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Scan of the Legal, Policy, and Practice Context and Considerations for Collecting Data on Guardianship Abuse and Fraud

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I. Introduction

This paper — Part 3: Scan of the Legal, Policy, and Practice Context and Considerations for Collecting Data on Guardianship Abuse and Fraud — builds upon the first two papers in our environmental scan.[1]

In this paper, we summarize our key guardianship[2] data findings in the context of national resources on data collection, monitoring, and reporting of suspected abuse and fraud. We explain the types of guardian misconduct, delineating general misconduct from criminal conduct. We also highlight why it is so difficult to answer questions about the number of adults with guardians and the prevalence of abuse by guardians.

In addition, we include a detailed section on how courts and other stakeholders can use specific guardianship data elements — both to strengthen monitoring at the case level and to inform changes in law, policy, and practice. We list dozens of data elements over the life of a case and show the relevance of each in addressing abuse and fraud. We stress that individual court systems should prioritize the complete set of data elements, adapting it to meet their most pressing problems and gaps in knowledge.

Finally, we make several recommendations on federal actions to enhance guardianship data collection and to address abuse and fraud by guardians. Although guardianship law and policy are created at the state level, there are opportunities for the federal government to help states protect individuals with a guardian from abuse either through unnecessary or overboard guardianships or by under-monitored guardians. We organize our recommendations for federal action into four categories: supporting greater uniformity, allocating federal resources for state courts, expanding federal data sources to include guardianship, and focusing on federal approaches to increase collaboration and support adults subject to guardianship.

II. Summary of Key Guardianship Data Considerations

In this section, we summarize the key findings from the first two phases of our research and highlight why it is so difficult to answer what seem to be two basic questions: How many adults have a guardian, and what is the prevalence and nature of abuse by guardians?

a. Summary of Part 1 Research

In Part 1 of our environmental scan, we conducted a review of the literature on guardianship systems and abuse by guardians, drawing from a variety of disciplines and sources spanning nearly four decades. Our review of the literature found that no comprehensive, reliable data exist about the nature or extent of abuse by guardians, despite numerous efforts to quantify concerns about widespread abuse. To determine the scope and prevalence of abuse by guardians, it is critical to know — but difficult to ascertain — the number of cases for which a guardian has been appointed by the court and for which the court is responsible for monitoring. However, despite attempts to estimate the number, there is no definitive data source. It is abundantly clear that there are substantial gaps that need to be filled to effectively address abuse and fraud by individual guardians and the guardianship system.

i. What We Found About Abuse by Guardians, Including Criminal Charges

Existing research shows that courts lack both basic information about how many guardians are under their jurisdiction and the capacity to provide oversight, which presents a significant barrier to finding documentation about the nature of abuse by guardians. In our research, we identified limited pockets of information that expose breaches of fiduciary duties, mismanagement of assets, and exploitation.

We examined state appellate court opinions reported in Lexis/Nexis involving a wide range of guardianship issues as a source of information on types of misconduct (for example, financial or personal management), the relationship of the guardian to the adult (for example, family or attorney), and the resolution (for example, criminal charges).[3] However, these represent only those cases that reached state appellate courts.

The disciplinary actions of state or national certification programs also help contribute to understanding the nature of abuse by guardians. Thirteen states have certification or licensing requirements for professional guardians; these include procedures for receiving and reviewing complaints and determining whether the guardian should be disciplined.[4] Nine states require guardians to be certified by the Center for Guardianship Certification, the only entity that provides nationwide certification of guardians. The Center for Guardianship Certification, which has been certifying guardians since 1997, receives complaints about guardians.[5] Although illustrative, this information does not provide thorough coverage of the nature of abuse, as it includes only cases in which a filed complaint involved certified professional guardians. As a result, the number of cases provides only a limited picture of a small group of guardians.

Studies have attempted to gather information on abuse by guardians, but similar to state court appellate cases and complaints to certification bodies, these fail to capture the totality of cases. The National Center for State Courts (NCSC), for example, conducted a comprehensive analysis of media stories on abuse by guardians from July 1, 2015, to December 31, 2016, to learn about instances of financial exploitation and case outcomes.[6] NCSC also presented findings from a 2018 research study of the Minnesota court's centralized professional auditing team.[7] A separate study examined substantiated Adult Protective Services (APS) reports over a 10-month period at sites in six states.[8] Although these studies provide important insight into the nature of abuse by guardians, they include a small subsect of cases and thus do not provide an understanding of the national scope of the problem.

ii. What We Found About the Nature of Abuse by Guardians

The nature of abuse by guardians and by the guardianship system remains an unsolved mystery due to both inconsistent definitions of what constitutes abuse and a significant lack of data. From the information that exists, we found that:

- Overall, elder abuse affects about one in six community dwelling adults each year, although prevalence rates differ by study and type of abuse.[9] This estimate does not include vulnerable younger adults with disabilities, and it may or may not include older adults with a guardian. Studies have recognized that projections of elder abuse underestimate actual prevalence.

- The best estimate of the number of adult guardianships in the United States is 1.3 million open cases, but that is based on varying reports by selected states.[10]
- There are numerous reports by governmental, media, and other sources showing malfeasance by both professional and nonprofessional guardians. This malfeasance includes a spectrum of actions, ranging from noncompliance in failing to file reports in a timely manner, to abusive conduct as defined by APS, to criminal conduct for which various sanctions are imposed.
- There are few appellate cases involving misconduct by guardians; these cases expose how guardians abuse their court-ordered authority to exploit the estates they have been entrusted to protect.
- Although press stories have reported serious problems, they may not accurately represent the issues, and they fail to address scope and prevalence. Media exposés tend to focus on sensational cases of intrafamily disputes carried out in guardianship courts.
- A systematic study of APS in six states revealed that financial exploitation is more likely to occur through misuse of powers of attorney rather than guardians.[11]
- Although we do not know the nature or prevalence of abuse by guardians, some interviewees reported that a majority of potential fraud cases that were investigated involved family guardians.[12]

Substantial advocacy work on guardianship monitoring has resulted in revisions to state laws, promulgation of standards of practice for guardians and courts, development of a model uniform act, and enhanced oversight approaches applied in some courts. However, due to lack of funding, technology, and, in some cases, political will, much remains to be accomplished to effectively target abuse by guardians and bring about needed changes in the ways in which courts impose and monitor guardianships. Many gaps exist between law and practice. Ongoing media reports of grave abuses by guardians are an indication that, although standards and statutes may be in place, practices lag behind them. A gap exists between processes on paper and in reality.

b. Summary of Part 2 Research

In Part 2 of our research, we interviewed and surveyed subject matter experts in state court systems. They offered firsthand knowledge of what data state courts and local courts are able to collect and then aggregate about guardianship cases, which could help answer the question of the nature and prevalence of abuse by guardians. Through our interviews, we found that there is scant capacity to help answer that question; however, we were able to identify existing state judicial case processing and data collection capabilities, along with known barriers to improving data collection.

All interviewees emphasized the importance of court data technology. They agreed that states cannot effectively prevent or address abuse and fraud by guardians without knowing the parameters of their system and how it functions. Data are essential for courts to track and monitor individual cases to detect abuse and intervene with sanctions or removal of the guardian. Data also enable courts and policymakers to uncover patterns of abuse or system limitations that require changes in law or court procedures.

Based on our interviews, a key data point is the total number of cases subject to court review. Each case represents one adult for whom the court has appointed a guardian and monitoring is

required. NCSC has recommended that courts use "set for review" to provide uniformity in identifying a case in which a guardian has been appointed and the case is awaiting regular court review. However, according to our interviews, courts use a mix of terms such as "active," "open," and "closed," which appear to have different meanings from one state to the next. Definitions are often blurred in practice, resulting in confusion about case counts and available data. For example, in some states, cases are coded "closed" when a guardian is appointed, even though the court's oversight responsibility is just beginning.[13]

In addition to inconsistent terminology, the interviewees had concerns about data reliability because court staff may not properly code case status and events during the time the case is subject to review. Other issues raised during the interviews were inequities between and within different local courts and their varying ability to extract case numbers easily and accurately.

Some states are simply unable to produce a statewide number of cases for court review due to the lack of a centralized data collection system. Counties are often information silos, and information cannot be retrieved statewide. Even if an individual county could pull case numbers, the lack of a centralized system often raises concerns around the accuracy of any statewide data.

i. Complex Local Court Systems

One challenge to answering the basic questions on abuse by guardians is the complex nature of local court systems. Every state has some type of state administrative office for the judicial branch, typically led by the state chief justice and state court administrator. However, some state administrative offices do not have authority over the judicial officers in the local courts who hear guardianship cases, and they cannot dictate what data the locally funded courts should collect. Others have what are called "unified" court systems, in which there are varying levels of centralized management, rulemaking, budgeting, and financing at the state level.

In all but 17 states, guardianship cases are heard in general jurisdiction courts, which hear all civil and criminal matters at the municipal, county, circuit, or district level. There are approximately 1,780 general jurisdiction courts with more than 7,000 assigned judges.[14] Some general jurisdiction courts may have special dockets or judges dedicated to probate matters, including estates of deceased individuals and guardianship cases. On a day-to-day basis, these 7,000 judges hear a wide variety of cases, ranging from felonies and misdemeanors to juvenile matters, traffic cases, divorces, estates of deceased individuals, civil tort, and contract cases — and a small fraction of the docket may be guardianship cases. Even in the 17 states with specialized probate courts, some are locally administered and thus are not under the authority of the state court administrative office, and some may oversee only estates of deceased individuals and not guardianship matters.

Courts do use some technology to track cases as they move through the court system. Court clerks are responsible for recording dates on which lawsuits or motions are filed, scheduling matters for hearings, arranging for jury panels, assigning judges to cases, and attending to a multitude of other details to move the cases through the court system. In general, case management systems are like giant calendars that record events in the case: motions filed, orders entered, and verdicts given by a jury. Although case management systems gather

important information, most are not intended or designed to be able to aggregate case details. Instead, the details can be found in the documents of the court filings.

