STATE ADULT GUARDIANSHIP LEGISLATION: DIRECTIONS OF REFORM – 2014

Commission on Law and Aging
American Bar Association

An earlier version of this 2014 legislative summary [January – September] was published as part of the National Guardianship Association's *2014 NGA Legal Review*, presented at the October 2014 NGA National Conference.

This 2014 legislative summary includes information on 18 state enactments on adult guardianship from 15 states -- the fewest enactments annually during the past decade. Significantly, the list includes three states that enacted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

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I. Pre-Adjudication Issues

Over the past two decades, legislative changes have sought to bolster safeguards in proceedings for the appointment of a guardian or conservator. Additionally, states continue to make various procedural "tweaks" to clarify requirements or address inconsistencies.

1. Emergency Appointment. In making an emergency appointment, the legislature and the court must make a difficult balance between procedural safeguards and prevention of irreparable harm. An emergency guardianship, sometimes established without full procedural protections, may open the door for a plenary and permanent appointment.

In the landmark case *Grant v. Johnson*, 757 F. Supp. 1127 (D. Or. 1991), a federal district court declared the Oregon temporary guardianship statute unconstitutional in that it did not provide minimum due process protections. Following the *Grant* decision, a number of states revised their temporary guardianship provisions. (For the status as of 2008, see Gandy, A., "Emergency Guardianship Statutes: An Analysis of Legislative Due Process Since Grant v. Johnson, *Bifocal*, ABA Commission on Law and Aging, http://www.americanbar.org/content/dam/aba/migrated/aging/publications/docs/dec_08_ABA_Bifocal_J.authcheckdam.pdf , with accompanying state-by-state chart.

Utah HB 265 makes a change in the state's emergency guardianship provisions. Previously, appointment of a "temporary" guardian required that a hearing be held within five days after an ex parte order of appointment. The new provisions create an "emergency" guardianship and require that a hearing be held within 14 days following such an appointment. Supporters of the bill stated that this would allow sufficient time for a medical assessment.

Additionally, the bill enacts provisions for "temporary" guardianship. An "emergency" guardian is distinguished from a "temporary" guardian," for which procedural requirements and authority are the same as for a permanent guardian. For a temporary guardianship, the court is required to appoint counsel for the alleged incapacitated person.

After notice and a hearing the court may convert an emergency guardian to a temporary guardian, or appoint a different person as a temporary guardian to replace an emergency guardian. The temporary guardian is charged with "care and custody" of the person and may not permit the person to be moved outside the state. There is no requirement in the statute for an end date for a temporary guardianship, allowing it to extend indefinitely.

II. Multi-Jurisdictional Issues

In our increasingly mobile society, adult guardianships often involve more than one state, raising complex jurisdictional issues. For example, many older people own property in different states. Family members may be scattered across the country. Frail, at-risk individuals may need to be moved for medical or financial reasons. Thus, judges, guardians, and lawyers frequently are faced with problems about which state should have

initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized in another.

Such jurisdictional quandaries can take up vast amounts of time for courts and lawyers, cause cumbersome delays and financial burdens for family members, and exacerbate family conflict -- aggravating sibling rivalry as each side must hire lawyers to battle over which state will hear a case and where a final order will be lodged. Moreover, lack of clear jurisdictional guideposts can facilitate "granny snatching" and other abusive actions.

1. Background on Uniform Act. To address these challenging problems, the Uniform Law Commission in 2007 approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved, and to enhance communication between courts in different states. Key features include:

- Determination of initial jurisdiction. The Act provides procedures to resolve controversies concerning initial guardianship jurisdiction by designating one state – and one state only – as the proper forum. It sets out a schema for determining a person's "home state" and if none then a "significant jurisdiction state" in which a proceeding should be heard.

- Transfer. The Act specifies a two-state procedure for transferring a guardianship or conservatorship to another state, helping to reduce expenses and save time while protecting persons and their property from potential abuse.

- Recognition and enforcement of a guardianship or protective proceeding order. UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register orders in the second state.

- Communication and cooperation. The Act permits communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.

- Emergency situations and other special cases. A court in the state where the individual is physically present can appoint a guardian in the case of an emergency.

