

STATE ADULT GUARDIANSHIP LEGISLATION SUMMARY: DIRECTIONS OF REFORM – 2018

Commission on Law and Aging
American Bar Association

This 2018 legislative summary includes information on 39 state enactments from 22 states on adult guardianship, as compared with 49 enactments from 25 states in 2017. An earlier version of this 2018 legislative summary [January – August] was published as part of the National Guardianship Association's *2018 NGA Legal and Legislative Review*, presented at the October 2018 NGA National Conference.

States were active on a variety of fronts. Maine was the first state to adopt the *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (UGCOPAA) (approved in 2017 as "a modern guardianship statute that better protects the individual rights of both minors and adults subject to a guardianship or conservatorship order."). New Mexico adopted parts of UGCOPAA, making multiple changes to its guardianship law. Missouri passed a landmark measure, which was originally drafted by Missouri WINGS, and underwent additional significant revisions from other stakeholders. Kentucky amended its unique jury trial requirement for guardianship cases, allowing for a bench trial under certain circumstances. Florida, Iowa, Kentucky, and Utah made changes to their public guardian laws. Alaska, the District of Columbia and Wisconsin formally recognized supported decision-making agreements.

Finally, Congress passed Strengthening Protections for Beneficiaries of Social Security Act (H.R. 4547), a bipartisan measure aimed to improve the Social Security Administration (SSA)'s representative payee program. See https://www.ssa.gov/legislation/legis_bulletin_042418.html. The new federal law pertains to guardians in at least two ways. First, the law exempts certain representative payees who have a familial relationship with the beneficiary from the annual accounting of use of benefits requirement: parents/legal guardians of a minor child, parents of an adult child with a disability living in the same household, and spouses. 42 U.S.C. § 405(j)(3)(D). Some of these family members are also guardians. Second, the law directs the SSA to contract with the Administrative Conference of the United States to conduct a study on the feasibility and barriers of information sharing between SSA, state courts, and relevant state agencies. The results of this study have the potential to improve the flow of information between guardians and the representative payee program. With a framework for sharing information, guardians and representative payees could alert state courts and SSA of financial exploitation; avoiding the unfortunate situation when a fiduciary, who has been removed as a guardian or representative payee, continues to serve in the other role.

Since 2011, states have enacted approximately 270 adult guardianship bills – ranging from a complete revamp of code provisions to minor changes in procedure. Most

have been steps forward for individuals in safeguarding rights, addressing abuse, and promoting less restrictive options – but a few have taken steps back. The real challenge lies in turning good law into good practice.

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If you know of additional state adult guardianship legislation enacted in 2018, please contact dari.pogach@americanbar.org. The views expressed in the legislative summary have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

I. Pre-Adjudication Issues

For the last 30 years, 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, promote effective administration, or address inconsistencies.

1. Counsel for Respondent. Perhaps the most basic procedural right of respondents in guardianship proceedings is the right to counsel. Both the *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (UGCOPAA) and the *National Probate Court Standards* provide for appointment of counsel, while not every state guarantees an attorney. The role of counsel differs substantially, with some states requiring counsel as vigorous advocate and others specifying that counsel should act as guardian ad litem. See the ABA Commission on Law and Aging state-by-state chart updated _____ to _____ 2018 at: https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartrepresentationandinvestigation.authcheckdam.pdf.

- *Missouri SB 806* establishes the right to representation at a guardianship hearing.
- *Missouri SB 806* adds several provisions addressing the role of the lawyer who represents an allegedly incapacitated person in a guardianship proceeding. According to the new law, the attorney:
 - Has the right to obtain the person’s medical and financial information.
 - Must visit the person at least twenty-four hours before the hearing. The court may waive this requirement for good cause.
 - Shall get as much help as possible from the person in advancing the person’s interests.

- If the attorney finds the person cannot communicate or participate in the proceedings, the attorney shall safeguard and advance the interests of the person.
 - Must have the court's permission before withdrawing in favor of private counsel.
 - Cannot also serve as guardian ad litem or conservator.
 - May not be nominated by the petitioner to serve as attorney for the person.
 - Must inform the respondent of the respondent's rights, including the right to appeal the court's decision.
- Missouri SB 806 guarantees the right to a court-appointed attorney for a person who consents to the appointment of a conservator of their estate. The attorney must advise the "proposed protectee" of their rights and the consequences of being appointed a conservator.
 - Utah HB 167 enlarges the list of exceptions when counsel for the respondent is not required. A new exception exempts court appointed counsel if, within 60 days of the date the court initiated the appointment of counsel, there is no attorney available from the court's list of attorneys who have volunteered to represent respondents in guardianship cases, and the court appoints a court visitor.

2. Procedural Changes. Over the past 30 years, most states have made changes in pre-appointment requirements for the petition, notice, presence, and hearing procedures.

- California SB 931. Under existing law, when a professional in charge of an agency that provides comprehensive evaluation or a facility that provides intensive treatment determines that a person is gravely disabled because of a mental disorder or impairment by chronic alcoholism, the professional may recommend conservatorship to the county investigatory authority. Mental health professionals in county jails have the same option. SB 931 codifies this authority for professionals serving county jails, at the discretion of the county. Moreover, under the new law a conservatorship investigator cannot choose not to decline an investigation because the person is in a county jail.
- Kentucky HB 5 amends its jury trial requirement for guardianship cases. Kentucky is the only state that requires a jury trial for guardianship cases. Now, a bench trial is permissible if: "(a) the respondent is present, counsel for the respondent, and the attorney for the Commonwealth agree to a bench trial; (b) no objection to a bench trial is made by an interested person or entity; and (c) the interdisciplinary evaluation report prepared for the proceeding reflects a unanimous consensus of the persons preparing it that the respondent is disabled or partially disabled, the court has reviewed the report, and the court finds no cause to require a jury trial."