Guardianship cases are unique in that, unlike almost all other cases on a civil or criminal docket, the adjudication of the petition with the appointment of a guardian is only the beginning of the case. Once a guardian is appointed, ongoing monitoring must occur to ensure the well-being of the adult. In other types of cases, once the case has been adjudicated, it is closed and no longer needs to be tracked in the court filing system. In some jurisdictions, judges have incentives to close a case as quickly as possible to indicate their efficiency in deciding cases.

Our research identified very few states with advanced case management and database systems that allow for both effectively tracking individual cases and aggregating information for a larger view of how the guardianship process is working. Data elements that would shed light on abuse by guardians appear largely inaccessible. Currently, many states have only a rudimentary case management system, and most are unable to aggregate key data elements. The conundrum facing most states is how to collate or synthesize the existing but presently inaccessible information to detect and prevent abuse. To collect and aggregate the data would require a manual case-by-case search of each petition — an overwhelmingly laborious and expensive task. Even when courts have the ability to identify an overall number of active cases, they often cannot aggregate specific information about cases under court review. Among states with comprehensive data capabilities and aggressive monitoring, none said that they could confidently gather data reflecting the prevalence of confirmed abuse in their jurisdictions.

Few courts have the ability to set up special database systems specifically designed to collect and aggregate data about the unique circumstances of guardianship cases, especially when guardianship matters are a small part of the overall court docket. The lack of funding and the high cost to implement improvements are contributing factors to the lack of technology capacity.[15]

ii. Complex Nature of Abuse by Guardians

An additional challenge is the complex nature of abuse by guardians. Describing the nature of abuse by guardians is like putting together a puzzle with pieces from different puzzles. Those puzzles include:

- What we do not know about elder abuse, how it happens, how much occurs, and how to identify it.
- Whether there are significant differences between the abuse of older adults and the abuse of the younger population of vulnerable adults.
- Whether there are significant differences between the abuse that occurs in the general population and the abuse occurring to those with a guardian.
- Whether state guardianship systems are abusive by creating unnecessary or overbroad guardianships or by permitting guardians to abuse their authority through lax oversight.
- Whether there is any common definition of what actions or inactions constitute abuse by a guardian.

Caution is necessary when trying to identify whether a guardian is committing abuse or exploitation because the different puzzles may use different vocabulary:

- APS definitions of abuse, neglect, or exploitation may have distinctly different elements than a state statute's criminal elements of elder abuse, theft, or financial exploitation.
- National and state agencies that license and discipline guardians may look for violations of practice standards that other entities consider misconduct, noncompliance, or breach of a fiduciary duty.
- Courts' monitoring of guardianship cases may concentrate on whether required reports are filed in a timely manner, whether accountings are complete, and whether the adult is in appropriate housing or receiving necessary services — which are important but not necessarily indicators of possible abuse, neglect, or exploitation.

III. How Will Courts and Other Stakeholders Use Guardianship Data?

a. Data Are Needed To Improve the Understanding of Guardianship Practices, Including Abuse and Fraud

There is much we do not know about how well the guardianship system functions. With data, we may be able to shine a light on the perplexing questions that currently have no answers:

- Does guardianship improve the well-being of the adult?
- Is guardianship used in appropriate cases?
- Are guardianship orders overly restrictive of the adult's rights?
- Does granting limited authority to guardians reduce the amount of abuse by guardians?
- What monitoring practices are most effective in detecting abuse?
- What deterrents or safeguards are most effective in preventing abuse by guardians?

b. Courts Need Data for Effective Guardianship Monitoring To Detect Abuse

Data are needed on basic case information, case type, the reason(s) a petition was brought and by whom (for example, financial exploitation, abuse, or neglect), the reason the case was closed, the dates of documents due and filed, complaints raised and resolved, financial assets, demographic information about the adult and the guardian, residential status of the adult, and relationship of the guardian to the adult. This information helps courts assess whether the guardian is meeting their fiduciary duty and whether the adult is at risk of harm — and helps determine court actions, such as increasing the bond, appointing a co-guardian, limiting guardian access to the accounts, and removing the guardian.

c. Policymakers Need Data for Legal and Policy Changes To Address Abuse

Carefully and consistently collected and updated data can enable state and federal entities to clarify the scope, prevalence, and nature of abuse by guardians. It will also provide information about the adults most affected and the consequences for their lives, the settings where abuse happens, and the effectiveness of various court interventions.

Data are important for policymakers to determine trends and gaps that require changes in laws, regulations, and guidelines, and to develop appropriate training programs for all stakeholders. For example, data might show that family guardians fail to understand their duties or that judges fail to consider less restrictive options prior to appointment. Data might highlight a high rate of financial exploitation by case type, setting, or individual committing the abuse, or demonstrate that additional court procedures stand to enhance the well-being of the adult and protect their rights.

d. Important Data Elements To Collect After Appointment

There are dozens of data elements that courts could collect to improve case monitoring and highlight needed changes in law or policy. Rather than collecting all elements, courts would most likely need to prioritize those elements most effective for addressing abuse or changing systems. The selection of these top data elements requires careful thought and collaboration and should be determined in consultation with an advisory user group, as suggested by NCSC.[16] Below is a universe of data elements, as well as questions that collection of these data elements could answer. Each state or local court system would select those elements most needed and most accessible to collect.

i. Data Elements at Case Initiation

- Respondent (the adult who is the subject of a guardianship petition)
  - Age or birthdate
    - Is the respondent a minor or an adult? Many courts have separate statutory procedures for minors and adults. Data need to distinguish between minor and adult cases at the initial filing.
    - Is the respondent transitioning as a young adult into adult guardianship? Data can identify the need for additional education for parents of individuals with intellectual or developmental disabilities about alternatives, such as supported decision-making.
  - Race/ethnicity; gender
    - Is the adult receiving appropriate services?
    - Is gender and race/ethnicity a factor in service provision?
    - Is there domestic violence involved in the case or in an associated case involving the same parties?
  - Contact information
    - Where is the respondent currently residing (so they can receive all notices and filings throughout the case to stay informed)?
    - Where will the respondent be living if a change of residence is necessary (so that court monitors will be able to locate them)?
    - Is the respondent living or will they be living out of state, and does this require court approval or suggest that the petition be brought in another state?
  - Accommodations; investigations

        - What is the respondent's preferred language (so that an interpreter can be arranged)? Does failure to accommodate language barriers affect the assignment of a guardian?
        - What assistance will the respondent need to attend and participate in any proceedings?
        - Who is the respondent's preference(s) for a guardian?
        - Does the respondent wish to attend the proceedings?
- Petitioner (the individual or entity filing the petition)
    - Is the petitioner a nursing home, hospital, proposed guardian, APS, or other role that presents a conflict of interest?
    - Is the petition contested by the respondent or other family members (which highlights the need for a thorough review of the need for guardianship or the appropriateness of the proposed guardian)?
- Guardian/conservator
    - What is the age, race, ethnicity, and gender of the guardian?
    - What is the guardian's contact information (including email, text, and telephone, so they can receive notices, reminders of due dates of important filings, and inquiries from the court)?
    - What qualifies the person to be the best choice for guardian? Data reflecting the difficulty in finding qualified guardians could indicate a need for more education and training for potential guardians or the development of a volunteer guardian program.
    - Has the guardian completed any state-required education?
    - Is the guardian certified or licensed?
    - What is the relationship of the guardian to the respondent? Data could reveal a history of family conflict and suggest mediation or other services.
    - Is the guardian an individual, professional, attorney, an agency, volunteer, APS, or public guardian? Aggregated data on who has been appointed will tell the court where enhanced monitoring would be most effective.
    - Was a background or credit check conducted to determine if there was reason to disqualify the proposed guardian/conservator? If a criminal or bankruptcy history was disclosed, why did the court waive the disqualification? Is closer monitoring appropriate to protect the security of the respondent's estate? Aggregated data could determine if background checks are effective in deterring or identifying abuse.
    - Is the guardian also serving as representative payee (so that the Social Security Administration can be notified if discharged for cause as guardian)?
    - Where is the guardian physically located with respect to the person for whom they have been appointed? Data could identify guardians' difficulty in carrying out visitation requirements.
    - How many appointments does a guardian have? Data would identify if an individual guardian has more appointments than they can responsibly serve.
- Attorney for respondent

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  - Has the attorney received any necessary training on the role of counsel according to state law?
  - Has the attorney taken actions to vigorously advocate for the wishes of the adult?
  - Has the attorney taken action to identify less restrictive options?
  - Was the attorney appointed by court or secured by the respondent?
  - Who paid for the attorney representation?
- Court visitor/guardian ad litem[17]
  - Was a visitor or guardian ad litem appointed?
  - Was the visitor or guardian ad litem randomly selected from a pool or rotation schedule, or chosen by the petitioner? Data about who are selected as guardian ad litem can indicate the need for training more individuals to serve in this role.
  - What was the nature of the visitor or guardian ad litem visit?
  - Did the court visitor or guardian ad litem seek to identify supports and less restrictive options?
  - Were the findings of the court visitor or guardian ad litem reflected in the findings and order of the court?
  - Who paid for the guardian ad litem or court visitor?
- Precipitating cause for petition
  - Was the respondent a victim of or at risk for abuse or exploitation, necessitating closer monitoring?
  - Was the respondent a victim of self-neglect, necessitating closer monitoring?
  - What problem(s) does the appointment of a guardian resolve?
  - What were the leading causes of incapacity? Could the perceived incapacity be temporary, suggesting a temporary order? Data about the nature of incapacity may affect the care plan and other treatment.
  - Is there an emergency that statutorily permits fewer due process protections? Data would indicate the frequency and reasons for which emergency petitions are granted and whether they are being misused.
  - If an emergency guardianship is necessary, how long is the emergency authority in force? Is the order limited to the circumstances of the perceived emergency?
- Elements of the order
  - Did the order set out specific findings on which the determination of incapacity was based?
  - Which less restrictive interventions did the court consider before appointing a guardian?
  - What rights did the respondent retain? In what aspects was the order limited? Specifically, did the respondent retain the right to vote? Data would quantify the courts' success in tailoring orders to respondents' specific needs.
  - Was a protective arrangement instead of a guardianship ordered?

ii. Data Elements After Appointment

The following data can help establish a baseline of expectations for the guardian. A tickler system that reminds guardians of various filing dates can help them make timely filings, and it can help the court track filings. The due dates should be automatically calculated and included in the letters of office so that both the court and the guardian are aware of the due dates.