Also, if the individual has real or tangible property located in a certain state, the court in that jurisdiction can appoint a conservator for that property.

2. Passage of Uniform Act by States. As it is jurisdictional in nature, the UAGPPJA cannot work as intended -- providing uniformity and reducing conflict -- unless all or most states adopt it. See "Why States Should Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act," http://uniformlaws.org/Narrative.aspx?title=Why States Should Adopt UAGPPJA .

- In 2008, five states (Alaska, Colorado, Delaware, Utah and the District of Columbia) quickly adopted the Act.
- In 2009, the eight states adopting the Act include Illinois, Minnesota, Montana, Nevada, North Dakota, Oregon, Washington, and West Virginia.
- In 2010, seven states adopted the Act, including Alabama, Arizona, Iowa, Maryland, Oklahoma, South Carolina and Tennessee.
- In 2011 another ten states enacted the UAGPPJA, including Arkansas, Idaho, Indiana, Kentucky, Missouri, Nebraska, New Mexico, South Dakota, Vermont and Virginia.
- In 2012, six states passed the Uniform Act, including Connecticut, Hawaii, Maine, New Jersey, Ohio and Pennsylvania.
- In 2013, two additional states, Wyoming and New York, joined the list

In 2014, three states passed the Uniform Act, bringing the total to 40 states plus the District of Columbia and Puerto Rico. The Act is pending in additional states.

- ✓ *Mississippi passed SB 2240*, which was signed by the Governor in March.
- ✓ *Massachusetts passed SB 2249*, which was signed by the Governor in August.
- ✓ *California SB 940*, which was signed by the Governor in September.

III. Choice of Guardian

1. Public Guardianship. The 2008 national public guardianship study found that 44 states have statutory provisions on public guardianship or guardianship of last resort. Of these, 27 states have "explicit schemes" that refer specifically to public guardianship and frequently establish a public guardianship program or office; while 18 states have "implicit schemes" (some state have more than one system) that address the role of guardian of last resort – for instance designating a governmental agency to serve if no

one else is available. Additional states have public guardianship functions in practice. (See Teaster et al, *Public Guardianship: In the Best Interest of Incapacitated People?* Preager, 2010); also an earlier version of the study (2008) at http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/wards_state_full_rep_11_15_07.authcheckdam.pdf .

In 2014, two states passed landmark public guardianship legislation, and two additional states amended their public guardianship provisions.

Oregon concluded a long advocacy quest for a statewide public guardianship program with the approval in April of *SB 1553*. Prior to the new legislation, Oregon law provided that a county court or board of county commissioners could create an office of public guardian and conservator, but few such county programs have existed. The Multnomah County Public Guardian and Conservator program has been the longest running effort and served the most clients. In 2009, Oregon legislation established a Public Guardian and Conservator Task Force; and in 2011, HB 2237 renewed the Task Force and charged it with making recommendations on the need for public guardian and conservator services in the state. The Task Force recommended the establishment of an independent statewide agency to provide the services. In 2014, that aim was finally fulfilled. The creation of an Oregon WINGS group (Working Interdisciplinary Network of Guardianship Stakeholders) is credited with building the momentum that tipped the balance for the passage of the bill.

SB 1533 provides that the state Long-Term Care Ombudsman, in consultation with the state Residential Facilities Advisory Committee, shall appoint a Public Guardian and Conservator. In Oregon, the Long-Term Care Ombudsman office is an independent agency. Establishing the public guardianship program in such an independent agency that serves as an advocate for residents avoids any conflict of interest that would result from placing the new program in a human services office.

The Oregon Public Guardian and Conservator, in consultation with and subject to the approval of the Long-Term Care Ombudsman, is to hire or contract with deputy public guardians and other staff, as well as volunteers. The new office will provide public guardian and conservator services for persons who do not have relatives or friends willing to serve and who do not have financial resources to secure a private guardian or conservator. The office will develop standards of eligibility and professional conduct; develop training and educational materials, including public education; and recruit, train and supervise volunteers to assist the office. The statewide office will cooperate with the existing offices of county public guardian and conservator.

The new office is to determine if there are options less restrictive than guardianship that will meet the need of an individual; determine whether any other person may be willing and able to serve as guardian or conservator; and provide services least restrictive to the person's liberty. In these ways, the public guardianship program will function as a last resort.