- Missouri SB 806 makes several changes to pre-appointment requirements, including:
 - Requiring the petitioner to state in the petition a factual basis for the conclusion of incapacity, including incidents and specific behaviors that support why the appointment of the guardian or limited guardian is sought.
 - Granting the right to notice of the petition to the: proposed guardian/conservator, co-tenants and co-depositors of the respondent. The Public Administrator who serves as public guardian (if nominated) shall receive notice of the petition and any accompanying documents, including exhibits and medical opinions, and can attend and participate in the hearing.
 - Adding the following requirements to a petition for appointment of a co-guardian: (1) reasons for co-appointment; (2) whether co-guardians are to act independently or jointly; (3) statement that written consent has been obtained from proposed co-guardian.
 - Clarifying if parents petition the court to become the guardians of an adult child, and they also have a child custody or visitation case pending, the court with the authority to enter the child support order may only do so after the probate court appoints the guardian.
 - Requiring not only clear and convincing evidence of incapacity to appoint a guardian, but also clear and convincing evidence that the person's identified needs cannot be met by a less restrictive alternative.
 - Requiring the court to include the following in the guardianship order:
 - Extent of the person's physical, mental, and cognitive incapacity to manage essential requirements for food, clothing, shelter, safety, other care, and financial resources.
 - Whether the person requires placement in a supervised living situation and, if so, the degree of supervision required.
 - Whether the person's financial resources require supervision and, if so, the nature and extent of supervision needed.
 - Whether the person retains the right to vote.
 - Whether the person is permitted to drive if the person can pass the required driving test.
 - Whether the person retains the right to marry.
- Missouri SB 806 establishes the right to present evidence, cross-examine witnesses, the right to remain silent, the right to have a hearing open or closed to the public, and the right to a hearing in accordance with rules of evidence in civil proceedings.
- New Mexico SB 19 requires the petitioner to state the following in the petition for guardianship or conservatorship:
 - Name and address of several individuals.
 - What less restrictive means have been attempted.
 - Whether limited guardianship would be appropriate.
 - Any individual with whom contact should be limited.

- New Mexico SB 19 expands notice of proceedings to include the rights of the person alleged to need a guardian or conservator, including the right to attend the hearing. Notice must be provided to all individuals named in the petition.
- New Mexico SB 19 addresses when records from a guardianship or conservatorship hearing are public or sealed. The hearing itself shall be open to the public unless the court determines otherwise.
 - Generally, the guardianship hearing is a matter of public record, unless the person alleged to be incapacitated requests the court to seal the record and the petition was dismissed or the proceeding was terminated.
 - The person alleged to be incapacitated, the attorney for that person, and anyone entitled to notice may access court records.
 - Other persons may petition for access based on good cause.
 - Visitor and healthcare professional reports are sealed but available to the individual alleged to be incapacitated and certain other individuals.
- Utah HB 167 directs notice of a guardianship hearing to be provided to Adult Protective Services (APS) if APS has received a referral concerning the welfare of a person with a guardian; a person alleged to lack capacity; a guardian or conservator; or a potential guardian or conservator.

3. Temporary/Emergency Guardianship Orders. In emergency situations, statutory provisions and the court must strike 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 1991 case *Grant v. Johnson*, a federal district court declared the Oregon temporary guardianship statute unconstitutional because it did not provide minimum due process protections. Following the *Grant* decision, some states revised their temporary guardianship provisions. The ABA Commission on Law and Aging published a chart of state provisions on temporary guardianship in 2014. https://www.americanbar.org/content/dam/aba/administrative/law_aging/Emergency_Guardianship_Chart.authcheckdam.pdf.

- Missouri SB 806 extends the maximum possible term of an emergency guardian/conservator from 30 to 90 days. A hearing must be held within five days of a petition. If the petition for a permanent guardianship or conservatorship is not filed within the 90 days, the court may terminate the appointment upon a finding that termination would not be contrary to the respondent's interests.
- Virginia HB 850/SB 543 provides for the appointment of a temporary conservator when the court orders an emergency appointment of adult protective services (APS). Previously, Virginia's law only allowed for a temporary guardian in this context. The court may appoint the local APS department or another interested person as temporary conservator of the adult for the sole purpose of managing the adult's

estate and financial affairs related to the approved adult protective services until the expiration of the order (maximum 15 days with an option for a 5-day extension). The court shall set the bond of the temporary conservator. The temporary conservator may petition the court to set aside or modify the emergency order upon a substantial change in circumstances and is required to submit a report to the court describing any services provided to the adult.

4. Youth Transition. In many cases parents of minors with disabilities file for guardianship when (or in some states before) the child turns 18. Parents or legal guardians of a child with a disability may have been told by education or social service professionals that they must seek guardianship to remain involved with their child's life when the child turns 18. In some cases, parents/legal guardians may fear their child will not be able to receive medical treatment or public benefits without an adult guardian. It is seldom, if ever true that a young person must have a legal guardian upon turning eighteen or suffer calamitous consequences. There are many legal options for ensuring parents/legal guardians can continue to provide support and care without rushing into what may be an unnecessary guardianship.

- Louisiana HB 395 allows the court to appoint a tutorship (guardianship) for a person over the age of 15 who has less than "2/3 the intellectual functioning of a person the same age." The tutorship, which restricts the legal capacity of a person with an intellectual disability to that of a minor, does not end at any age, but rather continues until revoked by the court.
- Utah SB 182 enacts statutory provisions allowing parents or other interested parties to initiate guardianship proceedings for a minor who is at least 17 and a half years old and alleged to be incapacitated. The petitioner can request that the guardianship order take effect on the day the minor turns eighteen. Furthermore, unless contrary to the person's best interests, if a petition is filed within two years of the eighteenth birthday of the allegedly incapacitated person, the court shall appoint the person or persons who had sole legal decision-making authority when the "incapacitated person" was 17 and a half years old as guardian.

5. Basis for Appointment. California AB 3144 expands the basis for which a mental health conservatorship (of the person and property) may be appointed. According to state law, a conservator may be appointed for a person who meets the definition of "gravely disabled" as a result of a mental health disorder or alcoholism. This law expands the basis of appointment of a conservator for a person who: cannot care for their own health and well-being due to a serious mental illness and substance abuse disorder as evidenced by eight or more detentions for evaluation and treatment in the preceding 12 months. Note that this bill only applies to Los Angeles, San Diego, and San Francisco County. The board of supervisors of each respective county may not authorize the new law without first establishing a working group to conduct an evaluation of the new statutory provisions, and ensuring there is available funding and resources to provide an extensive list of

services, including: supportive community housing that provides wraparound services, appropriately trained public conservators, outpatient mental health counselling, coordination and access to medications, psychiatric and psychological services, vocational rehabilitation, veterans' services, family support and consultation services, and a service planning and delivery process.

6. Vetting of Potential Guardian. Oregon HB 4094 requires the petitioner and the nominated fiduciary in a protective proceeding to disclose whether the nominated fiduciary has failed to perform a fiduciary duty which resulted in a loss, and was surcharged a surety for that loss by the court, or if the fiduciary was removed according to Oregon Rev. Stat. §125.225. In addition, the petition must provide a statement of circumstance surrounding such actions and repercussions. Finally, once a person is appointed fiduciary, they have a duty to inform the court immediately if they have failed to perform a fiduciary duty which resulted in a loss, and were surcharged a surety for that loss by the court, or if they were removed from a fiduciary position according to Oregon Rev. Stat. §125.225.

