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**Guardianship Monitoring:  
A National Survey of Court Practices**

by

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The AARP Public Policy Institute, formed in 1985, is part of the Policy and Strategy group at AARP. One of the missions of the Institute is to foster research and analysis on public policy issues of importance to mid-life and older Americans. This publication represents part of that effort.

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## Foreword

Guardianship is a powerful legal tool that can bring good or ill for the increasing number of vulnerable people incapable of making their own decisions. While it often brings needed protections, it also removes fundamental rights. Incapacitated elders are at risk of abuse, neglect, and exploitation by guardians with the authority to make surrogate personal and financial decisions. Guardianship monitoring by courts is critical to identify abuses and remove guardians who abuse or neglect the incapacitated people in their care through action or inaction, thereby ensuring the welfare of these vulnerable individuals. Despite a dramatic strengthening of guardianship statutory safeguards in recent years, judicial monitoring practices in many areas remain lax. Recent news accounts and research indicate that serious problems persist.

In 1991, the American Bar Association (ABA) published the first and only comprehensive national study of guardianship monitoring. The intervening 15 years have seen vast changes in demographics, court technology, and adult guardianship law. There is a compelling need to review guardianship monitoring practices in light of these developments and assess changes since the ABA study. Therefore, in 2005 the AARP Public Policy Institute, in conjunction with the ABA Commission on Law and Aging, conducted an updated survey to examine current court practices for guardian oversight.

AARP is publishing this report to present a national snapshot of guardianship monitoring practices, based on survey responses from several hundred experts with frontline experience. Currently, AARP and the ABA are conducting a second phase of this study. Through site visits and intensive interviews in jurisdictions with exemplary practices, we will develop an updated set of promising guardianship monitoring practices for replication around the country. AARP will publish a follow-up report documenting the additional research and articulating recommended steps for monitoring aimed at improving the lives of vulnerable incapacitated older people.

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# Executive Summary

## Guardianship Monitoring: A National Survey of Court Practices

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 or incapacitated person). A judge appoints a guardian upon finding that an adult individual lacks capacity to make decisions for him or herself. Guardianship is a powerful legal tool that can bring good or ill for an increasing number of vulnerable people with cognitive impairments, affording needed protections, yet drastically reducing fundamental rights.

Court monitoring of guardians is required to ensure the welfare of incapacitated persons, identify abuses, and sanction guardians who demonstrate malfeasance. In 2005 the AARP Public Policy Institute, in conjunction with the American Bar Association (ABA) Commission on Law and Aging, conducted a survey to examine current court practices for guardian oversight. In 2006 the two organizations are continuing to study guardianship monitoring through site visits and telephone interviews, and a second report will follow with recommendations on promising practices.

### Background

Guardianships are established through a legal process outlined in state law and are subject to court supervision. Guardianship has a “front end” (procedures providing due process protections before a finding of incapacity and appointment of a guardian) and a “back end” (procedures for guardian oversight following appointment). Monitoring procedures may include the guardian posting a bond, submission and review of periodic reports and accounts, and sanctions for guardians who fail to file reports in a timely manner or who demonstrate malfeasance. This process differs from state to state, court to court, and judge to judge.

### Demographic and Societal Shifts

The need for effective court monitoring practices is heightened by ongoing demographic trends that will sharply boost the number of guardianships in coming years, including growing numbers of older people, individuals with Alzheimer’s disease and other forms of dementia, and people with mental retardation or intellectual disabilities. Moreover, incidents of elder abuse are on the rise, as is the number of not-for-profit, for-profit, and public guardianship agencies that must make critical decisions about multiple wards, sometimes with high caseloads. All of these trends combine to underscore the dire need for oversight when fundamental rights and financial resources are transferred to guardians, leaving at their mercy individuals with diminished capacity.

### Guardianship Monitoring Reform Efforts

A comprehensive 1987 Associated Press series, entitled *Guardians of the Elderly: An Ailing System*, triggered close to two decades of adult guardianship reform, igniting a rush to revise guardianship statutes, prepare training materials, and strengthen court practices.

State legislatures have sought to bolster guardian accountability through provisions on the frequency and contents of guardian reports and accounts, bonding requirements, court review procedures, and sanctions.

Despite these reform measures, judicial monitoring practices appear to vary and, in many areas, remain lax. Continuing news accounts throughout the 1990s and beyond indicate that serious problems persist. Whether such accounts reflect isolated examples of abuse in an otherwise well-functioning process or come closer to the norm has been unknown, as data and research are scant.

## **Methodology**

In 2005, AARP's Public Policy Institute, in collaboration with the ABA Commission on Law and Aging, conducted a national Internet-based survey of how courts monitor guardianship cases, replicating and building on a similar ABA survey in 1991. The 35-question survey focused on actual court practices—seeking to ascertain whether the practices meet, exceed, or fall short of requirements imposed by statutes and court rules and to identify practices that may be “ahead of the curve.”

AARP sent the survey to approximately 2,100 individuals, including guardians, probate judges, court managers, elder law attorneys, and legal representatives of people with disabilities (identified through relevant national organizations), and received 387 survey responses from 43 states and the District of Columbia. Of these, over half identified their role as guardians.

## **Findings**

### **Guardian Reporting and Accounting Requirements**

- Statutes in all but two states require guardians to submit personal status reports, although the required frequency varies. In the survey, 74.2% of respondents said their court requires annual filing of these reports, yet close to 80% reported that their statute or rule requires annual filing, indicating that a small but statistically significant number of courts do not impose the statutory or regulatory mandate of annual reporting.
- Eighty-six percent of survey respondents stated that their statute or court rule requires accountings annually, yet slightly fewer (82.7%) reported that their court requires accountings annually, and although slight, that difference was significant.
- A total of 34.1% of respondents stated that their court consistently requires guardians to file plans for future care of the individual, and 9.3% stated that the court sometimes requires the filing of such plans. However, almost half (48.1%) said their court does not require filing of plans.

### **Court Assistance to Guardians**

- The most commonly available resource for guardians is court-provided written instructions or manuals (43.2% of respondents). More than one-third of respondents

(37.5%) reported that training sessions are sponsored by non-court entities for their jurisdiction. Over one-fifth (22%) of respondents said that no guardian training resources are available.

- A significant majority of respondents (62.8%) reported that their court routinely specifies the guardian's reporting and accounting responsibilities in the initial guardianship order, but 24.8% said the court does not typically do so.
- Only 19.9% of respondents said that the court routinely sends reporting and accounting forms to guardians. Otherwise, forms are available from the court clerk (42.6%), from attorneys (33.1%), or on the court website (33.1%).
- More than 40% of respondents (40.1%) said that no samples of appropriately prepared reports and accountings were available to them. Only 18.1% said samples are available from the clerk.

### **Enforcing Reporting Requirements**

- Some 63.8% of respondents indicated that the court has an effective notification system in place to alert guardians of report due dates; 26.6% said there was no such system.
- The most commonly named court sanction for failure to file reports and accountings is sending the guardian a notice of delinquency (46.5%), followed by entering show cause orders (31.8% reporting routine use and 27.4% when appropriate). In addition, 15.5% of respondents said court staff informally contacts the guardian, and only 3.9% reported use of fines.
- While close to 40% of respondents did not know what measures the court takes if a guardian habitually files late, 48.6% reported that the court requires such a guardian to appear for a status hearing. Over a quarter (25.6%) said the court revokes the appointment and appoints a successor guardian, and 16.0% said the court asks an investigator or volunteer to obtain more information.

### **Procedures for Review**

- More than half of respondents (50.6%) indicated that financial accountings are reviewed by a court auditor or other court staff for whom this is a primary responsibility; while 26.6% said the judge who entered the order performs the review, and 14.0% said a judge is assigned to review the accountings. Close to one-fifth of respondents (19.9%) reported that other court staff conduct the review. Some 8.5% of survey respondents said no one has such responsibility on a regular basis.
- Regular review of personal status reports is most commonly the responsibility of a court investigator or other court staff for whom this is a primary task (36.7% of respondents) or by the judge who entered the order (30.5%).

## **Verification and Investigation**

- Over one-third of respondents (34.4%) stated that no one is designated to verify the information in reports and accounts. A total of 16.8% of respondents indicated that court staff verify as needed, and 10.1% said court staff verify each report. In 5.9% of jurisdictions, a special master, guardian ad litem, or other person verifies each report. Thus, only 16% of respondents reported that someone at the court verifies *every* report. Volunteers rarely fill this function.
- No one visits the incapacitated individual in the jurisdictions of 40.3% of those responding. Only about a quarter of respondents (25.9%) reported that someone visits the person on a regular basis.
- Does an accounting trigger an inquiry into an incapacitated person's well-being if a possible problem is uncovered? Close to 38% of respondents said the court investigates in such a situation, 13.4% said review of the financial information focuses only on whether the calculations are correct, and 25.1% said that consideration of the individual's well-being in review of the accounting varies.
- The most common court response to complaints about the guardian—reported by more than half of survey participants—is to appoint a guardian ad litem, special master, or visitor to investigate (51.9%). Other common practices include entering a show cause order or setting a hearing (41.9%) and contacting the guardian (37.0%).

## **Sanctions**

- The most common sanction was removing the guardian and appointing a successor guardian (67.2%), followed by imposing a fine (48.1%) and appointing a guardian ad litem to investigate (33.3%). Courts may also make a referral to adult protective services (26.9%), report the guardian to law enforcement (26.6%), or report an attorney guardian to the bar association (15.8%). In some instances, courts deny or reduce the guardian's fee (23.8%).

## **Funding for Monitoring**

- Over two-fifths (43.4%) of respondents stated that funding for monitoring is unavailable or clearly insufficient. About 17% responded that some funding is available, and only 10.9% said sufficient funds are available.
- The majority of respondents who identified funding sources stated that their courts rely on multiple sources. The source that 45.5% of respondents named was state legislative appropriations specifically for guardianship monitoring, followed by filing fees (16.5%), and a number of other less common sources. Close to one-third of respondents (31.3%) said there is no specific funding for guardianship monitoring.



## **Role of Attorneys**

- Close to one-fifth of respondents (18.6%) stated that their state bar has clear and complete ethical guidelines for attorneys representing the petitioner, guardian, ward, or proposed ward, but 14.2% said that the guidelines are clear only in some aspects, 8% said the guidelines are unclear concerning the roles of attorneys, and 9% said there are no applicable guidelines.
- Over half of respondents (53.7%) stated that the extent to which attorneys for guardians assist with reporting and accounting varies by attorney, guardian, or case circumstances.
- The role of the attorney for the incapacitated individual in monitoring the person's well-being after a guardian is appointed varies greatly. According to one-third of the respondents (33.1%), the court dismisses the attorney after the appointment and has no further role. Only 7.5% stated that the attorney remains the attorney of record and routinely stays actively involved throughout the case, with the remaining respondents describing a lesser role.

## **Court-Community Interaction**

- Interaction between courts and community entities concerning guardianship monitoring is relatively infrequent. Over one-quarter of respondents (25.3%) indicated that the court is aware of relevant community groups and communicates from time to time, while just under one-quarter (24.0%) said the court has little contact. A small percentage of respondents (10.9%) said the court participates in multidisciplinary groups on guardianship and alternatives or collaborates with such groups on training and education (10.9%). In just a few cases (5.7%), the court has developed referral protocols with community groups.

## **Data Systems and Court Technology**

- A substantial portion of respondents (40%) did not know how the court maintains data on adult guardianship cases. Only 27.6% said the court has a computerized system to track the number of adult guardianship filings and dispositions, and only 8% stated that the court has a computerized system that tracks and aggregates not only the number of filings and dispositions, but additional data elements as well.
- By far the most common data element for which the court maintains statistics is guardian actions on behalf of the ward (82.7% of respondents). More than one-fifth of respondents (22.2%) said the court maintains statistics on the timeliness of guardian reports, 18.9% indicated maintenance of data on whether the incapacitated person was represented by counsel at the time of adjudication, and 18.3% reported data collection on the age of the incapacitated individual.
- Only 9.3% of survey respondents said the court maintains data on whether the case involved elder abuse.

- While 44% of respondents did not know how the court uses computer technology in guardianship monitoring, over one-third (36.2%) indicated that the court uses such technology to identify late filings. Other uses for monitoring are quite rare. A substantial 22% of respondents stated that computer technology is completely unavailable for guardianship monitoring.
- Close to one-third of survey respondents (30.2%) indicated that part of the guardianship file is open to the public, but part is sealed, and nearly another third (28.9%) said the entire file is open and is available at the courthouse. Only a handful of respondents said the entire file is open and accessible through the Internet (3.9%), or that the entire file is sealed (4.1%).

## Discussion and Conclusions

Monitoring is a must, but, in reality, it varies substantially from court to court. Survey findings suggest that some current monitoring practices are promising and worthy of replication, while other aspects of monitoring are ripe for improvement. Salient themes in the survey findings include the following:

- **Guardianship monitoring practices continue to show wide variation.** Key areas of variation include court assistance to guardians, handling of filing deadlines and late filings, designation of reviewers, response to complaints, review of the need to continue the guardianship, sanctions, and roles of attorneys. These varied approaches are likely to yield some “promising practices,” to be explored in the next phase of this research.
- **Reporting practices have advanced over the past 15 years in some key aspects.**
  - *Filing of Personal Status Reports.* The percentage of respondents stating that their court requires filing of personal status reports rose to 74.2%, up from 67.5% in 1991. The majority of respondents reported that courts require a moderate amount of detail. Thus, more courts are getting regular information in a form that may provide them insight into the incapacitated person’s circumstances and condition.
  - *Compliance with Statutory Reporting Requirements.* The gap between statute and practice on reporting seems to have narrowed substantially since 1991. Almost 80% of respondents said their statute requires reports, and 74.2% said their particular court requires reports.
  - *Use of Guardianship Plans.* Over 34% of respondents reported that their court requires guardians to file forward-looking plans. This number is significant, since plan requirements in statute are relatively new, and only about 10 state statutes require them.
- **Use of technology in monitoring is minimal; harnessing technology could effect a paradigm shift in monitoring practices.** While computer technology is available

that could greatly strengthen guardian accountability, surprisingly few courts use it for monitoring. For example, only 3.9% of survey respondents said their court e-mails guardians about reporting status, and only 4.1% said the guardian could check the status of reports and due dates online. Few courts maintain comprehensive guardianship databases electronically. Also, courts vary widely in whether the public has access to case files (electronic or hard copy) with sensitive personal information, raising serious privacy concerns.

- **Guardian training has increased but remains a compelling need.** While training and written instructional materials for guardians are increasingly available, with 40% of survey respondents saying that their court provides such resources, training continues to be a significant unmet need. Over 40% of respondents indicated that no model reports or accountings are available to guide them.
- **Verification of guardian reports and accounts, as well as visits to individuals under guardianship, is frequently lacking.** More than one-third of survey respondents said no one is designated by their court to verify the information in guardians' reports and accounts. Of equal concern, over 40% of respondents report that no one is assigned to visit the vulnerable individual, and only a quarter said that someone visits on a regular basis. Mechanisms serving as the "eyes and ears" of the court are critical.
- **The role of volunteers in monitoring is minimal, yet offers potential.** Fewer than 10% of respondents reported that their courts use volunteers for any monitoring function, despite the fact that some courts have used this potentially low-cost, high-return resource.
- **Court-community action on monitoring is infrequent, yet could enhance oversight.** Only slightly over 10% of respondents stated that the court collaborates with community groups on training, and only one-quarter of respondents said that their courts are aware of and work intermittently with relevant community entities such as adult protective services agencies and long-term care ombudsman programs.
- **Funding for guardianship monitoring remains minimal.** Some 43.4% of respondents said that funding for monitoring is unavailable or insufficient. This critical funding gap affects every aspect of monitoring. Heightening the awareness of legislatures, county commissions, and other funding sources concerning the urgent need for monitoring resources is an important step in securing the welfare of vulnerable individuals under guardianship.

# Guardianship Monitoring: A National Survey of Court Practices

## I. Introduction

*“Thirty years ago, California tried to put muscle into court oversight of conservators. The state created a corps of court investigators whose duties include knocking on the doors of elderly wards and checking that they are alive and well treated and have food in the refrigerator. They joined attorneys and examiners working for the probate courts who are supposed to comb through conservators’ financial reports to make sure they aren’t stealing or squandering clients’ money. Such steps made California a leader in protecting the rights and resources of the elderly. Over the years, however, they have been eroded by tight budgets and an explosion in the number of elderly people under conservatorship.”* **Los Angeles Times, November 14, 2005**<sup>1</sup>

*“The statewide system of appointing guardians to manage the finances and affairs of incapacitated people has created the opportunity for widespread corruption and needs to be radically overhauled, a grand jury concluded in a report filed yesterday in State Supreme Court in Queens . . . The grand jury closely examined the case of a Long Island City lawyer who stole \$2.1 million over a five-year period in cases involving 17 incapacitated people . . . The grand jury. . .said that guardians. . .are poorly trained and inadequately supervised by court appointees. It found, for instance, that even rudimentary financial reporting requirements are often ignored and independent audits are rare.”* **New York Times, March 3, 2004**<sup>2</sup>

*“Nearly 100 people can’t access their money or must wait weeks for their checks to arrive as authorities continue to investigate [a] former Eaton County court guardian. . . The longtime Charlotte attorney, 56, became the subject of a criminal probe after a deceased woman’s family accused him of failing to produce \$347,000 from her estate, which he oversaw.”* **Lansing State Journal, August 19, 2005**<sup>3</sup>

While these recent newspaper accounts of abuse by guardians and oversight failures may not be typical, they do indicate the importance of strong and effective guardianship monitoring.

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 or incapacitated person). A judge appoints a guardian upon finding that an adult individual lacks capacity to make decisions for him or herself. Guardianship is a powerful legal tool that can bring good or ill for an increasing number of vulnerable people with cognitive impairments, affording needed protections yet drastically reducing fundamental rights.

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<sup>1</sup> Leonard, Jack, Fields, Robin, & Larrubia, Evelyn. (2005, November 14). Judges’ inaction, inattention leave many seniors at risk. *Los Angeles Times*. Retrieved November 14, 2005, from <http://www.latimes.com>

<sup>2</sup> Glaberson, William. (2004, March 3). Report calls for overhaul of system that protects the unfit. *New York Times*. Retrieved March 3, 2004, from <http://www.nytimes.com>

<sup>3</sup> Hassett, Kelly. (2005, August 18). Money on hold for 100 clients of ex-guardian, *Lansing State Journal*. Retrieved August 22, 2005, from <http://www.lsj.com>

Because guardians have authority to make surrogate personal and financial decisions for at-risk individuals frequently unable to speak on their own behalf, high fiduciary standards and strict accountability are critical. Court monitoring of guardians is required to ensure the welfare of incapacitated persons, identify abuses, and sanction guardians who demonstrate malfeasance.