In two ways, the new law differs from recommendations of the 2008 national public guardianship study. First, *SB 1553* does not include a staff to client ratio. The 2008 national study recommended a ratio of 1:20. Second, the new legislation provides that the court may not appoint the Public Guardian and Conservator or a deputy to serve as fiduciary unless the program "has petitioned for or consented to the appointment." The national study recommended that "public guardianship programs should not petition for their own appointment" because of the inherent conflicts in being both a petitioner and guardian for the same individuals.

The legislature appropriated $950,000 for the new program. This will allow for the hiring of a Public Guardian and Conservator and two deputies. The program is expected to track the need and report to the legislature on future support required.

Nebraska. The 2008 national public guardianship study named Nebraska as the only state without either an explicit public guardianship program or an implicit arrangement for guardianship of last resort using state funds that covers at least part of the state. Nebraska has had public guardianship bills pending in prior years, with no successful passage. In 2014, *LB 920*, approved by the Governor in April, finally adopts a Public Guardianship Act. The bill first finds that "the present system of obtaining a guardian or conservator for an individual, which often depends on volunteers, is inadequate." It establishes a statewide Office of Public Guardian" to provide services when no private guardian or private conservator is available. The bill explicitly states that "alternatives to full guardianship and less intrusive means of intervention should always be explored, including, but not limited to, limited guardianship, temporary guardianship, conservatorship, or the appointment of a payee."

LB 920 includes the establishment of a an Advisory Council on Public Guardianship, as recommended in the 2008 national public guardianship study's Model Public Guardianship Act. Such a body can be helpful in assessing the strengths and weaknesses of the program and advocating for additional support needed.

LB 920 places the new Office within the judicial branch, responsible to the State Court Administrator. In 2008, there were five other states that located their public guardianship program within the court system. In Nebraska, the State Court Administrator is to appoint a director of the Office, known as the Public Guardian. The Public Guardian must have "broad knowledge of human development, intellectual disabilities, sociology, and psychology, and shall have business acuity and experience in public education and volunteer recruitment." The Public Guardian may hire a deputy and up to 12 associate public guardians.

The new Office is to: provide guardianship and conservatorship services; offer public education; recruit members of the public or family members to serve; act as a resource to private guardians; explore less restrictive options; and "model the highest standard of practice for guardians and conservators to improve the performance of all guardians and conservators in the state." The Office must develop a data collection system, adopt standards of practice and a code of ethics, develop guidelines for a sliding scale of fees; develop and maintain a training curriculum for successor and other private guardians and conservators; and report annually to the Chief Justice and the legislature. Once appointed, the Office must make "reasonable efforts" to locate a successor guardian or conservator. The Office must make monthly personal contact with the individuals served (as is specified in the National Guardianship Association Standards of Practice, www.guardianship.org).

LB 920 includes a staff to client ratio of 1:40 – that is, appointments are "not to exceed an average of forty individuals per associate public guardian . . . When the average has been reached, the Public Guardian shall not accept further appointments." The 2008 national public guardianship study provides that "public guardianship programs should be staffed at specific staff-to-client ratios. The recommended ratio is 1:20." At the time of the study, seven states had established ratios by statute, either mandating a specific ratio in law or requiring an administratively specified ratio.

LB 920 creates a Public Guardianship Cash Fund, administered by the State Court Administrator. The legislature appropriated The first year start-up was $675,000 for the first year start up and full funding for the second year at $1,500,000.

In addition to the Oregon and Nebraska legislation, two other states addressed their public guardianship programs.

In *Florida*, the state budget includes $3 million to operate Public Guardianship program on statewide basis and to allow resources to be allocated to local public

guardianship offices based on criteria established by Department of Elder Affairs. The budget also allocated an additional $750,000 was in nonrecurring funds to Lutheran Services of Florida to provide guardianship services to the indigent population.

Maryland has two separate public guardianship schemes – one for elders age 65 and over, through the Department of Aging and the area agencies on aging; and one for younger adults in need guardianship services through local departments of social services. Each Maryland public guardianship case must be reviewed by a "public guardianship review board" at least every six months. Once a year, the review is an in-person review, alternating with a file review.