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 be moved for medical or financial reasons. Thus, judges, guardians, and lawyers are frequently 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.

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.
- 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 facilitates 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. For more information, see “Why States Should Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,” <http://uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UAGPPJA>.

In 2018, Wisconsin joined 46 other states in adopting the UAGPPJA. Four states remain that have not adopted the Act: Florida, Kansas, Michigan, and Texas.

III. Choice of Guardian

In the past, bills on choice of guardian have targeted guardian certification and licensure; standards and training; requirements for court selection of guardians; and guardian background checks. This year most of the bills in this category addressed public guardianship.

1. Who May Serve? Several states clarified which persons or entities may serve as guardian or conservator:

- California AB 3144 extends the operation of the Professional Fiduciaries Bureau (“bureau”) within the Department of Consumer Affairs until 2023. The Bureau licenses and regulates professional fiduciaries, including private/professional conservators and guardians. The law requires the licensee to disclose whether the licensee has been removed for cause as an agent under a power of attorney for health care or finances. The law already requires the licensee to disclose any prior removals as guardian or conservator. The new law requires the bureau to keep the licensee’s current principals under a power of attorney in the licensee’s file, as well as documentation of whether the licensee has ever been removed for cause as an agent under a power of attorney. The law prohibits the licensee from billing a client or estate for time spent responding to a complaint filed with the bureau against the licensee.

- Illinois HB 4867 requires the potential guardian of an adult with disabilities to disclose how many other adults with disabilities are under their guardianship. The State and Public Guardian are exempted. If the number is more than five, the court shall notify the Guardianship and Advocacy Commission. The Guardianship and Advocacy Commission shall maintain a list of all notifications it receives under this section for reference by other agencies and the public.
- Illinois HB 4686 clarifies that not only are agencies serving residential services to an individual, but also their employees, prohibited from serving as guardian.
- Missouri SB 806 clarifies the priority of appointment of the following individuals as guardian, specifying an unrelated third party shall be the last resort: (1) any eligible person nominated by the person at the time of the hearing; (2) any eligible person nominated in a durable power of attorney or an instrument in writing, signed by the person, before the “inception of the person’s incapacity or disability;” (3) “the spouse, parents, adult children, adult brothers and sisters and other close adult relatives of the incapacitated or disabled person;” (4) any eligible person, or for the estate only, any organization or corporation nominated in a will of such spouse or relative.
- New Mexico SB 19 authorizes the court to require the guardian to petition for the appointment of a conservator.

2. Guardian Background Checks

- Missouri SB 806 requires a proposed guardian or conservator submit to a background check at their own expense, and a proposed conservator must submit to a credit history investigation. The results of the background checks and credit history investigations must be filed with the court at least ten days prior to guardianship/conservatorship appointment hearing. Guardians certified by a national accrediting organization may file proof of certification in lieu of a background check. Public administrators and family members are exempt from this requirement.

3. Public Guardianship. A 2008 national public guardianship study found that 44 states have statutory provisions on public guardianship or guardianship of last resort. According to the study, 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 states 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?* Praeger, 2010); see also an earlier version of the study (2007) at

https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html.

- Florida SB 268 creates an exemption to the public records requirement for certain identifying information of public guardians, their families, and “employees with fiduciary responsibility.” The legislature deemed this exemption a “public necessity” to protect the safety of public guardians who may be at risk of attack or harassment from individuals for whom they served as guardians.
- Florida SB 498 removes the scheduled repeal date of the law authorizing the Foundation for Indigent Guardian, Inc, which serves as a not-for-profit organization with the sole purpose of supporting Florida’s Office of Public and Professional Guardians.
- Iowa HF 2449 renames the “Iowa Substitute Decision Maker Act” as the “Iowa Public Guardian Act,” transferring the statutory authority formerly bestowed upon a “substitute decision-maker” to a public guardian. The term substitute decision-maker referred to a guardian, conservator, representative payee, attorney in fact under a power of attorney, or personal representative. The new law eliminates the references to power of attorney or personal representative, and defines “public guardianship services” as “guardianship, conservatorship, or representative payee services.” While many of the Office’s duties remain the same as its predecessor, the law eliminates the duty of managing a person’s affairs after death and removes all references to “decedents.”
- Kentucky HB 5 provides several clarifications and changes to the role of the state’s public guardian, known as the Cabinet for Health and Family Services, defining the role of the cabinet as a “fiduciary.” The cabinet, when appointed as a guardian, shall not assume physical custody of the person; be assigned as the person’s caregiver or custodian; or become personally liable for the person’s expenses or placement, or to third parties for the person’s actions. However, the cabinet shall procure resources and services when they are necessary and available for which the person is eligible. The law also states, “before appointing the cabinet, consideration shall be given to the average caseload of each field social worker.”
- Kentucky HB 5 provides only a “resident of the state” may be appointed a public guardian. The new law defines “‘resident of the state’ as an individual who has a permanent, full-time residence in Kentucky prior to the filing of a petition for or appointment of a ...guardian...for at least the previous six months that is not a hospital, treatment facility, correctional facility, or long-term care facility, and who is a citizen or permanent resident of the United States.” In addition to the residency requirement, a person who has been convicted of a sex crime or violent offense is also not eligible for appointment of a public guardian on their behalf.

- Missouri SB 806 provides that the court may not appoint a public administrator as a guardian or conservator unless the public administrator can participate in the hearing. The public administrator may waive notice and the opportunity to participate.
- Utah HB 167 adds the Office of Public Guardian to the list of prioritized individuals for the court to consider when appointing a guardian.

IV. Guardian Actions

1. Guardian's Powers/Authority

- Kentucky HB 5 changes the definition of the powers of a guardian from having “full care, custody, and control,” and “managing the financial affairs,” to simply having the responsibility to “manage the personal affairs” of the “disabled person.” The law defines “personal affairs” as decisions about, but not limited to, health care, food, clothing, shelter or personal hygiene.
- Missouri SB 806 clarifies that a limited guardianship is only appropriate if a less restrictive alternative is not sufficient to meet the person's needs. The limited guardianship shall preserve as much of the person's autonomy as possible: “The order of appointment shall specify the powers and duties of the limited guardian so as to permit the individual to provide for self-care commensurate with the individual's ability to do so and shall also specify the legal disabilities to which the individual is subject. In establishing a limited guardianship the court shall impose only such legal disabilities and restraints on personal liberty as are necessary to promote and protect the well-being of the individual and shall design the guardianship so as to encourage the development of maximum self-reliance and independence in the individual.”
- Missouri SB 806 directs the guardian to only exercise authority to the extent necessary given the person's limitations, and as much as possible, the guardian must encourage the person to participate in decisions, to act independently, and to develop or regain capacity.

