Guardians of the Elderly: Not Always so Heroic, and Sometimes, Unnecessary and Abusive

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Guardianships are a powerful and useful tool frequently used by courts to help elderly people who can no longer care for themselves. Guardianships can be helpful, but they can also be unnecessary and used by malicious guardians to exploit elderly people for financial gain. States vary substantially in how they allow guardians to obtain certification, implement guardianships, and allow for people subject to them to regain their autonomy. This Note argues for laws to be more standardized across states and to allow for higher bars for guardians to obtain certification. Additionally, this Note advocates for burdens of proof to be changed to favor vulnerable elderly people and their family and friends. Also discussed are ways courts can better oversee guardianships to ensure that they are still necessary. In this way, abusive guardianships can be prevented, both by changes in the law, and by changes in judicial and administrative procedures.

I. Introduction

For nearly fourteen years, Britney Spears was under a conservatorship, and as a result, was unable "to make basic decisions about her finances, career, and personal life."[[2]](#footnote-3) During this time, her conservators "made her perform while sick with a fever," "held her credit card and used it whenever they wanted," "limited her to a weekly allowance," and "prohibited her from making cosmetic changes to her kitchen."[[3]](#footnote-4) Spears was also "forced into a mental health facility against her will, which she viewed as retaliation for speaking up in a rehearsal."[[4]](#footnote-5) In July 2021, she was finally able to hire her own lawyer, and in November 2021, the conservatorship was at last removed.[[5]](#footnote-6)

The problem of oppressive and unnecessary conservatorships and guardianships has recently come into mainstream consciousness both by the struggles of Britney Spears and by the 2020 movie *I Care a Lot,* directed by J Blakeson.[[6]](#footnote-7) Conservatorships and guardianships are "legal actions put in place so an incapacitated person’s estate can be managed."[[7]](#footnote-8) Both are almost exactly the same but vary in that guardianships are usually for minors and allow for fewer decision-making powers for the person under the guardianship.[[8]](#footnote-9) Conservatorships, by contrast, are generally for adults, and the conservator usually only has the authority to pay bills, make investments, and handle other financial matters.[[9]](#footnote-10) State laws vary in their definitions of these two terms, and courts can often differ in the extent of rights granted to conservators and guardians.[[10]](#footnote-11) As a basic concept, a guardian or conservator can be defined as someone invested with the power and duty to manage the property and rights of the ward, the person declared by the court to be disabled,[[11]](#footnote-12) who for some peculiarity of status, or defect of age, understanding, or self-control, is considered incapable of administering his or her own affairs.[[12]](#footnote-13) For the purpose of clarity to the reader, this Note will refer to both guardianships and conservatorships as “guardianships.”

Guardianships are intended to benefit wards by providing "valuable protection and assistance when they are unable to care for themselves," such as when an elderly person has dementia and cannot understand the consequences of their actions.[[13]](#footnote-14) Guardianships, however, can instead be stigmatizing and traumatizing for the people they are designed to protect.[[14]](#footnote-15) Guardians should only be granted for individuals’ identified needs, but unfortunately, they often receive very broad powers.[[15]](#footnote-16) Because of their broad and invasive powers, guardians often have opportunities to exploit their wards.[[16]](#footnote-17) Exploitation most commonly takes the form of siphoning money from the ward while distancing them from family members or other people who can help. Because of the risks of malicious and/or incompetent guardians, it is important for courts to screen guardians before appointment, but some state laws make it easy for people to become professional guardians, sometimes only requiring a background check and a class.[[17]](#footnote-18) Additionally, there is no official federal agency that governs guardianships, so it is difficult to hold guardians accountable.[[18]](#footnote-19) Many states require annual reports on guardianships, but these reports are not always effective, since courts do not always review them on a regular basis.[[19]](#footnote-20) As a result of these issues, it is important for states to implement laws that protect elderly wards who can be harmed by guardianships.

This Note first analyzes the harms that the elderly can experience from guardianships, which can include financial exploitation, isolation, and physical and mental abuse. The Note then examines state laws and systemic problems that can cause these harms. Different states' laws are compared, and examples are analyzed to see which laws are effective at mitigating harmful guardianships and which are not. Some of the issues that are analyzed are the screening of guardians, qualifications for guardians, oversight of guardians, and whether a federal agency or system should be set up to oversee professional guardians. Possible methods and requirements for establishing guardianships are also discussed. Additionally, this Note evaluates issues about when to overturn guardianships and suggests solutions such as requirements for annual reporting, legal representations for wards, and stricter requirements in the law for guardians to maintain their positions. This Note discusses solutions to these issues about when to overturn a guardianship or when to prevent a guardianship from being implemented by evaluating possible new statutes. These new statutes include ways to prevent guardianships from being initiated against the elderly in the first place, and methods the elderly can use to remove a guardianship that they no longer need or never needed.

II. Background

In this Background section, the scope of the issue of guardianships will be analyzed by first discussing the history of guardianships. Following this, the purposes of guardianships will be explained along with the problems that can often come along with guardianships. Then, examples of different types of abusive and unnecessary guardianships will be explored so that the extent of the problems around guardianships can be illustrated. Finally, the measures that are currently in place for putting guardianships into effect will be reviewed to determine their effectiveness.

A. History of Guardianships

In fourteenth-century England, a practice known as “*parens patriae*” became popularized, which is the power and the duty of the state to protect vulnerable citizens.[[20]](#footnote-21) This concept became codified in some American state laws in the 1800s and reflected *parens patriae*’s concept of protection.[[21]](#footnote-22) There has been little scholarship written about how guardianships operated in earlier periods of American history through the mid-1900s.[[22]](#footnote-23)

In the 1970s and 1980s, a wave of legislation changed guardianship procedures.[[23]](#footnote-24) These laws—adopted by many states—included the right to appointed counsel, the right to effective notice, standardized notice forms, petition requirements, the right to be present at the guardianship hearing, the right to present and compel evidence, the requirement of proof by clear and convincing evidence, a focus on functional capacity rather than medical diagnosis, and ongoing monitoring of the guardianship by the court after appointment.[[24]](#footnote-25) These changes were a result of media exposés, uniform code revisions, national studies, conferences, and congressional hearings.[[25]](#footnote-26) Many of these laws, however, did not make a large impact, because courts continued to treat adult guardianship proceedings as nonadversarial matters conducted for the benefit of the protected person.[[26]](#footnote-27)

In 1987, a groundbreaking investigation by the Associated Press (AP) "triggered modern guardianship reform," by asserting that “overworked and understaffed court systems frequently break down, abandoning those incapable of caring for themselves.”[[27]](#footnote-28) The report by the AP found that in 44% of cases involving elders in guardianship court, the proposed ward had no attorney representing them.[[28]](#footnote-29) The report also found that while laws in forty-four states require guardians to file regular accountings of the ward’s money, they were missing or incomplete in 48% of the files examined.[[29]](#footnote-30) In response to this investigation, state legislatures took steps to beneficially reform guardianship laws and change the system.[[30]](#footnote-31) The Uniform Guardianship and Protective Proceedings Act (UGPPA) was developed in 1982 and updated in 1997, and provides for the termination or modification of a guardianship “if the ward no longer needs the assistance or protection of a guardian."[[31]](#footnote-32)

B. Scope of the Issue

Despite reforms in state laws in the 1980s and 1990s, guardianships still have their drawbacks as well as their benefits. In a 2017 study by the American Bar Association (ABA), guardianships were called both a “gulag and a godsend.”[[32]](#footnote-33) Guardianships can be very helpful for elderly persons when they are unable to care for themselves.[[33]](#footnote-34) Examples include "the inability to remember to take necessary medications, maintain regular hygiene, or manage finances properly [sic]."[[34]](#footnote-35) Guardianships can be useful for elderly persons experiencing these issues, but sometimes, too many freedoms (such as the freedom to maintain personal finances or the freedom to live independently) are taken away.[[35]](#footnote-36) The power of guardianships led U.S. Representative Claude Pepper to state in 1987 that “the typical ward has fewer rights than the typical felon.”[[36]](#footnote-37) This quotation might be hyperbolic, but the point Pepper was trying to illustrate is that guardians can have excessive control over their wards, and guardianships can be very difficult to undo.[[37]](#footnote-38) The exact number of adults in guardianships is unknown, however, it was estimated by the National Center for State Courts that the number of open adult guardianship cases was 1.3 million.[[38]](#footnote-39)

The duties of guardians can include “deciding where the elderly person will live, how to keep the elderly person healthy, how to prepare a budget based on the elderly person’s finances, and how to arrange for recreation and social contact."[[39]](#footnote-40) Decisions regarding health can include setting up appointments, consenting to surgical procedures, admitting to a mental health or residential care facility, consenting to invasive or experimental treatments, and consenting to end-of-life decisions.[[40]](#footnote-41) Guardians can also ensure that the ward is taking their medications and that they are not behaving in a manner that, while legal, might be socially unacceptable.[[41]](#footnote-42)

One problem with guardianships is that the capacity of elderly people can often vary from day to day.[[42]](#footnote-43) Additionally, it can be difficult to determine whether an elderly person has a debilitating condition such as dementia.[[43]](#footnote-44) The label “dementia” implies "no specific cause," nor does it "represent an inevitable part of normal aging.”[[44]](#footnote-45) The percentage of people with Alzheimer’s dementia, however, increases with age: 3% of people age sixty-five to seventy-four, 17% of people age seventy-five to eighty-four, and 32% of people age eighty-five and older.[[45]](#footnote-46) A study on "restoration of guardianships," which analyzed the ages of wards whose rights were restored, found that in 78.9% of restoration cases, the individual was between ages seventeen and fifty-nine.[[46]](#footnote-47) Of all restoration cases, 93.8% were uncontested.[[47]](#footnote-48) Almost one-third of cases for guardianship appointment involved individuals with mental illnesses.[[48]](#footnote-49)

