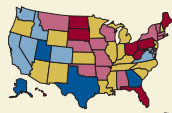


• **The Aging of America**

See inside



"We are all aging, but unfortunately, I cannot say with confidence that if any one of us becomes incapacitated that a robust system is in place to protect our person and our financial assets."

— Senator Gordon H. Smith
Press release, 2007

CASELOAD HIGHLIGHTS

The Need for Improved Adult Guardianship Data

The US Senate's Special Committee on Aging recently noted that the current guardianship system is not fulfilling its promise, and called for the development of new models of guardianship for the elderly.¹ The starting point of any major reform is an accurate picture of the reality the policy intends to reform; in this case, that means at a minimum that states are able to count the number of incoming and outgoing adult

guardianships in their courts. Unfortunately, the current caseload data on these cases is woefully deficient. In this issue of *Caseload Highlights*, we review the current state of guardianship data and describe some new approaches to more effective case management based on improved data.

Guardianship is a relationship created by state law in which a court gives one person or entity (the guardian) the duty and power to make personal and/or property decisions for another (the ward), designed to protect the interest of incapacitated adults and elders in particular. In general, a *Guardian of the Person* is a person or entity who possesses some or all power with regard to the personal affairs (health and welfare) of the individual, while a *Guardian of the Estate* (often referred to as a conservator or fiduciary) is a person or entity who possesses some or all powers with regard to the real and personal property of the individual. In many cases, the *Guardian of the Person* and the *Guardian of the Estate* is the same person or entity. In many states, a probate court handles guardianship cases, while in others general or limited jurisdiction courts or divisions other than probate are responsible for guardianship cases.

Due to the loss of individual rights that it implies, guardianship is considered to be an option of last resort. The court can order either a full or limited guardianship for

continued

¹ "Smith and Kohl Request Proposals to Improve Guardianship for the Elderly," Press Release, December 6, 2006, found at www.aging.senate.gov/minority.

The Need for Improved Adult Guardianship Data

“Two factors weigh heavily on the future of the ability of state courts to properly respond to the problems associated with the guardianship process . . . first, the aging of America . . . second, the current lack of basic reliable court data . . . ”



On the Web

National Guardianship Association (NGA)
Standards of Practice

www.guardianship.org

incapacitated persons. Under full guardianship, wards relinquish (or are relieved of) all rights to self-determination, and guardians have complete authority over their wards' personal and financial affairs: Wards lose all fundamental rights, including the right to manage their own finances, buy or sell property, make medical decisions for themselves, get married, vote in elections, and enter into contracts. For this reason, limited guardianships—in which the guardian's powers and duties are limited so that wards retain some rights depending on their level of capacity—tend to be preferred. Once a guardian has been appointed, the court is responsible for holding the guardian accountable through monitoring and reporting procedures for the duration of the case. The court has the authority to expand or reduce guardianship orders, remove guardians for failing to fulfill their responsibilities, and terminate guardianships and restore the rights of wards who have regained their capacity.

Court assignment and oversight of guardians and conservators have been the focus of media attention. For instance, in June 2003, the *Washington Post* published several articles detailing massive neglect and exploitation by court-appointed attorney guardians in the District of Columbia.² In 2004 and 2005, a series of articles in the *Dallas Morning News* spotlighted problems with guardianships

in Texas, also detailing neglect.³ In November 2005, the *Los Angeles Times*, in a report following the examination of more than 2,400 conservatorship cases, found that “judges frequently overlooked incompetence, neglect and outright theft.” According to the authors, “Probate judges say that they do their best, but that the courts are swamped with cases and short of staff.”⁴ Whether these media assessments are accurate is not the point here; rather, we are highlighting the need for state courts to be able to demonstrate a firm grasp on managing their guardianship caseloads by pointing to accurate statistics utilized in regular management reports.

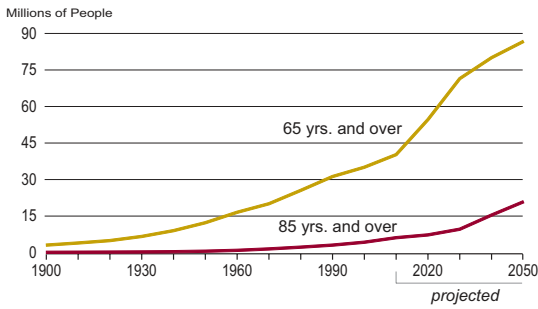
Two factors weigh heavily on the future of the ability of state courts to properly respond to the problems associated with the guardianship process. First, the aging of America is likely to create a tremendous burden on the courts that oversee guardianships, conservatorships, and estates. Second, the current lack of basic reliable court data on the number of active guardianships and conservatorships creates an environment ripe for abuse and criticism. Fortunately, the tools for improving current practices and deficiencies are in hand; what is required is a concerted effort to use them to improve the management of guardianship cases.

³ See for example, Kim Horner and Lee Hancock. 2005. “Holes in the Safety Net,” *Dallas Morning News*, January 12.

⁴ Leonard, J., R. Fields, and E. Larrubia, “Justice Sleeps While Seniors Suffer,” *Los Angeles Times*, November 14, 2005.