2. Authority of Agents vs Guardians. Financial and health care powers of attorney are important planning tools that can reduce or avoid the need for guardianship. If a guardian is nonetheless appointed, a key question is the extent to which, and under what circumstances, an agent's authority trumps that of a guardian. A 2015 ABA Commission article and chart explored the authority of guardians and health care agents, at:

http://www.americanbar.org/publications/bifocal/vol_36/issue_6_august2015/health-care-decision-making-authority-guardians-agents.html. For agents under financial powers of attorney, there may be considerations of abuse and exploitation. The new

UGCOPAA provides that, unless authorized by specific order, a guardian does not have the power to amend or revoke a power of attorney. In fact, a power of attorney for healthcare or finances trumps the authority of the guardian. Thus, the decision-maker appointed in a power of attorney maintains authority over health care or financial decisions, and the guardian/conservator should cooperate as much as possible. UGCOPAA § 315(a). Recent legislation diverges on following the Uniform Law and deferring to an agent in a power of attorney (New Mexico), and following the older Uniform Power of Attorney Act (2006), which terminates a power of attorney upon appointment of a guardian or conservator (Kentucky, Missouri).

- Kentucky HB 11 adopts parts of the Uniform Power of Attorney Act, providing that if a court appoints a guardian, conservator or other fiduciary after a power of attorney is executed, the power of attorney terminates unless the court specifically provides that it remains in effect. In a power of attorney, the principal can nominate a limited or plenary guardian or conservator, and the court will consider the nomination if protective proceedings are initiated after the principal executes the power of attorney. “The nomination shall be treated as indication of the principal’s preference...and the court shall give the preference due consideration.”
- Missouri SB 806 clarifies that the appointment of a guardian revokes the powers of an agent under a health care power of attorney, unless the court orders otherwise.
- New Mexico SB 19 prohibits a guardian from amending or revoking a healthcare power of attorney. The agent’s decisions take precedence over the guardian’s.
- New Mexico SB 19 clarifies what kinds of actions the court may authorize an individual to carry out to protect a person’s finances or property instead of appointing a full conservator. The court may issue a protective order restricting the access of a specific individual to the person’s property. Before it issues an order, the court should consider the preferences of the person.

3. Sale of Real Property. Many states have specific requirements concerning the authority of the guardian/conservator authority in the sale of real property.

- Missouri SB 806 gives the person ten days of notice prior to a hearing on the sale of the person’s real or tangible personal property. Prior notice is not required for sale of intangible personal property.

4. Comingling of accounts.

- Missouri SB 806 prohibits conservators from combining personal property and estate property.

- New Mexico SB 19 prohibits guardians or conservators from comingling their own accounts with the person or the person's accounts with those of another conservatee.

5. Guardian/conservator liability for the actions of the individual.

- New Mexico SB 19 makes clear that the guardian is not liable for the actions of the person subject to their guardianship, merely because they are the guardian.
- New Mexico SB 19 prohibits the request of a waiver of a liability from a conservator.

6. Dissolution of Marriage. Marriage and divorce generally are considered so personal in nature that authority concerning these actions may not transfer to a guardian.

- Missouri SB 806 recognizes the right to of the person with a guardian to ask the court for permission to marry.

7. Guardian Access to Digital Assets. The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)(approved by the Uniform Law Commission in 2015) allows individuals to plan for the disposition of their digital assets in the same way they can make an estate plan for traditional assets. Digital assets include email, digital photographs, documents stored in electronic form, websites, and social media accounts. For conservators, access to certain private communications is restricted unless approved by the court or the protected person. Georgia, Maine, Missouri, U.S. Virgin Islands, and West Virginia enacted a RUFADAA law this year, bringing the total number of states with such a law to 42. (Summary by Ben Orzeske).

8. Post-Death Authority Concerning Disposition of Property.

- Maine LD 123 adopts UGCOPAA, stating one of the purposes of recodification is to "discover and make effective the intent of a decedent in the distribution of the decedent's property."

9. Commitment to an institution for mental health treatment.

- Maryland HB 33 states the appointment of a guardian of a person may not be the basis for commitment of that person to a "mental institution." Furthermore, "appointment of a guardian of the person; (1) Is not evidence of incompetency of the disabled person; and (2) Does not modify any civil right of the disabled person unless the court orders, including any civil service ranking, appointment, THE RIGHT TO APPLY FOR VOLUNTARY ADMISSION TO A FACILITY...and rights relating to licensure, permit, privilege, or benefit under any law." In addition to the existing requirement

that the facility notify the guardian if someone requests discharge after a voluntary admission to a facility, HB 33 directs the facility to notify the guardian if a person subject to their guardianship has been admitted to the facility.

- New Mexico SB 19 requires the guardian to follow involuntary civil commitment procedures if the guardian seeks to commit a person to a mental health facility.

V. Fees for Guardians and Attorneys

Payment of guardian fees and attorney fees, as well as court fees and costs, is a significant factor in bringing a guardianship proceeding. Guardian fees can be substantial, and are often the subject of legal disputes.

- Utah HB 167 clarifies that the allegedly incapacitated person or respondent in a guardianship proceeding is only exempt from paying court-appointed counsel if the respondent or the respondent's parents are indigent.

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. Right to Visitation/Association. Visits by, and communication with, family members and friends are basic to the quality of life of an individual subject to guardianship. Guardians stand in a position to either restrict or enhance such communication. Restrictions may result in harmful isolation, yet at the same time may be an effort to protect *against* harm and abuse. The complex cases in which visitation issues arise often are marked by family dysfunction, and may involve undue influence, neglect and financial exploitation. A fundamental question is: to what extent should decisions involving basic rights to visitation/association be in the hands of guardians or be required to be authorized by courts?

The *NGA Standards of Practice* direct guardians to support visitation whenever possible: stating “the guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person,” and “the guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person” (Std #4). See <https://www.guardianship.org/standards/>.

The *Uniform Guardianship, Conservatorship and Other Protective Arrangements Act* (UGCOPAA) provide a model for statutory provisions that support and foster communication and visitation (§§ 311, 315, 502, 503). The Act:

- Requires that the individual receive notice of the right to communicate, visit or interact with others;
- Limits a guardian's authority to restrict communication/visitation, prohibiting such a restriction, with three exceptions – (1) the restriction is authorized by court; (2) there is a protective order or protective arrangement that limits contact; OR (3) the guardian "has good cause to believe the restriction is necessary because interactions with a specified person poses a risk of significant physical, psychological, or financial harm" AND the restriction is for not more than 60 days, OR the person with whom contact is restricted does not have a family or social relationship with the individual.
- Allows the court to order a "protective arrangement" instead of a guardianship. Under this Article, the court may direct a visitation or supervised visitation; or restrict access "by a person whose access places [the individual] at serious risk of physical or psychological harm" – or by a person who uses fraud, coercion, duress or deception and control.