- Inventory due date
- First accounting due date
- Financial plan due date
- Guardian plan due date
- Well-being status report due date

Once the inventory is filed, data about the assets under protection of the court can help the court track the security of the adult's resources. Updating these amounts over the life of the guardianship enables the court to adjust the amount of the bond as necessary.

- Financial assets at start
- Real and personal property at start
- Total assets at start

Information about the bond should be maintained and updated as appropriate to ensure that the adult's estate is protected from any misuse.

- Date bond posted
- Amount of bond
    - Reason for any waiver of bond
    - Order entered for restricted account
- Review of bond adequacy
- Modification of bond amount and reason
- Surcharge on bond and cause

Information on whether reports and accounts are filed in a timely manner is the first step in the court's ability to supervise the guardian and keep abreast of the adult's well-being.

- Date inventory filed
- Date financial plan filed
- Date guardian plan filed
- Date accounting filed
- Date status report filed
- Notice of late filing sent
- Show cause ordered and outcome

Once the court has received the required reports and accounts, it should track the flow and outcome of the review. Such data provide valuable information about investigations needed to detect abuse, as well as the court staffing needed to manage the monitoring process.

- Reviewed by a court official
- Issues noted
    - Indicators or red flags of abuse or exploitation
    - Dates and location of visits by the guardian and if they were in person or remote. Infrequent visits could suggest the need for investigation.
- Action taken by the court
- Appointment of guardian ad litem/visitor/magistrate to investigate or interview
- Referral to APS/Long-Term Care Ombudsman for investigation; investigation and outcome
- Investigator or auditor appointed
    - Audit finding
    - Investigator substantiation

When the investigation or audit raises concerns, data can assist in monitoring and identifying themes or gaps in the court system, the need for training various stakeholders, and the effectiveness of the court's interventions.

- Show cause hearing
- Removal or substitution of the guardian
    - Notice to licensing or certifying entity
    - Notice to other jurisdictions
    - Qualifications of any new guardian
- Modification of bond
- Surcharge of bond
- Protections and services provided to the person with a guardian or conservator[18]
- Referral to APS/Long-Term Care Ombudsman
- Referral to law enforcement

Data on complaints communicated to the court can help the court find and respond to problems and abuse, as well as evaluate the effectiveness of the complaint process.

- Receipt of complaint
    - Complaint source
    - Who reviewed
    - Issues noted
- Action taken on complaint
    - Resolution

Data on subsequent proceedings during the life of the guardianship can alert the court to events that could indicate potential for abuse.

- Motions filed
    - Sale of property
    - Visitation restrictions
    - Authority for estate planning
    - Request for instructions
    - Medical consent outside the scope of the order
    - Placement in restrictive setting
    - Moving an individual out of state
- Appointment of an attorney for a person with a guardian
- Transfer of the guardianship to another state
- Modification of order
    - Petitioner
    - Rights restored or restricted, including the right to vote
- Substitution of guardian/conservator
    - For cause (abuse, neglect, or exploitation)
    - Not for cause (best interest of the adult, relocation, or resignation)
- Ending of the guardianship/conservatorship
    - Death of the adult
    - Transfer of the guardianship out of state
    - Full restoration of rights

These data elements over the life of a case reveal the complexity of designing a system to both improve court oversight of cases and clarify systemic changes that are needed. Each state court system and each local court will select priorities that may need to be refined as the system is implemented and the court gains experience.

IV. Recommendations: Federal Actions To Enhance Guardianship Data Collection

The previous sections have shown how better data can be used to help prevent and address abuse and fraud by guardians. This section suggests specific opportunities for the federal government to enhance data on guardianship and the misuse of the guardianship system. These recommendations are organized into four categories: (a) supporting uniformity in guardianship law, policy, and data governance; (b) allocating additional resources for guardianship reform, including state court technology and monitoring capacity of staff; (c) expanding federal data sources to include guardianship; and (d) exploring ways the U.S. Department of Justice (DOJ) can help address abuse by guardians and support adults subject to guardianship.

a. Supporting Uniformity in Guardianship Law, Policy, and Data Governance

As we found in our Part 2 report, guardianship terminology and law vary from state to state, and practice varies not only by state but also from court to court. Moreover, state court data systems range widely in their case management protocols, key elements, and technological capacity. States also differ in the extent to which the court system is centralized, with lower courts

reporting to the highest state court in a unified court system. Even in states with unified court systems, guardianship processes and data collection are often inconsistent across local courts. Greater uniformity in both law and data governance would strengthen access to data on abuse and fraud by guardians, as well as monitoring approaches.

Adult guardianship is the responsibility of state courts, deriving from the ancient legal concept of *parens patriae*, the government's duty to take care of those who cannot care for themselves.[19] Guardianship administration falls to the states under the Tenth Amendment to the U.S. Constitution, which reserves to the states all powers not expressly delegated to the federal government.[20] That means there will inevitably be some variability. However, the federal government can take action to encourage uniformity of effective practices. One way is to support enactment of uniform state statutory provisions. Another is to support uniformity of key data elements.

i. The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act

Formed in 1892, the Uniform Law Commission (ULC) is a quasi-governmental entity that develops model statutes for state legislatures. The ULC "provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law."[21] State legislatures can choose to pass an entire uniform act, take key provisions, or adapt terms and provisions to best suit local needs.

The ULC first addressed adult guardianship in 1969 in Article V of the Uniform Probate Code. At the time, Article V was forward-looking because it separated guardianship of the person ("guardianship") from guardianship of property ("conservatorship") and allowed conservators to engage in a wide range of transactions without seeking court approval.[22] In 1982, the ULC amended Article V and created a separate Uniform Guardianship and Protective Proceedings Act, which authorized limited court orders.[23] In 1997, the ULC amended the Uniform Guardianship and Protective Proceedings Act to highlight the principle that "a guardian or conservator should be appointed only when necessary, only for so long as necessary, and only with such powers as are necessary."[24]

In 2017, prompted by the 2011 National Guardianship Network's Third National Guardianship Summit, the ULC adopted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act ("the Act").[25] The Act includes many innovations that, taken together, result in:

> a comprehensive guardianship statue for the twenty-first century … [It] promotes person-centered planning to incorporate an individual's preferences and values into a guardianship order and requires courts to order the least restrictive means necessary for protection of persons who are unable to fully care for themselves.[26]

Especially relevant to this report, the Act offers a range of tools to reduce abuse and better protect the rights of adults subject to guardianship. Key among them are the following:[27]

- Section 127 of the Act creates a process for anyone concerned about the welfare of an adult to bring a grievance about a guardian to the attention of the court without a formal

petition. The court must review the grievance and hold a hearing if the grievance supports a reasonable belief that removal of the guardian or termination of the order may be appropriate. The court may take a range of corrective actions.

- Section 310(e) requires the court order to give anyone who cares about the welfare of the adult subject to guardianship the opportunity to receive copies of essential documents in the case. Such family members and friends may have important information about the adult's condition and changing circumstances and may bring these to the attention of the court. "These individuals can then act as an extra set of eyes and ears for the court to prevent or remedy abuse."[28]

- Section 315(c) of the Act limits a guardian's ability to restrict the adult's interaction with others. Short of a court order, a guardian who believes that interaction with a specific person poses a risk of harm may restrict contact for no more than seven days if it involves family or a pre-existing relationship, and for no more than 60 days if it is not family or there is no pre-existing relationship.

- Section 317 addresses submission of the guardian's report and lists 14 elements that must be included. Section 423 addresses submission of the conservator's accounting. The adult and others designated by the court have the right to receive a copy of the report. The court must review each report at least annually and may appoint a court visitor to investigate. Section 318 authorizes the court to remove a guardian for cause.

- Section 418 mandates that the court require a conservator to furnish a bond or make an alternative arrangement for protecting assets, such as restricting conservator access to an account above a specified amount.

- Section 120 sets out key factors for the court's consideration in determining a "reasonable" guardian fee. This section aims to reduce exploitation through inappropriate charges that erode assets of the adult under care.

- Article 5 of the Act creates a new, less restrictive alternative to guardianship called a "protective arrangement." Such an arrangement targets particular needs of an adult and is "narrower in scope and shorter in time than an ongoing guardianship or conservatorship order … Such specific court authorizations may target possible abuse or exploitation." For example, the court's protective arrangement could order or restrict visits by a specified individual, or it could direct certain financial transactions to avoid exploitation.