C. Examples of Oppressive Guardianships

There are numerous examples of elderly people who have been placed in guardianships that are both oppressive and unnecessary.[[49]](#footnote-50) One such example is Marie Winkelman, a Holocaust survivor living in Florida who was stripped of her civil rights in 2013 and declared a ward of the state.[[50]](#footnote-51) Winkelman had her rights taken away at the request of her stepson-in-law, Robert Szychowski, who requested that Winkelman execute documents she did not understand.[[51]](#footnote-52) Szychowski’s petition for emergency guardianship claimed that Winkelman had a “boyfriend” who was interfering with her health and “threatening to take her out of the jurisdiction.”[[52]](#footnote-53) The documents signed by Winkelman included a power of attorney, which gave Szychowski "sweeping rights to handle [Winkelman's] money." [[53]](#footnote-54) As a result, Winkelman had no control over her finances, possessions, or medical care.[[54]](#footnote-55) The court "ordered a trust company to cut checks from her account for about $635,000 to pay attorneys, guardians, and others involved in her case, with many more expenses pending."[[55]](#footnote-56) This amount was a result of an average professional guardian receiving "more than $1,000 per month, at $85 per hour to coordinate … doctors’ appointments, help with financial transactions, and communicate with [friends and family]."[[56]](#footnote-57)

In another example, an elderly couple in Nevada was moved to an assisted living facility without their consent or the consent of their daughter.[[57]](#footnote-58) The couple were able to live on their own with the occasional help of a nurse until one day, a woman named April Parks came to their home and told them they had to pack up and move.[[58]](#footnote-59) The couple were threatened with police action by Parks and when their daughter called, Parks told her that everything was legal, which unfortunately, was true.[[59]](#footnote-60) This happened without the knowledge of the couple’s children and by the time they found out, it was too late.[[60]](#footnote-61) When they arrived at the assisted care facility, the couple discovered that many other elderly persons had been placed in the facility by Parks.[[61]](#footnote-62) Parks was able to take advantage of outdated guardianship laws in Nevada and was helped by courts that had a distrust of family members serving as guardians.[[62]](#footnote-63) These outdated laws included a provision requiring that family members serving as guardians live in-state, and there was nothing requiring wards to be represented by a lawyer in court.[[63]](#footnote-64) Parks was eventually "arrested and convicted on over a hundred counts of perjury, dozens of charges for theft, elder exploitation, and one count of racketeering."[[64]](#footnote-65) She "pleaded guilty and could serve up to [forty] years in prison."[[65]](#footnote-66) It is a story like this that shows how a movie such as *I Care a Lot* is a lot more than a figment of Hollywood’s imagination; it is a situation that can and does happen.[[66]](#footnote-67)

A more disturbing case occurred in Kansas in 2005, where Arlan Kaufman and his wife Linda Kaufman were convicted for abusing patients at the “Kaufman House,” a home for mentally ill patients.[[67]](#footnote-68) The couple ran the House in Kansas for over twenty-four years before they were caught.[[68]](#footnote-69) At this house, the Kaufmans abused elderly and mentally ill patients, forcing them to perform sexually explicit acts on videotape and making them perform physical labor in the nude.[[69]](#footnote-70) The Kaufmans "kept their mentally ill victims compliant by creating a 'climate of fear'” where they used "threats, violence, force, manipulation, and constant abuse."[[70]](#footnote-71) Arlan Kaufman was also the guardian of a fifty-year-old female patient and subsequently stole $250,000 from her.[[71]](#footnote-72) Following the arrests of the Kaufmans, Kansas state law was reformed to provide greater oversight of group homes for the disabled.[[72]](#footnote-73) The behavior by the Kaufmans is similar to many exploitative guardians, who often use fear tactics and manipulation to prevent elderly people from speaking out against them.[[73]](#footnote-74)

D. Current Measures

In a 2010 report, the U.S. Government Accountability Office (GAO) selected and analyzed twenty closed cases of guardian abuse and found that the guardians stole $5.4 million in assets from 158 incapacitated victims, many of whom were seniors.[[74]](#footnote-75) In these cases, the guardians "came from diverse professional backgrounds and were located in fifteen states and the District of Columbia."[[75]](#footnote-76)

The GAO observed three common themes with abusive guardianships.[[76]](#footnote-77) First, state courts failed to adequately screen potential guardians, appointing individuals with criminal convictions and/or significant financial problems to manage estates worth hundreds of thousands or even millions of dollars.[[77]](#footnote-78) Second, state courts failed to adequately oversee guardians after their appointment, "allowing the abuse of vulnerable seniors and their assets to continue."[[78]](#footnote-79) Third, state courts failed to communicate with federal agencies about abusive guardians once the court became aware of the abuse, which in some cases, enabled the guardians to continue to receive and manage federal benefits.[[79]](#footnote-80) In six of these twenty cases observed by the GAO, the courts failed to screen guardians before giving them control over the financial affairs and care of their wards.[[80]](#footnote-81) In twelve of the cases, courts failed to oversee the conduct of the appointed guardians, allowing physical abuse and financial exploitation to continue unobserved.[[81]](#footnote-82) In eleven of the twenty cases, state courts failed to communicate with federal agencies about ongoing abuse committed by guardians.[[82]](#footnote-83)

It is a problem of guardianship that anyone can become a guardian by simply taking a class and not having any felonies or recent bankruptcies on their record.[[83]](#footnote-84) As a result, there are some guardians who prey on elderly people for their wealth and others who think they are doing good by putting them in guardianships. States should do what they can to keep a closer eye on guardianships and should communicate more with federal agencies to ensure that guardians are doing their jobs correctly. This way, harmful guardianships can be prevented from being implemented.

Another problem with guardianships is that once a person is placed in one, it is difficult for them to gain autonomy.[[84]](#footnote-85) This is exemplified by the guardianship of Britney Spears, who was placed in a guardianship in 2008 and not allowed to select her own attorney until July 2021, after she learned she could file a petition to end her conservatorship.[[85]](#footnote-86) Until that time, Spears was represented by a court-appointed attorney, who made an estimated $3 million representing her and never advocated for termination of the guardianship, despite her insistence that she do so.[[86]](#footnote-87) To prevent situations such as this, there should be remedies for a person to restore their autonomy from harmful guardianships when they occur. Currently, restoring autonomy in many states can be an arcane process, due to many jurisdictions having "no searchable, computerized system for aggregating information on adult guardianship cases generally," and restoration attempts are often unsuccessful.[[87]](#footnote-88) Additionally, wards and family members are often unaware of the option of restoring autonomy.[[88]](#footnote-89) Because of this, it is important for states to make their laws more easily navigable for seniors seeking to gain autonomy, and help increase awareness of the existence of these laws. The following section analyzes state guardianship laws in states and how they can be poorly written or enforced in regard to screening guardians, overseeing guardianships, and helping elderly people regain their autonomy, which results in exploitation of vulnerable elderly people.

II. Analysis

This section will first analyze state regulations for screening guardians to determine if they are effective in preventing harmful guardians from putting themselves in positions of power. In this section, this Note will also evaluate policies limiting the number of wards a guardian can take on, along with laws regarding whether guardians should be able to benefit financially from their wards. In subsection B, the Note will analyze state laws for obtaining and overseeing guardianships. Additionally, this subsection looks at laws that give guardians excessive control over their wards, which are contrasted with laws that limit guardians’ powers and provide courts with an opportunity to step in and prevent guardianship abuse. In subsection C, laws regarding the termination of guardianship are analyzed and ways to involve wards’ family members in the guardianship process are discussed. The fourth subsection evaluates how laws can sometimes be ineffective due to abuses within the system of placing wards into guardianships. In subsection D, this Note discusses reforms of laws that can make guardianships equitable for wards.

A. Laws about Screening Guardians

For an elderly person, it is important to appoint someone who is trusted to have power of attorney, so that in the event of incapacitation, that person can act on their behalf.[[89]](#footnote-90) If an elderly person has not executed a signed document according to the laws of the state giving power of attorney, a state court can give a total stranger control over their life.[[90]](#footnote-91) The amount of control can vary depending on what the court determines to be necessary; the guardianship may be general with broad duties, or limited with narrow duties.[[91]](#footnote-92) The guardian may have control over the person’s savings, home, medical decisions, and medicines that they take.[[92]](#footnote-93) Because of this, it is important for courts to be careful when deciding whom to appoint when an elderly incapacitated person does not have anyone as their power of attorney.[[93]](#footnote-94) Because of low barriers to becoming a guardian, and little oversight keeping guardians accountable, it can be easy for a seemingly trustworthy person to dupe a court into thinking an elderly person needs them as their guardian.[[94]](#footnote-95)

States should screen guardians carefully and keep detailed records on them, but many states fail to do so.[[95]](#footnote-96) The Government Accountability Office (GAO) could not locate "a single website, federal agency, state or local entity, or any other organization that compiles comprehensive information on [background checks and training for guardians]."[[96]](#footnote-97) Guardianships can violate fundamental human rights and should be used as a last resort, but they are often used as a go-to whenever someone has cognitive disabilities or serious mental health problems.[[97]](#footnote-98)