For a more in-depth analysis of the right to visitation, see the ABA Commission on Law and Aging's recent publication, Legislative Fact Sheet: Guardianship and the Right to Visitation, Communication, and Interaction, available at https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-05-24-visitation-legislative-factsheet.authcheckdam.pdf. The Fact Sheet provides a comprehensive review of legislative amendments since 2015.

The following bills restrict and/or authorize guardians to take various actions concerning an individual's right to visitation/association and communication with family and friends:

- Illinois HB 4309 enacts the Frail Elderly Individual Family Visitation Protection Act, also known as the Kasem/Baksys Visitation Law. The Act gives standing to family members to petition the court for visitation with a "frail, elderly individual," or someone over the age of 60 who is determined by the court to be functionally impaired, when a caregiver unreasonably prevents the family members from doing so. The Act does not apply to individuals with guardians.
- Maryland HB 1483 authorizes a court to include in an order appointing a guardian the duty to foster and preserve family relationships, including assisting to arrange visitation and communication by telephone calls, personal mail, and electronic communications.
- Maine LD 123 adopted UGCOPAA, including its strong provisions on visitation.
- Nebraska LB 845 addresses the process in which a family member may petition the court for the right to visit a family member who is in a healthcare facility or another dwelling where the person receives care and services, and the family member has

been denied the opportunity to visit by a guardian or other caregiver (designee under power of attorney or another person denying visitation). The law expands the list of factors the court may consider, including the nature of the relationship between the family members, the location of the proposed visit, the likely effect of visitation on the person, and the likelihood of onerously disrupting the established lifestyle of the person.

- New Mexico SB 19, in line with UGCOPAA, prohibits the guardian from restricting visitation unless (1) authorized by court order; (2) “a less restrictive alternative is in effect that limits contact between the protected person and a person; or” (3) the guardian has good cause to believe the interaction in question would cause harm to the person, and the restricted contact is for no more than seven days for a family member or someone with a preexisting relationship or 60 days for all other parties.
- Utah SB 182 requires a guardian to immediately inform anyone who requests notification of the following, provided they are not restricted in associating with the person: the person’s admission to a hospital or hospice for three more days, and (in addition to notification of death) the arrangements for disposition of the person’s remains.

2. Bill of Rights. At least six states have statutory provisions listing rights of individuals with guardians. Florida sets out basic rights at Fla. Stat. § 744.3215, Minnesota has a statutory “bill of rights for individuals and protected persons” at Minn. Stat. § 524.5-120, which provides that “the individual/protected person retains all rights not restricted by court order and these rights must be enforced by the court,” and enumerates 14 specific rights. In 2012 Michigan created a new provision summarizing and reiterating within a single section the basic rights of individuals at Mich. Comp. Laws Ann. § 700.5306a. In 2015, Texas enacted a new subchapter (1151.351 of the Estates Code), “Rights of Individual,” setting out a total of 24 distinct rights. The person retains all rights under law “except where specifically limited by a court-ordered guardianship.” In 2017 Nevada enacted a “Protected Persons’ Bill of Rights” at Nev. Rev. Stat. § 159.327-8. Also in 2017, South Carolina required the court’s guardianship order to specify from a detailed list the rights specifically removed and the rights vested in the guardian at S.C. Code §62-5-101 et seq. This year Missouri enacted a comprehensive list of rights for people under guardianship.

- Missouri SB 806 provides an individual with a guardian has the right to:
 - A guardian who acts in the best interests of the individual.
 - A guardian who is reasonably accessible to the individual.
 - Communicate freely and privately with family, friends, and other persons other than the guardian; except that, such right may be limited by the guardian for good cause but only as necessary to ensure the individual’s condition, safety, habilitation, or sound therapeutic treatment.

- Individually or through the individual's representative or legal counsel, bring an action relating to the guardianship, including the right to file a petition alleging that the individual is being unjustly denied a right or privilege, including the right to bring an action to modify or terminate the guardianship.
- The least restrictive form of guardianship assistance, taking into consideration the individual's functional limitations, personal needs, and preferences.
- Be restored to capacity at the earliest possible time.
- Receive information from the court that describes the individual's rights, including rights the individual may seek by petitioning the court.
- Participate in any health care decision-making process.

3. Right to Less Restrictive Alternatives

- Missouri SB 806 requires that before appointing a guardian or conservator, the court must find, by clear and convincing evidence, that the respondent's needs cannot be met by a less restrictive alternative. Less restrictive alternatives include, but are not limited to:
 - Durable power of attorney.
 - Trust.
 - Representative payee.
 - Supported decision-making agreements or the provision of protective or supportive services or arrangements provided by individuals or public or private services or agencies.
 - The use of appropriate services or assistive technology.
 - Temporary emergency guardian ad litem or conservator ad litem.
 - Limited guardian or conservator.

4. Other Provisions Concerning Rights.

- Missouri SB 806 expressly grants the court the authority to enter an order preserving certain rights even if it finds the person is wholly incapacitated: the right to vote, drive if the person can pass a driving test, and the right to marry.
- Missouri SB 806 allows a person who has been appointed a guardian to petition the court for the right to:
 - Marry or divorce.
 - Make, modify, or terminate other contracts or ratify contracts made by the individual.
 - Consent to medical treatments.
 - Establish a residence.
 - Change the person's domicile.

- Bring or defend any legal action, except an action relating to the guardianship.
- Missouri HB 1719 assigns discretion to the board of the Division of Professional Registration to refuse to reinstate any certificate of registration of authority if someone needs or is assigned a guardian or conservator.
- New Mexico SB 19 holds an adult subject to guardianship retains the right to vote unless the court order appointing the guardian includes findings that support removing that right.

4. Changes in Terminology. Many states are making changes in language to reflect preferred terminology more in line with individual self-determination and rights. Some changes are simply reflective of efforts to clarify meaning.