The Maryland statute sets out the composition of the 11-member review board. *Maryland HB 179* changes the composition of the board. Instead of requiring two physicians, including one psychiatrist from a local health department, it requires one physician's assistant, nurse practitioner or physician who is not a psychiatrist and one psychiatrist. The aim is to expand the membership of the board by including physician's assistants and nurse practitioners, as they do much of the hands-on care, and they need community service hours for their licensure. The amendment also changes "public health nurse' to "registered nurse" to expand the pool of nurses that may serve.

2. Guardian Background Checks. An increasing number of states have begun to enact criminal and other accountability background checks for prospective guardians. (See state law chart at http://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_04_CHARTFelony&Backgroundcheck.authcheckdam.pdf). Currently pending federal legislation (S. 975 sponsored by Sen. Klobuchar of Minnesota, with five co-sponsors) would support background checks of potential guardians and conservators. This federal bill has passed the U.S. Senate Judiciary Committee.

Florida CS/HB 635, approved by the Governor in June, requires guardians to submit to credit history investigation and background screening. A nonprofessional guardian may petition the court for reimbursement of the cost of the credit history investigation and background screening. The bill also provides that a person seeking appointment as guardian may not deny or fail to acknowledge the arrests covered by an expunged or sealed record. Additionally, the bill includes provisions on monitoring of guardianship assets (see Section IX below). Funding for the courts to implement the act's requirements would bolster implementation.

Additionally, *Arizona*, which already has a requirement that the guardian get fingerprints to enable the court to conduct a criminal background investigation, has enacted a provision (in *HB 2322*) mandating notification of a guardian appointment to the national instant criminal background check system (see Section IX below).

2. Guardian Certification. The Center for Guardianship Certification (CGC) has a national certification process that requires applicants to pass a test, meet minimum eligibility requirements, pay a fee, and make attestations about their background. Arizona was the first state to implement a state program and has established specific requirements for all fiduciaries other than family members who serve as guardian or conservator. As of February 2014, CGC had approved over 1,500 National Certified Guardians and 67 National Master Guardians throughout the country. In addition, CGC has state-specific testing in California, Florida and Oregon. Beyond the CGC efforts, a number of states have enacted their own guardian certification programs.

Texas has a state guardian certification program. As of September, 2014, new *Texas Rules* provide that the state's Guardianship Certification Board will no longer exist and its duties will be transferred to the Judicial Branch Certification Commission, as authorized by SB 966 passed in 2013.

IV. Guardian Actions

1. Dissolution of Marriage. Marriage and divorce generally are considered so personal in nature that authority concerning these actions may not transfer to a guardian. However, *Indiana SB 59* allows a guardian to request permission to file a petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person.

The legislation was prompted by a 2013 Court of Appeals decision that noted the absence of statutory authority for guardians to petition for dissolution (*In re: Marriage of Tillman*, July 3, 2013). In the decision, husband and wife were both incapacitated and had guardians. Husband had previously signed a pre-nuptial agreement to provide for support of the wife during the marriage. Husband was in a nursing home and could not afford to continue supporting wife, short of being accepted for Medicaid coverage for nursing home care -- which would have required a move that would be very detrimental to his care. Husband's guardian filed for dissolution of the marriage. The trial court found that controlling Indiana case law prohibits a guardian from filing for dissolution of marriage. The Court of Appeals affirmed, noting that "neither the current Indiana statutes governing dissolution of marriage nor governing the guardianship of incapacitated person

provide a means for the guardian of an incapacitated person to file a petition for dissolution of marriage . . ." Following this case, the legislature took action to provide the following:

- The bill allows the court to grant a request for such permission only if it determines by clear and convincing evidence that such petitioning is in the best interests of the person.
- In making this determination, the court must consider "the totality of the circumstances" including the desire and interests of the spouse, and the risk of harm to the individual if the court does not grant the petition. The "risk of harm' includes the individual's physical or mental health, safety or property.
- The court also must "give appropriate weight" to evidence of the incapacitated person's "intent or preferences" or a prior decision by the person. But the court may reduce the weight given these factors if it concludes that the passage of time or changed circumstances make the evidence less reliable.