The federal Elder Abuse Prevention and Prosecution Act at Section 505 directs the U.S. Attorney General to publish "model legislation relating to guardianship proceedings for the purpose of preventing elder abuse."[29] The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act meets the objective of Section 505. The U.S. Senate Special Committee on Aging endorsed the Act in its 2018 report, urging "nationwide adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act."[30] DOJ has not expressed whether the Act meets the objective of Section 505, but it has pointed to the Act as a good source of guidance for states.[31]

The 2021 Fourth National Guardianship Summit, sponsored by the National Guardianship Network, recommended that "[s]tates should adopt and implement the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act."[32] To date, only two states — Maine and Washington — have done so.[33] However, some states, such as New Mexico, have considered or adopted parts of the Act. Staff from the ULC have noted that at least three states would likely adopt the Act if it were not for its budgetary implications.[34]

Recommendation: The federal government should initiate a grant program for the highest court in states that have, in whole or in substantial part, enacted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act to implement key sections of the Act that would target abuse and fraud by guardians. This would serve as an incentive for states to adopt or adapt the Act and would provide resources to implement key initiatives to identify and address abuse and fraud.

ii. NCSC Data Elements Recommended for Guardianship or Conservatorship Monitoring

NCSC produced the National Open Court Data Standards "to support the creation, sharing and integration of court data by ensuring a clear understanding of what court data represent and how court data can be shared in a user-friendly format."[35] In 2020, using this framework, NCSC published a set of recommended data elements specifically for guardianship and conservatorship monitoring.[36]

As we found in our Part 2 report, the NCSC guardianship/conservatorship data set, with its subsets of elements, represents a "gold standard" for courts to collect and aggregate information most useful for monitoring — and for addressing abuse and fraud by guardians. The data set makes it easier to share information among courts, enhance data consistency, and compare data across jurisdictional lines. The more states that adopt and implement the NCSC data set, the clearer our national picture will be of the extent, nature, and prevalence of abuse by guardians. Specific examples of how courts could use the data — both at the case level and the systemic level — to address abuse and fraud by guardians are discussed above.

Aggregating key data elements and conducting statistical analyses could reveal much about the scope, prevalence, and nature of abuse and fraud by guardians. For instance, courts could see what percentage of guardians who have been suspended or removed were family members. Courts could also determine the proportion of cases filed due to alleged abuse and whether it was abuse against an older adult or a younger adult with disabilities.

Recommendation: The federal government should create grant opportunities for the highest state courts to support staff and develop technology to manage guardianship cases and aggregate data that will identify patterns and trends, as through the NCSC data standards.

b. Allocating Federal Resources for State Court Reform Practices, Technology, and Staff

The interviews and survey in Part 2 of our environmental scan found that the key barriers to improving guardianship data to better address abuse are the lack of court resources and burdens on court staff, including insufficient staffing for data management.

In addition to funding to encourage uniformity in guardianship law and data governance, state courts need funding to thoroughly and broadly assess their current guardianship systems, identify state-specific goals and objectives, and implement reforms within general nationally articulated principles. These broad principles target the need to: increase use of less restrictive options and supports; ensure procedural due process; limit the scope of guardianship orders to only what is necessary; provide strong court oversight that uses a case management system; monitor and sanction guardians who violate the law and breach their fiduciary duties; and enhance the potential for restoration of rights.[37] Within this framework, allowing state courts discretion in their priorities for guardianship reform increases buy-in and encourages innovation. There are three channels for federal support of broad-based guardianship improvements.

i. Elder Abuse Prevention and Prosecution Act

The Elder Abuse Prevention and Prosecution Act of 2017[38] seeks to prevent elder abuse and improve the justice system's response to victims in elder abuse cases. Section 501 focuses on court-appointed guardianship oversight activities. This section authorizes the Secretary of the U.S. Department of Health and Human Services to make demonstration grants to the highest courts of states to "assess the fairness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings" and to implement changes as a result of the assessment. Section 501 specifically references:

> systems to enable the annual accountings and other required conservatorship and guardianship filings to be completed, filed, and reviewed electronically in order to simplify the filing process for conservators and guardians and better enable courts to identify discrepancies and detect fraud and the exploitation of protected persons.[39]

In awarding the grants, the Secretary must consider the recommendations of the U.S. Attorney General and the State Justice Institute. State courts that are awarded grants must collaborate with the State Unit on Aging and the APS agency for the state.[40] Congress has not appropriated any funds for grants under Section 501 of the Elder Abuse Prevention and Prosecution Act.

Recommendation: Federal agencies should urge Congress to appropriate funding for Section 501 of the Elder Abuse Prevention and Prosecution Act.

ii. ACL Guardianship Grants to State Courts

Prompted by the National Guardianship Network's 2011 Third National Guardianship Summit,[41] the State Justice Institute and the Administration for Community Living (ACL) provided initial funding for state courts to improve adult guardianship in collaboration with community partners.

The State Justice Institute, a federally authorized agency to improve the quality of justice in state courts,[42] awarded small grants for selected states to pilot the Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) project in 2013 and 2015. In 2016, ACL awarded a grant to the American Bar Association (ABA) Commission on Law and Aging to determine whether WINGS could advance guardianship reform.[43] The ABA Commission made subgrants to seven states to establish, enhance, or expand WINGS. At the end of the grant period, the ABA Commission concluded in its 2020 briefing paper to ACL that:

> while the project WINGS, and indeed all state WINGS, have advanced adult guardianship reform, their modestly funded efforts are not enough to significantly improve outcomes for adults subject to, or potentially subject to, guardianship … WINGS require ongoing support and technical assistance to realize their potential for creating long lasting systemic change.[44]

The ABA Commission recommended that "ACL, in coordination with other federal entities, should provide funding to support WINGS through systems change grants," including five-year systems change grants, along with programmatic requirements for monitoring guardians. It also urged ACL to create a WINGS capacity-building or technical assistance entity.[45]

Building on the initial WINGS project, ACL made two-year Elder Justice Innovation Guardianship Grants to the highest courts in seven states in 2021. The grants sought to "assess the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings, and develop innovations to improve the experiences of individuals at risk of guardianship/conservatorship."[46] The state court proposals included a broad range of guardianship improvement objectives, among them several that directly address abuse and fraud by guardians and the need for data:[47]

- The Alaska State Courts, to "improve monitoring of financial issues."
- The Massachusetts Administrative Office of Trial Courts, to "create an Office of Adult Guardianship and Conservatorship Oversight within the Administrative Office of the Probate and Family Court to increase court oversight … and protect older adults and adults with disabilities from abuse, financial exploitation, and neglect."
- The Maryland Court of Appeals, to "conduct a comprehensive statewide assessment … and develop a response to that assessment." (The Maryland project includes a focus on the hospital-to-guardianship "pipeline" that results in overbroad or unnecessary guardianship.)
- The Minnesota Judicial Branch, to "design and implement a guardian/conservator grievance/investigation process to alert the court of potential maltreatment and fraud."
- The Judiciary Courts of Nevada, to examine "ways to improve data collection of the district courts."
- The New York Unified Court System, to "implement a uniform, modern data tracking system."
- The Oregon Office of the State Court Administrator, to "establish processes that will enable courts to better detect financial mismanagement of protected persons' assets."

In September 2022, ACL awarded close to $2 million for three additional Elder Justice Innovation Guardianship Grants. Again, aspects of these grant awards include the need for data to address abuse:[48]

- The Administrative Office of Pennsylvania Courts, to "improve the data collected through Pennsylvania's Guardianship Tracking System (GTS) to monitor guardians more effectively."
- The District of Columbia Courts, to "enhance the court's ability to monitor guardianships."
- The Supreme Court of Virginia, to "improve data collection and data standards; enhance monitoring practices; and … strengthen case management processes; facilitate data and information sharing."

These grants will help bolster the capacity of courts to collect and aggregate data to improve monitoring and address abuse. The funded states can provide models for adaptation by other states. NCSC is working with several of the grant recipients specifically on data issues.

Recommendation: ACL should continue to support the Elder Justice Innovation Guardianship Grant program, giving selected states a jump-start to improve their data systems and their approaches to addressing abuse, as well as more broadly improving guardianship and promoting less restrictive options. DOJ should explore ways to collaborate with ACL to enhance this program.

iii. Guardianship Court Improvement Program

Programs like WINGS and the ACL Elder Justice Innovation Guardianship Grants are beginning to make inroads to create meaningful reform. Still, more is required. Such programs should exist in every state, with a national infrastructure for technical assistance and support, and with ongoing rather than piecemeal funding.

A model for such an approach can be found in the child welfare system. Each year since 1993, Congress has provided targeted funding to state courts through the child welfare Court Improvement Program (CIP),[49] which conducts assessments of the role of the courts in child welfare cases and implements necessary changes. The Department of Health and Human Services Children's Bureau administers CIP, and funding is allocated to each state court on a formula basis. Congress provided $5 million the first year; it has provided $10 million each subsequent year.[50] In 2005, Congress appropriated an additional $10 million for state grants on training and $10 million for state grants on data and has continued those appropriations annually.[51]

The Children's Bureau has also provided funding for a national capacity-building and technical assistance resource for the courts, through which the ABA Center on Children and the Law provides training and facilitates communication among the state CIPs.

Since its inception, CIP "has achieved significant results, including developing court projects that have improved court processes … establishing close collaboration and data sharing between

courts and child welfare agencies."[52] CIP has "not only provided direct funding for its intended goals such as judicial training and data collection and analysis, it also helped to leverage major state investments to implement CIP plans for improvement such as … court case management systems."[53] It is particularly notable that a 1998 study of state CIP efforts found a striking need to improve case management systems to collect data, and by 2005, analyzing data to effect improvements "had become an integral and ongoing national effort."[54]

There are many parallels between the child welfare system and the adult guardianship system — including the lack of data and the potential for abuse. Both are court-based but require collaboration and specialized interdisciplinary knowledge beyond the courts. Both involve at-risk populations that may receive funding through a number of federal Health and Human Services programs. Both have often been perceived as low priority in the courts,[55] and both have been targeted by the press.

As early as 2012, guardianship reform advocates began to call for a national adult guardianship CIP. These advocates have included the Conference of Chief Justices/Conference of State Court Administrators,[56] the ABA House of Delegates,[57] and the National Council on Disability.[58] Advocates point out that there is a solid rationale for federal funding of a guardianship CIP — the federal government provides services and benefits to many adults with (or who are at risk of having) guardians through Social Security, Medicare, Medicaid, the Older Americans Act, veterans benefits, and more. Guardians control many estates with assets from federal retirement programs.