In most states, the bar for becoming a guardian is low, with many states requiring nothing other than the petition to the court.[[98]](#footnote-99) One expert has said that in most states, “it is easier to qualify as a guardian than it is to become a hairdresser” and has pointed out that there are no sanctions on a guardian when they serve poorly.[[99]](#footnote-100) In some states, such as Illinois and Nevada, no training requirements are necessary, and only a national exam must be passed, with no background check performed.[[100]](#footnote-101) This national exam is a test of 100 multiple-choice questions, and a test-taker must get over 75% correct to pass the test.[[101]](#footnote-102) California requires its own separate exam that is different from the national exam.[[102]](#footnote-103) Some states, such as New York and Washington, have even fewer requirements than this, only requiring minimal training and approval of a petition to a court for guardianship.[[103]](#footnote-104) In New York, an aspiring guardian only needs to complete a one-day six hour training course.[[104]](#footnote-105) Florida is the best example of a state requiring very stringent requirements to become a guardian.[[105]](#footnote-106) In Florida, one must be subject to a background check, take a state exam, and obtain forty hours of instruction and training within one year of appointment.[[106]](#footnote-107) The training in Florida is conducted in-person at specific times and places throughout the year and completion of the training is pass/fail.[[107]](#footnote-108)

Laws should ensure that there is a high standard for individuals to meet to become guardians. In Texas, the requirement to become a guardian is to complete a training course "designed to educate guardians about their responsibilities, alternatives to guardianships, supports and services available to the ward, and a ward’s bill of rights."[[108]](#footnote-109) Texas law also provides the courts with the circumstances in which it may waive the requirement of taking the training course.[[109]](#footnote-110) It is risky for states to have no requirements like this, and it can result in guardians being uninformed about their duties and how they must take care of their ward so that their best interests can be served.[[110]](#footnote-111)

Another problem with guardianships, consistent with the lack of screening, is the high ratio of protected persons to guardians.[[111]](#footnote-112) Illinois has one of the highest ratios in the country with an average of one guardian for every 132 wards.[[112]](#footnote-113) Kentucky is another state with a high ratio, with approximately one guardian for every eighty wards.[[113]](#footnote-114) Because the high ratios in these states, there can be a problem of guardians not devoting enough time to each of their wards. Another issue is that some guardians attempt to maximize the number of wards so that they can increase their earnings. Currently, Florida is the only state to have a required staff-to-ward ratio, which prevents problems of too many wards assigned to one guardian.[[114]](#footnote-115) Florida’s cap is set at one-to-forty.[[115]](#footnote-116) Other state statutes provide that the agencies responsible for public guardianship determine the appropriate guardian-to-ward ratio.[[116]](#footnote-117) It is possible that implementing caps for guardian-to-ward ratios might result in elderly people needing a guardian but not having one. This could be solved by allowing courts flexibility to assign more wards to certain guardians in special circumstances. The main goal of having ratio limits is to prevent some guardians from collecting wards they can exploit.[[117]](#footnote-118)

Some states, such as Illinois, have several different types of guardianships for adults.[[118]](#footnote-119) In Illinois, there are four types of adult guardianships: limited guardianship, plenary guardianship, temporary guardianship, and successor guardianship.[[119]](#footnote-120) Each of these types of guardianships is appropriate for a different type of situation: a limited guardianship is used when a guardian is needed to make some, but not all, decisions for the ward; a plenary guardianship is used when a ward needs a guardian to make all financial and personal care decisions for him/her; a temporary guardianship is used when an emergency requires a guardian for less than sixty days to protect the ward's interests; and a successor guardianship is used when the previous guardian can no longer serve.[[120]](#footnote-121) This is an effective way of ensuring that wards have a degree of autonomy, and they will not be taken advantage of by guardians who have control over all aspects of their lives. There are times when a ward has the ability to perform some functions but not others, so that it may be appropriate for a guardian only to have control over certain capacities of the ward.[[121]](#footnote-122) Other states, such as New York, use court evaluators to make determinations on exactly what types of things wards can and cannot do before giving powers to guardians.[[122]](#footnote-123) This enables courts to be very flexible in giving powers to guardians and prevents guardian abuse over wards, as long as the evaluator does a proper job.

When determining the degree to which a guardian is needed, it is helpful for courts to analyze the different capacities the ward has. The ABA has laid out thirteen different capacities that a person can have, and these different types of capacity should be respected by courts and guardians.[[123]](#footnote-124) These capacities are: contractual capacity, capacity to convey real property, testamentary capacity, donative capacity, capacity to execute a durable power of attorney, financial capacity, capacity to make healthcare decisions, capacity to appoint a healthcare agent, independent living, capacity to marry, capacity to mediate, capacity to testify, and sexual consent capacity.[[124]](#footnote-125) Limiting a guardianship for a ward who may not have the capacity for only one or two of these would be more beneficial for elderly people who might otherwise have all of their rights taken away by a court imposing a guardianship upon them. Usually, courts base guardianship determinations on financial capacity, since it is the capacity most likely to be targeted by malicious guardians.[[125]](#footnote-126) Because of this, courts should keep a closer eye on this capacity than the others.

In some states, laws require that guardians not benefit from guardianship.[[126]](#footnote-127) Michigan is one example.[[127]](#footnote-128) In Michigan, a court may not appoint a guardian who “benefits directly from providing housing, medical, mental health, or social services to the legally incapacitated individual.”[[128]](#footnote-129) In Florida, professional guardians are not allowed to petition for his or her appointment as a guardian unless the petitioner is a relative of the alleged incapacitated person.[[129]](#footnote-130) Not all states have these requirements, however, and even when states have these laws, guardians can find ways around them to give themselves much of the ward’s fortune.[[130]](#footnote-131) This is exemplified by Ms. Winkelman’s situation, whose guardian charged exorbitant sums for performing small tasks for her that she could easily perform herself.[[131]](#footnote-132) Currently, no states have laws requiring a cap on guardianship fees, and because of this, many guardians are able to charge large sums.[[132]](#footnote-133)

B. Laws About Obtaining and Overseeing Guardianships

The steps for obtaining a guardianship vary from state to state.[[133]](#footnote-134) In California, one must first file a petition, then inform the person and their relatives of the petition, have an investigation conducted, and then have a court hearing.[[134]](#footnote-135) Most states require a physician to sign a written letter or certificate.[[135]](#footnote-136) In Texas, it is required that the letter be dated not earlier than the 120th day before the date the application is filed.[[136]](#footnote-137) Additionally, the letter must describe the nature, degree, and severity of the ward’s capacity and any functional deficits regarding the proposed ward’s ability to handle business matters, manage financial matters, operate a motor vehicle, or make personal decisions regarding residence, voting, and marriage, and consent to medical treatment.[[137]](#footnote-138) In Texas, the standard for determining a person to be incapacitated and in need of a guardian is clear and convincing evidence.[[138]](#footnote-139)

A problem with guardianships is that after elderly persons are placed in them, courts fail to ensure that the guardians do not abuse their power.[[139]](#footnote-140) This problem was exemplified by the Kaufman House.[[140]](#footnote-141) There are some states which have statutes that require annual status reports from guardians, to ensure that the guardian is still needed.[[141]](#footnote-142) Some states, such as California, require annual status reports and make it a misdemeanor for a guardian to falsify information in the form.[[142]](#footnote-143) Florida also requires an annual status report, which includes a requirement that guardians show the accounting numbers of the previous year.[[143]](#footnote-144) This is intended to ensure that guardians are not forcing their wards to pay unreasonable amounts.[[144]](#footnote-145) These statutes are well-intentioned and good in theory, but do not always work effectively in practice.[[145]](#footnote-146) In Florida, there are still problems with obtaining information on all of the guardianships.[[146]](#footnote-147) Basic information such as the number of people under guardianship, the number of guardians, how many cases each guardian has, how much money and property are under the control of guardians, and who the individuals are under guardianship, is not readily available.[[147]](#footnote-148) In one instance, a guardian was removed from their eight guardianships for misconduct, yet, they were appointed to a guardianship examining committee in another circuit in the state.[[148]](#footnote-149) This happened because the judge had no way of knowing they were removed from their former role.[[149]](#footnote-150)

Some states give guardians unreasonable amounts of power over their wards and give them the ability to prevent wards from exercising rights to get out of the guardianship.[[150]](#footnote-151) In Arkansas, state law provides guardians the option of delivering a ward into the custody of the sheriff for “safekeeping in the county jail until such time as the court may hear and act upon a petition.”[[151]](#footnote-152) In Texas, guardians can, without the assistance of a peace officer, transport the ward to an inpatient mental health facility for a preliminary examination if the guardian has reason to believe and does believe that the ward is a person with mental illness and is a substantial risk of serious harm to the ward or to others.[[152]](#footnote-153) Both of these laws prevent wards from fighting for their own rights and infringe on their due process, because the wards are not given the chance to petition the court for their rights to freedom.[[153]](#footnote-154) These laws also give the upper hand to guardians in imposing their will upon vulnerable people who have diminished freedom and autonomy as a result of these laws.[[154]](#footnote-155)

An important procedural right that state laws can give to wards is to allow for the appointment of counsel.[[155]](#footnote-156) 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.[[156]](#footnote-157) There can be varying roles of counsel required by state law, with some states requiring vigorous advocacy, while others specify that counsel should only act as guardian ad litem.[[157]](#footnote-158) Some states have also taken measures to ensure that the guardian is performing fiduciary duties for the benefit of the ward.[[158]](#footnote-159) Oregon is one such example.[[159]](#footnote-160) Oregon HB 4094 requires disclosure by the guardian in an instance where the guardian failed to perform a fiduciary duty that resulted in a loss, and were surcharged a surety for that loss by the court.[[160]](#footnote-161) Other states, such as Kentucky, have changed the definition of the powers of a guardian.[[161]](#footnote-162) In Kentucky, the powers of a guardian were recently changed from having “full care, custody, and control,” and “managing the financial affairs,” to simply having the responsibility to “manage the personal affairs” of the ward.[[162]](#footnote-163) This is useful in preventing bad-intentioned guardians from justifying the misuse of their ward’s finances.