- Missouri SB 806 modifies several definitions:
 - “disabled,” “partially disabled,” and “partially incapacitated” - adds a reference to cognitive condition.
 - “habilitation” - updates the definition to match current practice, as the “process of treatment, training, care, or specialized attention that seeks to enhance and maximize the ability of a person with an intellectual disability or a developmental disability to cope with the environment and to live as determined by the person as much as possible, as is appropriate for the person considering his or her physical and mental condition and financial means.”
 - “incapacitated person” - adds reference to cognitive condition and clarifies that an individual is NOT incapacitated if they can manage “essential requirements for food, clothing, shelter, safety or other care ...” with appropriate services and technology.
 - “least restrictive alternative” - replaces “alternative” with “environment” and updates language to match current practices. The law defines least restrictive alternative as it relates to the guardianship order and the guardian’s powers, allowing the person found “incapacitated” to live, learn, and work with minimum restrictions. It also means choosing the approach that places the least possible restriction on the person’s personal liberty and promotes the person’s inclusion in the community. At the same time, the least restrictive alternative will meet the person’s needs for health, safety, habilitation, treatment, and recovery, and protect the person from abuse, neglect, and financial exploitation.
- New Mexico SB 19 replaces the term “incapacitated person,” which referred to a person who was found to lack capacity and appointed a guardian, to “protected person.”

VII. Capacity Issues

Fundamental to guardianship law is the “trigger point” that states use to determine when an individual’s rights can be removed and in some cases transferred to a court-appointed surrogate – a guardian or conservator. State statutes have a definition of “incapacity,” or some similar term, to direct judges in their determination. These definitions generally combine or select from four elements: medical condition, cognitive ability, functional ability, and potential harm without a surrogate appointment.

The Uniform Guardianship and Protective Proceedings Act of 1997 used a functional and cognitive test. The recently approved *Uniform Guardianship, Conservatorship, and other Protective Arrangements Act* (UGCOPAA) uses similar language but: (1) adds supports and supported decision-making; and (2) does not use the term “capacity” or “incapacity” – instead the language sets out the “basis for appointment” of a guardian, which is a finding by clear and convincing evidence that the respondent:

“lacks the ability to meet essential requirements for physical health, safety, or self-care because: (A) the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and (B) the respondent’s identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives.” (Sec. 301).

1. Determination of Capacity. States use a variety of definitional elements and a variety of experts to assist the judge in making the difficult determination of whether an individual needs a guardian or conservator.

- Kentucky HB 5 raises the age of legal disability from 14 to 17 years.
- Missouri SB 806 adds the following regarding a court ordered evaluation for capacity. A physician or “other professional” may conduct the evaluation, provided the “other professional” has experience or training in the alleged impairment of the person. SB 806 removes the requirement for the professional to explain the legal definitions of incapacity or disability to the person. If a party objects to an evaluation report, a court may hold a hearing to determine whether the report is admissible. Finally, that report may not be used in any other civil action or criminal proceeding without the consent of the person holding evidentiary privilege.
- Missouri SB 806 clarifies that the appointment of a guardian does not mean the court has found that the person lacks testamentary capacity.

2. Supported Decision-Making. A recent shift in the decision-making landscape is the advent of “supported decision-making.” The United Nations Convention on the Rights of Persons with Disabilities, Article 12, recognizes that persons with disabilities have “legal capacity” and the right to make their own decisions, and that governments have the obligation to support them in doing so. For people with cognitive, intellectual or psychosocial disabilities, Article 12 is critical to self-determination and equality. For more on supported decision-making, see the National Resource Center on Supported Decision-Making, <http://www.supporteddecisionmaking.org>.

As supported decision-making gains recognition, state legislatures have begun to debate whether and how to define, recognize and authorize supported decision-making in law. Some states have authorized supported decision-making agreements. In 2015, Texas became the first state to do so, with a groundbreaking bill intended to “recognize a less restrictive alternative to guardianship” for adults who need assistance but are not “incapacitated persons.” The law allowed an adult with a disability to “voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter” and it set out the scope of the agreement. Texas expanded the law in 2017, when it enacted safeguards against abuse by the supporter, and sought to inform transition age youth about alternatives including supported decision-making. In 2016, Delaware became the second state to statutorily recognize supported decision-making agreements. This year, the District of Columbia, Wisconsin and Alaska formally recognized supported decision-making agreements.

Other states passed relevant legislation without addressing supported decision-making agreements. Missouri and Tennessee recognized supported decision-making as a less restrictive alternative to guardianship and affirmed the rights of people with guardians to continue to make their own decisions when possible. Utah charged guardians with encouraging people under their guardianship to participate in decisions, engage in self-determination, and develop/regain capacity to manage their own affairs.

- Alaska HB 336 authorizes supported decision-making agreements, lists who may *not* serve as a supporter, and details what information is required to put in the document.
- District of Columbia B22-0154 recognizes supported decision-making agreements, specifying who may *not* be a supporter, and provides a mandatory format for a supported decision-making agreement.
- Wisconsin AB 655 recognizes supported decision-making agreements between an adult with a “functional impairment” and a supporter. The law provides an outline of a form that will become a Supported Decision-Making Agreement and specifies the Department of Health Services will make the forms available. The law requires courts to consider whether supported decision-making has been attempted before appointing a guardian for an individual.

- Tennessee SB 264 adds a definition of “least restrictive alternatives,” relative to supported decision-making agreements, as “techniques and processes that preserve as many decision-making rights as practical under the particular circumstances for the person with a disability.”
- Utah SB 182 charges guardians with encouraging people under their guardianship to participate in decisions, engage in self-determination, and develop/regain capacity to manage their own affairs.

3. Restoration to Capacity. While it is most common for a guardianship to end with the death of the individual, all state statutes provide for termination of a guardianship upon a finding that: (1) the person has sufficient capacity to manage personal and/or financial affairs; (2) the person has gained sufficient supports; or (3) new evidence is identified to show the individual does not meet the definition of “an incapacitated person” or a similar definition.

Restoration proceedings are under increasing focus -- especially for younger individuals with intellectual disabilities, mental illness or brain injuries who may be able to make decisions on their own with adequate family and community support. In 2017, the ABA Commission on Law and Aging, with the Virginia Tech Center for Gerontology, completed a pioneering research project on restoration including a review of court files in four states and a roundtable discussion resulting in recommendations. See *Restoration of Rights in Adult Guardianship: Research & Recommendations*, https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration%20report.authcheckdam.pdf. For an overview of restoration, including a discussion of recent success stories, see the Commission on Law and Aging’s 2018 webinar training, Guardianship Termination and Restoration of Rights, hosted by the National Center on Law & Elder Rights (NCLER), available at <https://vimeo.com/286254712>.

- Missouri SB 806 adds the following statutory provisions regarding termination of guardianship and restoration of rights:
 - The court will terminate the guardianship if it finds the guardian cannot serve because the person is out of state or other circumstances.
 - The petition for termination of the guardianship, whether from the person or anyone on behalf of the person, may be in the form of an informal letter. Anyone who interferes with delivery of the letter may be subject to contempt.
 - If the court believes the guardian or conservator’s powers should be increased or decreased, or additional rights should be returned to the person, the court shall set the matter for a hearing.
 - The court may require a professional report with recommendations on whether to terminate or modify a guardianship.