In 2021, the Fourth National Guardianship Summit passed a recommendation supporting a guardianship CIP:

> Congress should establish a Guardianship Court Improvement Program modelled on the successful Child Welfare Court Improvement Program and provide funding directly to the highest court in each participating state in order to enhance the rights and well-being of adults subject to, or potentially subject to, guardianship.[59]

The Summit recommendation listed effectuating consistent and meaningful data collection as a key aspect of the program. Two closely-related Summit recommendations urged that a guardianship CIP should feature interdisciplinary and interagency collaboration, build upon WINGS, be supported by federal funding authorized at a level similar to the $30 million currently authorized for the child welfare CIP, and give courts wide latitude to set priorities.[60] The related recommendations also noted that the guardianship CIP should have a national, nonprofit capacity-building or resource center to provide training and technical assistance and to build a national network.[61]

Recommendation: Building on Parts 1 and 2 of our environmental scan, we endorse the Summit recommendation urging Congress to create an ongoing guardianship CIP, which would include support for state efforts to collect and aggregate guardianship data to address abuse and fraud. Relevant federal agencies, such as DOJ and the Department of Health and Human Services, should explore the role and benefits of such a guardianship CIP and mechanisms for implementation.

c. Expanding Federal Data Sources To Include Guardianship

The federal government collects information through key databases on health, long-term care, criminal justice, fiduciary, and legal services networks that might offer opportunities to include or strengthen elements on guardianship. In addition to funding state initiatives as addressed above, federal agencies could explore some of these databases to see if they could shed light on the scope and prevalence of abuse by guardians. The database with perhaps the greatest potential for capturing information about abuse by guardians is the National Adult Maltreatment Reporting System. There are additional databases that might be modified to include guardianship or abuse by guardians in their data set.

i. National Adult Maltreatment Reporting System

In 2013, the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, began a two-year effort to design, develop, and pilot a national reporting system based on data from state APS agency information systems. The goal of the data collection system was to provide consistent, accurate, national data on the exploitation and abuse of older adults and adults with disabilities, as reported to state APS agencies. By 2017, state APS agencies began voluntarily providing data to the National Adult Maltreatment Reporting System (NAMRS).[62]

Constructing the data system was a complicated task. APS programs had little prior experience with collecting and reporting data. It took four years of design and testing to address challenges in developing the database, data elements, and definitions, as well as accommodating differences in the characteristics of the populations served (some programs serve only those over 60 or 65, and others serve younger vulnerable adults) and in state statutory definitions of types of abuse. The pilot also had to overcome both the wide range of technological skills and capabilities in the states and their local offices and the need to design a system that did not overwhelm the reporting offices.[63]

The development of NAMRS held out the promise that this national abuse database would be an important advancement in collecting data on abuse by guardians.[64] In practice, however, NAMRS data on individuals who perpetrate abuse are very limited; only 30 states are able to submit data on any kinship relationship (spouse, child, parent, etc.) between the victim and the individual perpetrating the abuse. Although the database was designed to capture whether the person who perpetrated the abuse was in a fiduciary relationship with the victim, the most recent ACL report on NAMRS data (2020) does not have any data on whether they are a court-appointed guardian or other fiduciary.[65] The report stated that "less than half of states submit the perpetrator data elements to NAMRS."[66] ACL officials acknowledged that, even at the summary data level, these data are the least complete type of data and a recognized gap.[67]

In a 2021 investigation, the Government Accountability Office found that APS officials have difficulty collecting data on those who perpetrate abuse in general and especially on the costs of financial exploitation.[68] The Government Accountability Office report confirmed that over half of states were still not providing detailed case-level data elements on financial exploitation or on the relationship between victims and those perpetrating the abuse.

State APS reporting difficulties include the following: (1) lack of data on individuals who perpetrate abuse collected in the state-level data systems; (2) concerns about due process in recording this type of information; (3) a primary APS focus on victims and not on those perpetrating the abuse; (4) the staff hours needed to add additional data elements; (5) the lack of a single statewide adult abuse data system in some states; and (6) data entry errors by caseworkers who are required to perform multiple jobs and therefore work quickly.

To help overcome technological difficulties in reporting NAMRS data, ACL provided grant funding to the state APS agencies to improve their data systems in 2015, 2016, 2018, and 2019. ACL has also supported the APS Technical Assistance Resource Center, which provides ongoing guidance and support to the state agencies.[69]

Although the data currently collected through NAMRS on adult abuse provide valuable insight about many aspects of abuse, the extensive multiagency effort to devise, maintain, and support a national data collection system of APS reports demonstrates the complexities inherent in identifying the nature of abuse by guardians. NAMRS addressed challenges in variations in elder abuse laws, diverse jurisdictions of APS agencies, and limited data system capacity. Those same challenges are also present for the even more diverse state guardianship systems, laws, and lexicon.

Recommendation: The federal government should strengthen data collection on those who perpetrate adult abuse in NAMRS. The federal government should also continue to provide grants to state APS offices to enhance their ability to collect and report data on any relationship between the victim and individual perpetrating the abuse, specifically fiduciary relationships such as guardianship.

ii. Other Potential Federal Sources of Data on Abuse and Fraud by Guardians

Aside from NAMRS, there are several other federal databases that could be modified to further our understanding of abuse by guardians.

1. Federal Fiduciary Program Data

There are two major federal fiduciary program databases — the Social Security representative payee database and the U.S. Department of Veterans Affairs fiduciary program database — along with smaller programs such as the Office of Personnel Management.

a. Social Security Administration Electronic Representative Payee System

The Social Security Administration (SSA) appoints representative payees to receive and manage benefit payments on a beneficiary's behalf if it determines the beneficiary is incapable of managing their own payments. Sometimes SSA appoints a guardian as payee. SSA has approximately 5.6 million payees (but 52% of beneficiaries with payees are minors).[70] Guardians are high on the SSA order of preference list for payee selection because the court has already appointed them in a fiduciary role. SSA field office staff are to appoint as payee only those

guardians "with custody or who demonstrate strong concern."[71] Information about whether a payee is a guardian is included in the SSA Electronic Representative Payee System (eRPS), which is a web-based application that includes all payee-related information, including findings of misuse.

The Government Accountability Office found that although state courts with guardianship jurisdiction and the SSA payee program serve essentially the same population, there is very little coordination or information sharing between the two systems.[72] This lack of coordination may put beneficiaries at risk of harm. For instance, if the same person is payee and guardian and the court removes the guardian for exploitation, the SSA field office is not informed to make a change in the payee. Conversely, if the payee is changed due to misuse of benefit funds, the court is not generally notified to trigger review of the guardian's conduct.[73]

SSA has maintained that it cannot share information about representative payee cases with courts because of the federal Privacy Act.[74] In 2018, the federal Strengthening Protections for Social Security Beneficiaries Act required SSA to commission a study by the Administrative Conference of the United States on information sharing between state courts and the SSA representative payee program. For the study, the Administrative Conference of the United States partnered with the National Academy of Public Administration. Their 2020 report provides an analysis of the legal and practical barriers to information sharing and makes suggestions to SSA on overcoming these barriers.[75] For example, the report suggests that disclosure of payee information to courts may be allowed under the "routine use exception" in the Privacy Act.

b. Department of Veterans Affairs Fiduciary Program Database

The Department of Veterans Affairs (VA) fiduciary program allows for the appointment of a fiduciary for a VA beneficiary who is not able to manage their own affairs.[76] In fiscal year 2019, the fiduciary program served more than 170,000 beneficiaries.[77] A 2021 report by the Department of Veterans Affairs Office of Inspector General found approximately 12,000 allegations of fiduciary misuse of funds in 2018-2019.[78] An unknown number of these cases may have been instances in which the VA fiduciary also served as a guardian appointed by a state court. As with the SSA payee program, the Government Accountability Office found a lack of coordination between the VA fiduciary program and state courts.[79]

Recommendation: To address abuse and fraud by guardians and enhance guardianship data, SSA and the Department of Veterans Affairs — working in collaboration with other federal agencies as well as with state courts — should address barriers to information sharing on representative payee and fiduciary cases.

2. Other Federal Databases

There are a host of other federal databases that hold varying degrees of potential for learning more about the scope, prevalence, and nature of abuse by guardians. A 2006 white paper for the National Center on Elder Abuse explored using these databases, with adjustments, to collect information on elder abuse.[80] These databases could also be examined for possible use in collecting information on guardianship, specifically abuse and fraud by guardians.

The white paper described approximately 30 federal databases. From those, we selected databases that appeared to have the most potential for adding information on guardianship. We list DOJ crime and criminal justice databases first, followed by others.

- Bureau of Justice Statistics National Crime Victimization Survey: The Bureau of Justice Statistics National Crime Victimization Survey is "the nation's primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of about 240,000 persons in about 150,000 households. Persons are interviewed on the frequency, characteristics, and consequences of criminal victimization in the United States."[81] Among many other elements, the survey collects information on the relationship between the victim and the individual perpetrating the offense. The Bureau of Justice Statistics could examine the survey results to see if they include any information on abuse by guardians. It could also consider adding a question about guardians. The white paper lists survey limitations.

- Federal Bureau of Investigation National Incident-Based Reporting System (NIBRS): "Implemented to improve the overall quality of crime data collected by law enforcement, NIBRS captures details on each single crime incident — as well as on separate offenses within the same incident — including information on victims, known offenders, relationships between victims and offenders, arrestees, and property involved in crimes."[82] Since NIBRS includes the relationship between the victim and the individual perpetrating the offense, this could possibly include guardianship, and if not, the Federal Bureau of Investigation could consider adding it. However, this survey targets only crimes reported to police, and many incidents of malfeasance by guardians — which could be crimes — are not reported to law enforcement.

- Bureau of Justice Statistics National Survey of Prosecutors: According to the survey website, the last survey — conducted in 2007 — included 2,330 prosecutors' offices.[83] The Bureau of Justice Statistics could consider adding a question on the prosecution of guardians.