C. Laws for Termination of Guardianships and Guardianship Reviews

There is a broad spectrum of rights that may be taken away from a person when a court appoints a guardian.[[163]](#footnote-164) These rights can include an individual’s right to determine residence, to consent to medical treatment, to make end-of-life decisions, possess a driver’s license, manage property, buy property, sell property, contract, file lawsuits, marry, and vote.[[164]](#footnote-165) A recent trend has been for state laws to reflect the idea that courts should remove only those rights that the adult is incapable of handling, thus giving the guardian a limited guardianship over the ward.[[165]](#footnote-166) Additionally, another trend for many states has been to have statutes in place making it easier for wards to terminate their guardianships.[[166]](#footnote-167) They do this by not placing a heavy burden on the wards or other interested persons to show that the guardianship is unnecessary, even after an original showing has been made.[[167]](#footnote-168) An example of one such state is Florida.[[168]](#footnote-169) In Florida, the law is that a court may modify or remove a guardian if it is “proper considering the pleadings and the evidence.”[[169]](#footnote-170) Other states’ laws, however, are not as favorable for wards.[[170]](#footnote-171) In Illinois, it must be established by clear and convincing evidence that a guardianship is no longer necessary.[[171]](#footnote-172) This heavy burden can make it difficult to remove an unnecessary guardianship.[[172]](#footnote-173)

Another advantage that several state legislatures often give to wards is that they allow anyone to file a petition to terminate a guardianship.[[173]](#footnote-174) In Florida, any interested person may file a suggestion of capacity, including the ward, and upon filing, a physician will be appointed to examine the ward.[[174]](#footnote-175) The physician must examine the ward and report to the court within twenty days after the appointment.[[175]](#footnote-176) This should allow family members of wards to file petitions if they are concerned about exploitation by the guardian. Many other states, such as California and Michigan, require the petition to be from the ward or an “interested person.”[[176]](#footnote-177) This can be helpful for the ward, but a stricter standard like this can make it more difficult for someone to help a ward they know to be in an oppressive or unnecessary guardianship.[[177]](#footnote-178)

Family members should play an important role in the care of the ward, but there are some state statutes that allow a guardian to limit the ward’s communication with family members.[[178]](#footnote-179) These statutes are intended to prevent situations where there is harm or abuse by a family member who is exerting undue influence.[[179]](#footnote-180) The statutes, however, can cause isolation of the elderly from family members who could prevent abuse from the guardian.[[180]](#footnote-181) These statutes usually operate by giving the guardian a chance a prove there is “good cause to believe the restriction is necessary because interactions with a specified person pose a risk of significant physical, psychological, or financial harm.”[[181]](#footnote-182) Guardians can use this statute to prevent family members from undoing the guardianship and can abuse the ward financially in their absence, much like what April Parks did with her victims.[[182]](#footnote-183) Professional guardians that judges are familiar with can sometimes gain the trust of the courts and convince them that it is in the ward’s best interests to have their family members kept away.[[183]](#footnote-184) Judges who have seen certain guardians in court multiple times over the years are more likely to trust guardians and are sometimes pressured by time constraints to expend little energy in fully evaluating the necessity of guardians.[[184]](#footnote-185) Additionally, manipulative guardians can sometimes convince the wards themselves that it is in their best interests to be kept away from family members, which is what happened with the Kaufman house.[[185]](#footnote-186) When guardians are successful in doing this, the chances of a ward being exploited increases.[[186]](#footnote-187)

As of 2013, eighteen states’ statutes and federal law required that the same procedures apply in a restoration proceeding as the procedures used in an appointment of guardian.[[187]](#footnote-188) The evidentiary standard and the evidence considered thus depends upon the particular appointment process in the state.[[188]](#footnote-189) If the court deems restoration to be appropriate, it may restore the individual’s rights, thereby terminating the guardianship and ending all rights and responsibilities of the guardian beyond those involved in the winding up process.[[189]](#footnote-190)

Other laws that some states have that help with ending certain guardianships are laws that require courts to perform annual reviews of guardianships.[[190]](#footnote-191) Not all states have laws that provide for these requirements.[[191]](#footnote-192) One such state is California.[[192]](#footnote-193) In California, it is a requirement for guardians to submit to the court, annually, a status report of the guardianship.[[193]](#footnote-194) Any guardian who falsifies such a report is guilty of a misdemeanor.[[194]](#footnote-195) If a guardian fails to submit such a report, the court must find a way to obtain the information through an investigation and must show cause, through this investigation, why the guardian should not be removed.[[195]](#footnote-196) Texas is a state that does not require annual reports from the guardian, but instead requires judges to examine the well-being of each ward on an annual basis.[[196]](#footnote-197) This requirement is not as stringent as the one in California, but it still prevents judges from putting a ward into a guardianship and forgetting about how it is possible that the guardianship may no longer be needed in the future.[[197]](#footnote-198)

D. The Abuses in the System

Sometimes, states can have problems with guardianship abuse despite having laws properly screening guardians, giving autonomy to wards to choose their attorney, and requiring regular reviews from courts to determine the continued necessity of the guardianship.[[198]](#footnote-199) This is because laws can often be misapplied or go unenforced by busy courts seeking to work quickly.[[199]](#footnote-200) Another problem is that expert witnesses often appear before the same judges in an established network of overlapping financial and professional interests.[[200]](#footnote-201) Judges can obtain false trust in guardians, witnesses, and attorneys who appear frequently within their courts.[[201]](#footnote-202) As the cases of April Parks and the Kaufmans show, guardians can be very good at maintaining their wrongdoing for a long amount of time before being caught.[[202]](#footnote-203)

In theory, a doctor should be able to prevent illicit guardianships from happening, but an analysis of more than 700 guardianship cases in Franklin County, Ohio, found that doctors were not doing enough to protect wards.[[203]](#footnote-204) The analysis found that in more than a third of cases, a medical or mental-health professional determined that a patient was incompetent in less than thirty minutes.[[204]](#footnote-205) Additionally, more than one in five doctors had never before seen the patient.[[205]](#footnote-206) States such as Texas often require detailed forms to be filled out showing exactly the level of capacity of the proposed ward, but they do not require details regarding the length of time of the evaluation or that the physician performed the evaluation in person.[[206]](#footnote-207) Because of the lack of details regarding evaluation time and place, physicians can easily evade the spirit of these laws and a judge can then easily approve the guardianship.[[207]](#footnote-208)

Another problem with the system of forming guardianships is that modern guardianship law emphasizes individualized decision-making.[[208]](#footnote-209) Judges must make decisions based on the individual’s abilities and behaviors and not on broad and vague disability characteristics and assumptions.[[209]](#footnote-210) In practice, the implementation of statutory procedures for restoration remains unclear, ambiguous, and appears to vary significantly by state, court, and judge.[[210]](#footnote-211) As a result, judges implementing guardianships often treat it more as an art than a science, since there are no hardline rules.[[211]](#footnote-212) Additionally, courts can make mistakes when applying laws to the situations before them.[[212]](#footnote-213) In one example, a Michigan court applied the best interests framework instead of the clear and convincing evidence standard that is applicable to adult guardianship.[[213]](#footnote-214) When judges misapply standards like this, opportunistic guardians acting in bad faith can take advantage.[[214]](#footnote-215)

E. Measures Being Implemented or Encouraged

The Fourth National Guardianship Summit has recommended that all states adopt the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA), especially the requirement of representation by a lawyer of all adult respondents.[[215]](#footnote-216) Adoption of this act will help all states work together in ensuring that guardianship proceedings are fair and equitable. As it is now, all states have very different laws regarding guardianships, leading to a frequent need for changes in reaction to problems that arise.[[216]](#footnote-217)

Laws should be implemented that tip the balance of power away from guardians. In Florida, a bill has been proposed to require that guardians be appointed on a rotating basis and that guardians act in good faith.[[217]](#footnote-218) The bill’s requirement for rotating guardians will be very useful in preventing guardians from picking out certain elderly persons to exploit and isolate.[[218]](#footnote-219) This bill also explicitly prohibits the abuse, exploitation, or neglect of a ward.[[219]](#footnote-220) Another bill in Florida seeks to increase oversight of guardianships by establishing a new Office of Public and Professional Guardians and requiring the registration of professional guardians.[[220]](#footnote-221) The establishment of this administration would help in giving the government more oversight over guardians, who can often act without repercussions.[[221]](#footnote-222)

Another recent change has been that the National Guardianship Network (a coalition of organizations dedicated to improving guardianship law and practice) launched a project known as Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS).[[222]](#footnote-223) WINGS is a collaboration of courts, government agencies, and civic groups in twenty-five states that is working to reform guardianship systems.[[223]](#footnote-224) WINGS has caused changes in state laws that give more rights to wards.[[224]](#footnote-225) In Missouri, MO-WINGS has contributed to a statute requiring the least strict alternative for incapacitated persons and a statute giving wards the right to contract, consent to medical treatment, establish residence, and to drive a motor vehicle.[[225]](#footnote-226) WINGS of Minnesota also emphasizes the consideration of less restrictive interventions on wards before deciding there is no other way to provide for the care, safety, and financial management of the person with questionable capacity.[[226]](#footnote-227) These less restrictive alternatives include the identification of a person who can help the person with decision making, the use of a geriatric care manager to recommend, arrange, and monitor services, and the use of banking tools such as automatic payment of regular bills.[[227]](#footnote-228) The success of WINGS in these states in giving more rights to vulnerable elderly Americans shows that it would be beneficial for more states to have their own WINGS organizations.[[228]](#footnote-229)

IV. Recommendation

This Note recommends that all states change their laws in ways that shift the balance of power from guardians to wards and vulnerable elderly persons who might be forced into harmful guardianships. The first subsection of this section discusses recommendations for requirements in becoming a guardian and laws for preventing guardians from taking on an excessive number of wards. The second subsection discusses reforms that can help in overseeing guardianships and terminating them if needed. Ways to help wards advocate for their rights and ways to require courts to oversee guardianships are recommended. In the third subsection, this Note recommends systemic changes of guardianships, which include the further spread of lobbyist groups such as WINGS, which help push for state statutory reform.