In 1991, the American Bar Association (ABA) Commission on the Mentally Disabled and Commission on Legal Problems of the Elderly<sup>4</sup> conducted a national study on guardianship monitoring and recommended steps courts could take to strengthen guardian accountability. The intervening 15 years have seen vast changes in demographics, court technology, and adult guardianship law. There is a compelling need to review guardianship monitoring practices in light of these developments and assess changes since the ABA study. Therefore, in 2005 the AARP Public Policy Institute, in conjunction with the ABA Commission on Law and Aging, conducted an updated survey to examine current court practices for guardian oversight. This report presents the survey findings.

## II. Background<sup>5</sup>

### A. Overview of Guardianship Process

Guardianships are established through a legal process outlined in state law and are subject to court supervision. Guardianship has a “front end” (procedures providing due process protections before a finding of incapacity is made) and a “back end” (procedures for guardian oversight following appointment).

The guardianship process begins at the “front end” with a petition alleging that an individual lacks decision-making capacity and cannot care for his or her own person and/or property. The court sends a notice of the allegation and of the upcoming hearing to the individual and to relatives and others specified by statute. The individual may or may not have an attorney—and in some cases the court may appoint an attorney. In addition or instead, in some states the court may appoint an investigator, a “guardian ad litem” (representing the best interests of the individual during the proceeding and serving as the “eyes and ears” of the court), or a court visitor. There may be a medical statement from a physician, a mental health specialist, or other health care professional.

The hearing may be very brief if the guardianship is uncontested. If the person opposes the guardianship or the appointment of a particular guardian, the case could involve depositions, and the hearing could include extended testimony. The judge makes findings on the capacity of the individual and may appoint either a plenary (full) guardian or a limited guardian. The appointment may be for guardianship of the person only, for guardianship of the property only (often known as “conservatorship”), or both. The appointment may be an emergency appointment if the person is at risk of immediate harm. In an emergency or

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<sup>4</sup> Currently the Commission on Mental and Physical Disability Law and Commission on Law and Aging.

<sup>5</sup> The background section is based in part on Hurme, Sally Balch, & Wood, Erica. (2002, Spring). Guardian accountability then and now: Tracing tenets for an active court role. *Stetson Law Review*, 31(3).

urgent situation, this temporary appointment may be made before the hearing on the general guardianship.

At the “back end,” after the appointment is made, court procedures seek to ensure that the guardian is accountable. The guardian may be required to post a bond and generally must submit periodic reports and accountings following the appointment. If the reports are not forthcoming, the judge may call the guardian into court to explain his or her failure to file in a timely manner. The court may sanction or remove any guardian who demonstrates malfeasance. If the guardianship is no longer necessary, the court can restore the rights of the individual.

While the above generalized description gives a broad-brush understanding of the process, it differs from state to state, court to court, and judge to judge. This study examined the “back end” of guardianship, inquiring about the practices of courts throughout the country. The study responds to striking demographic shifts and societal trends that will increase the expected number of guardianship cases, and is based on a substantial history of reform efforts in guardianship monitoring, as described below.

## **B. Demographic and Societal Shifts**

The need for effective court monitoring practices is heightened by ongoing demographic trends that will sharply boost the number of appointments in coming years. The older population (age 65+) numbered 35.9 million in 2003. As the baby boomers come of age, the older population will more than double, reaching 71.5 million by 2030. Within the older population, the number of “old old” (age 85+) is growing especially rapidly and is expected to increase from 4.7 million in 2003 to 9.6 million in 2030.<sup>6</sup> At the same time, Alzheimer’s disease and related dementias are becoming more prevalent. Today, 4.5 million Americans have Alzheimer’s disease. The number has more than doubled since 1980 and will continue to grow; it is expected to reach 11.3 to 16 million by 2050 unless a cure or preventive measures are discovered.<sup>7</sup> Moreover, guardianship also serves a younger population of adults with mental retardation, developmental disabilities, and mental illness. Today “it is estimated that there are seven to eight million Americans of all ages who experience mental retardation or intellectual disabilities. Intellectual disabilities affect about one in ten families in the USA.”<sup>8</sup> This number will rise with new forms of medical treatment, and an increasing number will outlive family caregivers.<sup>9</sup>

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<sup>6</sup> U.S. Administration on Aging. A profile of older Americans: 2004. Retrieved Dec. 6, 2005 from <http://www.aoa.gov/prof/Statistics/profile/2004/2004profile.pdf>. Also see U.S. Census Bureau, <http://www.census.gov/ipc/www/usinterimproj/natprojtab02a.pdf>

<sup>7</sup> Alzheimer’s Association, <http://www.alz.org/Resources/FactSheets/FSAlzheimerStats.pdf>.

<sup>8</sup> President’s Committee for People with Intellectual Disabilities, Administration for Children & Families, U.S. Department of Health and Human Services. “Fact Sheet.” Retrieved Dec. 6, 2005 from [http://www.acf.hhs.gov/programs/pcpid/pcpid\\_fact.html](http://www.acf.hhs.gov/programs/pcpid/pcpid_fact.html)

<sup>9</sup> Estimates of the number of adults age 60 and over with mental disabilities/mental retardation and other developmental disabilities (such as cerebral palsy, autism, and epilepsy) range between 600,000 and 1.6 million. This population is growing rapidly, and although many persons are unidentified and the actual number is not known, it is expected that by 2030 there will be several million. Retrieved Dec. 6, 2005 from [http://www.aamr.org/Policies/faq\\_toc.shtml](http://www.aamr.org/Policies/faq_toc.shtml)

At the same time, incidents of elder abuse are rising. While statistics are scant, it is estimated that “between 1 and 2 million Americans age 65 or older have been injured, exploited, or otherwise mistreated by someone on whom they depended for care or protection. The frequency of occurrence of elder mistreatment will undoubtedly increase over the next several decades, as the population ages.”<sup>10</sup>

In response to demographic changes and the increased need for surrogate decision making, corporate or agency guardianship is growing. Over the last 20 years, a burgeoning number of not-for-profit and for-profit agencies—as well as public guardianship programs—has developed to serve the at-risk, “unbefriended” population, that is, those who have no family or friends available and qualified to serve as guardian.<sup>11</sup> Agency guardians frequently must make critical care decisions about multiple wards, often with little knowledge of their lives or past values, and sometimes with high caseloads and insufficient staffing. All of these trends combine to underscore the dire need for oversight when fundamental rights and financial resources are transferred to guardians, leaving individuals with diminished capacity at their mercy.

### C. History of Guardianship Monitoring Reform Efforts

A comprehensive and compelling 1987 Associated Press series, entitled *Guardians of the Elderly: An Ailing System*, triggered close to two decades of adult guardianship reform, igniting a rush to revise guardianship statutes, prepare training materials, and strengthen court practices. The series contended that “overworked and understaffed court systems frequently break down, abandoning those incapable of caring for themselves,” and that courts “routinely take the word of guardians and attorneys without independent checking or full hearings.”<sup>12</sup> Among the reform activities launched following the AP report were efforts aimed specifically at guardianship monitoring:

- *Wingspread Recommendations.* In 1988, the American Bar Association convened a landmark interdisciplinary National Guardianship Symposium (“the Wingspread conference”) that made six recommendations on accountability of guardians (training and orientation, review of guardian reports, public knowledge and involvement, guardianship standards and plans, role of attorneys, and role of judges).<sup>13</sup>
- *National Monitoring Study.* The Wingspread recommendations in turn fueled a groundbreaking 1991 ABA study, *Steps to Enhance Guardianship Monitoring*,<sup>14</sup> funded

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<sup>10</sup> Bonnie, Richard J., & Wallace, Robert B., Panel to Review Risk and Prevalence of Elder Abuse and Neglect, National Research Council of the National Academies (Eds.). (2003). *Elder mistreatment: Abuse, neglect, and exploitation in an aging America*. Washington, DC: The National Academies Press, p. 1.

<sup>11</sup> While national data are lacking, the *LA Times* reported that, in California alone, about 500 professional guardians are caring for at least 4,600 people and managing \$1.5 billion in assets; Leonard, Jack, & Fields, Robin. (2006, January 14). Task force to analyze guardian system. *Los Angeles Times*. Retrieved January 20, 2006, from <http://www.latimes.com>

<sup>12</sup> Bayles, Fred, & McCartney, Scott. (1987, September). *Guardians of the elderly: An ailing system*. Associated Press Special Report.

<sup>13</sup> American Bar Association Commission on the Mentally Disabled & Commission on Legal Problems of the Elderly. (1989). *Guardianship: An agenda for reform—Recommendations of the National Guardianship Symposium and policy of the American Bar Association*. Washington, DC: American Bar Association.

<sup>14</sup> Hurme, Sally Balch. (1991). *Steps to enhance guardianship monitoring*. Washington, DC: American Bar Association Commission on the Mentally Disabled and Commission on Legal Problems of the Elderly.

by the State Justice Institute. The study included a national survey and six intensive site visits. The report outlined 10 recommended “monitoring steps” drawn from actual practices in diverse jurisdictions.

- Volunteer Guardianship Monitoring. Also in 1991, AARP initiated a National Volunteer Guardianship Monitoring Project funded by the State Justice Institute.<sup>15</sup> The project used trained volunteers as court visitors, auditors, and records researchers, and the model was adopted by over 50 courts throughout the country.
- Judicial Review. In the same year, the School of Law and the School of Medicine at St. Louis University developed a national model for judicial review of guardian performance based on an analysis of monitoring in six courts.<sup>16</sup>
- Probate Court Standards. In 1993, a Commission on National Probate Court Standards set out specific procedures for guardianship monitoring in the *National Probate Court Standards* (training and outreach, reports by guardians, practices and procedures for review of reports, reevaluation of the necessity for guardianship, enforcement of court orders, and final report before discharge).<sup>17</sup>
- Uniform Guardianship Act. The Uniform Guardianship Act, originally Title V of the Uniform Probate Code adopted in 1969, was revised in 1982 and again in 1997.<sup>18</sup> The latter revision included provisions on guardianship monitoring, and the commentary highlighted the importance of “an independent monitoring system . . . for a court to adequately safeguard against abuses.”
- Wingspan Conference. In 2001, the Second National Guardianship Conference (the “Wingspan conference”) made seven recommendations on monitoring and accountability, drawing on and clarifying the earlier Wingspread statements.<sup>19</sup> In 2004, several national groups convened a session focused specifically on practical implementation of selected Wingspan recommendations, including those on monitoring.<sup>20</sup>
- Senate Hearing and Government Accountability Office Report. In 2003, the U.S. Senate Special Committee on Aging held a hearing, entitled *Guardianships Over the Elderly: Security Provided or Freedoms Denied?*<sup>21</sup> The Committee Chair observed that “substantial sums of federal money . . . are administered and potentially misused by guardians” and that “the imposition of guardianship without adequate protections and oversight may

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<sup>15</sup> Miller, Susan, & Hurme, Sally Balch. (1991). Guardianship monitoring: An advocate’s role. *Clearinghouse Review*, 25, 654.

<sup>16</sup> Zimney, George, et al. (1991). *A national model for judicial review of guardians’ performance: Final report*. St. Louis, MO: School of Law & School of Medicine, St. Louis University.

<sup>17</sup> Commission on National Probate Court Standards. (1993, 1999). *National Probate Court Standards*, Williamsburg, VA: National Center for State Courts.

<sup>18</sup> National Conference of Commissioners on Uniform State Laws. (1997). *Uniform Guardianship and Protective Proceedings Act*. Chicago, IL: American Bar Association.

<sup>19</sup> Wingspan—The Second National Guardianship Conference, Recommendations. *Stetson Law Review*, 31(3).

<sup>20</sup> 2004 National Wingspan Implementation Session: Action Steps on Adult Guardianship Reform. Retrieved Dec. 8, 2005 from <http://www.guardianship.org/associations/2543/files/WingspanReport.pdf>

<sup>21</sup> U.S. Senate Special Committee on Aging. (2003). Serial No. 108-3. Washington DC.



actually result in the loss of liberty and property for the very persons these arrangements are intended to protect.” The hearing led to a 2004 Government Accountability Office (GAO) report, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*.<sup>22</sup> The GAO study found that “all states have laws requiring courts to oversee guardianships, but court implementation varies. Most require guardians to submit periodic reports, but do not specify court review of those reports . . . . The extent to which the courts and [federal] agencies leave elderly incapacitated people at risk is unknown” due to lack of data.

- *State Legislation.* Finally during the last 15 years, state legislatures have sought to bolster guardian accountability, with many jurisdictions making changes in the frequency and contents of guardian reports and accounts, bonding requirements, court review procedures, and sanctions for guardians who fail to file a timely report or demonstrate malfeasance.<sup>23</sup> (See Appendix B for a table of state statutory authorities on guardianship monitoring.)

Despite these reform measures, judicial monitoring practices appear to vary and, in many areas, remain lax. Continuing news accounts throughout the 1990s and beyond indicate that serious problems persist.<sup>24</sup> Recent press stories included a two-part *Washington Post* series in 2003, “Misplaced Trust: Guardians in the District,” which alleged that “the [District of Columbia] court’s probate division . . . has repeatedly allowed its charges to be forgotten and victimized.” The *Post*’s review of more than 10 years of case dockets and hundreds of court files, as well as dozens of interviews, found hundreds of cases where court-appointed protectors violated court requirements, noting specifically that since 1995, one of five guardians had gone years without reporting to the court.<sup>25</sup>

In November 2005, the *Los Angeles Times* published an extensive four-part series, entitled “Guardians for Profit,” detailing the findings from a review of more than 2,400 cases, including every case handled by professional guardians in Southern California between 1997 and 2003. The *LA Times* found many cases in which guardians (called “conservators” in California) ignored the needs of their wards, plundered estates, and charged hefty fees. The series observed that court oversight is “erratic and superficial,” and that judges “rarely take action against conservators.” These and similar press accounts detail guardianship abuses not substantially different from those the Associated Press described some 18 years earlier.

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<sup>22</sup> U.S. Government Accountability Office. (2004, July). *Guardianships: Collaboration needed to protect incapacitated elderly people*. GAO-04-655. Washington, DC: GAO.

<sup>23</sup> See state statutory guardianship monitoring chart on the website of the ABA Commission on Law and Aging, <http://www.abanet.org/aging/guardian5.pdf>.

<sup>24</sup> See, for example, Wendland-Bowyer, Wendy. (2000, May 24). Who’s watching the guardians? *Detroit Free Press*; Wendland-Bowyer, Wendy. (2003, Oct. 25). Guardian system overrun by abuse. *Detroit Free Press*; Kilzer, Lou, & Lindsay, Sue. (2001, April 7). The probate pit: Busted system, broken lives. *Rocky Mountain News*; Rubin, Paul. (2000, June 15). Checks & imbalances: How the state’s leading fiduciary helped herself to the funds of the helpless. *Phoenix New Times*; Glaberson, William. (2004, March 3). Report calls for overhaul of system that protects the unfit. *New York Times*.

<sup>25</sup> Leonnig, Carol D., Sun, Lena H., & Cohen, Sarah. (2003, June 15). Under court, vulnerable became victims. *The Washington Post*, A-01; Cohen, Sarah, Leonnig, Carol D., & Witt, April. (2003, June 16). Rights and funds can evaporate quickly. *The Washington Post*, p. A-01.

Whether such accounts reflect isolated examples of abuse in an otherwise well-functioning process or come closer to the norm is unknown. Indeed, policymakers, advocates, and the legal and judicial system are working in the dark in assessing adult guardianship. There are very few data. The 2004 GAO report noted that most courts “do not maintain information needed for effective monitoring and oversight of guardianships.”

### **III. Methodology**

AARP’s Public Policy Institute, in collaboration with the American Bar Association Commission on Law and Aging, conducted a national study of how courts monitor guardianship cases, the first such study in 15 years. This study sought to replicate and build on the 1991 ABA study of guardianship monitoring, and to identify effective measures that aid courts in overseeing the performance of guardians.

This report presents the results of the first phase of the study, an Internet-based survey of a diverse group of professionals with expertise in guardianship monitoring. Phase II of the study, to be conducted later in 2006, will include on-site court visits to observe monitoring practices and interview stakeholders, supplemental in-depth telephone interviews, and meetings with experts to explore findings and develop recommendations for promising practices.

#### **A. Survey Process**

The goal of the survey was to elicit information about guardianship monitoring practices nationwide. While all states have statutory monitoring requirements, and those mandates are known, the survey sought to identify what courts are actually doing in this arena; to ascertain whether the practices meet, exceed, or fall short of requirements imposed by statutes and court rules; and to identify practices that may be “ahead of the curve.”

In designing the survey questionnaire, project staff relied on the assistance of an expert advisory panel with representation from the National Guardianship Association (NGA), National College of Probate Judges (NCPJ), National Academy of Elder Law Attorneys (NAELA), National Association for Court Management (NACM), and National Disability Rights Network (NDRN). In addition, the advisory panel included Sally Hurme (of AARP), who conducted the 1991 monitoring study for the ABA.

The 2005 AARP survey questionnaire, based on the written “Recommended Steps” to enhance guardianship monitoring resulting from the 1991 study, included additional areas of inquiry that have become particularly relevant in the last several years, such as data collection and use of technology. Advisory Committee members reviewed the draft questionnaire and provided detailed feedback. In addition, four individuals (two guardians, an elder law attorney, and a probate judge) tested the survey and contributed comments. The final survey instrument (see Appendix A) included 35 questions on:

- Background on state laws and formal court rules
- Reporting, accounting, and care plan practices

- Court assistance to guardians
- Tracking and enforcement
- Responsibility for monitoring activities
- Assessment of guardianship by the court
- Funding
- Attorney activities
- Court/community interaction
- Data, technology, and court files.

Investigators and Advisory Committee members agreed that the categories of individuals who could provide the most knowledge and expertise in monitoring practices included guardians, probate judges, court managers, elder law attorneys, and legal representatives of people with disabilities. To maximize the number of respondents in these professions from across the nation, project staff sought membership lists from the organizations listed above as well as lists of Registered and Master Guardians from the National Guardianship Foundation. In answering the questions, survey respondents were asked to refer to the jurisdiction with which they have the most familiarity.