2. Authority to Compel Actions. Two state amendments address a guardian's authority to enforce actions:

- *Utah HB 265* allows a guardian or a conservatorship to compel the production of the person's estate documents, including a will, trust, power of attorney, and any advance health care directive.

- *Indiana SB 59* allows a guardian to bring an enforcement proceeding to compel compliance if a third party fails to comply with certain demands concerning the guardianship of an incapacitated person.

V. Fees for Guardians and Attorneys

Payment of attorney fees, as well as court fees and costs, is a significant factor in bringing a guardianship proceeding. Moreover, guardian fees can be substantial, and fee disputes have been frequent.

Tennessee HB 2317 specifies that if a court grants a protective order placing under seal the respondent's financial information, the order may not deny access to information concerning fees and expenses of the conservatorship (the state's term for adult guardianship cases). Making information about fees and expenses available in instances in which other financial information is sealed clarifies the costs and allows for an examination of the reasonableness of the charges.

California AB 2747 clarifies that the court's decision to grant a waiver for court fees and costs in a case involving a conservator [California term for guardian of adult] should be based on the financial resources of the proposed conservatee.

VI. Rights of Individuals

Writings and enactments over the past 25 years have heightened awareness that guardianship removes or infringes on fundamental rights, that some basic rights should be retained statutorily, and that limited guardianship can allow the person to retain rights in areas in which he or she can make decisions.

1. Restoration to Capacity. While it is most common for a guardianship to end upon the death of the individual, all state statutes provide for termination of a guardianship upon finding that the person has sufficient capacity to manage his or her personal and/or financial affairs. Restoration proceedings are under increasing focus, especially for younger individuals with intellectual disabilities, mental illness or head injuries who may be able to make decisions on their own with adequate family and community support. For a recent article examining state statutory authority for restoration of rights, see Cassidy, J., "State Statutory Authority for Restoration of Rights in Termination of Adult Guardianship," ABA Commission on Law and Aging, *Bifocal*, Vol. 34, Issue 6 (August 2013) at: http://www.americanbar.org/publications/bifocal/vol_34/issue_6_august2013/guardianship_restoration_of_rights.html. A compilation of restoration case law is underway.

Idaho SB 1247 adds a new section to its guardianship code concerning "termination or modification of a guardianship." Like many states, the new Idaho provisions allow "a ward, a guardian or another person interested in the ward's welfare' to seek termination of the guardianship" if the person no longer needs "the assistance or protection" of a guardian.

- Like the Uniform Guardianship and Protective Proceedings Act and 18 jurisdictions, the new Idaho language provides that in terminating a guardianship, the court must "follow the same procedures to safeguarding the rights of the ward as apply to a petition for [establishing a] guardianship."
- Similar to the UGPPA – as well as Minnesota and Maine -- Idaho requires that the petitioner establish a *prima facie* case for termination unless the opposing party shows that continuation is in the best interest of the person. This lower evidentiary

standard for restoration of rights than for the establishment of a guardian is consistent with the Uniform Act's philosophy that a guardian should be appointed only for as long as necessary – and consistent with current emphasis in guardianship reform on self-determination and supported decision-making. Many other states require the petitioner to meet a higher standard of evidence, making it more difficult for someone to make a case for restoration.

- The new Idaho bill also clarifies that the court may modify the type of appointment or powers of the guardian if circumstances or the person's needs or abilities change.

2. Changes in Terminology. Many states are making changes in language to reflect preferred terminology ("people first" language) more in line with individual self-determination and rights.

Vermont S. 27 makes change in terminology not just in the guardianship provisions but throughout the code "for the purpose of reversing demeaning stereotypes, changing negative attitudes, and cultivating a culture of respect toward persons with disabilities." For example, it deletes the word "retarded," which appeared at least 75 times in statute, and replaces it with "intellectual disability." It removes archaic references to idiots and imbeciles; and in many other instances the bill changes language to put the phrase "persons with" before various conditions, such as "persons with disabilities."