A. Screening Guardians

When appointing a guardian, it is most helpful to the ward for courts to do what they can to find the least restrictive alternative for wards.[[229]](#footnote-230) This is what the courts do in Missouri and Minnesota.[[230]](#footnote-231) There should also be higher barriers for guardians to obtain certification. Currently, there are too many states that require no training, and passing an exam and having a background check is the only thing that stands in the way a person becoming a guardian.[[231]](#footnote-232) It would be helpful if states required training and regularly checked up on their guardians to ensure that they are not abusing their wards. Florida sets a good baseline for guardianship requirements and is a good example that other states should follow.[[232]](#footnote-233) Florida sets requirements for guardian-to-ward ratios, training for guardians, and passage of the national exam.[[233]](#footnote-234) Florida falls short, however, in its requirements for annual review of guardianships.[[234]](#footnote-235) California is a perfect example of how this should be. In California, guardians are required to submit annual reports showing the need for a continued guardianship.[[235]](#footnote-236) This is important in preventing exploitation of wards.[[236]](#footnote-237)

States should also be more mindful of keeping information on guardians so that if a guardian is found to have committed malpractice, judges can know such information and prevent them from taking guardianships over any other vulnerable wards. This problem was apparent in Florida.[[237]](#footnote-238) Laws requiring a limit on the number of wards assigned to guardians would also be helpful in preventing guardians from collecting a high number of wards to maximize their profits. So far, Florida is the only state to have limits, and it would be helpful for other states to enact similar statutes.[[238]](#footnote-239)

Another way of preventing exploitation from guardians is to prevent guardians from receiving direct benefits from their guardianship. An example of a state that does this is Michigan, where the law states that a court may not appoint a guardian who “benefits from directly providing housing, medical, mental health or social services to the legally incapacitated individual.”[[239]](#footnote-240) Guardians can still exploit wards by billing them for an excessive number of hours, but this can be curtailed by states enacting laws that require annual status reports, as described above.[[240]](#footnote-241) These types of measures can give courts the power to keep a close eye on guardians.

It also helps when states give courts the ability to limit or expand the powers of guardians.[[241]](#footnote-242) There are many different capacities that a person can have, which are laid out in the ABA’s diminished capacity handbook and incorporating these into the law will help wards maintain autonomy over their lives.[[242]](#footnote-243) If a court looks closely at the thirteen different capacities laid out in the ABA’s diminished capacity handbook, the court can limit the powers that a guardian has, and as a result, a ward can remain semi-autonomous.[[243]](#footnote-244) This is important in preventing exploitation.[[244]](#footnote-245)

B. Overseeing and Terminating Guardianships

Once guardians are appointed, there should be ways for wards to have autonomy and be able to petition for removal of their guardian if the guardian is abusive or no longer necessary. One way of doing this is by giving wards the ability to contract with attorneys of their choice who will advocate on their behalf.[[245]](#footnote-246) Without this right, guardians can be free to isolate their wards and use manipulation and intimidation to prevent them from escaping their exploitation. Another way to help wards is to give them restoration notice every time the court has contact with them.[[246]](#footnote-247) As part of this contact, court investigators and guardians should be required to explain rights and processes to their wards so that wards know how to take action for themselves.[[247]](#footnote-248)

As discussed earlier, it is useful for states to require annual reports on guardianships so that courts can review guardianships and ensure that they are not abusive, but it is also helpful when different judges are reviewing the reports.[[248]](#footnote-249) This way, the same judges are not reviewing their own decisions. Additionally, the burden of proof should not be a showing of clear and convincing evidence for the ward. It is better to adopt an approach where the judge looks at the evidence as a whole and makes a determination without unfairly forcing the ward to make a showing that may require a substantial amount of evidence.[[249]](#footnote-250) Physicians and other medical professionals should also be involved to check up on the wards. Other people who should be involved are family members, who usually know the ward better than any else and will usually act in the best interests of the ward.

C. Systemic Changes of Guardianships

Other measures that can be taken are to raise awareness among professionals, other stakeholders, and guardians and to recommend more training for guardians, attorneys, and judges.[[250]](#footnote-251) The WINGS project is a good start in raising awareness and is a great organization that acts as a lobbyist to legislatures.[[251]](#footnote-252) It would be even more helpful if WINGS could be present in all states, so that all state legislatures are pushed to implement reforms. Other suggested reforms besides these include the inclusion of a “bill of rights” in states for individuals subject to or potentially subject to guardianship.[[252]](#footnote-253)

V. Conclusion

Of all legal topics, guardianships are not an issue that is typically in the limelight. Because of recent media coverage of Britney Spears, however, people inside and outside of the legal field are beginning to realize the abuses that can take place when a person of sound mind is placed under the control of someone who may not have their best interests at heart.[[253]](#footnote-254) Due to the recent attention, now is a good time for advocates of guardianship reform to petition state legislatures to make changes to protect elderly and vulnerable wards. If changes in state statutes are not made, abuses will continue and some elderly people seeking to enjoy their twilight years might find themselves victims of fraud.

To solve the problems that can exist with guardianships, it is best for legislators to look to statutes of other states to get ideas to improve their own states’ situations. With so many variances in state laws, states can get an idea of what works and what does not by observing guardianship situations in other states. This can help in deciding which laws to implement. Some of the most important measures that states can implement include status reports and a lower burden of proof for wards to overturn a guardianship. States have much variance in these matters and adopting a uniform set of laws would help courts in preventing unnecessary and abusive guardianships.[[254]](#footnote-255)

Also important in guardianship reform is educating judges, guardians, lawyers, and elderly people about the dangers of guardianships.[[255]](#footnote-256) When corners are cut by doctors and judges, elderly people can slip between the cracks and become abused either by guardians or by the system.[[256]](#footnote-257)

