "engage in a vigorous campaign to organize and mobilize partners . . .
-NCSC High Performance Court Framework

Court-Community Partners

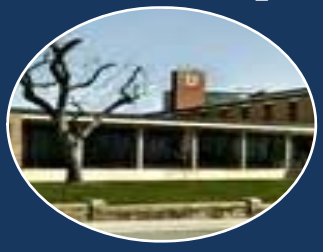
Guardianship improvement requires "an interdisciplinary entity focused on guardianship implementation, evaluation, data collection, pilot projects, and funding."

-- 2004 National Guardianship Network Action Steps

NGN 2011 Third National Guardianship Summit

- Recommended that states create WINGS – Working Interdisciplinary Networks of Guardianship Stakeholders

WINGS
Working Interdisciplinary Networks of Guardianship Stakeholders

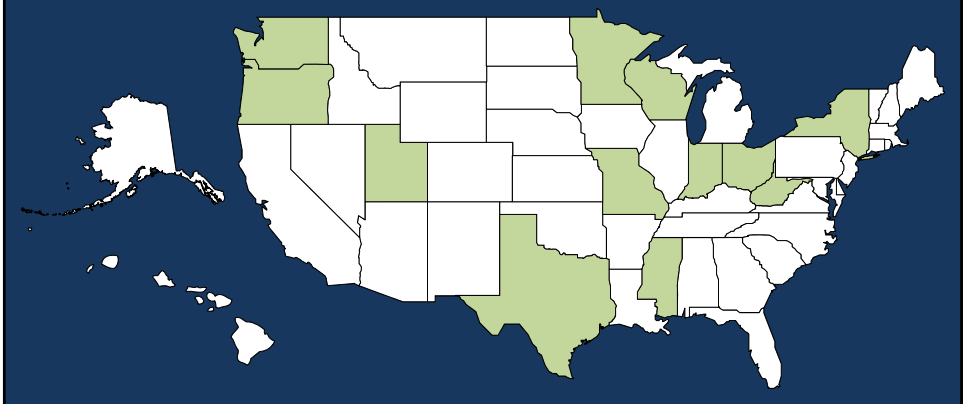


What is WINGS?

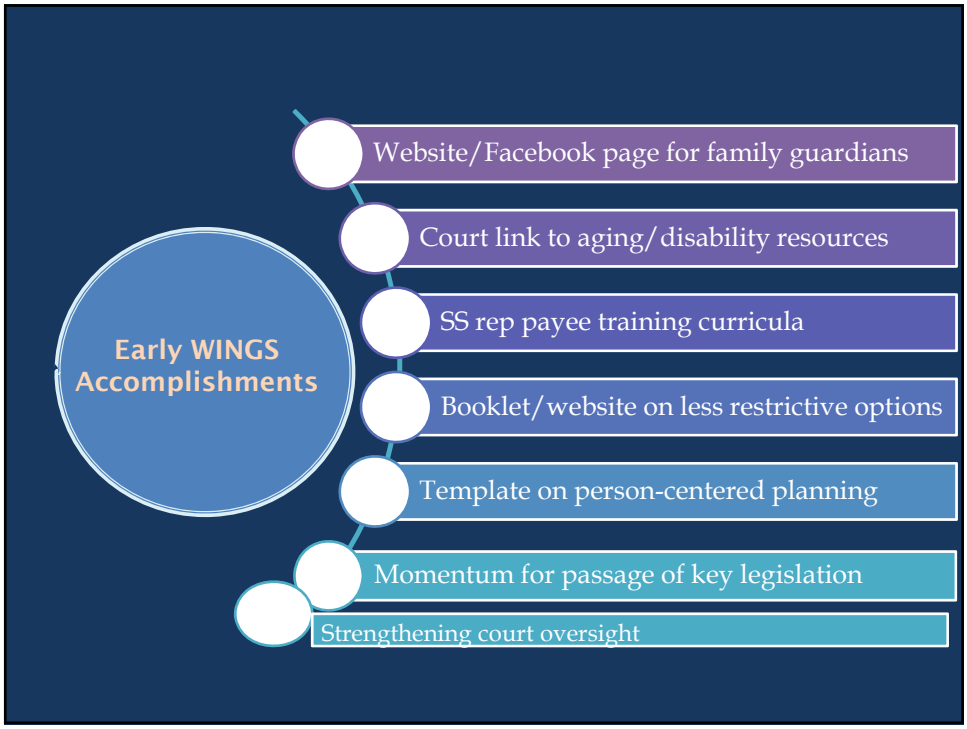
- Court-Community Partnerships
- Evaluation of "on the ground" practices
- Ongoing forum

National Guardianship Network

Current WINGS States



DC, IN, MN, MS, MO, NY, OH, OR, TX, UT, WA, WV, WI



WINGS Collective Impact Power

- *"Connections were established between agencies that sometimes serve the same population but do not communicate with each other or provide referrals."* Utah

- *"Without WINGS. . . [the senator] may not have made the public guardian bill one of his two bills this session . . . the momentum was here to make it a priority bill. "* Oregon

WINGS Evaluation- National Center for State Courts

- *WINGS "proving to be a feasible and effective means for addressing the current shortcomings of the guardianship system and process."*
- *Now time to "take steps to prepare for the long-term effort needed."*