² Leonnig, Carol D., Lena H. Sun, and Sarah Cohen. 2003. “Misplaced Trust: Guardians in the District: Under Court, Vulnerable Became Victims,” *Washington Post*, June 15.

Number of Senior Citizens in the United State, 1900-2050



The United States Bureau of the Census paints the following picture of the future of American society:

- The number of people older than 65 will more than double between

The Aging of America

2000 and 2050, and the population over age 85 will quadruple;

- Approximately 114,000 Americans will be centenarians in 2010, a number expected to swell to 241,000 by 2020; and
- By 2050, 40 percent of the population will be older than 50—for the first time in history, seniors will outnumber children and youth.

This demographic shift is the result of the sheer number of people in the

Baby Boomer cohort and the fact that people are living longer. But this demographic shift is being felt differently across the United States, as indicated by the adjacent map. The proportion of adults over 65 years old ranges from Florida (16.8 percent), West Virginia (15.3) and Pennsylvania (15.2) at the high end to Georgia (9.7), Utah (8.8) and Alaska (6.8) on the low end.

Guardianship Caseloads

In 2005, the *Los Angeles Times* reported that, “The state’s conservator system is so underfunded and overwhelmed that court officials do not even know how many incapacitated adults are under conservatorship.”⁵ California’s woes are replicated in almost every state nationwide. The National Center for State Courts’ Court Statistics Project (CSP), which collects court data on an annual basis, includes data fields for adult guardianships and conservatorships/trusteeship. A review of these data indicates:

- Few states report complete statewide data;
- Adult guardianships and conservatorships are often not reported as distinct case types;
- The rate at which guardianship cases are filed across the fifty states is highly divergent; thus

- The trend in guardianships is hard to interpret.

These observations suggest that the quality of these data—for example, whether all adult guardianship cases are being classified and counted properly and whether active cases are being distinguished from inactive cases—are deficient.

The adjacent table serves as an illustration of several of the observations above. First, this list represents all the states that currently report adult guardianships as a distinct case type: only 13 of the 50 states and the District of Columbia report complete statewide data to the Court Statistics Project. Second, variations in the data are illustrated when attempting to describe the relationship between population and caseload. The data suggest that the larger the percentage of adults aged 65 years and more in the population, the more adult guardianship cases will be filed in

the state courts. However, there is still a large difference in the rate of filing even among states with a similar proportion of elderly in their populations. This data raises as many questions as it answers, for example: Why does Vermont have a rate of 590 cases per 100,000 adults over 65, while Missouri has a rate of only 379 cases, even though both states have the same proportion of adults over 65? What is critical to understand is whether these differences reflect differences on how the courts are utilized by the people in those states (do families not turn to the courts to help in the care of elders?) or differences in the family structures in the population (is there a greater presence of multigenerational families that care for their older members?), or whether these differences are simply an artifact of how cases are defined and counted in each state. State courts also need to develop a firm grasp of their population demographics in order to anticipate the impact of an aging population on their future caseload.

⁵ Leonard, Fields, and Larrubia, *supra*, note 4.

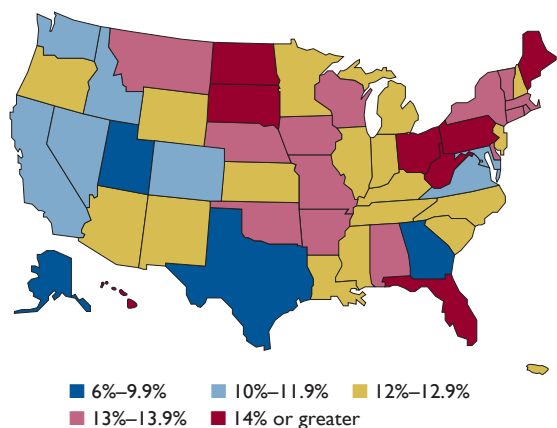
Managing Guardianship Cases

Data that document the number of open and closed cases by type of guardianship (e.g., conservatorship, adult guardianship) on a quarterly or annual basis would allow a closer examination of trends and forecasts on how the volume of cases may change as the population ages. Ultimately, courts should strive to monitor the number and outcomes of hearings and the annual reports filed by guardians and conservators and to define additional data elements that can help judges identify cases that need further attention from the courts.

The 2007 report from the Senate Special Committee on Aging recommended that “Congress should mandate collection of data on guardianship cases by the states.”⁷ As the institution managing this caseload, state courts are best positioned to know what data are required to improve the management of guardianship cases and should take concerted action to do so before others make good on promises to do it for them.

⁷ Smith and Kohl, *supra*, page 41.