- National Ombudsman Reporting System: The Older Americans Act requires states to collect long-term care complaint data.[84] Ombudsman programs report the aggregate data to ACL through the National Ombudsman Reporting System (NORS). [85] Under NORS "Residents Rights" is an element on "abuse, gross neglect, exploitation." As of 2006, categories P.117 and P.121 were for complaints of abuse, neglect, and exploitation by family members, friends, and others "whose actions the facility could not reasonably be expected to oversee or regulate." [86] These categories could be amended to note whether the individual perpetrating the abuse was a guardian appointed by the court. In addition to formal complaints, ombudsman programs also receive informal calls concerning abuse of facility residents, and these contacts are captured in another part of NORS. The white paper lists limitations, yet NORS has the potential to uncover new information about abuse by guardians.

- Other long-term care databases: The white paper describes a number of other databases concerning certified nursing facilities. According to the white paper, nursing home enforcement data were collected through the Online Survey, Certification and Reporting System (OSCAR), which had a field for abuse, but did not indicate the kind of abuse or the individual perpetrating the abuse. In 2012, OSCAR was replaced by the Certification and Survey Provider Enhanced Reporting (CASPER) system and the Quality Improvement Evaluation System (QIES). These are part of a large database within CMS, the Automated Survey Processing Environmental (ASPEN).[87] The nursing home "Minimum Data Set" reports on the required annual assessment of residents.[88] In past versions, it may have specified whether the resident had a surrogate decision-maker, including a guardian,[89] but it likely would not yield much data on abuse by guardians.

- Health care databases: The white paper describes 10 separate health care surveys, including seven administered by the National Center for Health Statistics. Some rely on the World Health Organization International Classification of Diseases to code and classify conditions. There is an International Classification of Diseases code for adult and child abuse, neglect, and other maltreatment ("suspected T76").[90] However, the white paper speculated that physicians rarely used it, as they would more likely use a diagnosis of the presenting condition, rather than what caused it — or who was involved. In addition, the code does not indicate who committed the maltreatment.

- Legal services databases: The Legal Services Corporation is a private, nonprofit corporation established by Congress to seek equal access to justice by providing civil legal assistance to low-income individuals. It provides federal funding to over 130 independent, nonprofit legal aid programs with more than 800 offices.[91] The Legal Services Corporation maintains a reporting system on cases to measure program services. It is possible that some current codes relate to "abuse" or "guardianship" and might add a limited amount of information to what we know about guardians and abuse by guardians.

- American Community Survey: Conducted by the United States Census Bureau, the American Community Survey is "a nationwide survey designed to provide communities with reliable and timely social, economic, housing, and demographic data every year."[92] The survey has an annual sample size of about 3.5 million. It includes data sets to which guardianship might potentially be added — specifically one on disability and one on demographic characteristics.

Recommendation: Where feasible, federal agencies should modify their current crime, criminal justice, health, and long-term care databases to include information on guardianship and abuse by guardians.

d. Exploring Ways DOJ Can Help Address Abuse by Guardians and Support Adults Subject to Guardianship

In addition to encouraging uniformity, funding states for guardianship reform, and enhancing federal data collection on guardianship, there are other ways DOJ could directly target abuse by guardians. Although these are not data initiatives, they would help inform data in valuable ways.

i. Fostering Collaboration Among Courts, Law Enforcement, and Adult Protective Services

Although state courts must strengthen their guardianship databases and monitoring, there are other systems in place that could detect abuse by guardians and protect adults.[93] APS, law enforcement, and other agencies throughout the nation are charged with protecting individuals from abuse and exploitation.[94] Moreover, an increasing number of state and local multisystem collaborative networks address adult abuse and could play a role in targeting abuse by guardians.

However, there is little structured communication and collaboration among courts, APS, and law enforcement in targeting abuse by guardians. A coordinated response is needed.[95] The Fourth National Guardianship Summit recommended promotion of "state and local collaborations at the policy level concerned about adult abuse or guardianship (i.e., adult/elder abuse multi-disciplinary and multi-system networks and teams and Working Interdisciplinary Networks of Guardianship Stakeholders) to address abuse by guardians."[96] The Summit recommendation directed ACL to take the lead in this effort "in partnership with other federal agencies [and others]."[97]

Adult Protective Services: APS receives, identifies, and investigates reports of abuse, neglect, or exploitation of vulnerable and older adults, as described in state law, and provides needed services. APS intersects with guardianship in a number of ways — a guardian may report abuse; someone may report abuse by the guardian; APS may petition for guardianship services for an adult in need; or APS may serve as guardian in selected cases, at least temporarily. However, in some instances, APS may receive a report but may not pursue it, presuming that the court is monitoring the guardian. Moreover, the court may suspect abuse by a guardian but may not always report it to APS, viewing such reporting as outside the court's responsibilities or authority. In our Part 2 report, court officials who were interviewed had mixed responses on the extent of communication between the court and APS. They said local practice varies, but often there is a lack of information sharing — for example, "it is possible that a court will have no idea that an [APS] investigation on a guardian is pending."

Law enforcement: Law enforcement may also play a role in targeting abuse by guardians, but there are several obstacles to its intervention. For example, it may be difficult for a court, APS, or anyone else to make a referral because there are multiple and varying law enforcement agencies, and jurisdiction may be confusing. A 2021 paper prepared for the Fourth National Guardianship Summit stated that "judges interviewed indicated it was their belief they could make law enforcement referrals; however, such referrals are not frequent."[98] Moreover, the victim — judged by the court as "incapacitated" — may be seen as unable to assist in prosecution. Victims may fear retaliation or be reluctant to have family members prosecuted and may not want law enforcement involved. Law enforcement personnel often lack training about guardianship, elder abuse, and disability rights.

A key obstacle is the presumption by law enforcement that abuse by guardians is primarily a civil matter and not a criminal activity. In recent years, states have passed new or expanded statutes making abuse of older persons or incapacitated persons — especially by those in trusted positions such as guardians — a crime or providing for enhanced penalties.[99] To be effective,

these statutes must be widely understood through public outreach and training of judges, police, prosecutors, and others — and such training must cover the role of guardians.

Multidisciplinary systems: The field of elder abuse has long recognized the need for a multidisciplinary or multi-systems approach.[100] Multidisciplinary collaborations could occur for either case review or systemic improvements. Using elder justice collaborations for systemic improvements appears to have potential for addressing abuse by guardians. However, current multidisciplinary elder abuse or elder justice coalitions do not exist everywhere. Also, they have not focused on abuse by guardians — and it would require significant education and training to do so.[101] Finally, a perception of conflict of interest may limit court involvement, especially if there is not a clear line between individual case review and systems change.

Recommendation: Working in partnership with ACL, DOJ should take the lead in convening key stakeholders in the state court system, law enforcement, and state APS to build an infrastructure for communication and coordination to target abuse by guardians.

ii. Court-Appointed Special Advocates Program for Adults Subject to Guardianship

DOJ's Office of Juvenile Justice and Delinquency Prevention administers and funds the Court-Appointed Special Advocate (CASA) program "to ensure that abused and neglected children receive high-quality best interest advocacy in dependency court and the child welfare system."[102] The office awards grants through the National CASA/GAL Association for Children, which supports a network of 950 state CASA/GAL (court-appointed special advocates and guardians ad litem) organizations and local programs in 49 states and the District of Columbia.[103] Trained CASA volunteers develop a relationship with a child over time through regular visits. The volunteer learns about the child and the child's life, speaks up for the child's best interests in court, and makes recommendations about the child's placement and services. The volunteer reports to the court. These volunteers make remarkable differences in the lives of children:

> Trusting that an adult will show up for them consistently can be a difficult concept to grasp for many children in the foster care system. Positive changes for children occur when the CASA volunteer is able to build a trusting, consistent relationship with the child.[104]

The CASA concept originated in 1977 and has grown into a nationwide program. The Office of Juvenile Justice and Delinquency Prevention provides training and professional development for staff and volunteers, standards for local programs, technical assistance in program operation, and outreach help.[105] In fiscal year 2021, the National CASA/GAL Association received more than $11 million in funding.[106]

Although there are many similarities between the child welfare system and the adult guardianship system, CASA has no analog in the guardianship world. Some states and localities have volunteer guardianship monitoring programs, in which a trained volunteer visits an adult subject to guardianship and reports back to the court — but it is a one-time visit, and no trusting relationship is developed over time. Older adults and adults with disabilities need the type of

support they could receive from a guardianship CASA program — and such volunteers could help prevent or identify abuse and bring it to the attention of the court.

Recommendation: The federal government should pilot and evaluate an adult guardianship CASA program for individuals subject to guardianship.

V. Conclusion

This paper draws together findings from our previous literature review and data landscape in a comprehensive scan of the legal, policy, and practice contexts for collecting guardianship data — and specifically for addressing data on abuse and fraud by guardians. Our groundbreaking scan forms the basis for recommendations for federal action to assist states in improving guardianship data collection and confronting abuse and fraud.

In Part 1 of our environmental scan, we found the picture of abuse by guardians — including criminal abuse — to be blurry and incomplete. The scope, prevalence, and nature of such abuse remain unclear due to inconsistent definitions, the limited number of litigated cases that reach the appellate level, the limited number of complaints about certified guardians that reach the disciplinary level, and the limited number of research studies.

The scant information that does exist shows that there are numerous reports of malfeasance by both professional and nonprofessional guardians, ranging from noncompliance to various levels of abuse and criminal acts. At the same time, agents under power of attorney or caregivers may be as likely or more likely to commit financial exploitation than court-appointed guardians. Some reports show that guardians who engage in abusive acts are more commonly family members as opposed to professional guardians. Although courts have done substantial work on guardianship monitoring, there are marked gaps between the law and practice, as well as insufficient funds, as demonstrated by ongoing media stories.