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2. . Sam Levin, *Britney Spears’s conservatorship terminated after nearly 14 years*, The Guardian (Nov. 12, 2021, 6:11 PM), https://www.theguardian.com/music/2021/nov/12/britney-spears-conservatorship-terminated. [↑](#footnote-ref-3)
3. *. Id.* [↑](#footnote-ref-4)
4. *. Id.* [↑](#footnote-ref-5)
5. *. Id.* [↑](#footnote-ref-6)
6. . *See Netflix’s I Care A Lot: Is Marla Grayson’s Elder Abuse Grift a Real Thing?*, MovieMaker (Feb. 19, 2021), https://www.moviemaker.com/i-care-a-lot-elder-abuse-marla-grayson/. [↑](#footnote-ref-7)
7. . *Conservatorship vs Guardianship*,The L. Dictionary (Feb. 4, 2022, 7:35 AM),https://thelawdictionary.org/article/conservatorship-vs-guardianship/, [https://web.archive.org/web/20220204073529/]. [↑](#footnote-ref-8)
8. . *See* *Conservatorship and Guardianship*, Fam. Caregiver All. (2012), https://
www.caregiver.org/resource/conservatorship-and-guardianship/. [↑](#footnote-ref-9)
9. . Belle Wong, *Conservatorship vs. Guardianship*, LegalZoom, https://www.legalzoom.com/articles/conservatorship-vs-guardianship (last updated May 2, 2022). [↑](#footnote-ref-10)
10. . *See* *The Ins And Outs Of Guardianship And Conservatorship*, ElderLawAnswers (July 20, 2021), https://www.elderlawanswers.com/guardianship-and-conservatorship-12096. [↑](#footnote-ref-11)
11. *. Serving As A Guardian For An Adult With Disabilities*, Ill. State Bar Assoc. Ass’n, https://www.isba.org/public/guide/guardianadultdisability (last visited Feb. 24, 2022). [↑](#footnote-ref-12)
12. . *GUARDIAN*, *Definition & Legal Meaning*, The L. Dictionary, https://
thelawdictionary.org/guardian/ (last visited Feb. 24, 2022). [↑](#footnote-ref-13)
13. . Nina A. Kohn, *Britney Spears’ case has shown guardianship laws need to Case Has Shown Guardianship Laws Need To Change*, The Guardian (Aug. 18, 2021, 10:00 AM), https://www.theguardian.com/commentisfree/2021/aug/18/britney-spears-case-guardianship-laws. [↑](#footnote-ref-14)
14. . *Id.* [↑](#footnote-ref-15)
15. *. Id.* [↑](#footnote-ref-16)
16. . *See generally* Karna Sandler, *A Guardian’s Health Care Decision-Making Authority: Statutory Restrictions*, 35 Bifocal 106 (Apr. 1, 2014) https://www.americanbar.org/groups/law\_aging/publications/bifocal/vol\_35/issue\_4\_april2014/
guardianship\_health\_care\_decisions\_statutory\_restrictions/. [↑](#footnote-ref-17)
17. *. See generally* U.S. Gov’t Accountability Off., gao-10-1046, Guardianships Cases of financial exploitation, neglect, and abuse of seniors (Sept. 2010) [hereinafter GAO Report]; Rachel Aviv, *How the Elderly Lose Their Rights*, New Yorker (Oct. 2, 2017), https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights. [↑](#footnote-ref-18)
18. *.* U.S. Gov’t Accountability Off., Highlights of GAO-17-33, Elder Abuse: The Extent Of Abuse By Guardians Is Unknown, But Some Measures Exist To Help Protect Older Adults (Nov. 1 2016). [↑](#footnote-ref-19)
19. . *See* Erica Wood, Pamela Teaster, Jenica Cassidy,A.B.A. Comm'n On L. and aging & VA. Tech Ctr for gerontology, Restoration of Rights in Adult Guardianship: research & recommendations 10, 40 (2017) [hereinafter Wood et al.]. [↑](#footnote-ref-20)
20. . Jenica Cassidy, *Restoration Of Rights In The Termination Of Adult Guardianship*, 23 Elder L.J. 83, 93 (2015). [↑](#footnote-ref-21)
21. *. Id.* [↑](#footnote-ref-22)
22. . Lawrence M. Friedman, Joanna L. Grossman, Chris Guthrie, *Guardians: A Research Note*, 40 Am. J. Legal Hist. 146, 147 (1996). [hereinafter Friedman et al.] [↑](#footnote-ref-23)
23. . Jennifer L. Wright, *Protecting Who From What, And Why, And How?: A Proposal for For An Integrative Approach To Adult Protective Proceedings*, 12 Elder L.J. 53, 60 (2004). [↑](#footnote-ref-24)
24. *. Id.* [↑](#footnote-ref-25)
25. *. Id.* [↑](#footnote-ref-26)
26. *. Id.* at 60–61. [↑](#footnote-ref-27)
27. *. Guardianship Reform/WINGS Background*, A.B.A (May 27, 2020) https://
www.americanbar.org/groups/law\_aging/resources/wings-court-stakeholder-partnerships0/guardianship-reform-wings-background/. [↑](#footnote-ref-28)
28. . Fred Bayles, *Guardians of Of The Elderly: An Ailing System Part I: Declared ‘Legally Dead’ by By A Troubled System*, AP News (Sept. 19, 1987), https://apnews.com/article/1198f64bb05d9c1ec690035983c02f9f. [↑](#footnote-ref-29)
29. *. Id.* [↑](#footnote-ref-30)
30. . Wood et al., *supra* note 18. [↑](#footnote-ref-31)
31. *. Id.* [↑](#footnote-ref-32)
32. . Ted Knutson, *Adults Under Guardianship Should Have Chance To Regain Rights, ABA Says*, Fin. Advisor (July 10, 2017), https://www.fa-mag.com/news/
adults-under-guardianship-should-have-chance-to-regain-rights—aba-says-33626.html. [↑](#footnote-ref-33)
33. *. Elderly Guardianship Basics*, FindLaw (May 17, 2021), https://www.findlaw.
com/elder/elder-care-law/elderly-guardianship-basics.html [hereinafter *Elderly Guardianship Basics*]. [↑](#footnote-ref-34)
34. *. Id.* [↑](#footnote-ref-35)
35. *. See generally* GAO Report, *supra* note 16. [↑](#footnote-ref-36)
36. . Wood et al., *supra* note 18, at 18. [↑](#footnote-ref-37)
37. . *Id.* [↑](#footnote-ref-38)
38. *. Id.* at 19. [↑](#footnote-ref-39)
39. *. Elderly Guardianship Basics*, *supra* note 32. [↑](#footnote-ref-40)
40. . Karna Sandler, *A Guardian's health Care Decision-Making Authority: Statutory Restrictions*, ABA (Apr. 1, 2014), https://www.americanbar.org/groups/law\_aging/
publications/bifocal/vol\_35/issue\_4\_april2014/guardianship\_health\_care\_decisions
\_statutory\_restrictions/. [↑](#footnote-ref-41)
41. . *See* Wright, *supra* note 22, at 68–9. [↑](#footnote-ref-42)
42. *. Id.* at 61. [↑](#footnote-ref-43)
43. 40. *See Assessment of Older Adults with Diminished Capacities*, ABA Handbook for Lawyers, at 1 (2021) [hereinafter *Assessment of Older Adults with Diminished Capacities*] (“Assessing a client’s capacity may seem foreign and perhaps a bit alarming to the legal professional lacking training in capacity assessment or other aspects of mental health.”). [↑](#footnote-ref-44)
44. *. Id.* at 18. [↑](#footnote-ref-45)
45. *. Id.* [↑](#footnote-ref-46)
46. . Wood et al., *supra* note 18, at 27. [↑](#footnote-ref-47)
47. *. Id.* at 32. [↑](#footnote-ref-48)
48. *. Id.* at 29. [↑](#footnote-ref-49)
49. 48. *See id.* at 39 (“Thus, many cases in which individuals no longer need a guardian—or perhaps never needed a guardian—fail to receive any regular review and may slip through the cracks, leaving individuals with an unnecessarily restricted life.”). [↑](#footnote-ref-50)
50. . Barbara Peters Smith, *Elder guardianship: A well-oiled machine*, Herald Tribune (Dec. 6, 2014, 11:37 AM), http://guardianship.heraldtribune.com/. [↑](#footnote-ref-51)
51. *. Id.*  [↑](#footnote-ref-52)
52. *. Id.* [↑](#footnote-ref-53)
53. *. Id.* [↑](#footnote-ref-54)
54. . *Id.* [↑](#footnote-ref-55)
55. . *Id*. [↑](#footnote-ref-56)
56. . *Id.* [↑](#footnote-ref-57)
57. . Aviv, *supra* note 16. [↑](#footnote-ref-58)
58. *. Id.*  [↑](#footnote-ref-59)
59. *. Id.*  [↑](#footnote-ref-60)
60. *. Id.*  [↑](#footnote-ref-61)
61. *. Id.*  [↑](#footnote-ref-62)
62. . Matthew Hoffman, *Breaking Down the Law: Elder abuse and the case of April Parks*, 3 News (Dec. 18, 2019), https://news3lv.com/news/local/breaking-down-the-law-elder-abuse-and-the-case-of-april-parks. [↑](#footnote-ref-63)
63. . *Id.* [↑](#footnote-ref-64)
64. *. Id.*  [↑](#footnote-ref-65)
65. *. Id.* [↑](#footnote-ref-66)
66. . *See* I Care A Lot (STX Films 2020); Peter Bradshaw, *I Care a Lot review: Rosamund Pike is exquisitely nasty in toxic thriller*, Guardian (Feb. 18, 2021), https://www.theguardian.com/film/2021/feb/18/i-care-a-lot-review-rosamund-pike-amazon-prime-video. [↑](#footnote-ref-67)
67. . *Kansas Couple Convicted on Involuntary Servitude Charges for Abusing Mentally Ill Patients*, Dep’t of Just. (Nov. 7, 2005), https://www.justice.gov/archive/opa/
pr/2005/November/05\_crt\_599.html. [↑](#footnote-ref-68)
68. *. Id.* [↑](#footnote-ref-69)
69. *. Id.* [↑](#footnote-ref-70)
70. *. Id.* [↑](#footnote-ref-71)
71. . Jen Christensen, *Probe shows court-appointed guardians often not screened or monitored*, CNN (Oct. 27, 2010, 10:10 AM), http://www.cnn.com/2010/HEALTH/