To distribute the survey efficiently and to ease the burden on respondents, AARP created a website for the survey questionnaire. Potential respondents were notified of the survey by e-mail and could link directly to the website and complete the questions online.

All targeted organizations agreed to assist in survey dissemination either by providing mailing lists or using their listservs. Survey recipients received an advance e-mail explaining the project and encouraging participation. Because NAELA and NDRN chose not to share the names and e-mail addresses of their members, they distributed all relevant e-mails through their own channels, the NAELA Guardianship Special Interest Group listserv and the NDRN Legal Directors listserv. AARP sent the survey to NGA members, Registered Guardians, Master Guardians, NCPJ members, and NACM members.<sup>26</sup> AARP staff and cooperating organizations sent the survey to approximately 2,100 individuals and received 387 completed responses.<sup>27</sup> Respondents are not a nationally representative sample due to the nature of the survey distribution.

## **B. Respondents**

1. *Geographic Distribution.* The 387 survey respondents are from 43 states and the District of Columbia. The states with the highest response rate include Florida, 54 respondents (14%); California, 32 respondents (8.3%); Texas and Michigan, 21 respondents each (5.4%);

<sup>26</sup> Unfortunately, NACM was unable to provide a list of court managers working in courts with jurisdiction over guardianship cases, making its list overinclusive for survey purposes.

<sup>27</sup>Of the e-mails AARP sent, 62 were returned as "undeliverable." NAELA reported some "undeliverable" e-mails but did not keep track of the number. The response rate was 19%. This estimated response is likely to be somewhat lower than the actual response rate, because it does not factor in the undeliverable e-mails sent by NAELA. The response rate for the 1991 survey was 58%, and that survey had 199 respondents. Because the current survey utilized e-mail and Internet technologies that didn't exist in 1991, the new methodology was expected to have a lower response rate but a higher absolute number of respondents.

Washington, 18 respondents (4.7%); and Illinois, 17 respondents (4.4%).<sup>28</sup> There are no respondents from Arkansas, Hawaii, Mississippi, Nebraska, North Carolina, South Dakota, or West Virginia.

2. Role in Guardianship Process. Respondents identified their “most frequent role in the guardianship process” as follows:

**Table 1: Respondents’ Most Frequent Role in Guardianship Process**

<b>Role</b>	<b>Frequency</b>	<b>Percent</b>
Guardian	204	52.7
Attorney	56	14.5
Judge or Special Master	26	6.7
Court Administrator/ Manager/Staff	41	10.6
Visitor/Evaluator/ Investigator <sup>29</sup>	10	2.6
Guardian Ad Litem <sup>30</sup>	6	1.6
Other	44	11.4
Total	387	100.0

AARP Public Policy Institute, 2005

The 34 respondents who stated that their most frequent role was “other” included guardianship program administrators or coordinators (8); care managers (6); miscellaneous court roles (5); volunteer guardians or volunteer guardianship program administrators (5); attorneys not representing parties to guardianship cases (4); advocates (2); social workers (2); and trustees (2). The remaining 10 respondents could not be readily grouped or categorized.

3. Organizational Affiliation. Three hundred fifty-nine respondents listed at least one affiliation; 28 did not answer the question. Only a handful of respondents identified more than one affiliation. The responses were arrayed as follows:

<sup>28</sup> According to the 2005 U.S. Census Bureau population estimates, California had the highest number of people age 65 and older (3.8 million) in 2004, followed by Florida (2.9 million), New York (2.5 million), Texas (2.2 million), Pennsylvania (1.9 million), Ohio (1.5 million), and Illinois (1.5 million). Table 1-RES: Estimates of the Resident Population by Selected Age Groups for the United States and States and for Puerto Rico: July 1, 2004 (SC-EST2004-01-RES). Retrieved Dec. 8, 2005 from <http://www.census.gov/popest/states/asrh/tables/SC-EST2004-01Res.pdf>

<sup>29</sup> The National Guardianship Association’s 2005 publication, *The Fundamentals of Guardianship: What Every Guardian Needs to Know*, defines “Court Visitor, Monitor, Investigator” as “A person appointed by the court to provide the court with information concerning a ward or a guardian.” In *Guardianships of Adults* (2005), Mary Joy Quinn explains that “(c)ourt appointees have different labels depending on individual state law . . . . They may be called court investigators, court visitors, court evaluators, or guardians ad litem . . . . In general, court investigators perform two main functions: (1) they provide due process advisements to the person who is the subject of the proposed guardianship, and (2) they perform an independent assessment of the circumstances of the person with diminished capacity” (pp. 141–142).

<sup>30</sup> The Glossary of *The Fundamentals of Guardianship* defines a Guardian Ad Litem as “A person appointed by the Court to make an impartial inquiry into a situation and report to the Court.” In *Guardianships of Adults*, Quinn states, “State laws are vague about the actual duties of guardians ad litem, which has resulted in confusion as to whether they are representing the person with diminished capacity as any attorney would represent any client or if they are acting as an informational arm of the court” (p. 142).

- 270 were members of the National Guardianship Association and/or were Registered Guardians or Master Guardians
- 38 were National Academy Elder Law Attorneys members
- 24 were National College of Probate Judges members
- 17 were National Association of Court Managers members
- 25 were National Disability Rights Network members

## IV. Findings

### A. Guardian Reporting Requirements

1. *Filing of Personal Status Reports.* The primary way that courts are informed about the individual's status after a guardianship has been established is through periodic guardian reports. The 1991 ABA monitoring study recommended that "(t)he guardian should be required to report to the court . . . on the ward's personal status and finances no less than once a year."<sup>31</sup> Requiring periodic personal status reports is now generally accepted in courts across the country.<sup>32</sup> The most frequent requirement is for annual reporting. The Uniform Guardianship and Protective Proceedings Act requires annual reports and accounts.<sup>33</sup> The Wingspan 2001 recommendations urge "mandatory annual reports of the person and annual financial accountings."<sup>34</sup>

As of the end of 2004, all but two states<sup>35</sup> statutorily required personal status reports, although the required frequency of filing varied. The majority of state statutes require personal status reports to be filed at least annually, although some leave the frequency to the discretion of the court.<sup>36</sup>

In the 1991 ABA survey, although 43 state statutes required personal status reports, respondents in only 18 states said the court uniformly requires guardians to file such reports. Moreover, respondents from 11 states said guardians were not routinely required to file these reports. Answers from respondents in the remaining 19 states showed great variability. Overall, "131 respondents (67.5%) said that personal status reports were required, 40 said they were not, while 23 said that reporting was optional."<sup>37</sup>

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<sup>31</sup> Hurme, p. 15.

<sup>32</sup> Hurme & Wood, p. 898.

<sup>33</sup> National Conference of Commissioners on Uniform State Laws. (1997). *Uniform Guardianship and Protective Proceedings Act*, §317 & §420.

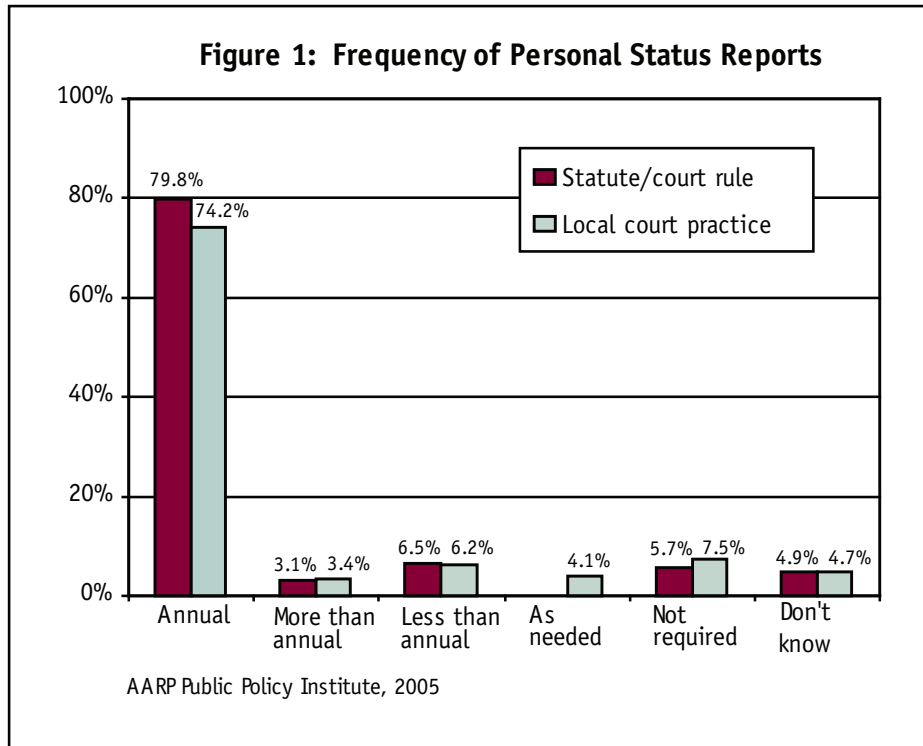
<sup>34</sup> Wingspan Recommendations, #51.

<sup>35</sup> Delaware and Massachusetts.

<sup>36</sup> See guardianship monitoring chart on the website of the ABA Commission on Law and Aging, <http://www.abanet.org/aging/guardian5.pdf>.

<sup>37</sup> Hurme, p. 17.

In the 2005 AARP survey, a substantial majority of respondents (74.2%) reported that the court practice is to require annual filing of these reports, yet an even larger number of respondents (79.8%) reported that their statute or rule requires annual filing. The statistical comparison reveals that significantly fewer respondents reported annual report requirements in local court practice than under statute/court rule. This finding seems to indicate that a small but statistically significant number of courts do not impose their jurisdiction’s specific statutory or regulatory mandate of annual reporting.<sup>38</sup>



2. *Format of Personal Status Reports.* Guardian reports must provide the court with sufficient information about the person’s condition and care, yet not be overly burdensome to fill out. The 1991 ABA study recommended that “(t)he guardian’s written report on the ward’s personal status should be designed to encourage some narrative responses that will provide the reviewer with a concise explanation of the ward’s circumstances, the care the guardian is providing and the need to continue the guardianship.”<sup>39</sup>

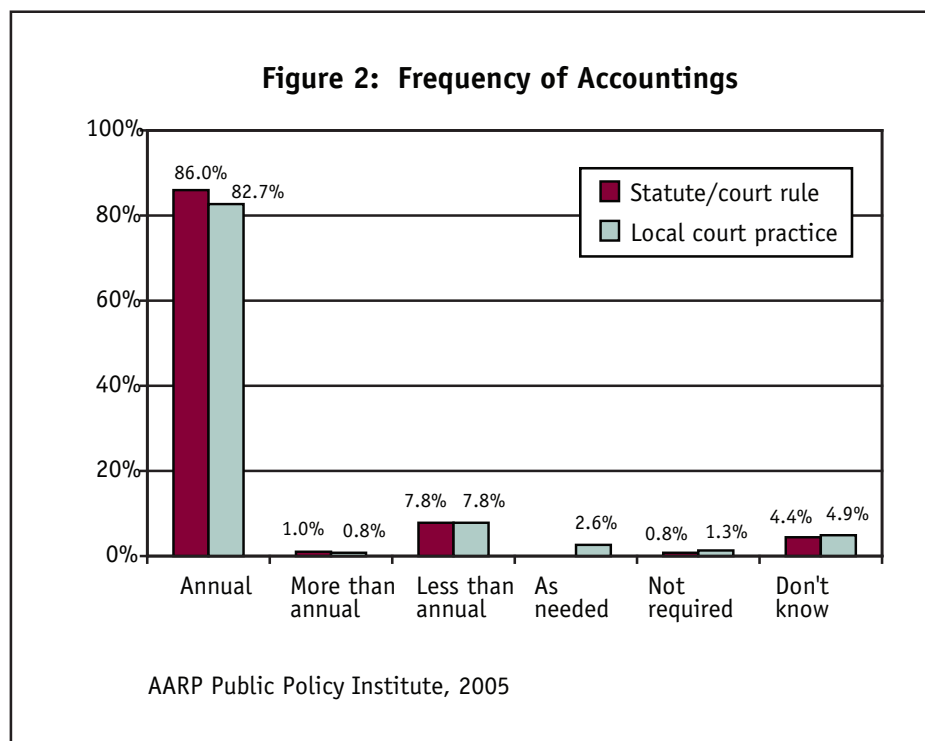
The 2005 survey found that the format and required elements for personal status reports varies. The most common format required is “limited or brief narrative responses”

<sup>38</sup> The survey also revealed that 89.4% of respondents stated that their statute or court rule required filing personal status reports at some regular interval (annual, more than annual or less than annual), while 83.8% of respondents said that their court required regular filing (again, combining annual, more than annual, and less than annual). There was no significant difference between statute/court rule and actual practice for the other possible options for frequency requirements. Some 4.1% of respondents stated that the court’s practice was to require personal status reports on an “as needed” basis.

<sup>39</sup> Hurme, p. 15.

(44.2%). Approximately one-fourth of the respondents stated that their court's report "combines checklist and narrative" (25.6%). Thus the majority of respondents practice in courts requiring a moderate amount of detail. Only 10.1% of respondents report that their courts require comprehensive narratives (the most detailed option), and just 2.6% percent reported using a checklist (probably the least detailed). About 10% (10.1%) of respondents stated that their courts do not require personal status reports from guardians of the person, and 7.5% did not know their court's practice.<sup>40</sup>

3. *Accountings.* Due to the probate roots of guardianship, probate courts are historically familiar with requiring and auditing accounts from executors and guardians of the estate. Since the 1988 Wingspread conference recommendations, experts and professional groups have repeatedly recommended that courts require guardians of the estate to file reports on their ward's finances at least annually. These recommendations can be found in the 1991 ABA monitoring study, the Uniform Guardianship and Protective Proceedings Act, the *National Probate Court Standards*, and the 2001 Wingspan conference recommendations.<sup>41</sup> All states statutorily require periodic accountings, with annual being the most common time interval, although a number of states defer the frequency of filing to the probate courts' discretion.



Eighty-six percent of survey respondents stated that their statute or court rule requires accountings annually. Slightly fewer (82.7%) reported that their court requires accountings annually, and, although slight, that difference was significant. Other findings regarding local

<sup>40</sup> This response seems to contradict the response to a separate question about the court's practice regarding the required frequency of personal status reports. In response to that question, only 29 (7.5%) of the respondents stated that their court does not require these reports (compared to 39 [10.1%] here). The same number of respondents, 387, answered both questions.

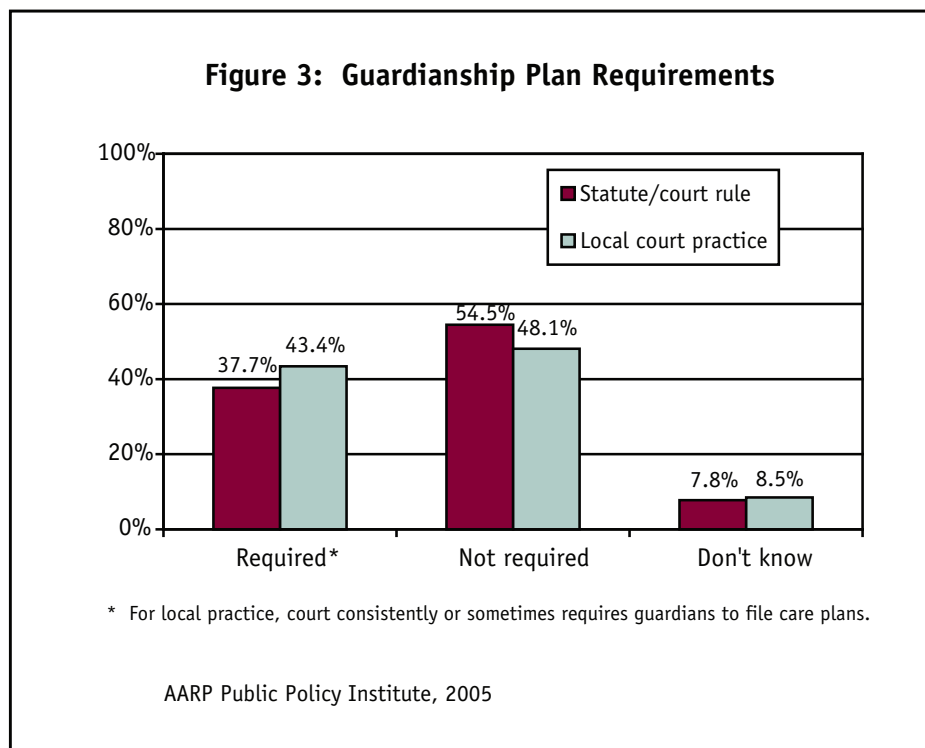
<sup>41</sup> Hurme & Wood, pp. 897-899; Wingspan Conference Recommendations, 2002, p. 605.

court requirements on accountings are accountings required more frequently than annually (0.8%); accountings required less frequently than annually (7.8%); accountings requested as needed (2.6%); no accountings required (1.3%); and don't know (4.9%).<sup>42</sup>

## B. Guardianship Plans

A guardianship plan is a forward-looking document submitted by a guardian to the court describing the proposed care of the individual and reporting on past care. Guardianship plans provide a baseline inventory that enables the court to measure the guardian's future performance. The concept of a guardianship plan, introduced in 1979 in an ABA model guardianship statute,<sup>43</sup> has been echoed in every major set of guardianship recommendations.<sup>44</sup> In contrast to accountings and personal status reports, only a few states mandate care plans by statute—with the filing of the petition, following appointment of a guardian, or with the annual report.<sup>45</sup> There are few data on whether guardianship plans are actually in use.

The 2005 survey reveals that 34.1% of respondents practice in a court that consistently requires guardians to file plans for future care of the individual, and 9.3% of respondents reported that the court sometimes requires guardians to file plans. Almost half of respondents (48.1%) stated that their court does not require filing of plans, and 8.5% of respondents did



<sup>42</sup> None of these other options was significantly different in practice from what is required by statute or court rule.

<sup>43</sup> American Bar Association, Commission on the Mentally Disabled. (1979). *Guardianship & conservatorship*, Model Statute, §17(2).

<sup>44</sup> Hurme & Wood, pp. 892–893.