Percent of Total Population Age 65 and Older



Guardianship Caseloads and Population, 2006—What’s Going On?

| | Incoming Cases | Total Population | Percent Pop. Over 65 | Cases per 100,000 Pop. 65 and Older |
|----------------|----------------|------------------|----------------------|-------------------------------------|
| Arkansas | 3,524 | 2,809,111 | 13.9 | 903 |
| Michigan | 9,689 | 10,102,322 | 12.5 | 767 |
| Idaho | 1,059 | 1,463,878 | 11.5 | 629 |
| Vermont | 487 | 620,778 | 13.3 | 590 |
| New Hampshire | 958 | 1,311,821 | 12.4 | 589 |
| Washington, DC | 399 | 585,459 | 12.3 | 554 |
| Massachusetts | 4,604 | 6,434,389 | 13.3 | 538 |
| Ohio | 6,646 | 11,463,513 | 13.3 | 436 |
| Wisconsin | 2,830 | 5,572,660 | 13 | 391 |
| Missouri | 2,946 | 5,837,639 | 13.3 | 379 |
| Delaware | 248 | 852,747 | 13.4 | 217 |
| Kansas | 771 | 2,755,817 | 12.9 | 217 |
| Utah | 442 | 2,579,535 | 8.8 | 195 |
| Colorado | 606 | 4,766,248 | 10 | 127 |

The limitations of state-level guardianship and conservatorship data were recently highlighted in a 2006 survey of state court administrators carried out by the American Bar Association Commission on Law and Aging with assistance from the National Center for State Courts and the Conference of State Court Administrators. Consistent with findings from the Court Statistics Project, the report concludes that “there is no state-level

guardianship data for the majority of reporting states.”⁶

Deficiencies in the statewide collection of data on the number of active cases are compounded by the lack of statewide case management systems that can identify key case

events for guardianships and conservatorships. Further, some states cannot distinguish between guardianships granted to children, incapacitated young adults, and elders. Finally, the inconsistent use of terminology across states makes the collection of systematic national data challenging.

The *State Court Guide to Statistical Reporting* offers a consistent, nationally recognized model for bridging the terminology differences among state legal systems and distinguishing these civil case types from each other, providing clear case type definitions that distinguish adult from juvenile guardianships, as well as definitions for conservatorship/trusteeship cases, probate/wills/intestate cases, and elder abuse cases (which are criminal in nature). The *Guide* also provides case counting rules and guidance for distinguishing between active and inactive cases, as well as those cases set for regular review.

⁶ Erica F. Wood, 2006. *State-Level Guardianship Data: An Exploratory Survey*. Washington, DC: American Bar Association Commission on Law and Aging, for the National Center on Elder Abuse, page 7.

Promising Court Technology

While most state courts are unable to provide basic data on the number of open adult guardianship and conservatorship cases, a number of individual courts are advancing the field by applying technology to these case types. Generally, software applications can be used to enhance the court's responsibility to oversee the guardianship process and to identify guardian activities that appear to be out of the norm. At its basic level, software can be used to create a tickler system that primarily reminds the court and notifies guardians of due dates of particular reports, such as annual accountings. At a higher level, financial-based software can be used to detect anomalies in guardianships of the estate (conservatorships). Several examples showcase how technology can improve court oversight of guardianship cases.

Florida's 17th Judicial Circuit (Broward County) uses guardianship reporting software that includes inventory, plan, and accounting forms. The goal is to reduce paper logistics, offload costly data entry, and reduce errors and redundancy. The court is developing a probate and guardianship database management system to work in conjunction with the e-filing system. The software promises judges and court staff flexibility in searching particular items and running reports. For example, reports could be run on cases where the visitation of the ward was not completed once per quarter or on cases where income increased or decreased by a specific percentage when compared to the prior accounting.

In St. Paul, Minnesota, the Second Judicial District Court (Ramsey County) is running a pilot program focused on the online submission of financial reports. The court cites the following benefits of this program:

- Comparative reports can be produced on demand;
- Analysis across all or a selected group of conservators/conservatorships can be completed quickly;
- Less staff time is required for reviewing and filing reports and associated activities; and
- Paper and paperwork are reduced while audit capabilities are enhanced.

Minnesota's pilot project is expected to be expanded statewide. As the database becomes populated, experts will be able to develop programs that flag cases for follow-up and/or investigation. With this system in place, a sudden increase or decrease in funds being withdrawn from financial institutions might trigger a case audit to determine the propriety of this action.

The increasing availability and utilization of technology can make the courts more efficient and improve accountability. Current software applications make court monitoring of conservatorships and the detection of financial abuse and exploitation more manageable; the application of these solutions to guardianship cases that require an examination of the person's well-being is naturally more complex. However, the adoption of these types of systems by an increasing number of state court systems can go a long way toward the provision of accurate data that can be used to document problems and improve current practices.



On the Web

17th Judicial Circuit, Florida
Guardianship Reporting Software

http://www.cdc.gov/nchs/data/nvss/divorce90_04.pdf

Second District Probate Court, Minnesota

www.mncourts.gov/district/2/?page=524

The Court Statistics Project (CSP) www.courtstatistics.org

Since 1975 the Court Statistics Project (CSP) has provided a comprehensive analysis of the work of state courts by gathering caseload data and creating meaningful comparisons for identifying trends, comparing caseloads, and highlighting policy issues. The CSP is sup-

ported by the Bureau of Justice Statistics and obtains policy direction from the Conference of State Court Administrators. A complete annual analysis of the work of the state trial and appellate courts will be found in *Examining the Work of State Courts, 2007*.



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Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the Bureau of Justice Statistics.

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