10/27/elderly.abuse/index.html. [↑](#footnote-ref-72)
72. . Tim Carpenter, *Victims: 15 Years in Prison not enough for architect of Kaufman House terror*, Kan. Reflector (July 23, 2020, 7:28 AM), https://kansasreflector.com/2020/07/23/victims-15-years-in-prison-not-enough-for-architect-of-kaufman-house-terror/. [↑](#footnote-ref-73)
73. . *See generally* Aviv *supra* note 16. [↑](#footnote-ref-74)
74. . GAO Report, *supra* note 16. (“5.4 million in assets from 158 incapacitated victims, many of whom were seniors.” Is a direct quote) [↑](#footnote-ref-75)
75. *. Id.* [↑](#footnote-ref-76)
76. *. Id.* at 7. [↑](#footnote-ref-77)
77. *. Id.* [↑](#footnote-ref-78)
78. *. Id.* [↑](#footnote-ref-79)
79. *. Id.* [↑](#footnote-ref-80)
80. *. Id.* at 8*.* [↑](#footnote-ref-81)
81. *. Id.* [↑](#footnote-ref-82)
82. *. Id.* at 9. [↑](#footnote-ref-83)
83. . Aviv, *supra* note 16. [↑](#footnote-ref-84)
84. . *Id.*  [↑](#footnote-ref-85)
85. . Levin, *supra* note 1. [↑](#footnote-ref-86)
86. *. Id.*  [↑](#footnote-ref-87)
87. . Wood et al., *supra* note 18, at 22, 25. [↑](#footnote-ref-88)
88. . *Id.* at 37. [↑](#footnote-ref-89)
89. . Abigail Stark, *Power of Attorney after Incapacitation*, LegalMatch, https://
www.legalmatch.com/law-library/article/power-of-attorney-after-incapacitation.
html (last updated July 27, 2020). [↑](#footnote-ref-90)
90. . Ann Brenoff, *The System of Court-Appointed Guardians Continues to Fail the Elderly*, HuffPost (Oct. 10, 2017, 6:01 AM), https://www.huffpost.com/entry/court-appointed-guardian-system-failing-elderly\_n\_59d3f70be4b06226e3f44d4e. [↑](#footnote-ref-91)
91. . Stark, *supra* note 88. [↑](#footnote-ref-92)
92. . Brenoff, *supra* note 89. [↑](#footnote-ref-93)
93. *. Id.*  [↑](#footnote-ref-94)
94. *. Id.* [↑](#footnote-ref-95)
95. *. Id.* [↑](#footnote-ref-96)
96. *. Id.* [↑](#footnote-ref-97)
97. . Kohn, *supra* note 12. [↑](#footnote-ref-98)
98. . *See generally* GAO Report, *supra* note 16. [↑](#footnote-ref-99)
99. . Brenoff, *supra* note 89. [↑](#footnote-ref-100)
100. *. Id.*  [↑](#footnote-ref-101)
101. . *Exam Information*, Ctr. for Guardianship Certification, https://guardianshipcert.org/exam-information/#1514392633726-bedf308a-31ba (last visited Feb. 24, 2022). [↑](#footnote-ref-102)
102. . GAO Report, *supra* note 16, at 47. [↑](#footnote-ref-103)
103. *. Id.* at 50−52. [↑](#footnote-ref-104)
104. *. Id.* at 50. [↑](#footnote-ref-105)
105. *. Id.* at 47. [↑](#footnote-ref-106)
106. *. Id.* [↑](#footnote-ref-107)
107. . *Steps to Become a Professional Guardian*, Fla. State Guardianship Ass'n, https://www.floridaguardians.com/education/becoming-a-guardian/ (last visited Feb. 24, 2022). [↑](#footnote-ref-108)
108. . Tex. Gov’t Code Ann. § 155.204 (West 2017). [↑](#footnote-ref-109)
109. *. Id.* [↑](#footnote-ref-110)
110. . *See generally* GAO Report, *supra*, note 16. [↑](#footnote-ref-111)
111. . Brenoff, *supra* note 89. [↑](#footnote-ref-112)
112. . Pamela B. Teaster, Erica F. Wood, Naomi Karp, Susan A. Lawrence, Winsor C. Schmidt, Jr., Marta S. Mendiondo, Wards of the State: A National Study of Public Guardianship 7 (The Ret. Rsch. Found., 2005). [↑](#footnote-ref-113)
113. *. Id.* at 139*.* [↑](#footnote-ref-114)
114. . Hailey M. Hanners, *Who Wants the Ward? The State’s Role in Adult Guardianship Proceedings*, 11 Est. Plan. & Cmty. Prop. L. J., 359, 369 (2019). [↑](#footnote-ref-115)
115. *. Id.* [↑](#footnote-ref-116)
116. *. Id.* [↑](#footnote-ref-117)
117. 116. *See id.* [↑](#footnote-ref-118)
118. . *Types of Illinois Adult Guardianships*,Rubin Law: A Pro. Corp. https://
www.rubinlaw.com/blog/types-of-illinois-adult-guardianships/ (last visited Feb. 24, 2022). [↑](#footnote-ref-119)
119. . *Id.* [↑](#footnote-ref-120)
120. *. Id.* [↑](#footnote-ref-121)
121. *.* A.B.A. Comm’n on L. And Aging & Am. Psych. Ass’n., Assessment of Older Adults with Diminished Capacities: A Handbook for Lawyers 17–23, (2d ed. 2021) [hereinafter A.B.A. Handbook]. [↑](#footnote-ref-122)
122. . N.Y. Mental Hyg. Law (Mckinney 2011) § 81.09. [↑](#footnote-ref-123)
123. . A.B.A. Handbook, *supra* note120, at 17–23. [↑](#footnote-ref-124)
124. *. Id.* [↑](#footnote-ref-125)
125. *. Id.* at 18. [↑](#footnote-ref-126)
126. . Mich. Comp. Laws Ann. § 700.5313 (West 2018). [↑](#footnote-ref-127)
127. *. Id.*  [↑](#footnote-ref-128)
128. *. Id.*  [↑](#footnote-ref-129)
129. . Fla. Stat. Ann. § 744.334 (West 2020). [↑](#footnote-ref-130)
130. 129. Peters Smith, *supra* note 49. [↑](#footnote-ref-131)
131. . *Id.* [↑](#footnote-ref-132)
132. 131. *See generally* *id.* [↑](#footnote-ref-133)
133. . *Elderly Guardianship Basics*, FindLaw, https://www.findlaw.com/elder/elder-care-law/elderly-guardianship-basics.html (last updated May 17, 2021). [↑](#footnote-ref-134)
134. *. Id.*  [↑](#footnote-ref-135)
135. 134. *See, e.g.*, Tex. Est. Code Ann. § 1101.103 (West 2015). [↑](#footnote-ref-136)
136. . *Id.* [↑](#footnote-ref-137)
137. *. Id.*  [↑](#footnote-ref-138)
138. . Tex. Est. Code Ann. § 1101.101 (West 2015). [↑](#footnote-ref-139)
139. 138. *See* Carpenter, *supra* note 71. [↑](#footnote-ref-140)
140. . *Id.* [↑](#footnote-ref-141)
141. . *See, e.g.*, Mich. Comp. Laws Ann. § 700.5309 (West 2000); Cal. Prob. Code § 1513.2 (West 2018); Tex. Est. Code Ann. § 1201.002 (West 2014); Nev. Rev. Stat. Ann. § 159.081 (West 2019); Ark. Code Ann. § 28-65-322. [↑](#footnote-ref-142)
142. . Cal. Prob. Code § 1513.2 (West 2018). [↑](#footnote-ref-143)
143. . Fla. Stat. Ann. § 744. 367 (West 2020). [↑](#footnote-ref-144)
144. 143. *See generally* Peters Smith, *supra* note 49. [↑](#footnote-ref-145)
145. . Ken Burke, *We need better data to improve Florida’s guardianship system*, Tampa Bay Times (Jan. 13, 2022), https://www.tampabay.com/opinion/2022/01/13/
we-need-better-data-to-improve-floridas-guardianship-system-column/. [↑](#footnote-ref-146)
146. *. Id.*  [↑](#footnote-ref-147)
147. *. Id.*  [↑](#footnote-ref-148)
148. *. Id.*  [↑](#footnote-ref-149)
149. *. Id.* [↑](#footnote-ref-150)
150. 149. *See, e.g.*, Ark. Code Ann. § 28-65-303(b) (West 2019). [↑](#footnote-ref-151)
151. . *Id.*  [↑](#footnote-ref-152)
152. . Tex. Health & Safety Code Ann. § 573.003 (West 2015). [↑](#footnote-ref-153)
153. . Ark. Code Ann. § 28-65-303(b) (West 2019); Tex. Health & Safety Code Ann. § 573.003 (West 2015). [↑](#footnote-ref-154)
154. . Ark. Code Ann. § 28-65-303(b) (West 2019); Tex. Health & Safety Code Ann. § 573.003 (West 2015). [↑](#footnote-ref-155)
155. *. State Adult Guardianship Legislation Summary: Directions of Reform—2018*, A.B.A. Comm’n on l. and aging 2 (2018). [↑](#footnote-ref-156)
156. *. Id.*  [↑](#footnote-ref-157)
157. *. Id.*  [↑](#footnote-ref-158)
158. *. Id.* at 7, 22. [↑](#footnote-ref-159)
159. *. Id.* at 7. [↑](#footnote-ref-160)
160. *. Id.*  [↑](#footnote-ref-161)
161. 160. *Id.* at 11. [↑](#footnote-ref-162)
162. *. Id*. [↑](#footnote-ref-163)
163. *. Guardianship: Key Concepts and Resources*, U.S. Dep’t. of Just., https://www.
justice.gov/elderjustice/guardianship-key-concepts-and-resources (last visited Feb. 24, 2022) [hereinafter *Guardianship Key Concepts*]. [↑](#footnote-ref-164)
164. *. Id.*  [↑](#footnote-ref-165)
165. *. Id.*  [↑](#footnote-ref-166)
166. 165. *Id.* at 4. [↑](#footnote-ref-167)
167. . *See, e.g.*, Fla. Stat. Ann. § 744.477 (West 2015). [↑](#footnote-ref-168)
168. *. Id.*  [↑](#footnote-ref-169)
169. *. Id.*  [↑](#footnote-ref-170)
170. . *See, e.g.*, 755 Ill. Comp. Stat. Ann. 5/11a-20 (West 2022). [↑](#footnote-ref-171)
171. *. Id.*  [↑](#footnote-ref-172)
172. 171. Erica Wood & Dari Pogach, *Guardianship Termination and Restoration of Rights*, Nat’l Ctr. on L. & Elder Rts. 1, 2 (Aug. 2018), https://ncler.acl.gov/
Files/Guardianship-Termination-Restoration-of-Rights.aspx. [↑](#footnote-ref-173)
173. . *See, e.g.*, Fla. Stat. Ann. § 744.464 (West 2015). [↑](#footnote-ref-174)
174. *. Id.*  [↑](#footnote-ref-175)
175. *. Id.* [↑](#footnote-ref-176)
176. . Cal. Prob. Code § 1820 (West 2018); Mich. Comp. Laws Ann. § 700.5303 (West 2000). [↑](#footnote-ref-177)
177. 176. *See* Wood & Pogach, *supra* note 171, at 2. [↑](#footnote-ref-178)