<sup>45</sup> States requiring care plans include Oklahoma, Washington, Colorado, Maryland, New Hampshire, and Maine; Hurme, Sally. (2005). *Guardian accountability*. In Mary Joy Quinn (ed.), *Guardianships of adults: Achieving justice, autonomy and safety*. New York: Springer Publishing Company, p. 171.



not know. Respondents reported significantly more local courts consistently or sometimes requiring guardians to file plans (43.4%) than statutory or court rule requirements to do so (37.7%).

### C. Court Assistance to Guardians

Serving as a guardian is “one of society’s most serious and demanding roles.”<sup>46</sup> The guardian must step into the shoes of another and make critical decisions about care and property—sometimes even about life and death. To do an effective job, guardians require assistance and direction from the court in the form of training, clear specification of reporting responsibilities, and provision of reporting forms, along with samples showing how they should be filled out. The 1991 ABA study concluded that “despite the difficulty of the guardian’s tasks, in many instances the guardian does not receive much assistance in taking on these new responsibilities.” Over 40% of the 1991 survey respondents rated “overall assistance given to new guardians” as low.<sup>47</sup>

1. *Guardian Training.* Since guardians must be knowledgeable about a vast array of topics, ranging from housing and long-term care to medical and psychological treatment to accounting, policy recommendations since the 1980s have endorsed court-sponsored training and ongoing assistance to guardians. For example, the National Probate Court Standards urge that probate courts “develop and implement programs for the orientation and training of guardians.”<sup>48</sup> Training and assistance may include guidance in reporting responsibilities.

Few state statutes mandate guardianship training and assistance, and such support generally is left to the initiative of the court. Florida and New York are exceptions; each has mandatory training (that can be waived under certain circumstances) with specified course content, including instruction in the guardian’s duties and responsibilities.<sup>49</sup> Arizona and Washington have training requirements as part of a certification program for private professional guardians.<sup>50</sup> In the 1991 ABA survey, 48% of respondents named lack of guardian training as a serious problem, 28% said it was the most important problem, and 51% listed training as a key way to improve monitoring practices.<sup>51</sup>

According to the 2005 survey, the most commonly available resource for guardians is court-provided written instructions or manuals (43.2% of respondents). More than one-third of respondents (37.5%) reported that training sessions are sponsored by noncourt entities in their jurisdiction. Videos are available for viewing in the courthouse or elsewhere, reported

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<sup>46</sup> ABA Commission on the Mentally Disabled & ABA Commission on Legal Problems of the Elderly. (1989). *Guardianship: An agenda for reform—Recommendations of the National Guardianship Symposium and policy of the American Bar Association*. Washington DC: ABA.

<sup>47</sup> “The average score of all respondents within 21 states was below a 3, with 1 being the lowest and 6 being the highest. Forty-three percent (85 out of 194) of the respondents rated the assistance as a 1 or 2; five percent (10 out of 194) gave the highest rating (6) to the assistance given guardians,” Hurme, p. 25.

<sup>48</sup> Standard 3.3.13, Commission on National Probate Court Standards, (1993). *National Probate Court Standards*. National Center for State Courts.

<sup>49</sup> Hurme & Wood, pp. 877–878.

<sup>50</sup> For instance, the certification process in Arizona requires the guardian to attend training.

<sup>51</sup> Hurme, p. 28.

17.1% of respondents. Just over 10% of respondents (10.9%) stated that court-provided training sessions are available. Over one-fifth (22%) of respondents said that no resources are available to guardians, and 8.8% of respondents did not know. More than one-quarter of respondents (27.1%) reported that multiple resources are available.<sup>52</sup>

2. *Guidance on Reporting Responsibilities.* In addition to training, courts can assist guardians by providing clear direction on reporting and accounting responsibilities. A significant majority of survey respondents (62.8%) reported that their court routinely specifies reporting and accounting responsibilities in the initial guardianship order or letter. About one-fourth of respondents (24.8%) stated that court orders typically do not include reporting responsibilities, 5.4% said that their court sometimes specifies reporting responsibilities, and 7% did not know.

3. *Reporting Forms and Samples.* The survey found that the most common source of reporting and accounting forms is the court clerk (42.6% of respondents). One-third of respondents (33.1%) reported that forms are on the court's website, and an equal number of respondents (33.1%) stated that the court relies on attorneys to make forms available. Only 19.9% of respondents said that the court routinely sends forms to guardians, and 13.7% were unaware of their court's practice. Almost one-third of respondents (31.5%) noted that their court uses more than one method of furnishing reporting and accounting forms.

Finally, samples or models of appropriately prepared personal status reports and accountings may be helpful to guardians. Over 40% of survey respondents (40.1%) said that no samples were available. Similar numbers of respondents indicated that their court relies on attorneys to make samples available (20.7%) and makes samples available from the clerk (18.1%). A smaller number of respondents stated that samples are available on the court's website (8.8%). Very few reported that the court routinely sends samples to guardians (3.9%). Some 11.9% said the court uses more than one means of providing samples or models of appropriately prepared reports, and 19.6% of respondents did not know.

## **D. Enforcing Reporting Requirements**

The 1988 Wingspread Conference participants recommended that courts "vigorously enforce timely filing of all required reports." Theoretically, state statutes inform guardians of reporting requirements and frequency. Moreover, reporting deadlines may be set out in the initial court order.<sup>53</sup> However, notification to guardians when the due date is approaching or has passed enhances the consistency of timely filing. The 1991 ABA monitoring study noted that "experience and our survey indicate that unless courts take steps to enforce reporting requirements, few reports are filed." The study observed: "in many courts it is common practice to notify guardians if reports and accounts are not filed on time."<sup>54</sup>

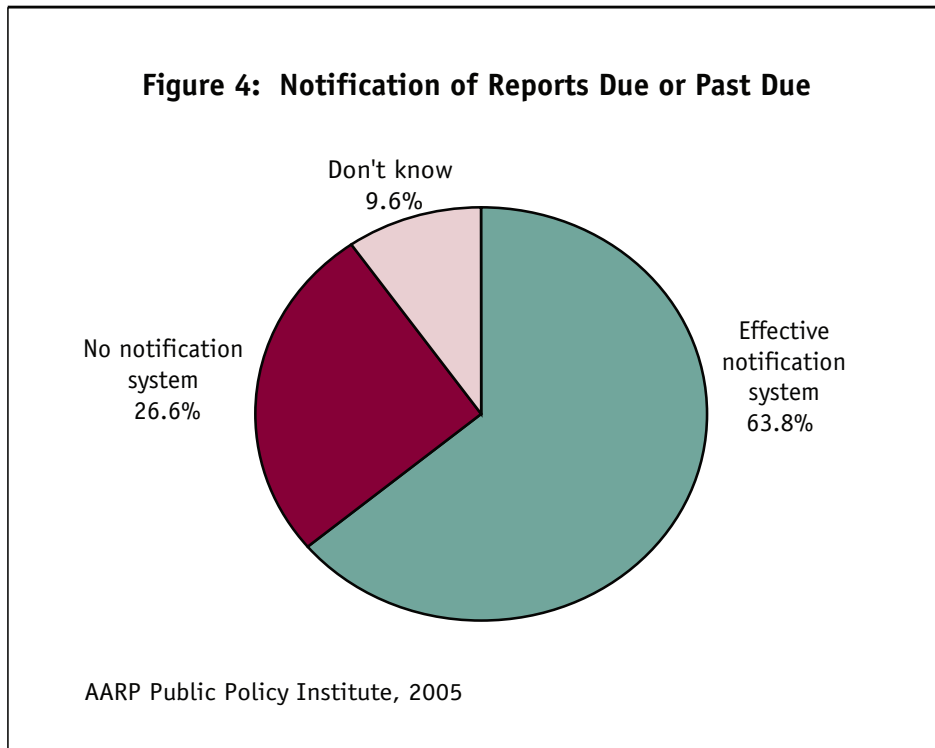
The 2005 study found that courts vary in the extent to which they notify guardians that reports are due or past due. A total of 63.8% of survey respondents indicated that

<sup>52</sup> A handful of responses were discounted because they either checked one of the listed resources and "no resources available" or one of the listed resources and "don't know."

<sup>53</sup> As noted in Sec. C(2) above, some 62.8% of 2005 survey respondents said the court routinely specifies reporting and accounting requirements in the initial guardianship order or letter.

<sup>54</sup> Hurme, pp. 31-32.

the court “has an effective notification system in place,” while 26.6% said there was no notification system in place, and 9.6% did not know. Without such a notice, guardians—particularly family guardians who may be unfamiliar with the process—may not understand or recognize the mandate for filing a report, and the judge may be left without adequate information about the ward and his or her assets.



What happens if guardians fail to respond to an initial notice? The *National Probate Court Standards* commentary indicates that “the court should be prepared to investigate those situations where a guardian fails to submit any report required by the original order.”<sup>55</sup> Guardianship statutes give judges an arsenal of sanctions to impose.<sup>56</sup> In the 2005 survey, respondents reported that state statute or court rule includes permanently removing the guardian upon failure to file (43%), holding the guardian in contempt (40%), suspending the appointment (32%), appointing a temporary successor guardian (28%), and denying the guardian’s compensation (25%).<sup>57</sup>

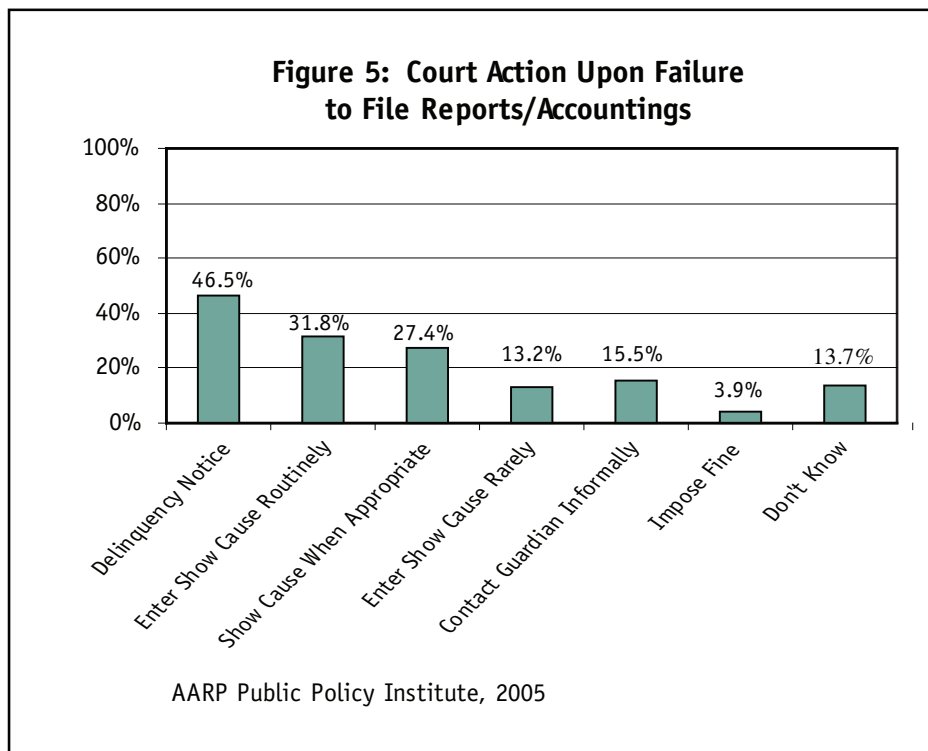
How are these statutory sanctions translated into practice? The 1991 ABA study showed that courts are more likely to take action if an accounting is not filed than if a personal status

<sup>55</sup> Commission on National Probate Court Standards, pp. 75–76.

<sup>56</sup> See state statutory guardianship monitoring chart on the website of the ABA Commission on Law and Aging, <http://www.abanet.org/aging/guardian5.pdf>

<sup>57</sup> Additional responses included terminating the guardianship (23%), appointing an attorney for the individual (18%), reducing the guardian’s fee (16%), collecting on the bond (16%), obtaining a judgment against the guardian (15%), imposing a surcharge (13%), reporting the guardian to the district attorney or law enforcement (10%), increasing the bond or other security (10%), attaching the guardian’s assets (8%), ordering funds to a court-supervised account (7%), imposing a daily fine (7%), and imprisoning the guardian (3%). Some 17% of respondents indicated that the statute did not state any sanction, 18% did not know, and 1% did not reply.

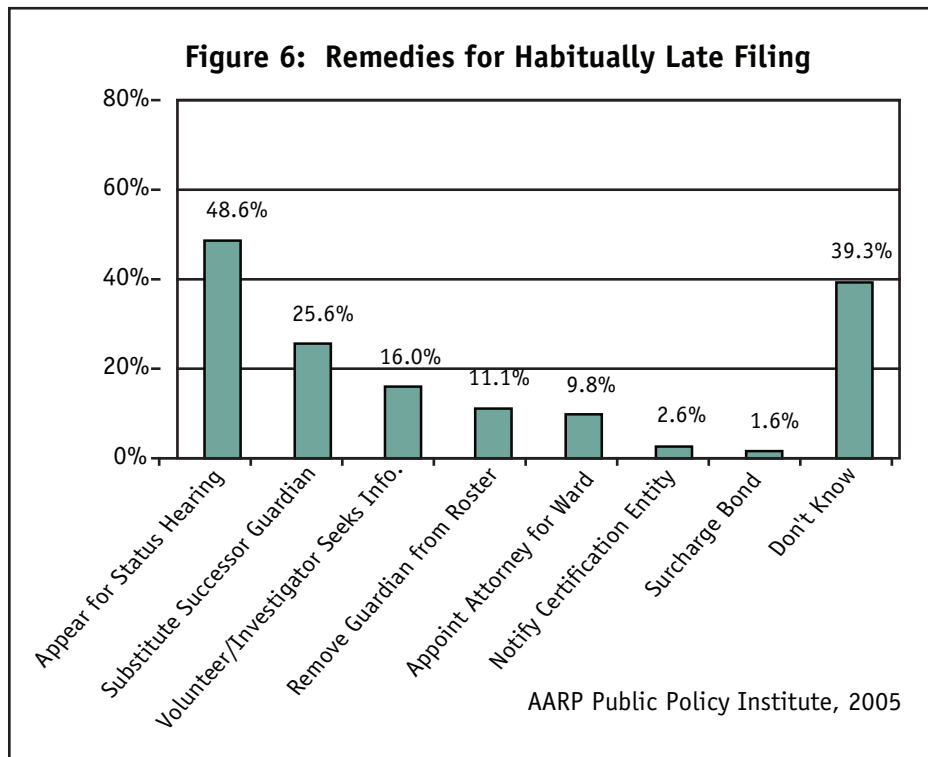
report is not filed, but indicated that, overall, sanctions are not used “frequently.”<sup>58</sup> Survey respondents in 2005 reported a range of court actions upon failure to file. The most common approach is to send the guardian a notice of delinquency (46.5%)—that is, a statement that the report is overdue. Entering show cause orders (or the local equivalent requiring that the guardian appear in court and explain why the report has not been filed) is also a frequent court action, with 31.8% reporting routine use and 27.4% indicating use when appropriate. Only 13.2% said show cause orders are rarely used when a report is not filed in a timely manner. In addition, 15.5% of survey participants said court staff contact the guardian informally. Fines appear to be infrequent, with only 3.9% reporting them. Over 13% of survey respondents did not know what sanctions are imposed. In general, it appears that the sanctions most frequently used in practice (sending a notice of delinquency and entering a show cause order) are less rigorous than the full range of sanctions named as included in statute or court rule, perhaps because these are first steps the courts take to urge guardians to carry out their duties.



If the guardian is habitually late in filing reports or accountings, courts may be apt to take stronger measures. While a substantial number of respondents in the 2005 survey (39.3%) did not know what measures the court takes, close to half (48.6%) reported that the court requires such a guardian to appear for a status hearing. Over one-quarter (25.6%) said

<sup>58</sup> Hurme, pp. 33–34. In the 1991 survey, respondents from 108 counties identified the person who sent late account notices, while respondents from 94 counties identified the person who sent late status report notices. Fourteen counties do not send late accounting notices, and 16 counties do not send late status report notices. Also, respondents in 73 counties indicated that courts routinely issue show cause orders when accountings are not filed, and 53 counties do so when personal status reports are not filed.

the court revokes the appointment and appoints a successor guardian; 16.0% said the court asks an investigator or volunteer to obtain more information; 11.1% indicated that the court removes the guardian from the appointment roster; 9.8% said the court appoints an attorney for the individual under guardianship; and a very small proportion said the court notifies a certification entity (2.6%) or surcharges the guardian’s bond (1.6%).



## E. Procedures for Review

Without consistent court review and response, guardian reports serve little purpose other than having a possible sentinel effect. As one source observed, “if an annual guardian report is merely going to be placed in a file, unread or at most given a cursory review, it is nothing but a palliative that squanders the guardian’s time and energy.”<sup>59</sup> The Wingspread conference urged courts to “increase the frequency and quality of report reviews”; the *National Probate Court Standards* set out the need for “written policies and procedures to ensure prompt review of reports and requests”; and the Uniform Guardianship and Protective Proceedings Act calls for courts to establish a system for filing and review of reports.<sup>60</sup>

1. *Designation of Reviewers.* Clearly, someone with expertise must examine the reports and accountings for completeness and accuracy and flag any problems needing attention. The 1991 ABA monitoring study recommended the specific judges or court personnel be responsible for review of accountings and personal status reports. It found that in about half

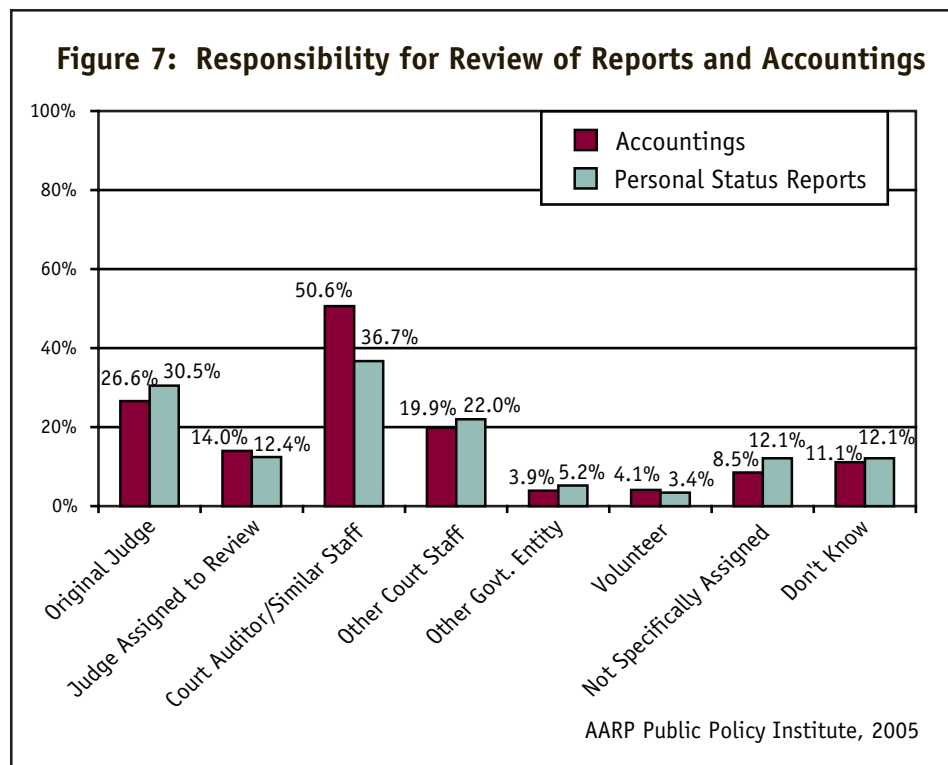
<sup>59</sup> Frolik, Lawrence. (1991, July). Abusive guardians and the need for judicial supervision. *Trusts & Estates*, 130, 41.