VII. Capacity Issues

A sound and thorough evaluation of medical, cognitive and functional elements can make a real difference in the judge's decision to appoint a guardian, as well as the scope of the guardianship order. Two bills this year addressed capacity assessment for an individual alleged to have diminished decision-making ability. In addition to the Idaho restoration bill profiled above, two bills this year addressed capacity assessment for an individual alleged to have diminished decision-making capacity.

Tennessee HB 2317 expands on the respondent's right to present evidence and confront and cross-examine witnesses at the hearing on his or her capacity. It specifies that the evidence may include testimony or other evidence from a physician, psychologist or senior psychological examiner of the respondent's choosing. This is critical in allowing the respondent to bring before the court a strong and detailed functional capacity assessment by an expert.

Arizona HB 2322 concerns capacity in the context of access to guns. The bill, signed by the Governor in April, requires notification of an incapacity determination and guardian appointment to the national instant criminal background check system. HB 2322 first provides that the court must make a specific finding as to whether the appointment is due solely to the person's physical incapacity. (Query, however, whether guardianship is ever merited if an individual has only a physical disability and no cognitive impairment.) The bill then states that unless the court makes such a finding, the court must transmit information about the individual and the guardian's appointment to the state department of public safety, which must transmit it to the national instant criminal background check system. The court also is required to transmit similar information about a person found "incompetent" under the Arizona rules of criminal procedure. The bill aimed to help keep guns away from people with cognitive impairment including mental illness.

VIII. Guardian and Fiduciary Misconduct

The 2010 Government Accountability Office report entitled *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors* (http://www.gao.gov/Products/GAO-10-1046) "could not determine whether allegations of abuse by guardians are widespread," but the report identified hundreds of such allegations by guardians in 45 states and DC between 1990 and 2010. The GAO examined 20 cases in which criminal or civil penalties resulted, and found that guardians engaged in significant exploitation of assets.

West Virginia SB 397 does not amend the state's guardianship code, but instead is elder abuse legislation that concerns guardianship. The bill clarifies the definition of "financial exploitation" of elders. In doing so, it provides that acting as a fiduciary – including serving as a guardian and a conservator – for an elderly person, protected person or incapacitated adult "shall not, standing alone, constitute a defense to a charge of financial exploitation." Thus, guardians who have financially exploited individuals entrusted to their care, in a breach of their fiduciary duty, cannot use their fiduciary appointment as a shield.

IX. Post-Adjudication/Monitoring Issues

During the past 15 years, many states have sought to strengthen the court's tools for oversight of guardians (See *Guarding the Guardians: Promising Practices for Court Monitoring,* http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf . Several 2014 bills addressed court oversight tools.

1. Filing of Accountings and Reports. The primary way courts are informed about an individual's status after a guardianship has been established is through periodic guardian reports – personal status reports and financial accountings, as provided by state law and court rules. All states require accountings and reports, and some require inventories and forward-looking plans.

Idaho HB 447 amends the existing requirements for guardian and conservator reporting. Conservatorship monitoring already had been shifted to review by Idaho Supreme Court personnel, who issue a report to the presiding judge for whatever action the judge believes appropriate. Guardianship monitoring, except for Ada County where there is a monitoring program for guardians, is still "a work in progress" (Robert Aldridge, Esq.) The Supreme Court has created and issued standard required forms for conservator inventories and annual reports (in both small and large estate formats) and for guardian annual reports.

Because the required forms include the relevant required information and because changes in the requirements are much easier by Rule than by statute, HB 447 removed the Code's detailed language about the contents of reports, especially for conservators, and left only minimal requirements in the statute for annual status reports for guardians and an inventory and annual reports for conservators, with specifics to be provided by Rule.. The new measure mandates that reports, accountings, and inventories must be made under oath or affirmation, and must comply with the Idaho Supreme Court Rules.

Idaho also had initiated a pilot project to have court visitors in guardian/conservator cases become court personnel, paid for and monitored by the Idaho Supreme Court. HB 447 authorizes the court to use court personnel to provide court visitor services through the Guardianship and Conservatorship Project Fund. Any money recovered from the individual's estate for court-provided visitor services must be deposited into the Guardianship and Conservatorship Project Fund.