In Part 2, we reported on the results of our interviews and survey of subject matter experts in state court systems with knowledge of guardianship data collection. They discussed existing case processing and data collection capabilities and barriers and said that they are not able to collect data showing the nature and prevalence of abuse by guardians. They described inconsistent terminologies, concerns about data reliability, and local variations in practice. They reported differences due to whether the court system was unified, whether guardianship cases were heard in probate or general jurisdiction court, and whether local courts had adequate case management systems. Often, data are in the case files but cannot be aggregated to show patterns and trends. Only a few states have advanced data systems; most state data systems are rudimentary. None of the state experts said that they could collect information on the prevalence of confirmed abuse by guardians.

This Part 3 report includes a deep dive into the universe of possible guardianship data elements and explains how courts and policymakers could use these elements to improve guardianship practice and address abuse. Courts should prioritize and select the elements most informative for their stakeholders.

Finally, this paper suggests specific opportunities for the federal government to enhance data on guardianship and abuse by guardians. Although guardianship is the responsibility of state courts, there are approaches that the federal government could take to assist states. We make the following recommendations:

- Support Uniformity. First, the federal government could support uniformity in guardianship law, policy, and data governance through grant opportunities to support the implementation of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act and the NCSC data standards for guardianship and conservatorship cases.
- Support Guardianship Reform. Second, the federal government could support guardianship reform practices, which include better monitoring and data collection, through: (1) funding Section 501 of the Elder Abuse Prevention and Prosecution Act; (2) continuing support for Elder Justice Innovation Guardianship Grants; and (3) creating an ongoing Guardianship Court Improvement Program that includes support for state efforts to collect and aggregate guardianship data to address abuse and fraud.
- Include Guardianship in Federal Data Sources. Third, the federal government could expand federal data sources to include guardianship. The existing National Adult Maltreatment Reporting System for state APS data could potentially include data on those who perpetrate abuse, including fiduciaries such as guardians. Additionally, federal fiduciary data could be strengthened and shared with state courts for better coordination. Specifically, the Social Security Administration and the Department of Veterans Affairs should address barriers to information sharing on how the representative payee system and the VA fiduciary system relate to state court guardianships. Also, there is a host of other federal databases in health, long-term care, and criminal justice that, with adjustments, hold varying degrees of potential for learning more about guardianship and the scope, prevalence, and nature of abuse by guardians.
- Explore DOJ Actions To Address Abuse by Guardians. Finally, there are two ways in which the federal government could directly target abuse by guardians. First, little structured communication and collaboration currently exist among courts, APS, and law enforcement on guardianship issues. The federal government could convene key stakeholders to build an infrastructure for improved interaction and protocols to address abuse and fraud by guardians. Second, an active CASA program exists to ensure that abused and neglected children receive the ongoing advocacy and individualized attention they need in court proceedings and in the child welfare system, but there is no similar program for adult guardianship. The federal government could pilot and evaluate an adult guardianship CASA program.

Notes

[1] Part 1: Literature Review of Research on Guardianship Abuse and Fraud, and Part 2: Scan of the Guardianship Abuse and Fraud Data Landscape.
[2] For purposes of this report, the terms "guardian" and "guardianship" include "conservator" and "conservatorship."
[3] See the table of cases in Appendix D in Part 1 Report. National Guardianship Association, *Legal and Legislative Review* (2005-2021).
[4] Catherine Seal & Pamela Teaster, *The Time has Finally Come: An Argument and a Roadmap for Regulating the Court-appointed Professional Fiduciary*, 72 Syracuse L. Rev. 469-494 (2022).
[5] Center for Guardianship Certification, htpp://www.guardianshipcert.org.
[6] National Center for State Courts, *Exploring the Consequences of Conservator Exploitation*, Brief No. 4 (2016).
[7] National Center for State Courts et al., *Financial Exploitation by Conservators: A Series of Background Briefs* (U.S. Dept. Justice, 2018), https://www.eldersandcourts.org/other-resources.
[8] Bolkan, Teaster, & Ramsey-Klawsnik, *Abuse of Vulnerable Older Adults by Designated Surrogate Decision Makers*, 4 Innovation in Aging 702-703 (2020), https://doi.org/10.1093/geroni/igaa057.2467.
[9] Yongje Yon, Christopher R. Mikton, Zachary D. Gassoumis, & Kathleen H. Wilber, *Elder Abuse Prevalence in Community Settings: A Systematic Review and Meta-Analysis*, Lancet Global Health, *5*(2), pp/ e147-e156 (2017) ; *also see* Acierno, R. et al, *National Elder Mistreatment Study* (2009), National Institute of Justice (2009), https://www.ojp.gov/pdffiles1/nij/grants/226456.pdf.
[10] L. Montgomery, *State court leaders strive to improve guardianship and conservatorship oversight*. National Center for State Courts (2016).
[11] Bolkan, Teaster, & Ramsey-Klawsnik, *Abuse of Vulnerable Older Adults by Designated Surrogate Decision Makers*, 4 Innovation in Aging 702-703 (2020), https://doi.org/10.1093/geroni/igaa057.2467.
[12] DOJ Part 2 Report, Scan of the Guardianship Abuse and Fraud Data Landscape, Interview Highlights, p. 32.
[13] National Center for State Courts, *National Open Court Data Standards*, http://www.ncsc.org/nods.
[14] State Court Organization Data, https://ncsc.org/sco.
[15] National Association for Court Management, *Adult Guardianship Guide: A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program* (2022), https://nacmnet.org/wp-content/uploads/AdultGuardianshipGuide_withCover.pdf.
[16] National Center for State Courts, *National Open Court Data Standards, NODS: Leadership Guide*, https://www.ncsc.org/__data/assets/pdf_file/0015/34026/NODS-Leadership-Guide.pdf; also see Diane Robinson et al, *Trends 2022: National Open Court Data Standards (NODS)*, https://issuu.com/statecourts/docs/ncsctrends2022/s/16422124.
[17] A guardian ad litem ("guardian for the suit") is an attorney appointed by the court to assist the court in investigating the circumstances of a case and to look out for the best interests of the respondent. The role of the guardian ad litem is very different from that of an attorney in the traditional role of advocating for the wishes of the respondent.
[18] Prior to appointment of a guardian, many (but not all) states use the term "respondent" for the adult alleged to need a guardian. Once an appointment has been made, the term for the individual served varies. Here we use the terms "person with a guardian" or "person subject to guardianship."
[19] Erica Wood, "History of Guardianship," in Mary Joy Quinn (ed.) *Guardianship of Adults: Achieving Justice, Autonomy, and Safety*, Springer (2005).
[20] U.S. Const. amend. X.
[21] Uniform Law Commission, https://www.uniformlaws.org/aboutulc/overview.
[22] Nina Kohn & David English, *Protective Orders and Limited Guardianships: Legal Tools for Sidelining Plenary Guardianship*, 72 Syracuse L. Rev. 223-254 (2022).
[23] *Id*.
[24] David English & Rebecca Morgan, *The Uniform Guardianship and Protective Proceedings Act (1997*), 11(2) NAELA Quarterly (1998).
[25] Uniform Law Commission, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (2017), https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c.
[26] *Id*.
[27] Unless otherwise noted, data in the bullets below come from Naomi Karp & Erica Wood, *Ten Ways to Reduce Guardianship Abuse Through Enactment of the Uniform Guardianship, Conservatorship, and Other Protective*

Arrangements Act (UGCOPAA), National Center on Elder Abuse (2022), https://ncea.acl.gov/NCEA/media/Publication-4.0/NCEA_UGCOPAA_GuardianshipBrief.pdf. Some of the Act's provisions cited in this Report for guardianship have counterpoints for conservatorship.

[28] Uniform Law Commission, Commentary to §310(E), Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (2017).

[29] PL 115-70, 115th Congress (2017), https://www.congress.gov/bill/115th-congress/senate-bill/178.

[30] U.S. Senate Special Committee on Aging, *Ensuring Trust: Strengthening Sate Efforts to Overhaul the Guardianship Process and Protect Older Americans* (2018), https://www.aging.senate.gov/imo/media/doc/Guardianship_Report_2018_gloss_compress.pdf?utm_source=rss&utm_medium=rss .

[31] Personal communication with Andy Mao, National Elder Justice Coordinator, Department of Justice, October, October 31, 2022.

[32] National Guardianship Network, Fourth National Guardianship Summit, Recommendation 3.1 (2021), http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability/ .

[33] Uniform Law Commission, UGCOPAA Enactment Map, https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c .

[34] Personal communication with Ben Orzeske, Chief Counsel, Uniform Law Commission, October 24, 2022.

[35] National Center for State Courts, *National Open Court Data Standards (NODS)*, https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods.

[36] Diane Robinson, Katherine Holt & Cate Boyko, *Guardianship/Conservatorship Monitoring: Recommended Data Elements* (National Center for State Courts 2020), https://www.eldersandcourts.org/__data/assets/pdf_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf.

[37] For a full list of such nationally recognized tenets for reform, see American Bar Association Commission on Law and Aging, *WINGS Briefing Paper: Advancing Guardianship Reform and Promoting Less Restrictive Options* (2020), https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-wings-briefing-paper.pdf.

[38] Elder Abuse Prevention and Prosecution Act, P.L. 115-70, https://www.congress.gov/bill/115th-congress/senate-bill/178/text.

[39] 42 U.S.C. 1397m-2(E).

[40] 42 U.S.C. 1397m-3.

[41] Four national guardianship summits, held roughly every 10 years (1988, 2001, 2011, and 2021) have driven a national agenda for guardianship reform. These summits were convened by national organizations dedicated to guardianship reform, which came together in the National Guardianship Network, consisting of 13 organizations, https://www.naela.org/NGN_PUBLIC/Home/NGN_PUBLIC/Home.aspx?hkey=8627da61-bd28-46b0-b7e1-f43b9878a39d.