<sup>60</sup> American Bar Association Commission on the Mentally Disabled & Commission on Legal Problems of the Elderly. (1989). Wingspread Recommendations, *Guardianship: An agenda for reform*, Rec. V-B; NCPS, Standard 33.1.5; National Conference of Commissioners on Uniform State Law. (1997). *Uniform Guardianship and Protective Proceedings Act*, Sec. 317(c).

the jurisdictions surveyed judges reviewed guardian reports, and in half clerks reviewed the reports, while accountings generally were examined by court auditors or clerks.<sup>61</sup>

In the 2005 survey, over half of the respondents (50.6%) indicated that financial accountings are reviewed by a court auditor or other court personnel for whom this is a primary responsibility. A significant number noted that the judge performs the review—26.6% said the judge who entered the order reviews the accountings, and 14.0% said a judge is assigned to review the accountings. Close to one-fifth of respondents (19.9%) reported that other court staff conduct the review, and 4.1% said volunteers conduct it. A very small proportion of respondents (3.9%) indicated that a governmental entity conducts the review. Finally, 8.5% of survey respondents said no one has the responsibility on a regular basis to review the financial accountings, and 11.1% did not know.

The 2005 survey also found that responsibility for regular review of personal status reports most commonly lies with a court investigator or other court staff for whom this is a primary task (36.7% of respondents) or by the judge who entered the order (30.5%). In other cases, the review may be conducted by a judge specifically assigned to do so (12.4%), other court staff (22.0%), or volunteers (3.4%). A few respondents (5.2%) indicated that a government entity conducts the review.<sup>62</sup> Notably, 12.1% of survey respondents said no one has regular responsibility for conducting the review, and 12.1% did not know.



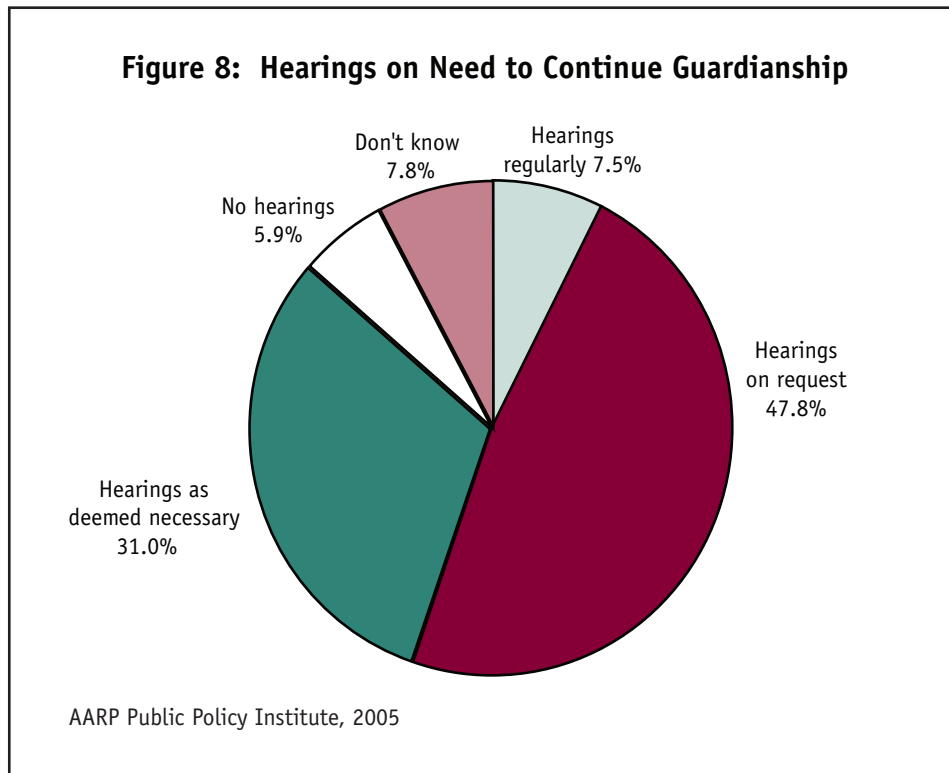
2. Review Criteria. The 1991 monitoring study recommended the establishment of specific review criteria, maintaining that “set criteria assist the reviewer in knowing what

<sup>61</sup> Hurme, p. 42.

<sup>62</sup> For instance, in Virginia the local departments of social services conduct the review.

to look for in the documents and aid the guardian in understanding what information the court expects.”<sup>63</sup> The 2005 survey found that review is guided by state statutes (28.7% of respondents), state court rules or policies (7%), and local courts’ rules (17.1%). Close to one-quarter of respondents said there are no specific standards to guide review, and 22.5% did not know.

3. Review of Need to Continue Guardianship. Since the condition and circumstances of the incapacitated person may change over time, there is a need to determine periodically whether guardianship is still necessary. According to the *National Probate Court Standards*, “the probate court should adopt procedures for the periodic review of the necessity for continuing a guardianship. A request by the respondent for a review of the necessity for continuing a guardianship should be addressed promptly.”<sup>64</sup> Currently, 29 state statutes include provisions requiring or permitting court review of continuing need.<sup>65</sup> The 1991 ABA survey found that status review procedures “vary from county to county.”<sup>66</sup>



In the 2005 survey, almost half of those responding indicated that the court holds hearings on the need to continue or modify the guardianship on request (47.8%), while 31% said the court holds hearings as it deems necessary, 7.5% said the court holds hearings

<sup>63</sup> Hurme, p. 37.

<sup>64</sup> NPCA, Standard 3.3.16.

<sup>65</sup> See state statutory guardianship monitoring chart on the website of the ABA Commission on Law and Aging, <http://www.abanet.org/aging/guardian5.pdf>

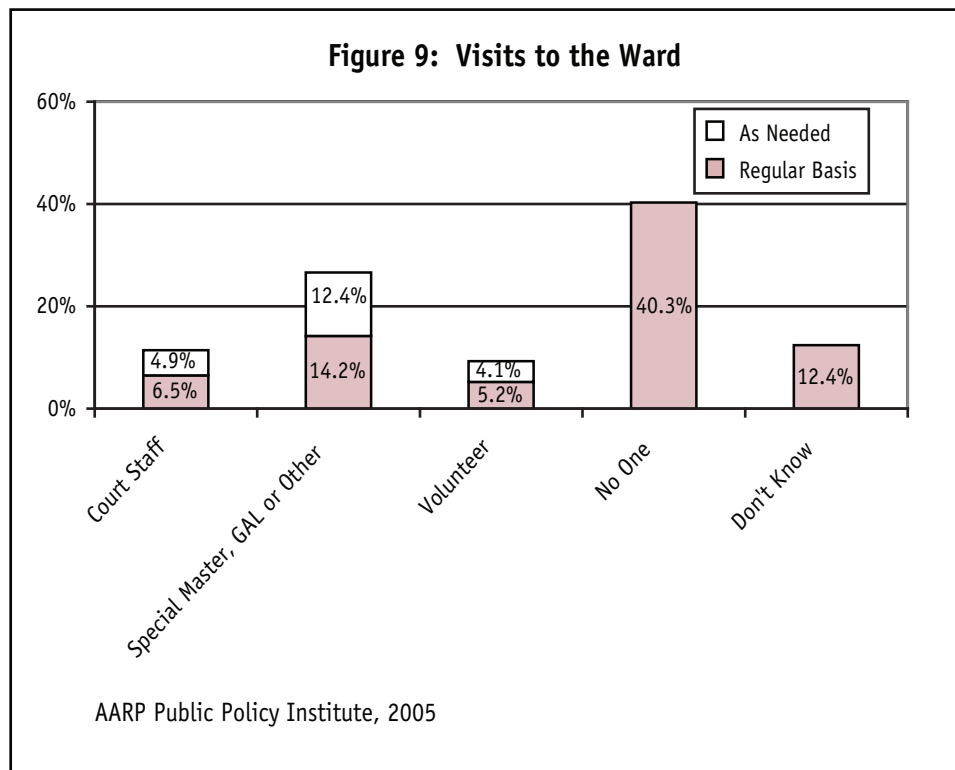
<sup>66</sup> Hurme, p. 54; respondents from 13 states indicated that status review hearings were routine, but others from different counties in the same states did not list status hearings as routine.

regularly, 5.9% said the court does not hold hearings, and 7.8% did not know. Thus, a review of the need to continue the guardianship does not appear to be “periodic,” as called for by the probate standards, but rather episodic.

## F. Verification and Investigation

Quality monitoring requires going beyond a paper review to verify the accuracy of the reports and accounts and investigate the financial and personal well-being of the incapacitated person. The 1988 Wingspread conference recommended that courts “use such supplemental means as volunteers, review boards, and investigators to verify the contents of the report and the circumstances of the ward,”<sup>67</sup> and the 1991 ABA monitoring study urged courts to establish verification procedures, investigate complaints, use volunteers to monitor the individual’s personal condition, and use other methods for verification and investigation.<sup>68</sup>

Verifying the information in a guardian’s report requires having someone visit the individual to check on living arrangements, changes in condition or needs, frequency of guardian visits, and implementation of any care plan. Some courts have used volunteers, and in the 1990s the AARP Volunteer Guardianship Monitoring Project used trained AARP members to visit incapacitated persons, verify report information, and relay any concerns to the court. California has long relied on a statutory system of probate court investigators who regularly visit each individual under guardianship.



<sup>67</sup> American Bar Association Commission on the Mentally Disabled & Commission on Legal Problems of the Elderly, 1989.

<sup>68</sup> Hurme, p. 45.



1. *Verification of Guardian Reports.* The 2005 study found that no one is designated to verify the information in the jurisdictions of 34.4% of survey respondents. In 16.8% of jurisdictions, court staff verify as needed, and in 10.1% court staff verify each report. In 5.9% of jurisdictions, a special master, guardian ad litem, or other person verifies each report, and in only 2.6% of jurisdictions, such investigators verify as needed. Thus, only 16% of respondents reported that someone at the court verifies every report. Volunteers verify as needed in 3.4% of jurisdictions and regularly in 2.6%. Some 23.8% of respondents did not know.

2. *Visits to Person under Guardianship.* A related question on the 2005 survey inquired specifically about visits to the incapacitated individual. A striking finding was that no one visits in the jurisdictions of 40.3% of those responding. Visitors in the remaining jurisdictions include special masters, guardians ad litem or other persons on a regular basis (14.2%) and as needed (12.4%); court staff on a regular basis (6.5%) and as needed (4.9%); and volunteers on a regular basis (5.2%) and as needed (4.1%). Only about a quarter of respondents (25.9%) reported that someone visits the person regularly. Some 12.4% of respondents did not know.

3. *Verification of Accountings. Triggers for Further Inquiry.* Because financial management of the incapacitated person's assets is critical, courts also require systems to verify and investigate the financial information in accountings. Special auditors, commissioners of accounts, trust clerks and attorneys, or certified public accountants can conduct such investigations. A key question in an investigation of financial information is whether it triggers an inquiry of the incapacitated person's well-being if a possible problem is uncovered, thus calling for closer judicial scrutiny. Close to 38% of survey respondents said the court investigates in such a situation, 13.4% said review of the financial information focuses only on the bottom line to determine if the calculations are correct, and 25.1% said that consideration of the individual's well-being in a review of the accounting varies by judge, examiner, and case. Some 23.8% did not know.

4. *Response to Complaints.* Finally, an important facet of verification is the court's response to complaints. The *National Probate Court Standards* commentary emphasizes that "the courts should . . . be especially attentive to complaints of abuse and be prepared to investigate their validity immediately." The 1991 ABA monitoring study recommended designating someone to investigate complaints and verify information.<sup>69</sup>

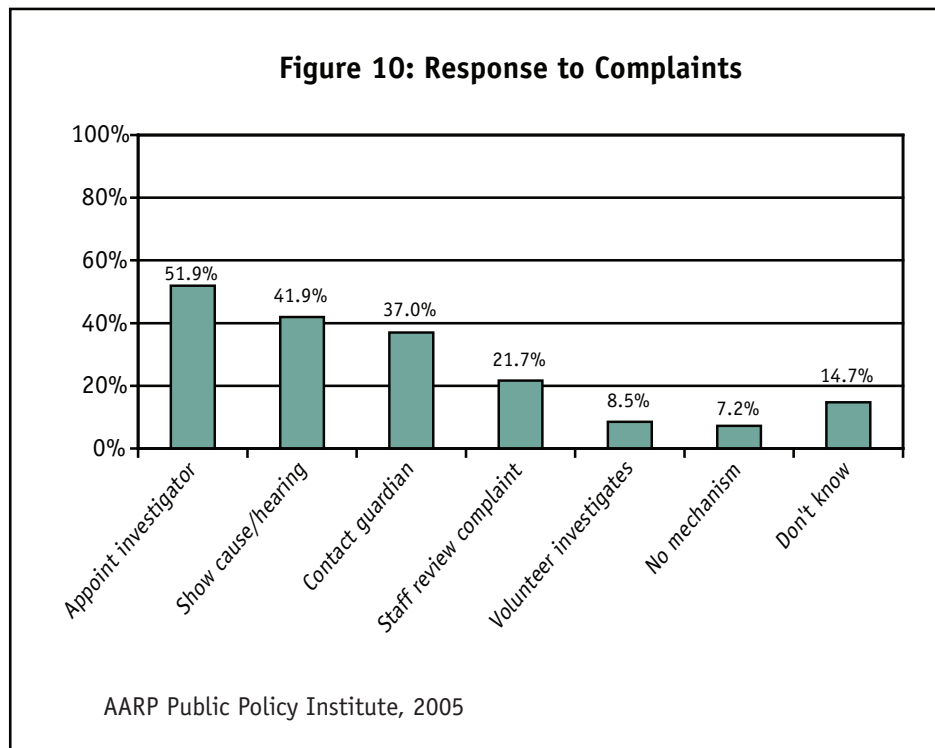
The 2005 survey found that the most common court response to complaints—reported by over half of the survey participants—is to appoint a guardian ad litem, special master, or visitor to investigate (51.9%). Other common practices include entering a show cause order or setting a hearing (41.9%) and contacting the guardian (37.0%). In addition, courts may ask court staff to review the complaint (21.7% of respondents) or use volunteers to investigate (8.5%). Some 7.2% of respondents indicated that there is no mechanism in place to respond to complaints, and 14.7% did not know.

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<sup>69</sup> Hurme, p. 45.

## G. Sanctions

When guardians violate their duty of care and fiduciary responsibilities toward incapacitated persons, the court must take action. The *National Probate Court Standards* provide that “the probate court should enforce its orders by appropriate means, including the imposition of sanctions,” and that “where the court learns of a missing, neglected, or abused respondent, it should take immediate action to ensure the safety and welfare of that respondent.”<sup>70</sup> Courts have a range of statutory sanctions for cases of malfeasance, including fines, contempt (declaring that a guardian has disobeyed court orders and will be punished), denial of compensation, suspension, removal, and more.<sup>71</sup>

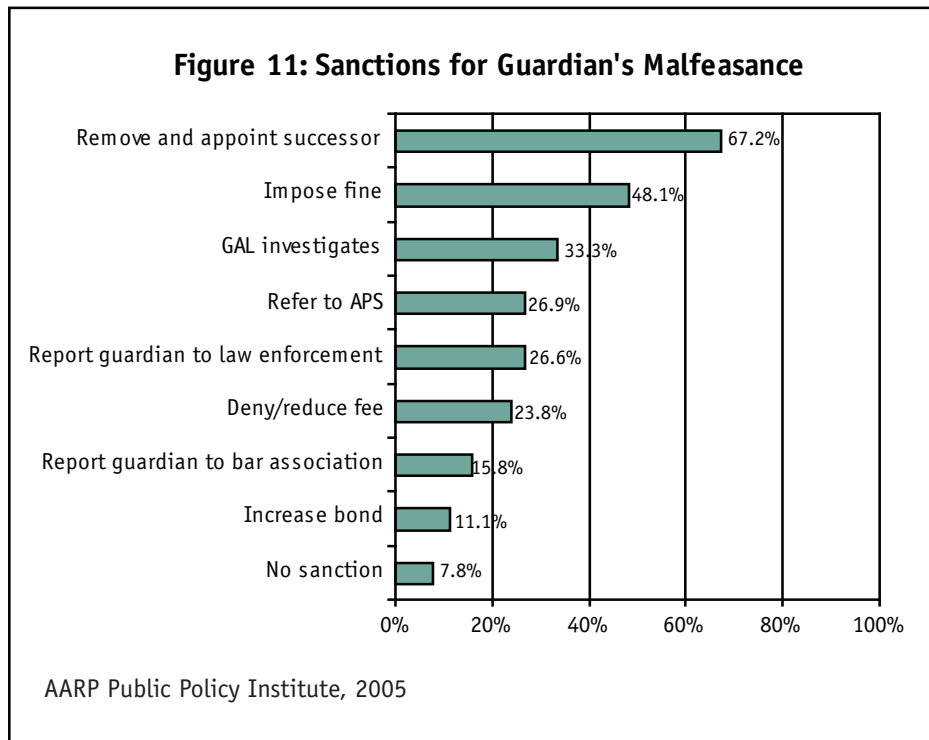


The most common sanction survey participants named was removal of the guardian and appointment of a successor guardian (67.2%), followed by imposing a fine (48.1%) and appointment of a guardian ad litem to investigate (33.3%). Courts may also make a referral to adult protective services (26.9%), report the guardian to law enforcement (26.6%), or report a guardian who is an attorney to the bar association (15.8%).<sup>72</sup> In some instances courts deny or reduce the guardian’s fee (23.8%), and, less frequently, courts may increase the bond or other security. Some 7.8% of survey participants said the court does not generally impose sanctions or take other actions.