The legislation builds on an earlier monitoring pilot project to improve oversight and enforcement. The process began in Ada County with a fairly informal voluntary review process undertaken pro bono by local attorneys, CPA's, and professional fiduciaries. The results convinced the Idaho legislature to initiate a pilot project to monitor conservatorships in six counties, diversified by size and location. The pilot project was extremely successful, raising compliance rates from as low as five percent to about ninety percent. Thus, the legislature and Supreme Court created the permanent monitoring system, currently funded by filing fees and report fees. Expansion of the program to on-the-ground monitoring likely will require legislative funding.

2. Review & Investigation of Reports and Accounts. Regular court review of guardian reports and accounts, as well as investigation of any problems, is key to effective oversight. In recent years, legislation has sought to authorize and require actions by courts for review, investigation and production of documents.

Oregon HB 4114 authorizes the court to appoint a volunteer "protected person special advocate" following appointment of a fiduciary. The special advocate is to "investigate and evaluate the protected person's circumstances to establish whether the fiduciary is fulfilling the fiduciary duties . . . ." The volunteer also will inform the fiduciary of community resources, and will report to the court.

The new measure specifies that the volunteer is not entitled to compensation or reimbursement for expenses from the court or from the estate; provides immunity for good faith acts or omissions in completing the duties; and allows the volunteer access to records concerning the person and the estate. The court is to establish qualifications, standards and procedures for protected person special advocates. Such "special advocates" are similar to "volunteer visitors" or "volunteer guardianship monitors" as described in the ABA Commission's online *Handbook on Volunteer Guardianship Monitoring and Assistance: Serving the Court and Community*, at http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/vol_gship_intro_1026.authcheckdam.pdf; as well as Klem, Volunteer Guardianship Monitoring: A Win-Win Solution, ABA Commission on Law and Aging, 2007, http://apps.americanbar.org/aging/publications/docs/Volunteer_Gdhip_rpt.pdf .

Florida CS/HB 635, in addition to requiring credit history investigation of guardians, authorizes a clerk of the court to obtain and review records affecting guardianship assets and to issue subpoenas to nonparties concerning the assets. It authorizes the court to require a guardian who has failed to submit records and documents during an audit to produce them; and provides for the removal of a guardian for a bad faith failure to submit guardianship records during an audit.

Tennessee SB 2354 transfers probate jurisdiction in Franklin County from the general sessions court to the chancery court and transfers the clerical duties for probate matters from the circuit court clerk to the clerk and master. Such transfers may arise from budgetary, retirement or caseload changes.

Virginia HB 346 addresses the authority of a Commissioner of Accounts in approving gifts from a conservatorship estate.

Table: State Adult Guardianship Legislation at a Glance: 2014

State	Legislation	Code Section Amended	Provisions
AZ	HB 2322	Ariz. Rev. Stat. §14-5304	Notification of guardian appointment to national instant criminal background check system.
CA	SB 940		Enacts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
CA	AB 2747		Clarifies basis for waiver of court fees and costs.
FL	CS/HB 635	Fla. Stat. §§744.3135; 744.368, 744.3685	Requires guardian credit history and background screening; strengthens court monitoring authority.
ID	SB 1247	Idaho Code §15-5-318	Provides for termination of guardianship; restoration of rights.
IN	SB 59	Ind. Code §29-3-9-12.2, additional sections	Concerns petition for dissolution of marriage.
MA	SB 2249		Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
MD	HB 179	Md. Code Ann. §14-402	Changes composition of Public Guardianship Review Board.
MS	SB 2240		Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
NE	LB 920		Adopts a public guardianship act.
OR	SB 1553		Enacts statewide public guardianship program.
OR	HB 4114	ORS §125.025	Authorizes court to appoint

			protected person special advocates
TN	HB 2354		Transfers probate jurisdiction to chancery court in one county.
TN	HB 2317	Tenn. Code Ann. §34-3-106; § 34-3-107	Concerns presentation of evidence; and information about fees & expenses.
UT	HB 265	Utah Code Ann. §75-5-310; 75-5-310.5, additional sections	Provides for emergency and temporary guardians.
VT	S 27	Throughout code	Makes changes in terminology.
VA	HB 346	Va Code Ann. §64.2-2032	Concerns gifts of a conservatorship estate.
WV	SB 397	W Va Code Ann §61-2-29b	Concerns financial exploitation of elders