[42] State Justice Institute, https://www.sji.gov/.

[43] ABA Commission, WINGS Briefing Paper, *supra* note 37.

[44] *Id*.

[45] *Id*.

[46] Administration for Community Living, *New Elder Justice Grants Address APS Training, Guardianship, APS to Community Services Transitions*, (September 28, 2021), https://acl.gov/news-and-events/announcements/new-elder-justice-grants-address-aps-training-guardianship-aps. Along with 7 adult protective services awards, the grants totaled $5.9 million.

[47] *Id*.

[48] Administration for Community Living, *Over $2.6 Million in 2022 ACL Elder Justice Innovation Grants Address Guardianship; Opioids and Substance Use,* (September 28, 2022), https://acl.gov/news-and-events/announcements/over-26-million-2022-acl-elder-justice-innovation-grants-address#:~:text=ACL%20is%20proud%20to%20award,involving%20opioids%20and%20substance%20use.

[49] P.L. 103-66.

[50] Dari Pogach & Chris Wu, *The Case for a Guardianship Court Improvement Program: Federal Funding to State Courts Could Improve Guardianship Systems and the Lives of Millions of Older Adults and People with Disabilities*, 72 Syracuse L. Rev. 491-536 (2022), http://law.syr.edu/uploads/docs/academics/Pogach-Wu.pdf.

[51] *Id*.

[52] *Id*.

[53] *Id*.

[54] *Id.*
[55] ABA Commission WINGS Briefing Paper, *supra* note 37; Pogach & Wu, *supra* note 50.
[56] Conference of Chief Justices/Conference of State Court Administrators, Resolution 3, In Support of the Guardian Accountability and Senior Protection Act (February 2012).
[57] ABA House of Delegates Resolution 105 (adopted August 2020); also see *ABA Pushes for a Federal Guardianship Court Improvement Program*, ABA Insider (Feb 1, 2021), https://www.abajournal.com/magazine/article/aba-pushes-for-a-federal-guardianship-court-improvement-program.
[58] National Council on Disability, *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination* (2018), https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives.
[59] National Guardianship Network, Fourth National Guardianship Summit, Recommendation 6.1 (2021), http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability/.
[60] *Id*. at Recommendations 6.2 and 6.3 (2021).
[61] *Id*. at Recommendations 6.2 and 6.3 (2021).
[62] Administration for Community Living, *National Adult Maltreatment Reporting System*, https://acl.gov/programs/elder-justice/national-adult-maltreatment-reporting-system-namrs-background.
[63] Y. Yaun et al., *Development of a National Adult Protective Services Data System: Namrs Pilot Final Report: Vol. 1* (2015), https://aspe.hhs.gov/reports/development-national-adult-protective-services-data-system-namrs-pilot-final-report-volume-1-0.
[64] K. Larin, Testimony to the U.S. Senate Special Committee on Aging, November 30, 2016.
[65] L. McGee & K. Urban, *Adult Maltreatment Data Report 2020*, submitted to the Administration for Community Living, U.S. Department of Health and Human Services, https://acl.gov/sites/default/files/programs/2021-10/2020_NAMRS_Report_ADA-Final%20%281%29.pdf .
[66] *Id.*
[67] *Id.*
[68] Government Accountability Office, *HHS could do more to encourage state reporting on the costs of financial exploitation*, GAO-21-90 (2021).
[69] APS Technical Assistance Resource Center/NAMRS, https://eldermistreatment.usc.edu/projects/aps-technical-assistance-resource-center-namrs/.
[70] Social Security Administration, *Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews* (2021), https://www.ssa.gov/legislation/RedactedFY21RepPayeeReport.pdf.
[71] Social Security Administration, Program Operations Manual System (POMS), GN00502.105.
[72] Government Accountability Office, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, GAO-04-6555 (July 2004), https://www.gao.gov/products/gao-04-655.
[73] Pamela Teaster, Erica Wood & Laura Sands, *Selection Processes for Social Security Administration Representative Payees of Adults*, Social Security Advisory Board (2020), https://www.ssab.gov/wp-content/uploads/2020/09/2020-RTB-Teaster-Wood-Sands-Representative-Payee-Selection-1.pdf. A field office survey in this study confirmed that "the court is rarely contacted" if a payee who is a guardian is removed for misuse of funds.
[74] Government Accountability Office, *supra* note 72.
[75] Administrative Conference of the United States, *Social Security Administration's Representative Payee Program: Information Sharing With States* (June 30, 2020), https://www.acus.gov/sites/default/files/documents/Final%20SPSSBA%20Report%20to%20SSA.pdf.
[76] Department of Veterans Affairs, Veterans Benefits Administration, *VA Fiduciary Program*, https://www.benefits.va.gov/fiduciary/.
[77] Department of Veterans Affairs, Office of Inspector General, Veterans Benefits Administration, *VBA's Fiduciary Program Needs to Improve the Timeliness of Determinations and Reimbursements of Misused Funds* (2021), https://www.va.gov/oig/pubs/VAOIG-20-00433-168.pdf.
[78] *Id*.
[79] Government Accountability Office, *supra* note 72.
[80] Erica Wood, *The Availability and Utility of Interdisciplinary Data on Elder Abuse: A White Paper for the National Center on Elder Abuse* (2006), https://www.pjwa.com/wp-content/uploads/2014/12/Elder_Abuse_Report.pdf.
[81] Bureau of Justice Statistics, *National Crime Victimization Survey* (NCVS), https://bjs.ojp.gov/data-collection/ncvs.

[82] Federal Bureau of Investigation, *National Incident-Based Reporting System* (NIBRS), https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/ucr/nibrs.
[83] Bureau of Justice Statistics, *National Survey of Prosecutors* (NSP), https://bjs.ojp.gov/data-collection/national-survey-prosecutors-nsp.
[84] Older Americans Act of 1965, as amended, §712 (c), "Reporting System."
[85] National Long-Term Care Ombudsman Resource Center, *National Ombudsman Reporting System* (NORS), https://ltcombudsman.org/omb_support/nors.
[86] Office of Management and Budget, *Long-Term Care Ombudsman Program Complaint Codes*, OMB No: 0985-0005, https://ltcombudsman.org/uploads/files/support/Complaint_Code2019.pdf; also see State Annual Long-Term Care Ombudsman Report, OMB 0985-0005 (2021), https://omb.report/omb/0985-0005.
[87] Cowles Research Group, *OSCAR to CASPER* (2023), https://www.longtermcareinfo.com/data/casper-and-oscar.php.
[88] Centers for Medicare and Medicaid Services, *Minimum Data Set (MDS) 3.0 for Nursing Homes and Swing Bed Providers*, (2022), https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqimds30.
[89] Personal knowledge of author.
[90] American Academy of Professional Coders, *ICD-10-CM Code for Adult and Child Abuse, Neglect and Other Maltreatment, suspected T76*, (2023), https://www.aapc.com/codes/icd-10-codes/T76#:~:text=ICD%2D10%20code%20T76%20for,other%20consequences%20of%20external%20causes%20.
[91] Legal Services Corporation, https://www.lsc.gov/.
[92] U.S. Census Bureau, *Understanding and Using American Community Survey Data,"* (September 2020), https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf . (The American Community Survey was not included in the 2006 white paper on elder abuse data.)
[93] This section draws on Georgia Anetzberger & Morgan Thurston, *Addressing Abuse by Guardians: The Roles of Adult Protective Services, Law Enforcement, and the Courts*, (2021) for the Fourth National Guardianship Summit, 72 Syracuse L. Rev. 367-418 (2022), http://law.syr.edu/uploads/docs/academics/Anetzberger-Thurston.pdf. Also see the Issue Brief on this topic prepared for the Fourth National Guardianship Summit, http://law.syr.edu/uploads/docs/academics/Issue_Brief_Working_Group_4_Monitoring_Abuse_final.pdf.
[94] Protection and Advocacy agencies (P&A agencies, sometimes called "disability law centers") are charged with protecting individuals with disabilities from abuse and exploitation, https://www.ndrn.org/about/ndrn-member-agencies/. Other entities that may be involved with adult abuse include long-term care ombudsman programs, state attorneys general, and selected health and financial offices.
[95] Anetzberger & Thurston, *supra* note 93.
[96] Fourth National Guardianship Summit, Recommendation 4.4, 72 Syracuse L. Rev. 37 (2022),
[97] *Id.*
[98] Anetzberger & Thurston, *supra* note 93.
[99] *Id.*; also see Department of Justice, Elder Justice Initiative, *Elder Abuse and Elder Financial Exploitation Statutes*, https://www.justice.gov/elderjustice/prosecutors/statutes.
[100] Department of Justice, Elder Justice Initiative, *State Elder Justice Coalitions: Informing Services and Influencing Public Policy* (2020), https://www.justice.gov/file/1284361/download.
[101] Anetzberger & Thurston, *supra* note 93.
[102] DOJ Office of Juvenile Justice and Delinquency Prevention, https://ojjdp.ojp.gov/tta-provider/national-casagal-association-membership-and-accreditation-and-training-and-technical
[103] National CASA/GAL Association, https://nationalcasagal.org/about-us/.
[104] Office of Juvenile Justice and Delinquency Prevention, *CASA/GAL Volunteers Bring Stability While Advocating for Youth in Foster Care*, https://ojjdp.ojp.gov/newsletter/ojjdp-news-glance-mayjune-2022/casagal-volunteers-bring-stability-while-advocating-youth-foster-care#:~:text=A%20nationwide%20network%20of%20950,%2411%20million%20in%20OJJDP%20funding.
[105] Office of Juvenile Justice and Delinquency Prevention, *National CASA/GAL Association Membership and Accreditation and Training and Technical Assistance Program*, https://ojjdp.ojp.gov/tta-provider/national-casagal-association-membership-and-accreditation-and-training-and-technical#c9gcgr.
[106] OJJDP, *supra* note 104.