<sup>70</sup> *National Probate Court Standards*, Standard 3.3.17.

<sup>71</sup> <http://www.abanet.org/aging/guardian5.pdf>; see also Hurme & Wood, pp. 913–914.

<sup>72</sup> See related issue at Sec. I. 4, below. If a guardian who is an attorney files reports late, 13.2% of respondents said the court files bar grievances when appropriate, 21.4% said such filing is rare, and only 0.3% said the court routinely files such grievances.



## H. Funding for Monitoring

Good monitoring requires sufficient resources—to fund staff, technology, training, and materials. The 1991 ABA study found that 52% of the guardianship experts surveyed named inadequate state appropriations as a barrier to monitoring, and 41% named inadequate local appropriations. The study indicated that most jurisdictions rely on multiple funding sources, and recommended that “(s)tate and local funding agencies should provide the courts with sufficient funds or revenues so the court will be able to monitor guardianship cases adequately.”<sup>73</sup> Thirteen years later, the July 2004 GAO study showed that funding remains a problem: “(m)ost courts surveyed said they did not have sufficient funds for guardianship oversight.”<sup>74</sup>

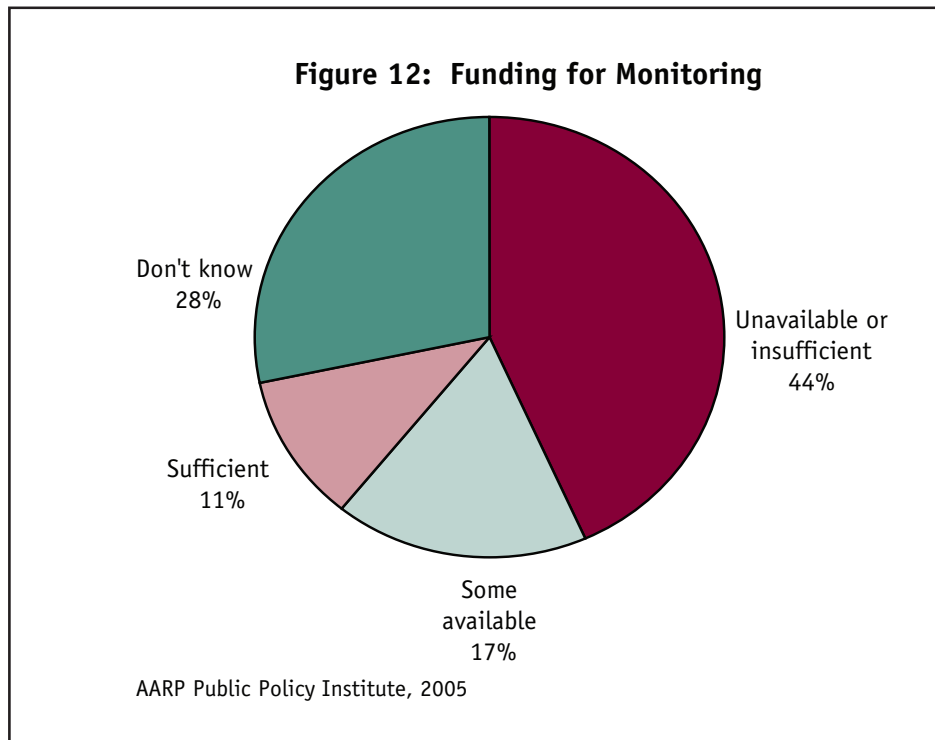
The 2005 survey continues to demonstrate serious funding gaps. More than 43% (43.4%) of respondents stated that funding for monitoring is unavailable or clearly insufficient, about 17% responded that some funding is available, and only 10.9% responded that sufficient funds are available to the court. A significant number of respondents (28.4%) did not know whether the court has sufficient monitoring funds.

As for sources of monitoring funds, the majority of respondents who identified funding sources stated that their courts rely on multiple sources. The source named most frequently (45.5% of respondents) was “state legislative appropriation specifically for guardianship monitoring.” After that, the most frequent sources are filing fees (16.5%); general appropriation for the judiciary (14.7%); county commission (11.6%); assessments

<sup>73</sup> Hurme, p. 59.

<sup>74</sup> GAO, p. 16.

against a person's estate (for individual case investigations, 9.0%); state judicial council or administrative office of courts (7.0%); fines or surcharges (1.8%); and public or private grants (1.6%). About 31% (31.3%) said there is no specific funding for guardianship monitoring, and 40% did not know.



## I. Role of Attorneys

Attorneys play multiple roles in the guardianship process. They may represent petitioners, guardians, alleged incapacitated persons, or individuals for whom a guardian has been appointed; they also may serve as guardian ad litem as well as taking on the duties of guardian after appointment. Both the court and the attorney must recognize the attorney's ethical responsibilities throughout the process.

The 1991 ABA report recommended that bar associations establish clear ethical guidelines for attorneys; attorneys for clients seeking to file guardianship petitions fully inform the client of a guardian's responsibilities (including reporting and accounting requirements); attorneys for guardians assist the guardian in fulfilling reporting requirements; and attorneys for wards assist the court in monitoring the individual's well-being throughout the guardianship or until dismissed by the court.<sup>75</sup> The *National Probate Court Standards* state that if a guardian who is an attorney is acting inappropriately, "the court should advise the appropriate disciplinary authority that the attorney may have violated his or her fiduciary duties to the respondent."<sup>76</sup>

<sup>75</sup> Hurme, p. 63.

<sup>76</sup> *NPCS*, Standard 3.3.17.

1. *Ethical Guidelines.* According to 18% (18.6%) of survey respondents, their state bars have clear and complete ethical guidelines for attorneys representing the petitioner, guardian, ward, or proposed ward. Some said that the guidelines are less than clear—14.2% said that the guidelines are clear in some aspects, 8% said the guidelines are murky concerning the roles of attorneys, and 9% said there are no applicable guidelines. Half of the survey respondents did not know whether their state bar associations have ethical guidelines for attorneys representing parties in a guardianship case; this is not surprising in that only 14.5% of survey respondents said that their primary role in the guardianship process is as attorney.

2. *Assistance with Reporting.* After a guardian is appointed, an attorney may assist the guardian in fulfilling obligations, including reporting requirements. In the 1991 ABA survey, 56% of respondents indicated that new guardians routinely received advice from an attorney.<sup>77</sup> In the 2005 survey, about half of the survey respondents (53.7%) stated that the extent to which attorneys for guardians assist guardians with reporting and accounting varies by attorney, guardian, or case circumstances. According to 16.3% of respondents, attorneys in their jurisdiction routinely provide extensive assistance with reporting requirements, while another 9.6% stated that attorneys provide some assistance. Just over 10% (10.9%) reported that attorneys do not generally assist the guardians, and 9.6% did not know.

3. *Role of Attorney after Appointment.* The survey indicates that the role of the attorney for the incapacitated individual in monitoring the person's well-being after a guardian is appointed varies greatly. According to one-third of the respondents (33.1%), the attorney is dismissed by the court after the appointment and has no further role. Only 7.5% of respondents stated that the attorney remains the attorney of record and routinely stays actively involved throughout the guardianship case, while 26.9% of respondents said that the attorney remains the attorney of record, but his or her involvement varies or is infrequent. About 20% (20.2%) of respondents stated that the attorney remains involved until the court and the attorney determine that the attorney is no longer needed. The remaining 12.4% of respondents did not know.

4. *Filing of Bar Grievance.* How do courts treat guardians who are attorneys and are habitually late in filing reports? While a substantial majority of respondents (65.1%) did not know the answer, the remaining respondents indicate that it is rare for the court to file a grievance with the state bar. Only one respondent (0.3%) stated that the court routinely files grievances. Over 20% (21.4%) said that the court rarely files grievances, and 13.2% stated that the court files grievances when appropriate.<sup>78</sup>

## **J. Court-Community Interaction**

The 1991 ABA monitoring study urged that courts be “aware of and encourage the efforts of other community groups and agencies that monitor wards’ well-being.” If courts and community agencies are both engaged in monitoring the status of at-risk individuals, they can strengthen their effectiveness by working together. Such community entities

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<sup>77</sup> Hurme, p. 65.

<sup>78</sup> See Sec. G, above, indicating that 15.8% of respondents said that if a guardian who is an attorney demonstrates malfeasance, the court files a report with the state bar.

might include adult protective services, long-term care ombudsman programs, state and area agencies on aging, guardianship associations, and bar association grievance committees. For instance, adult protective services staff may investigate reports of suspected abuse, neglect, or exploitation in which a guardian is involved. A long-term care ombudsman may encounter a nursing home or assisted living resident who is not receiving needed attention from a guardian. If there is a regular channel for such community actors to report guardian abuse or neglect to the court, the judge can take needed corrective actions.

Moreover, broader guardianship reform recommendations over the years have encouraged court-community linkages. The 1988 Wingspread conference urged states to create “multidisciplinary guardianship and alternatives committees” to plan for reform (including monitoring) and enhance education of all stakeholders. The 2001 Wingspan conference charged state and local jurisdictions to create “an interdisciplinary entity focused on guardianship implementation, evaluation, data collection, pilot projects and funding.”<sup>79</sup> Such interdisciplinary court-community committees could target guardian accountability.

In addition, Social Security field offices are responsible for appointing and monitoring representative payees, who may or may not be the same individuals or entities as the guardian. The Department of Veterans Affairs appoints and monitors fiduciaries to handle benefits for incapacitated veterans. The GAO’s 2004 report found that state courts handling guardianship and Social Security and VA offices lack coordination, even though they serve the same population of at-risk individuals. The report noted that the courts and the federal agencies do not systematically notify each other when they discover that a guardian or a representative payee is abusing the incapacitated person. “This lack of coordination could leave the incapacitated person who needs a representative payee or guardian without one.”<sup>80</sup>

The 2005 study revealed that interaction between courts and community entities concerning guardianship monitoring is relatively infrequent. More than a quarter of survey participants (25.3%) indicated that the court is aware of such groups and communicates from time to time, and just under a quarter (24.0%) said the court has little contact. A small proportion of survey respondents said that the court does participate in multidisciplinary groups on guardianship and alternatives (10.9%) or collaborates with such groups on training and education (10.9%). In just a few cases (5.7%), the court has developed referral protocols with community groups. Many respondents (23.3%) did not know the relationship.

## **K. Data Systems and Court Technology**

1. *Court Maintenance of Guardianship Data.* The 2004 GAO report highlighted a grave lack of hard data on adult guardianship. It found that only one-third or fewer of the responding courts surveyed tracked the number of active guardianships for incapacitated adults and concluded that the dearth of statistical data limits oversight and efforts to improve the guardianship system. The report observed that:

Neither the states nor the federal government compile data concerning the incidence of abuse or people assigned a guardian or representative payee or even the number of

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<sup>79</sup> Wingspan Recommendations, Rec. #6.

<sup>80</sup> GAO, Highlights: What GAO found.

elderly people with guardians. Without better statistical data concerning the size of the incapacitated population or how effectively it is being served, it will be difficult to determine precisely what kinds of efforts may be appropriate to better protect incapacitated elderly people from exploitation, abuse and neglect.<sup>81</sup>

The GAO findings reflect continuing concern with lack of guardianship data over the course of many years. In 1994 experts from the National Center for State Courts noted that “a pervasive problem for organizations examining the use of guardianship for the elderly has been the lack of accurate or reliable information concerning the number of persons actually under the protection of a guardian in the United States.”<sup>82</sup> A later law review article also stressed “the absence of ‘hard’ data” to evaluate the process and the changes that have occurred.<sup>83</sup> The 2001 Wingspan conference recommended that “a uniform system of data collection within all areas of the guardianship process be developed and funded” and urged that courts “maintain adequate data systems to assure that required plans and reports are timely filed.”<sup>84</sup>

In the 2005 study, a substantial portion of survey respondents (40%) did not know how the court maintains data on adult guardianship cases. Almost half of the remaining respondents (27.6%) said the court has a computerized system to track the number of adult guardianship filings and dispositions. Some 12.7% of the respondents indicated that the court does not maintain data on guardianship cases other than in individual case files, and 11.4% said the court’s data system for guardianship cases is uneven, inconsistent, or in the process of change. Only 8% stated that the court has a computerized system that tracks and aggregates not only the number of filings and dispositions, but additional data elements as well.

The 2005 survey sought information about specific data elements for which the court maintains statistics. By far the most common data element—indeed, the keystone for monitoring—was guardian actions on behalf of the ward (82.7% of respondents). Over one-fifth of respondents (22.2%) said the court maintains statistics on the timeliness of guardian reports, and close to one-fifth indicated maintenance of data on whether the incapacitated person was represented by counsel at the time of adjudication (18.9%) and on the age of the individual (18.3%). Responses for other data elements were lower: 14.5% of survey participants selected information on income, assets, and expenses of the individual; 14.2% selected the reason the case was initiated; 12.7% selected the individuals’ condition at the time of adjudication; and 6.2% selected information on social services provided to the person.

One additional data element concerns whether the case involved elder abuse. This is important because there is currently wide consensus that there is no clear picture of the incidence and prevalence of elder abuse in the United States, and that such a picture “is

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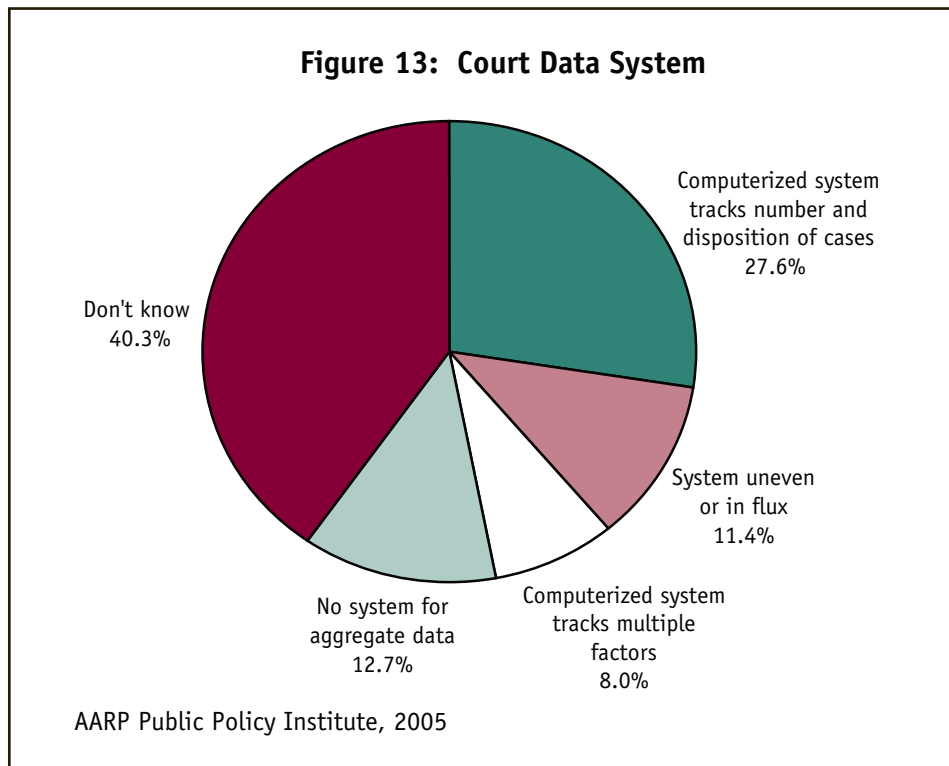
<sup>81</sup> GAO, p. 31

<sup>82</sup> Hannaford, Paula, & Hafemeister, Thomas. (1994). The National Probate Court Standards: The role of the courts in guardianship and conservatorship proceedings. *The Elder Law Journal*, 2.

<sup>83</sup> Frolik, Lawrence. (1998). Guardianship reform: When the best is the enemy of the good. *Stanford Law & Policy Review*, 9.

<sup>84</sup> Wingspan Recommendations, Rec. #4, # 53.

imperative to enable society to . . . mount an effective response.”<sup>85</sup> Court data on guardianship cases involving elder abuse (either as a reason for the guardianship or in which the guardian is the perpetrator) could contribute significantly to the knowledge base. Yet, only 9.3% of survey respondents said that the court maintains data on whether the case involved elder abuse.<sup>86</sup>



2. Court Technology. Since the 1991 ABA study on monitoring, court technology has undergone a sea change. Today, the National Center for State Courts estimates that, collectively, courts spend in excess of \$500 million annually on information technology.<sup>87</sup> Moreover, computer applications and software are continually changing, and courts are continually developing or procuring new systems.

The 2005 study sought information on the extent to which these vast changes in court technology affect guardianship monitoring. Respondents selected computer applications used by the court in guardianship monitoring. While more than 40% of respondents (44%) did not

<sup>85</sup> Bonnie, Richard J., & Wallace, Robert B. (Eds.). (2003). *Elder mistreatment: Abuse, neglect, and exploitation in an aging America*. Washington, DC: The National Academies Press. Note that there are widely differing definitions of “elder abuse.” According to the National Center on Elder Abuse, “elder abuse is a term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult. The specificity of laws varies from state to state, but broadly defined, abuse may be: physical abuse, emotional abuse, sexual abuse, exploitation, neglect, abandonment.” Retrieved Dec. 9, 2005 from <http://www.elderabusecenter.org/default.cfm?p=faqs.cfm>.

<sup>86</sup> A related study by the American Bar Association Commission on Law and Aging for the National Center on Elder Abuse will examine guardianship data reported by local courts to the state court administrator. This study includes a question to court administrators on whether elder abuse “is a distinct case type reported by trial courts.” The study is expected to be completed in 2006.

