

## Brief No. 7

## DATA QUALITY UNDERMINES ACCOUNTABILITY IN CONSERVATORSHIP CASES

*This is the seventh in a series of eight Background Briefs produced by the National Center for State Courts and its partners under a project funded by the U.S. Department of Justice Office for Victims of Crime to assess the scope of conservator exploitation and explore its impact on victims.<sup>1</sup>*

*A great deal of work lies ahead to modernize guardianship/conservatorship systems. At the local level, poor documentation directly impacts the ability of courts to detect and respond to exploitation.*

## BACKGROUND

In November 2016, the Government Accountability Office (GAO) issued a report, *The Extent of Abuse by Guardians is Unknown, but Some Measures are Being Taken to Help Protect Older Adults*. The report concludes that “the extent of elder abuse by guardians nationally is unknown due to limited data on the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian” (p. 6).

Two promising developments noted in the GAO report are worth highlighting:

- The U.S. Department of Health and Human Services has built the National Adult Maltreatment Reporting System (NAMRS), which is designed as a national reporting system for Adult Protective Services (APS) programs. NAMRS has the potential to determine the extent of reports of financial exploitation by a substitute decision-maker, including a guardian or conservator. In states that have an age criterion for APS services, the data will exclude younger adults who are placed

under a conservatorship. Moreover, it is uncertain how many cases of alleged conservator exploitation are reported to APS. The first iteration of data for 2016 was released on July 23, 2018 with 54 of 56 states and territories contributing data in the first year. Two states have reported data on substitute decision-making in the first year. However, there is no data reporting financial exploitation by a substitute decision-maker at this time.

- The Minnesota Judicial Branch has led the nation in the development of transaction-level software (MyMNConservator) and centralized auditing of conservatorship accountings. NCSC partnered with Minnesota on the Conservatorship Accountability Project to explore the use of analytically-based risk indicators as a predictor of a subset of problematic accountings (“concern of loss”). NCSC is working with several states to pilot a similar software approach, with the goal of modernizing the system and developing tools that courts can use to direct resources to cases most likely to involve some level of financial exploitation.

Despite these targeted efforts to document exploitation in guardianship or conservatorship cases, most reports and studies lack empirical data to enumerate the problem of conservator exploitation. Over the years, the National Center for State Courts has engaged in numerous attempts to collect data on adult guardianships and conservatorships. NCSC conducted a 2014 Survey of Local Courts on behalf of the Administrative Conference of the United States. While the survey was not based on a representative sample of local courts, “two-thirds of court respondents (64%) indicated that the court had taken actions against at least one guardian for misconduct, malfeasance, or serious failure to fulfill his or her obligations in the past three years. In these cases, the most serious sanctions applied were the removal and appointment of a successor guardian and issuing a show

<sup>1</sup> Data and practices presented in this Background Brief were collected in the fall of 2016, and do not necessarily reflect current state information.

cause or contempt citation.” This suggests that most judges who handle this case type have encountered cases that include an element of financial exploitation, however the data is still limited and does not paint a national picture. This Background Brief reports the project’s effort to document barriers to state court data collection, national estimates of caseloads based on the limited data available, and potential next steps to improve data collection and reporting.

## STATE COURT DATA COLLECTION EFFORT

NCSC’s Court Statistics Project annually collects state court data on a variety of case types, including adult guardianships and conservatorships. However, as noted in a number of publications, the quality of the national data remains highly problematic. To determine if the quality of data had improved and to explore challenges in documenting adult conservator exploitation, NCSC undertook a national survey of administrative offices of the courts in fall 2016. The project team also collected additional information from some individual states that have been working to reform their guardianship/conservatorship processes.

For the survey, team members contacted 56 designated state court Guardianship Points of Contacts (POCs) in each state, the District of Columbia, and the Territories to assess the extent of data collection efforts. For the most recent year available (2015), each state/territory was asked to report:

- New guardian and conservator cases filed
- Total active guardian and conservator cases
- Total dollar value for conservatorship cases
- Cases in which a conservator was removed for cause
- Cases in which a conservator was criminally charged
- Barriers or hurdles to reporting any of the above data elements.

Fifty-one states and territories responded (91%). Of the respondents, four states responded that they do not have administrative control over guardianship cases or do not have an available data expert and therefore were not able to provide further information (KS, ME, OK, RI). Eight states responded with no data but provided qualitative information regarding reporting barriers. The remaining 39 states (76%) were able to provide some level

of data regarding overall guardianship/conservatorship cases. None of the states was able to fully report all data elements in the detail requested.

## BARRIERS TO REPORTING QUALITY DATA

The most serious issues raised through the survey and correspondence with court guardianship POCs revealed three themes: local court authority, lack of standardized reporting, and limited technology.