178. *. State Adult Guardianship Legislation Summary: Directions of Reform—2018*, *supra* note 152, at 14–15. [↑](#footnote-ref-179)
179. 178. *Id.* at 14. [↑](#footnote-ref-180)
180. *. Id.* [↑](#footnote-ref-181)
181. *. Id.* at 15. [↑](#footnote-ref-182)
182. . Aviv, *supra* note 16. [↑](#footnote-ref-183)
183. . *Guardian*, Legal Info. Inst., https://www.law.cornell.edu/wex/guardian (last visited Feb. 24, 2022). [↑](#footnote-ref-184)
184. *. Id.*  [↑](#footnote-ref-185)
185. . Press Release, U.S. Dep’t of Just., *Kansas Couple Convicted on Involuntary Servitude Charges for Abusing Mentally Ill Patients* (Nov. 7, 2005). [↑](#footnote-ref-186)
186. *. See generally* *id.*  [↑](#footnote-ref-187)
187. . Erica Wood, Pamela Teaser & Jenica Cassidy, Am. Bar Ass’n, Restoration of Rights in Adult Guardianships: Research & Recommendations (2013), https://www.americanbar.org/content/dam/aba/administrative/law\_aging/2013\_CassidyRestorationofRightsChart7-13.pdf. [↑](#footnote-ref-188)
188. . Cassidy, *supra* note 19, at 92. [↑](#footnote-ref-189)
189. *. Id.* at 92–93. [↑](#footnote-ref-190)
190. 189. *Guardianship Key Concepts*, *supra* note 162. [↑](#footnote-ref-191)
191. 190. *See id.* [↑](#footnote-ref-192)
192. . Cal. Prob. Code § 1513.2 (West 2018). [↑](#footnote-ref-193)
193. *. Id.* § 1513.2(a). [↑](#footnote-ref-194)
194. *. Id.* § 1513.2(b). [↑](#footnote-ref-195)
195. *. Id.* [↑](#footnote-ref-196)
196. . *See generally* Tex. Est. Code Ann. § 1201.002 (West 2014). [↑](#footnote-ref-197)
197. . *Id.*; Cal. Prob. Code § 1513.2 (West 2018). [↑](#footnote-ref-198)
198. 197. *See* Mike Wagner et al., *Once in a Guardianship, Few Get Out*, The Columbus Dispatch (May 20, 2014, 3:58 PM), https://www.dispatch.com/story/news/2014/
05/20/once-in-guardianship-few-get/23487592007/. [↑](#footnote-ref-199)
199. 198. Heidi Blake & Katie J.M. Baker, *Beyond Britney: Abuse, Exploitation, and Death Inside America’s Guardianship Industry*, BuzzFeed News (Sep. 17, 2021, 1:02 PM), https://www.buzzfeednews.com/article/heidiblake/conservatorship-investigation-free-britney-spears. [↑](#footnote-ref-200)
200. 199. *See id.*  [↑](#footnote-ref-201)
201. 200. *See id.* [↑](#footnote-ref-202)
202. . Carpenter, *supra* note 71; Aviv, *supra* note 16. [↑](#footnote-ref-203)
203. . Wagner et al., *supra* note 197. [↑](#footnote-ref-204)
204. *. Id.* [↑](#footnote-ref-205)
205. *. Id.* [↑](#footnote-ref-206)
206. . *See* Tex. Est. Code Ann § 1101.103(b). [↑](#footnote-ref-207)
207. 210. *See* Wagner et al., *supra* note 197. [↑](#footnote-ref-208)
208. . Cassidy, *supra* note 19, at 95. [↑](#footnote-ref-209)
209. *. Id.* [↑](#footnote-ref-210)
210. *. Id.* [↑](#footnote-ref-211)
211. 210. *See generally id.* [↑](#footnote-ref-212)
212. 211. In re Guardianship Gordon, 975 N.W.2d 316, 319 (Mich. Ct. App. 2021) (illustrating that courts can make mistakes in application). [↑](#footnote-ref-213)
213. *. Id.*  [↑](#footnote-ref-214)
214. 213. *See generally* Cassidy, *supra* note 19; *see also* Aviv, *supra* note 16. [↑](#footnote-ref-215)
215. . Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability, Recommendations Adopted by Summit Delegates4 (2021). [↑](#footnote-ref-216)
216. 215. *Id.*  [↑](#footnote-ref-217)
217. . Kathleen McGrory, *Guardianship Horror Stories May Lead to Change*, Tampa Bay Times (Mar. 22, 2015), https://www.tampabay.com/news/politics/stateroundup/guardianship-horror-stories-may-lead-to-change/2222202/. [↑](#footnote-ref-218)
218. 217. *Id.* [↑](#footnote-ref-219)
219. *. Id.* [↑](#footnote-ref-220)
220. *. Id.* [↑](#footnote-ref-221)
221. 220. Kathleen McGrory, *Guardianship Horror Stories May Lead to Change*, Tampa Bay Times (Mar. 22, 2015), https://www.tampabay.com/news/politics/stateroundup/guardianship-horror-stories-may-lead-to-change/2222202/. [↑](#footnote-ref-222)
222. . Kenneth Miller, *What Happens When a Guardianship Gets Contentious*, AARP (Oct. 4, 2018), https://www.aarp.org/caregiving/financial-legal/info-2018/court-ordered-guardianship-separates-family.html. [↑](#footnote-ref-223)
223. *. Id.* [↑](#footnote-ref-224)
224. 223. *See Welcome to Mo-WINGS*,Missouri’s Working Interdisciplinary Network Guardianship Stakeholders, https://www.mo-wings.org (last visited Feb. 24, 2022) [hereinafter *Mo-WINGS*]. [↑](#footnote-ref-225)
225. . *Id.* [↑](#footnote-ref-226)
226. . *Less Restrictive Alternatives*, WINGS Minnesota, http://wingsmn.org/less-restrictive-alternatives/ (last visited Feb. 24, 2022). [↑](#footnote-ref-227)
227. *. Id.* [↑](#footnote-ref-228)
228. 227. *See generally Mo-WINGS*, *supra* note 223;WINGS Minnesota, *supra* note 225 (illustrating how the success of the WINGS legislation in Missouri and Minnesota has been beneficial for the elder population). [↑](#footnote-ref-229)
229. 232. *See* *Guardianship: Less Restrictive Options*, U.S. DOJ: Elder Justice Initiative, https://www.justice.gov/elderjustice/less-restrictive-options (last visited Feb. 24, 2022). [↑](#footnote-ref-230)
230. 233. *See Mo-WINGS*, *supra* note 223; WINGS Minnesota, *supra* note 225. [↑](#footnote-ref-231)
231. 234*. See generally* GAO Report, *supra* note 16, at 14–21. [↑](#footnote-ref-232)
232. 235. *See* Hanners, *supra* note 113, at 368–69. [↑](#footnote-ref-233)
233. 236. *Id.* at 369; *Professional Guardian Registration*, Fla. Dep’t of Elder Aff., https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/professional-guardian-registration/ (last visited Feb. 24, 2022). [↑](#footnote-ref-234)
234. 237. *See generally* Fla. Stat. § 744.367 (2020); Cal. Prob. Code § 1513.2 (2018). [↑](#footnote-ref-235)
235. 238. Cal. Prob. Code § 1513.2 (2018). [↑](#footnote-ref-236)
236. 239. *See* Adult Guardianship Guide, Nat’l Ass’n for Ct. Mgmt. 14 (2022). [↑](#footnote-ref-237)
237. 240. *See* Burke, *supra* note 144. [↑](#footnote-ref-238)
238. 241. *See* Hanners, *supra* note 113, at 369. [↑](#footnote-ref-239)
239. 242. Mich. Comp. Laws § 700.5313 (2013). [↑](#footnote-ref-240)
240. 243. *See* Burke, *supra* note 144. [↑](#footnote-ref-241)
241. 244. *See Assessment of Older Adults with Diminished Capacities*, ABA Handbook for Lawyers, at 17–23 (2021). [↑](#footnote-ref-242)
242. 245*. Id*. [↑](#footnote-ref-243)
243. 246. *Id.* [↑](#footnote-ref-244)
244. 247. *See generally* *Protecting Individual Rights*, Disability Rights N.C., https://disabilityrightsnc.org/wp-content/uploads/2022/03/Resource\_Brochure\_Limited\_Guardianship\_2013.pdf (last visited Sept. 12, 2022) (noting that limited guardianship promotes maximum autonomy). [↑](#footnote-ref-245)
245. 248. *See* Adult Guardianship Guide, Nat’l Ass’n for Ct. Mgmt. 14 (2022). [↑](#footnote-ref-246)
246. 249*.* Wood et al*., supra* note 18, at 10. [↑](#footnote-ref-247)
247. 250*. Id.* [↑](#footnote-ref-248)
248. 251. *Id.* [↑](#footnote-ref-249)
249. 252. *Id.* at 17. [↑](#footnote-ref-250)
250. 253*. See WINGS—An Innovative and Collaborative Approach to Reform,* ABA Comm’n on L. & Aging(Nov. 10, 2020),https://www.americanbar.org/groups/
law\_aging/publications/bifocal/vol-42/vol--42-issue-2--november-december-2020-/wings---an-innovative-and-collaborative-approach-to-reform. [↑](#footnote-ref-251)
251. 254. *Id.* [↑](#footnote-ref-252)
252. 255*. See* Comm’n on L. & Aging, State Adult Guardianship Summary: Directions of Reform 12 (2021), https://www.americanbar.org/content/dam/aba/
administrative/law\_aging/2021-guardianship-leg-summry.pdf. [↑](#footnote-ref-253)
253. 256. Sam Levin, *Britney Spears’s conservatorship terminated after nearly 14 years*, The Guardian (Nov. 12, 2021, 18:11 PM) https://www.theguardian.com/music/2021/nov/12/britney-spears-conservatorship-terminated. [↑](#footnote-ref-254)
254. 257. *See* Annemarie M. Kelly et al., *A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning,* J. Fin. Serv. Pro. 59 (2021). [↑](#footnote-ref-255)
255. 258. David Godfrey, *Challenges in Guardianship and Guardianship Abuse*, ABA Comm’n on L. & Aging (Mar. 11, 2021), https://www.americanbar.org/groups/
law\_aging/publications/bifocal/vol-42/vol-42-issue-4-march-april-2021/challenges-in-guardianship-and-guardianship-abuse/. [↑](#footnote-ref-256)
256. 259. Miller, *supra* note 221. [↑](#footnote-ref-257)