<sup>87</sup> National Center for State Courts. Retrieved Dec. 9, 2005 from [http://www.ncsconline.org/D\\_Tech/](http://www.ncsconline.org/D_Tech/)



know how the court uses computer technology, over one-third (36.2%) indicated that the court uses computer technology to identify late filings.<sup>88</sup> It appears that other uses of computer technology in performing monitoring functions are quite rare. Only very small proportions of respondents said such technology is used to e-mail the guardian about the reporting status (3.9%) or for any of the following: to enable the guardian to file an account on the court's website (0.3%), file an account by e-mail (1.6%), file a personal status report on the court's website (1.3%), file a personal status report by e-mail (2.1%), check the report status and due date on the court's website (4.1%), check the report status and due date by e-mail (0.8%), or ask questions about the case by e-mail (5.7%). A substantial 22% of respondents stated that computer technology is not available for guardianship monitoring.

3. Public Access to Guardianship Files. Guardianship files include sensitive private information on health conditions, mental disabilities, finances, and such identifying information as addresses and Social Security numbers. Good monitoring requires that full information be maintained. A critical question is to what extent this information is and should be available to the public, particularly if the files can be accessed on the Internet. Privacy and the potential for exploitation argue that the files should be sealed and available only for limited purposes, yet public access to guardianship monitoring can help to ensure full accountability. A 2004 meeting on implementation of the Wingspan recommendations expressed this basic tension in one of its monitoring recommendations:

Since the information created as a result of enhanced monitoring and oversight raises serious questions of privacy and confidentiality concerning vulnerable people, each state and jurisdiction should address the issues of privacy and confidentiality when implementing programs of guardianship monitoring reform.<sup>89</sup>

In light of technological innovations enabling courts to "broadcast" information in court records on the Internet, numerous state courts and legislatures have examined the issue of how to balance public access, personal privacy, and public safety. For example, a 2005 California court rule requires individual guardianship case records to be accessible electronically at the courthouse itself but not remotely. The Supreme Court of Florida's Committee on Privacy and Court Records recommended in 2005 that psycho-social evaluations, psychological evaluations, and guardian ad litem reports be placed under seal by the clerk of court.

The 2005 study inquired about the extent to which guardianship case files are open to the public. Close to one-third of respondents (30.2%) indicated that part of the file is open to the public but part is sealed, and nearly another third (28.9%) said the entire file is open and is available at the courthouse. In some instances, guardianship files are sealed but can be opened under specific circumstances with court approval (7.2%), or are furnished routinely to specific interested persons to verify information or object to actions by the guardian (5.7%).

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<sup>88</sup> This appears inconsistent with the finding noted earlier that 22.2% of respondents said the court maintains statistics on the timeliness of guardian reports.

<sup>89</sup> National Academy of Elder Law Attorneys, National Guardianship Association, National College of Probate Judges. (2004). *National Wingspan Implementation Session: Action Steps on Adult Guardianship Progress*. National Guardianship Network, p. 12.

Only a handful of respondents said the entire file is open and accessible through the Internet (3.9%), or that the entire file is sealed (4.1%). Some 19.9% of respondents did not know.

## V. Discussion of Findings and Conclusions

Guardianship originally grew out of the 14th-century English concept of *parens patriae*—the duty of the king, and later the state, to protect those unable to care for themselves. The court, on behalf of the state, appoints a guardian to carry out the duty of protection, and the guardian is bound by high standards of care and accountability. A critical part of the court’s protection is oversight of the guardian at the “back end” of the process. Without monitoring, the court cannot be assured of the welfare of society’s most vulnerable members. Indeed, monitoring is at the very core of the court’s *parens patriae* responsibility.

At the same time, monitoring is somewhat at odds with the traditional passive stance of probate courts. The Uniform Guardianship and Protective Proceedings Act sprang from the Uniform Probate Code, whose drafters envisioned the court’s role as “wholly passive until some interested person invokes its power to secure resolution of a matter. [The Court] should refrain from intruding into family affairs unless relief is requested, and limit its relief to that sought.”<sup>90</sup> The idea was to streamline the probate process by lessening the court’s involvement in the administration of estates. Moreover, a general passive philosophy is sometimes expressed in judicial settings as the notion that the court is an independent arbiter, not “a place for the delivery of social services . . . .”<sup>91</sup>

This perception may still be pervasive in some probate courts and may be effective in handling decedents’ estates; however, it is not in accord with the court’s active *parens patriae* duty. Individuals under guardianship are living beings whose needs change and who are powerless to voice concerns. “Unlike probate, serving as guardian is a responsibility that may change over time, last for many years, and include excruciatingly complex decisions about medical treatment, placement, and trade-offs between autonomy and beneficence.”<sup>92</sup>

In addition to these historical and philosophical bases for strong monitoring, there are practical considerations as well. First, monitoring can help guardians. Reporting to the court and facing inquiries if something is amiss informs guardians of the court’s—and society’s—expectations. It can provide useful feedback and support in a demanding role. Second, monitoring can “boost the court’s image and inspire public confidence.”<sup>93</sup> Consistent oversight of guardians lets the public know that the court is in charge, prevents damaging press exposés, and can help to garner court funding.

In short, monitoring is a must. But in reality, it varies substantially from court to court. The 2005 survey findings offer a snapshot of adult guardianship monitoring practices

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<sup>90</sup> National Conference of Commissioners on Uniform State Laws. (1987). *Uniform Probate Code*, art. III, General Comment, taken from Hurme, p. 6.

<sup>91</sup> Johns, A. Frank. (1997). Guardianship folly: “The misgovernment of *parens patriae* and the forecast of its crumbling linkage to unprotected older Americans in the twenty-first century—A march of folly? Or just a mask of virtual reality?” *Stetson Law Review*, 27, p. 80.

<sup>92</sup> Hurme & Wood, pp. 926–927.

<sup>93</sup> Hurme & Wood, p. 872.

15 years after the 1991 ABA survey. The current study comes at a critical time. In 2006, the first baby boomers turn 60, signaling much greater use of the guardianship system in coming years. Meanwhile, guardianship practices are again under censure by the press, courts struggle to secure funding allocations in a highly competitive environment, and rapid changes in information technology continue to revolutionize the way we communicate. Salient themes in the overall survey findings include the following:

**1. Guardianship monitoring practices continue to show wide variation.** It is not surprising that the survey confirmed expectations that monitoring practices vary dramatically in almost every aspect, just as they did 15 years earlier. For instance, survey responses showed a great range in key areas such as court assistance to guardians, practices in notifying guardians of filing deadlines, actions on late filings, designation of reviewers, response to complaints, review of the need to continue the guardianship, use of sanctions, and roles of attorneys in promoting guardian accountability. This “patchwork” of practices makes it difficult to assess and describe monitoring methods overall; nevertheless, it offers the potential that in the broad spectrum are some “promising practices” that stand out in effectiveness and could be replicated by other courts. The project will identify and examine such specific practices in Phase II.

**2. Reporting practices have advanced over the past 15 years in some key aspects.** While the 1991 report did not provide enough statistical detail in many areas for direct comparison to the information collected in 2005, it appears that reporting practices have moved forward in some respects:

- *Filing of Personal Status Reports.* In 1991, 67.5% of respondents said that personal status reports were required by the court, compared with 74.2% of respondents in 2005. While not a huge increase, the rise shows progress in information provided to the court about the well-being of the individual. Moreover, although the 1991 survey did not include a finding on the format of the guardian’s report, a majority of respondents reported in 2005 that courts require a moderate amount of detail. Thus, not only are more courts getting regular information, but the information may more often give insight into the person’s actual circumstances and condition.
- *Compliance with Statutory Reporting Provisions.* In 1991, 43 state statutes required personal status reports, yet respondents in only 18 states said the court uniformly required such reports. In the rest of the states, respondents either said the court did not require reports or their responses were variable. By 2005, 89.4% of respondents said the state statute requires reports at some regular interval,<sup>94</sup> and 83.8% of respondents said the court requires reports on some regular basis. Thus, it appears that some courts still are not complying with statutory mandates for reporting, but that the gap between statute and practice on reporting seems to have narrowed substantially.
- *Use of Guardianship Plans.* In the 1991 report, the concept of a guardianship plan on the future care of the individual was still so new that no data were collected on plan use.

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<sup>94</sup> According to the ABA statutory chart on monitoring, all except two states have provisions for a report; see <http://www.abanet.org/aging/guardian5.pdf>

Only five state statutes required plans. By 2005, at least 10 state statutes provided for plans,<sup>95</sup> and in the survey, more than 34% of respondents reported that the court requires guardians to file forward-looking plans. Moreover, according to respondents, slightly more local courts consistently or sometimes require the filing of plans than is provided for in statute or court rule.

**3. Use of technology in monitoring is minimal; greater use of computer technology could effect a paradigm shift in monitoring practices.** Today courts have computer application options that were unheard of in 1991. There are considerable opportunities for web-based and e-mail monitoring techniques to strengthen guardian accountability. Yet the 2005 survey found surprisingly low use of such technology in courts with jurisdiction over guardianship. Indeed, 22% of respondents stated that the court does not use computer technology in monitoring. Further, while just over one-third said the court uses computers to identify late filings, other key monitoring uses— notifying guardians of late filings and allowing guardians to file or to submit questions electronically—were next to negligible.

Notification to the guardian that a report or account is overdue is a case in point. Close to two-thirds of respondents (63.8%) said the court has some type of notification system in place, but over one-quarter (26.6%) said the court has no notification system. Of the notification systems in place, it appears that very few are electronic; only 3.9% of respondents said the court e-mails the guardian about the reporting status, and only 4.1% said the guardian could check the status of reports and the due date on the court's website. While funding may be involved in setting up such a system, once it is in place, there is very little cost. Notifying guardians automatically by e-mail of upcoming due dates appears a simple and straightforward approach that could have "big bang for the buck." Moving a step beyond this, allowing guardians to file either on the web or by e-mail could greatly ease their burden and dramatically increase the filing rate. (Note that almost one-third of respondents stated that reporting forms are on the court's website. While this is helpful, it still requires the guardian to print the forms out, fill them out manually, and mail them in—not an inviting prospect for busy fiduciaries.)

Additionally, computer applications could be used in maintaining guardianship data, which would be useful not only in monitoring but also to policymakers in assessing the guardianship system as a whole. Respondents indicated that few courts maintain statistics (at least beyond those on initial filings and dispositions)—for instance, on representation by counsel, age, income and assets, condition, reason the case was initiated, services provided, and whether elder abuse was involved either before or after appointment. Effective software systems could provide significant benefits to courts and policymakers.

Computer technology also raises privacy issues not on the radar screen in 1991. If guardianship files—including identifying information as well as health and financial status—are maintained electronically, just how public should they be? The widely differing survey responses on whether guardianship case files are open to the public (electronic or not) shows that courts are grappling with the problem. It is clear that privacy and confidentiality issues in guardianship monitoring merit further study.

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<sup>95</sup> Hurme & Wood, pp. 895–896.

**4. Guardian training has increased but remains a compelling need.** In 1991 almost half of the respondents (48%) named lack of guardian training as a serious problem. In 2005, over 40% of respondents said court-provided written instructions or manuals were available to guardians, and more than one-third said training sessions were sponsored by noncourt entities. Over one-fourth (27.1%) reported multiple training resources available to guardians, which appears to be an advance. Indeed, in the 15 years between the two studies, a host of guardian handbooks, videos, and curricula have appeared.<sup>96</sup>

Training continues to be a significant unmet need, however. Over a fifth (22%) of respondents stated that no resources are available to guardians. In addition, it is notable that more than 40% of respondents indicated that no samples of appropriately prepared personal status reports and accountings were available. Thus, many must tackle the challenge of serving as guardian and reporting to the court with little if any guidance or support. Clear and concise written instructions and training materials and a contact point for technical assistance seem to be cost-effective practices that can help prevent later problems.

**5. Verification of guardian reports and accounts, as well as visits to individuals under guardianship, is frequently lacking.** While useful, guardian reports and accounts may not necessarily be accurate or complete. Without independent investigation, there is only a paper review at best. What is needed are mechanisms that serve as the “eyes and ears” of the court, checking on vulnerable individuals and flagging any problems. Yet, in the 2005 survey, more than one-third of respondents (34.4%) said no one is designated by the court to verify the information in reports and accounts. Additionally, only 16% of respondents reported that the court verifies every report, rather than verifying randomly or as needed. This leaves a significant portion of reports and accounts without audit and causes the court to have to rely on the good faith of the guardian.

Of equal concern, over 40% of respondents stated that no one is assigned to visit the vulnerable individual, and only one-quarter said someone visits the person regularly. This leaves ample room for actions by guardians who may be inclined toward negligence or malfeasance.

**6. The role of volunteers in monitoring is minimal, yet offers potential.** Around the time of the 1991 monitoring study, AARP was initiating a Volunteer Guardianship Monitoring Project that eventually took hold in over 50 courts across the nation before national support concluded in 1997.<sup>97</sup> Some courts continue to use retired volunteers in a monitoring capacity, and at least a few others use social work or other students.<sup>98</sup> Responses to several of the 2005 survey questions reveal an overall limited use of volunteers: only 4.1% said volunteers review

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<sup>96</sup> See Hurme & Wood, pp. 877–882; Hurme, in Quinn, pp. 163–168.

<sup>97</sup> Hurme, p. 49; Miler & Hurme, p. 564; personal communication, Mary Twomey, director of the elder abuse prevention program at the Institute on Aging in San Francisco, former coordinator of AARP Volunteer Guardianship Monitoring Program, October 2005.

<sup>98</sup> Hurme, in Quinn, pp. 176–177; Tarrant County Probate Court One. (1995). *Volunteer Court Visitor Program*, Tarrant County, Texas; Ada County Guardianship Monitoring Program, Fourth Judicial District, Idaho. Retrieved Dec. 12, 2005 from <http://www2.state.id.us/fourthjudicial/Guardianship%20Monitoring%20Program/Guardianship.htm>; AARP brings guardianship monitoring program to Wisconsin. Retrieved Dec. 12, 2005 from <http://userpages.itis.com/cwag/gardaarp.htm>

financial accountings; 3.4% said volunteers review personal status reports; 3.4% stated that volunteers verify guardian reports; 5.2% said volunteers visit the person under guardianship; and 8.5% said the court uses volunteers to investigate complaints.

Certainly, volunteers require recruitment, training, and supervision, which represents a significant investment of court resources. Yet, in the long run, volunteers may prove their worth in guardianship monitoring. It is a concept that deserves renewed focus. Indeed, with baby boomers on the verge of retirement, a large pool of professionals will be available and may be looking for such public service opportunities.

**7. Court-community action on monitoring is infrequent, yet could enhance oversight.** Every major set of guardianship reform recommendations since 1988 has stressed the need for court-community linkages. Courts with scarce resources could leverage their monitoring efforts by interaction with community entities such as adult protective services and the long-term care ombudsman program.

The 2005 survey showed a paucity of such interaction, however. Only slightly over 10% of respondents stated that the court collaborates with community groups on training. One-quarter of respondents said the court is “aware” of such entities and may have intermittent contact, and one-quarter said the court has little contact. Courts very rarely file state bar grievances concerning guardians who are attorneys.

An increase in community collaboration could reap significant benefits in monitoring.<sup>99</sup> For instance, ombudsmen frequently encounter guardianships as they visit long-term care residents and could be trained and asked to report any problems directly to the court. Agencies on Aging under the Older Americans Act may be helpful in identifying volunteers to serve in a monitoring capacity. Adult protective services staff offices can exchange information with courts on guardians who are serving as representative payees.<sup>100</sup>

**8. Funding for guardianship monitoring remains minimal.** In the 1991 survey, 52% of respondents named inadequate state funding and 41% named inadequate local funding as a barrier to monitoring. In 2005, 43.4% of respondents said funding for monitoring is unavailable or insufficient. The figures are not directly comparable, but they do seem to show that a critical funding gap remains. Lack of funds affects every aspect of monitoring: it keeps courts from procuring necessary staff (file reviewers, investigators and auditors), training programs, computer technology, and data management. Over 30% of respondents indicated that their court has no specific funding for guardianship monitoring. Heightening the awareness of state legislatures, county commissions or boards, and judicial councils concerning the urgent need for monitoring resources is an important step in securing the welfare of vulnerable at-risk individuals under guardianship.

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<sup>99</sup> See American Bar Association Commission on Law and Aging. (2004). *Good guardianship: Promising practice ideas on community links*. Washington DC: American Bar Association.

<sup>100</sup> American Bar Association Commission on Legal Problems of the Elderly & Center on Children and the Law. (2001). *State guardianship and representative payment: Enhancing coordination of state courts with the Federal Representative Payment Program*. Washington, DC.

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## **Appendix A: Adult Guardianship Monitoring Practices Survey**

### **AARP Public Policy Institute and American Bar Association Commission on Law and Aging**

**Because terminology varies considerably across the country, this survey will use these definitions:**

- A GUARDIAN is an individual or organization named by court order to exercise some or all powers over the person and/or the estate of an individual.
- A GUARDIAN OF THE PERSON is a guardian who possesses some or all powers with regard to the personal affairs of the individual.
- A GUARDIAN OF THE ESTATE is a guardian who possesses some or all powers with regard to the real and personal property of the individual.

### **Introduction**

A. I have the most familiarity with the guardianship monitoring practices in \_\_\_\_\_ (county/city) in \_\_\_\_\_ (state).

B. My most frequent role in the guardianship process is as (select one):

- a. Guardian
- b. Attorney
- c. Judge or special master
- d. Court administrator/manager/staff
- e. Visitor/evaluator/investigator
- f. Guardian ad litem
- g. Other \_\_\_\_\_

### **Background (concerning state laws and formal court rules)**

C. Which statement best describes the state statute, statewide court rule, or local court rule that governs the frequency of personal status reports by guardians of the person?

- a. Statute/rule requires personal status reports annually.
- b. Statute/rule requires personal status reports more frequently than annually.
- c. Statute/rule requires personal status reports less frequently than annually.
- d. Statute/rule does not require personal status reports.
- e. Don't know.



D. Which statement best describes the state statute, statewide court rule, or local court rule that governs the filing of plans for future care of wards?

- a. Statute/rule requires care plans.
- b. Statute/rule does not require care plans.
- c. Don't know.

E. Which statement best describes your state statute, statewide court rule, or local court rule that governs the frequency of accountings by guardians of the estate?