IX. 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. In 2016, a GAO report entitled *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults* (<https://www.gao.gov/assets/690/681877.pdf>) profiled exploitation cases from six states. The report did not contain conclusions about the extent of abuse nationally by guardians due to limited data.

In October 2017, the *New Yorker* magazine featured a chilling article, “How the Elderly Lose their Rights” describing fraudulent actions by guardians in Clark County, Nevada.

This year at least four states – Delaware, Kansas, Kentucky, and Minnesota explicitly included misuse of the role of guardian in a definition of financial exploitation of older and/or “vulnerable” or “dependent” adults. In addition, Florida created an injunction for protection against exploitation of a “vulnerable adult.”

- *Delaware HB 332* defines financial exploitation as the breach of a fiduciary duty, including misuse of a guardianship appointment, that results in the unauthorized use of the “eligible adult’s” property, income etc., for the benefit of a person other than the eligible adult.
- *Florida HB 1059* creates a cause of action for an injunction for protection against exploitation of a “vulnerable adult.” Those who have standing to file for an injunction include: the guardian of a vulnerable adult in imminent danger of being exploited, an organization or person granted permission by the guardian to file on behalf of the vulnerable adult, or someone who “simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.” If the vulnerable adult has a guardian, only the court overseeing the guardianship process may grant relief in the form of freezing assets or lines of credit held by the guardian on behalf of the person.
- *Kansas HB 2458* adds “a violation of the act for obtaining a guardian or conservator,” to the law’s existing definition of “mistreatment of a dependent adult.”
- *Kentucky HB 93* amends the statute’s definition of financial exploitation to include the “use of a guardianship” to misuse a person’s assets, money or property.

- Minnesota HF 3833 amends the statute’s definition of exploitation to include “use of a guardianship” to misuse an older or vulnerable person’s assets, money or property.

X. 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 2018 bills addressed court oversight tools.

1. Bond Requirements. Approximately 20 state statutes require a guardian of property/conservator to post a bond, and the remainder allow courts some or complete discretion. See ABA Commission chart on bond requirements (2014) at: https://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_guardian_bond_chart.authcheckdam.pdf The UGCOPAA makes bond a default option for courts in the appointment of conservators, providing that “The court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement. . .” (Sec. 416).

- New Mexico SB 19 requires posting of a bond unless the court finds a bond is not necessary to protect the interests of the person subject to the bond. The requirement is not waivable for a professional conservator.

2. Guardian Report. One function of required guardian reports is to regularly assess the continuing need for the guardianship. The *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (UGCOPAA) requires the guardian’s annual report to include “a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.” (Sec. 317(a)). Many states require such a statement. See state by state chart, ABA Commission on Law and Aging & Hurme, S, “Monitoring Following Guardianship Proceedings,” https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartmonitoring.authcheckdam.pdf (2018).

- Missouri SB 806 adds the following new requirements to the mandatory annual guardian report:
 - Plans for future care.
 - Summary of the guardian’s visits with the individual and activities on the individual’s behalf.
 - The extent to which the individual has participated in decision making.
 - Any changes in the individual’s condition since the last report.
 - A summarized plan for the coming year, including short-term and long-term goals, and how much the individual participated in the formation of the plan.

- Missouri SB 806 adds more required information to the conservator's annual report, including: the conservator's opinion as to the continued need for a conservator.
- Missouri SB 806 authorizes the court to waive the requirement for the conservator's annual report and instead submit a form, if the conservatorship estate meets indigency standards and is under the control of another fiduciary such as a Social Security representative payee or Veteran's Affairs fiduciary.

3. Court Auditing of Accounts. Once the guardian/conservator files the reports and accounts, the court must examine and audit them. UGCOPAA requires the court to "establish a system for monitoring reports submitted. . . and review the reports at least annually . . . (§§ 317, 423). The *National Probate Court Standards* state that courts should "[review] promptly the contents of all plans, reports, inventories, and accountings." (Standard #3.3.17). In practice, many courts lack the staff and expertise for effectively auditing accounts.

- Florida HB 1187 allows the court clerk, who could already request and review documents that might pertain to the assets of a person with a guardian, to audit or to order an audit of guardian reports. The clerk shall inform the court of the results of the audit. Under this audit, the clerk may disclose confidential information to law enforcement as provided by court order. Furthermore, the guardian may disclose confidential information related to an investigation to the clerk or to the Office of Public and Professional Guardians. In Florida, the clerk's office is an independent entity and it is not under the authority of the Probate Court.
- New Mexico SB 19 requires the guardian and conservator to fully comply with the requirements of any audit of the person's property, account, inventory or report of the person.

4. Other Post-Adjudication/Monitoring Issues

- Alabama HB 251 explicitly authorizes guardians and conservators to contribute to an ABLE (Achieving Better Life Experience) account on behalf of a beneficiary. ABLE accounts are tax-advantaged savings accounts for individuals and their families.

5. WINGS. An important guardianship reform approach is to have stakeholders work together consistently and collaboratively in an ongoing court-community problem-solving group. This growing initiative is known as "Working Interdisciplinary Networks of Guardianship Stakeholders" (WINGS). WINGS brings together judicial, legal, aging, disability and mental health networks to identify strengths and weaknesses in a state's

guardianship law and practice, and pursue common objectives for change through an ongoing consensus-building partnership. Currently 26 states have either a court-initiated WINGS or a similar stakeholder guardianship reform group. See <http://ambar.org/wings>. This year the Kentucky and Alabama legislatures passed resolutions in support of WINGS.

- Kentucky HJR 33 recognized WINGS as an “innovative movement to improve adult guardianship” and recommended the creation of a Kentucky WINGS, headed by the Cabinet for Health and Family Services and the Administrative Office of the Courts.
- Alabama HJR 254 expressed the legislature’s full support of Alabama WINGS, and recommended that the WINGS Steering Committee submit a yearly report to the legislature on any needed adult conservatorship and guardianship changes in the law.
- Oklahoma HB 3328 created the Commission on the Prevention of Abuse of Elderly and Vulnerable Adults. Like a WINGS group, the Commission should be an interdisciplinary group of stakeholders, including a guardian.

Table: State Adult Guardianship Legislation at a Glance: 2018

State	Legislation	Code Section Amended	Provisions
AK	HB 336	Ak. Stat. § 13.56	Authorizes supported decision-making agreements.
AL	HB 251	Ala. Code § 16-33C-25(e)	Authorizes guardians and conservators to contribute to ABLE account on behalf of beneficiary
AL	HJR 254	n/a	Recommends WINGS Steering Committee submit yearly report to the legislature on any needed change to adult conservatorship/guardianship law
CA	SB 931	Cal. Welf. & Inst. Code § 5352	Allows psychiatric professionals in county jails to recommend prisoners for conservatorship.
CA	AB 3144	Cal. Bus. & Prof. Code §6501, 6510, 6533, 6534, 6561	Expands requirements for professional fiduciaries, which include professional guardians and conservators.
CA	SB 1045	Cal. Wel. & Inst. Code § 5450 (add and repeal Ch. 5)	Creates a pilot program for Los Angeles, San Diego, and San Francisco counties to find 8 or more detentions for psychiatric evaluation

			over a period of 12 months a sufficient basis for appointment of a conservator.
DC	B22-0154	D.C. Code §§ 7-2131, 7-2132(a)-(b), (d)	Defines supported-decision making, specifies who may not be a supporter, provides format for supported decision-making agreement.
FL	SB 268	Fla. Stat. § 744.21031	Creates an exemption to the public records requirement for certain identifying information of public guardians.
FL	SB 498	Fla. Stat. § 744.2105	Removes the scheduled repeal date of the law authorizing the Foundation for Indigent Guardian, Inc., which serves as a not-for-profit organization with the sole purpose of supporting Florida's Office of Public and Professional Guardians.
FL	HB 1059	Fla. Stat. § 825.101, 1035-36	Creates cause of action for injunction against exploitation of a "vulnerable adult"
FL	HB 1187	Fla. Stat. §§ 744.368, 744.444, 744.3701	Addresses court audits of guardianship reports.
IA	HF 2449	Iowa Code §§ 231E.1-E.11	Rewrites the "Iowa Substitute Decision Maker Act" as the "Iowa Public Guardian Act."
IL	HB 4309	Ill. Stat. Ch. 750 § 95/1	Provides standing to family members to petition for visitation orders with frail and elderly individuals. This Act does not apply to individuals with guardians.
IL	HB 4867	755 Ill. Comp. Stat. 5-11/a-5	Creates a new requirement for potential guardians of an adult with disabilities to disclose the number of people already under their guardianship.
KS	HB 2458	Kan. Stat. Ann. § 21-5417(a)(2)(D)	Adds "a violation of the act for obtaining a guardian or conservator" to the law's existing definition of "mistreatment of a dependent adult."

KY	HB 5	Ky. Rev. Stat. Ann. §§ 210.290; 387.570(7); 387.510(3), (17); 387.510(8)	Clarifies and changes the role of the public guardian; Amends the jury trial requirement for a bench trial; Changes the definition of the powers of a guardian; raises age of legal disability from 14 to 17.
KY	HB 11	Ky. Rev. Stat. Ann §§ 457.080; 457.100	Adopts parts of the Uniform Power of Attorney Act (2006); power of attorney terminates upon appointment of a guardian unless a court order indicates otherwise.
KY	HB 93	Ky. Rev. Stat. Ann. § 365.245(1)(b)(2)	Amends the statute's definition of financial exploitation to include the "use of a guardianship" to misuse a person's assets, money or property.
KY	HJR 33	n/a	Recommends the creation of Kentucky WINGS.
LA	HB 395	Civil Codes Articles 355, 359, and 361	Allows for a guardianship of a child 15 years or older to continue indefinitely beyond the age of majority if the minor has an intellectual disability and meets certain requirements.
MD	HB 1483	Md. Code Ann. § 13-708(b)(4)	Authorizes court to include in an order appointing a guardian the duty to foster and preserve family relationships.
MD	HB 33	Md. Code Ann. § 13-706	Addresses admission to a "mental institution" for someone with a guardian.
ME	LD 123	"Maine Uniform Probate Code," to be codified at 18-C Me. Rev. Stat. Ann.	Adopts UGCOPAA.
MN	HF 3833	Minn. Stat. Ann. § 45A.01	Amends the statute's definition of exploitation to include "use of a guardianship" to misuse an older or vulnerable person's assets, money or property.
MO	SB 806	Mo. Rev. Stat. Probate Code, §§ 475.010 - 475.361, multiple sections	Codifies wide sweeping revisions to the state's guardianship code.
MO	HB 1719	Mo. Rev. Stat. § 335.066(2)(24)	Assigns discretion to the board of the Division of Professional Registration

			to refuse to reinstate any certificate of registration of authority if someone needs or is assigned a guardian or conservator.
NE	LB 845	Neb. Rev. Stat. § 42-1301, et seq.	Concerns right to visit family member in healthcare facility.
NM	SB 19	Uniform Probate Code, New Mex. Stat. Ann. 2018, § 45-5 – 101 to 436, multiple sections	Addresses separate accounts and records, liability of a guardian/conservator, voting rights of a protected person, notice, confidentiality, visitation, alternate protective arrangements, waivers of liability and bonding.
OK	HB 3328	n/a	Creates the Commission on the Prevention of Abuse of Elderly and Vulnerable Adults
OR	HB 4094	Or. Rev. Stat. §§ 125.055; 125.210	Requires disclosure prior to appointment of guardian or immediately upon discovery that the nominated guardian violated prior fiduciary duties.
TN	SB 264	Tenn. Code Ann. § 34-1-101(11)	Adds a definition of “least restrictive alternatives” relative to supported decision-making agreements
UT	HB 167	Utah Code Ann. §§ 75-5-303(2)(b); 75-5-303(5)(d)(v); 75-5-311(3)(h)(I); 75-5-309(1)(e)	Addresses fees for court appointed counsel; Expands list of exceptions when counsel for respondent is not required; Adds Office of Public Guardian to list of prioritized individuals who may become guardian; provides for notice to APS in certain circumstances.
UT	SB 182	Utah Code Ann. §§ 75-5-312(3)(f)(iii); 75-5-312(7); 75-5-317	Requires a guardian to inform anyone who requests notification of certain circumstances regarding the person, provided they are not restricted in associating with the person; Enacts a process to petition for the guardianship of a minor who is at least 17 and a half years old and alleged to be incapacitated. The guardianship may take effect on the day the minor turns 18; Instructs

			guardians to encourage people under their guardianship to participate in decisions and exercise self-determination.
VA	HB 850/SB 543	Va. Code Ann. § 63.2-1609(b)(5)	Provides for the appointment of a temporary conservator.
WI	AB 629	Wis. Stat. § 53.01, et seq.	Adopts the Uniform Adult Guardianship Protective Proceedings Jurisdiction Act.
WI	AB 655	Wis. Stat. §52.01, et. seq.	Defines supported decision-making, provides an outline of a form, includes provisions that protect a person from inappropriate actions