- a. Statute/rule requires accountings annually.
- b. Statute/rule requires accountings more frequently than annually.
- c. Statute/rule requires accountings less frequently than annually.
- d. Statute/rule does not require accountings.
- e. Don't know

F. Which sanctions for failing to file reports or accountings are included in your state statute, statewide court rule, or local court rule? Check all that apply.

- a. Impose daily fine
- b. Impose surcharge
- c. Reduce fee/compensation
- d. Deny fee/compensation
- e. Order funds to court-supervised account
- f. Appoint temporary successor guardian
- g. Appoint guardian ad litem
- h. Appoint attorney for ward
- i. Hold guardian in contempt
- j. Increase bond or other security
- k. Suspend appointment
- l. Permanently remove guardian
- m. Obtain judgment against guardian
- n. Collect on the bond
- o. Terminate guardianship
- p. Report to district attorney or law enforcement
- q. Attach guardian's assets
- r. Imprison guardian
- s. No stated sanction
- t. Don't know

Please answer the following questions based on your experience with the ACTUAL PRACTICES in the court with which you are most familiar.

**Reporting, Accounting, and Care Plan Practices**

1. Which statement best describes your court's practice regarding the frequency of reports by guardians of the person on the ward's personal status?
  - a. Court requires personal status reports annually.
  - b. Court requires personal status reports more frequently than annually.
  - c. Court requires personal status reports less frequently than annually.
  - d. Court requests personal status reports as needed.
  - e. Court does not require personal status reports.
  - f. Don't know.
  
2. Which statement best describes your court's practice regarding the frequency of accountings by guardians of the estate?
  - a. Court requires accountings annually.
  - b. Court requires accountings more frequently than annually.
  - c. Court requires accountings less frequently than annually.
  - d. Court request accountings as needed.
  - e. Court does not require accountings.
  - f. Don't know.
  
3. Which statement best describes the format of personal status reports required by your court?
  - a. Personal status report is a checklist.
  - b. Personal status report format calls for limited or brief narrative responses.
  - c. Personal status report format requires a comprehensive narrative.
  - d. Personal status report combines checklist and narrative.
  - e. Personal status report is not required.
  - f. Don't know.
  
4. Which statement best describes your court's practice concerning filing of plans for future care of wards?
  - a. Court consistently requires guardians to file.
  - b. Court sometimes requires guardians to file.
  - c. Court does not require guardians to file.
  - d. Don't know.

### **Court Assistance to Guardians**

5. Which statement best describes your court's practice on informing guardians of reporting and accounting responsibilities in the initial guardianship order or letter?
- a. Court routinely specifies reporting responsibilities.
  - b. Court sometimes specifies reporting responsibilities
  - c. Court orders typically do not include reporting responsibilities.
  - d. Don't know.
6. Which statement best describes your court's practice on making reporting and accounting forms available? Check all that apply.
- a. Forms are on the court's website.
  - b. Forms are available from the clerk.
  - c. Court routinely sends forms to guardians.
  - d. Court relies on attorneys to make forms available.
  - e. Don't know.
7. Which statement best describes your court's practice on making available samples or models of appropriately prepared personal status reports and accountings? Check all that apply.
- a. Samples are on the court's website.
  - b. Samples are available from the clerk.
  - c. Court routinely sends samples to guardians.
  - d. Court relies on attorneys to make samples available.
  - e. No samples available.
  - f. Don't know.
8. Which of the following resources are available to guardians? Check all that apply.
- a. Court-provided written instructions or manual.
  - b. Video available for viewing in courthouse or elsewhere.
  - c. Court-provided training session.
  - d. Training session sponsored by other entity.
  - e. No resources available.
  - f. Don't know.

### Tracking and Enforcement

9. Which statement best describes the system in place in your court to notify guardians that reports are due or past due?

- a. The court has effective notification system in place.
- b. The court has no effective notification system in place.
- c. Don't know.

10. Which statement best describes the court's action if guardians have not filed reports/accountings on time? Check all that apply.

- a. The court routinely enters show cause orders (or local equivalent).
- b. The court enters show cause orders when appropriate.
- c. The court rarely enters show cause orders.
- d. The court fines the guardian.
- e. The court sends notice of delinquency.
- f. Court staff informally contact the guardian.
- g. Don't know.

11. Which statement best describes the court's action if a guardian is habitually late in filing reports/accountings? Check all that apply.

- a. The court asks a volunteer or investigator to obtain more information.
- b. The court requires the guardian to appear for a status hearing.
- c. The court appoints an attorney for the ward.
- d. The court surcharges the guardian's bond.
- e. The court removes the guardian from the appointment roster.
- f. The court revokes the appointment and appoints a substitute/successor guardian.
- g. The court notifies the certification entity.
- h. Don't know.

### **Responsibility for Monitoring Activities**

12. Who has the responsibility on a regular basis to review financial accountings? Check all that apply.

- a. Judge who entered the order.
- b. Judge assigned to review the accountings.
- c. Court auditor or other court personnel whose primary responsibility is to review the accountings.
- d. Other court staff.
- e. Other governmental entity such as department of social services or public guardian.
- f. Volunteer.
- g. No one is specifically responsible for review of financial accounts.
- h. Don't know

13. Who as the responsibility on a regular basis to review personal status reports? Check all that apply.

- a. Judge who entered the order.
- b. Judge assigned to review the status reports.
- c. Court investigator or other court personnel whose primary responsibility is to review the reports.
- d. Other court staff.
- e. Other governmental entity such as department of social services or public guardian.
- f. Volunteer.
- g. No one is specifically responsible for reviewing personal status reports.
- h. Don't know.

14. Which statement best describes verification of the information in the personal status reports?

- a. Court staff verify each report.
- b. Court staff verify as needed.
- c. Special master, visitor, guardian ad litem, or other person verifies each report.
- d. Special master, visitor, guardian ad litem, or other person verifies as needed.
- e. Volunteers verify on regular basis.
- f. Volunteers verify as needed.
- g. No one verifies.
- h. Don't know.

15. Which statement best describes visits to the ward?
- a. Court staff visit on regular basis.
  - b. Court staff visit as needed.
  - c. Special master, visitor, guardian ad litem, or other person visit on regular basis.
  - d. Special master, visitor, guardian ad litem, or other person visit as needed.
  - e. Volunteers visit on regular basis.
  - f. Volunteers visit as needed.
  - g. No one visits.
  - h. Don't know.

**Assessment of Guardianship by the Court**

16. Which statement best describes the standards your court uses in reviewing personal status reports and accountings?
- a. State statutory provisions guide the review.
  - b. Statewide court rules or policy guide the review.
  - c. Local court rules guide the review.
  - d. There are no specific standards to guide the review.
  - e. Don't know.
17. Which statement best describes how the court responds to complaints about wards' circumstances? Check all that apply.
- a. Appoint a guardian ad litem, special master, or visitor to investigate.
  - b. Ask court staff to review the complaint.
  - c. Enter show cause order or set hearing.
  - d. Use volunteer to investigate.
  - e. Contact the guardian.
  - f. No mechanism is in place to respond to complaints.
  - g. Don't know.
18. Which statement best describes the extent to which your court holds hearings on the need to continue or modify the guardianship?
- a. The court regularly holds periodic hearings.
  - b. The court holds hearings as it deems necessary.
  - c. The court holds hearings only upon request.
  - d. The court does not hold hearings.
  - e. Don't know.

19. Which statement best describes the practice of your court concerning review of accountings from a guardian of the estate?
- a. The court regularly holds periodic hearings.
  - b. The court holds hearings as it deems necessary.
  - c. The court holds hearings only upon request.
  - d. The court does not hold hearings.
  - e. Don't know.
20. How does your court respond to a guardian's malfeasance? Check all that apply.
- a. Impose fine or surcharge
  - b. Deny or reduce fee
  - c. Appoint guardian ad litem
  - d. Increase bond or other security
  - e. Remove guardian and appoint successor guardian
  - f. Report to law enforcement
  - g. Refer to adult protective services
  - h. Report to bar association if guardian is attorney
  - i. Court does not generally impose sanction or take other action.
  - j. Don't know.

### **Funding**

21. Which statement best describes the extent to which your court has sufficient funds to monitor guardianship cases?
- a. Sufficient funds are available to the court.
  - b. Some funding for monitoring activities or personnel is available.
  - c. Funding for monitoring is unavailable or clearly insufficient.
  - d. Don't know.

22. Which of the following sources provide funding for your court's monitoring activities? Check all that apply.

- a. State legislative appropriation specifically for guardianship monitoring
- b. General appropriation for the judiciary
- c. State judicial council or administrative office of courts
- d. County commission
- e. Filing fees
- f. Fines or surcharges
- g. Assessments against ward's estate for individual case investigations
- h. Public or private grants
- i. No specific funding for guardianship monitoring
- j. Don't know

**Attorney Activities**

23. Which statement best describes the extent to which your state bar association has ethical guidelines for attorneys representing the petitioner, guardian, ward or proposed ward?

- a. The state bar guidelines are clear and complete.
- b. The state bar guidelines are clear in some aspects.
- c. The state bar guidelines are murky concerning the roles of attorneys.
- d. There are no applicable state bar guidelines.
- e. Don't know.

24. Which statement best describes the extent to which attorneys for the guardian assist the guardian in fulfilling reporting and accounting requirements?

- a. Attorneys routinely provide extensive assistance.
- b. Attorneys do not generally assist the guardian.
- c. Attorneys provide some assistance.
- d. It varies by attorney, guardian or case circumstances.
- e. Don't know.



25. Which statement best describes the extent to which the attorney for the ward assists the court in monitoring the ward's well-being?

- a. The attorney remains the attorney of record and routinely stays actively involved throughout the guardianship case.
- b. The attorney remains the attorney of record but involvement varies or is infrequent.
- c. The attorney remains involved until the court and the attorney determine that the attorney is no longer needed.
- d. The attorney is dismissed by the court after the appointment and has no further role.
- e. Don't know.

26. Which statement best describes the court's action if an *attorney* who has been appointed as guardian is habitually late in filing reports?

- a. The court routinely files grievances with the state bar.
- b. The court files grievances when appropriate.
- c. The court rarely files grievances.
- d. Don't know.

### **Court/Community Interaction**

27. Which statement best describes the extent to which your court interacts with community groups and agencies (such as the long-term care ombudsman, adult protective services, guardianship associations, mental health, or aging advocacy groups) that regularly encounter wards?

- a. The court participates in multidisciplinary groups on guardianship and alternatives.
- b. The court has developed referral protocols with such groups.
- c. The court collaborates with such groups on training and education programs.
- d. The court is generally aware of such groups and communities from time to time.
- e. The court has little contact with such community groups.
- f. Don't know.

### **Data, Technology, Court Files**

28. Which statement best describes the extent to which your court maintains data on adult guardianship cases?

- a. The court has a computerized system to track the number of adult guardianship filings and dispositions.
- b. The court has a computerized system that tracks and aggregates (for statistical summaries) not only the number of filings and dispositions, but additional data elements as well.
- c. The court's data system for guardianship cases is uneven, inconsistent, or in the process of change.
- d. The court does not maintain data on guardianship cases other than in individual case files.
- e. Don't know.

29. For which of the following data elements does your court maintain statistics? Check all that apply.

- a. Guardian actions on behalf of the ward
- b. Ward's condition at time of adjudication
- c. Social services provided to ward
- d. Information on income, assets and expenses of ward
- e. Age of ward
- f. Timeliness of guardianship reports.
- g. Whether ward represented by counsel at time of adjudication
- h. Reasons the case was initiated
- i. Whether case involved elder abuse
- j. Residential placement
- k. Don't know

30. Which statements describe the extent to which your court uses computer technology in guardianship monitoring. Check all that apply.

- a. Identifies late filings.
- b. Generates an email notice to the guardian about reporting status.
- c. Enables the guardian to file the accounting by email
- d. Enables the guardian to file the accounting by email
- e. Enables the guardian to file the personal status report on the court's website.
- f. Enables the guardian to file the personal status report by email.
- g. Enables the guardian to check the report status and due date on the court's website.
- h. Enables the guardian to check the report status due date by email.
- i. Allows the guardian to ask questions by email about the administration of the case.
- j. Computer technology not available for guardianship monitoring.
- k. Don't know

31. Which statement best describes the extent to which your court's guardianship case files are open to the public?

- a. The entire file is open to the public and can be accessed on the Internet.
- b. The entire file is open to the public and is available at the courthouse.
- c. The file is routinely furnished to specific interested persons to verify information or object to actions by the guardian.
- d. Part of the file is sealed and part of the file is open.
- e. Guardianship files are sealed.
- f. Guardianship files are sealed but can be opened under specific circumstances with court approval.
- g. Don't know.

32. Please check all of the following affiliations that apply to you:

- a. National Guardianship Association
- b. National Guardianship Foundation Registered Guardian
- c. National Guardianship Foundation Master Guardian
- d. National Academy of Elder Law Attorneys
- e. National College of Probate Judges
- f. National Association of Court Managers
- g. National Disability Rights Network.

**If we may contact you for additional information, please provide**

**Name**

**Phone**

**Email**

Thank you for participating in this survey.  
Click here to submit

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## Appendix B: Table of Statutory Authorities For Guardianship Monitoring

State	Statutory Authority
AL	Ala. Code §§26-2A-78(b)(5); 26-2A-147; 26-2A-108; 26-2A-110
AK	Alaska Stat. §§; 13.26.117; 13.26.118; 13.26.235; 13.26.255;
AZ	Ariz. Rev. Stat. §§14-5307; 14-5308; 14-5315; 14-5419(A)
AR	Ark. Code Ann. §§28-65-320, 322, 108(b)
CA	Cal. [Probate] Code §§1850; 1851(a); 2620(a); 2620.1; 2620.2( c )
CO	Colo. Rev. Stat. §§15-14-112(2); 15-14-317
CT	Conn. Gen. Stat. §§45a-655(a)( c ); 45a-656(a)(6); 45a-660(6)
DE	Del. Code Ann. §§12-3908(a); 3941(b), 12-3943; 12-3944
DC	D.C. Code Ann. §§21-2047(a)(5); 21-2049; 21-2061; 21-2065(d)
FL	Fla. Stat. Ann. §§744.362 through.369; 744.372; 744. 3675(1); 744.3678; 744.3685
GA	Ga. Code Ann. §§29-4-22; 29-5-22; 29-5-30; 29-5-52 & 53; 29-5-60; 53-7-180(2)
HI	Haw. Rev. Stat. §§560:5-317(a); 560:5-420
ID	Idaho Code §§15-5-307(a); 15-5-419
IL	755 ILCS 5/11a-15;5/11a-17(b); 5/11a-20(b); 5/13-5(g)
IN	Ind. Code Ann. §§29-3-8-1(b); 29-3-9-5, 6 & 8; 29-3-9-11; 29-3-12-4(a)
IA	Iowa Code §§633.669; 633.670 (a) & (b); 633.674
KS	Kan. Stat. Ann. §§59-3034(a); 59-3035; 59-3036(b)
KY	Ky. Rev. Stat. Ann. §§387.080 & 090; 387.670; 387.710
LA	La. Rev. Stat. Ann. §§9:1025; 13-3443(A); Code of Civ. Pro. §§393; 4551; 4565; 4569(A)
ME	Me. Rev. Stat. Ann. §§18-A 5-307; 18-A 5-312 (a)(5); 18-A 5-415; 18-A 5-419(a) & ( c )
MD	Md. Code Ann. [Estates and Trusts] §§13-221; 13-708(b); 14-404(a)
MA	Mass. Gen. Laws Ann. Sec. §201 48; §205 1(6)
MI	Mich. Comp. Laws Ann. §§700.5309; 700.5310; 700.5314(e); 700.5418
MN	Minn. Stat. Ann. §§524.5-112(b); 524.5-316; 524.5-420
MS	Miss. Code Ann. §§93-13-23; 93-13-67; 93-13-121
MO	Mo. Ann. Stat. §§475.082; 475.190(4)
MT	Mont. Code Ann. §§72-5-321(2)(e); 72-5-414; 72-5-438(1)
NE	Neb. Rev. Stat. §§30-2623; 30-2628(a)(5); 30-2648(a)(5)
NV	Nev. Rev. Stat. §§159.081; 159.176; 159.177(1); 159.185
NH	N.H. Rev. Stat. Ann. §§464-A:35 through 464-A:37
NJ	N.J. Stat. Ann. §§3B:12-42

## Table of Statutory Authorities For Guardianship Monitoring cont'd

State	Statutory Authority
NM	N.M. Stat. Ann. §§45-5-314; 45-5-409
NY	N.Y. Mental Hyg. Law §§81.30 through 81.32
NC	N.C. Gen. Stat. §§35A-1242 through 35A-1244
ND	N.D. Cent. Code §§30.1-28-7(3); 30.1-28-12(8) & (9)
OH	Ohio Rev. Code Ann. §§2111.14(A); 2111.36; 2111.49
OK	Okla. Stat. Ann. §§30-4-303(A) & (D); 30-4-305 through 307; 30-4-801
OR	Or. Rev. Stat. §§125.160; 125;225; 125.325
PA	Pa. Stat. Ann. §§20-3182; 20-5512.2; 20-5521( c ) (1); 20-5531
RI	R. I. Gen. Laws §33-15-26
SC	S.C. Code §§62-5-307; 62-5-312(a)(5); 62-5-419
SD	S.D. Codified Laws §§29A-5-403; 29A-5-408; 29A-5-504
TN	Tenn. Code Ann. §§34-1-111; 34-1-115; 34-1-123; 34-1-131
TX	Tex. Prob. Code Ann. §§648(b); 651; 672(a) & (b); 725; 741 through 744; 761
UT	Utah Code Ann. §§75-5-307; 75-5-312(2)(e); 75-5-419; 75-5-429
VT	Vt. Stat. Ann. §§14-3076 through 3078
VA	Va. Code Ann. §§37.2-1021; 37.2-1022; 26-17.4
WA	Wash. Rev. Code Ann. §§11.92.040(2); 11.92.043(2); 11.92.160; 11.92.180
WV	W. Va. Code §§44A-3-2; 44A-3-11; 44A-4-4
WI	Wis. Stat. §§880.19(1); 880.16(2) & (4); 880.25; 880.34(4); 880.38(3); 880.251 through 253; 880.331(5)(d)
WY	Wyo. Stat. §§3-2-109; 3-3-901(a)(i)