### *Conservatorship Practices are Highly Localized*

The National Probate Court Standards (2013) noted that 17 states have specialized probate courts in all or a few counties. Often these specialized courts are locally administered and not under the authority of the state court administrative office. In the remaining 33 states, the District of Columbia, and the Territories, jurisdiction over probate and related issues lies within courts of general jurisdiction. To confuse matters more, not all probate courts oversee adult guardianships/conservatorships. Furthermore, not all states require a law-trained judge to oversee these types of cases—in North Carolina, elected county clerks handle these cases; in some courts in Texas, constitutional judges, who may or may not be law-trained, are responsible for adult guardianship/conservatorship cases. The experiences of individuals and their family members is highly dependent on the judicial officer handling the hearings and the practices embedded in the local court. The variations within and between localities compound the challenges associated with tracking and documenting guardianship/conservatorship cases and help explain the limited data available at the state and national level. Some state-level administrative offices do not have authority to dictate types of data collected by locally funded courts. Local courts may not collect this information, or only have details available in paper files. There is no efficient way to collect state-level data, as each case file would have to be reviewed.

### *Next Steps*

There are states that have taken on reviewing each case, and updating records and accompanying data. Texas, Nevada, and New Mexico are reviewing case files to determine if the case should still be open, what records or accountings are missing and needed follow-up.

Before implementing new data definitions and collecting more detailed information, states must document their current caseload and purge outdated or closed cases. The file review analysis should be carried out using a standardized checklist and form that documents the open/closed status of each case as well as compliance with state requirements, such as background checks, and recommended practices. Additionally, documentation of the amount of assets under the court's watch and reporting compliance—the submission of required reports and accountings on time—should be gathered to assess changes in asset values over time and to bring cases into compliance. State and local courts should conduct a file review analysis to determine the actual number of active cases and to improve compliance.

*Data standards for what needs to be collected and reported often do not exist within a state.*

### ***Lack of Standards for Data Reporting***

Data standards for what needs to be collected and reported often do not exist within a state. Multiple states do not offer or enforce guidelines on what data to capture or how to count guardianship/conservatorship cases. Regardless of whether a state has administrative authority over probate cases, many states reported that the level of detailed data requested could only be found in local court records. This type of detail is often not collected at the state-level. Instead, only aggregate information, such as total probate filings, is required to be reported to the administrative office. Without clear guidance or standards from the state on the type of information to collect and report, local courts often rely on past practice. This leads to inconsistent counting practices and data elements collected. Specific examples and quotes from POCs help illustrate these problems.

- **Is the case open or closed?** In each state that has moved toward statewide reform, the first step has been to review each case file in the local courts to determine if the case is open or not. All too often, courts have not followed up on cases and have failed to close cases in which the individual has died, the guardianship/conservatorship was temporary, the individual relocated to another jurisdiction,

or the minor reached the age of emancipation. Texas provides an illustration where the Office of Court Administration's Guardianship Compliance Pilot Project reviews uncover that many cases are not closed appropriately. Texas' experience is not unique. Nevada and New Mexico's efforts to document guardianships and conservatorships in several courts and have similar findings.

- **Are conservators submitting accountings on time?** Most states require annual accountings be filed with the court, yet local courts may not be sending notices to conservators or tracking the receipt and timing of submitted documents. Courts and judges may also be inconsistent in determining the anniversary/due date of annual accountings.
- **What are the key characteristics of individuals and conservators?** Most states do not include individual-level data in data systems, such as the date of birth of individuals, which is critical to distinguishing juvenile from adult cases and whether the case should be closed due to emancipation or death. Local courts do not necessarily collect information on whether the conservator is a family member or a professional. This information becomes particularly critical when allegations of misconduct against a professional conservator may involve a number of individuals.
- **What are the terms and conditions of the conservatorship?** Some judges do not write explicit orders that outline the specific powers of the guardian or conservator. In some cases, it is unclear as to whether the appointed person was given the authority to act on behalf of the person's health and well-being (guardian) and/or financial matters (conservator).
- **What data systems, if any, are used?** Some local courts, usually in rural jurisdictions, may not use a case management system. Even in larger jurisdictions, case management systems were designed to manage court events, primarily hearings, that result in disposition. They are often insufficient in tracking cases requiring review year after year, such as conservatorships.

- **How is the case being coded in the case management system?** Across localities, there are inconsistencies in how cases are coded. Generally, judges and court staff work to close cases and remove them from the docket. Some clerks consider the appointment of a conservator to be the event that closes a case, while others may keep it open because of ongoing oversight required by the court. While NCSC recommends that case management systems include a “set for review” option, there remain inconsistencies in how the cases are coded.

*The long-term nature of guardianships and conservatorships and the need for ongoing monitoring raises the level of reporting needed.*

### **Next Steps**

NCSC’s Court Statistics Project (CSP) has a data dictionary, the State Court Guide to Statistical Reporting, that defines each case type and discusses how cases should be counted for compiling a national picture of caseloads across the states. The CSP focuses on capturing an accurate count of the number of filings and the total number of active cases but captures high-level information in order to include all states in a national picture. More detailed data around guardianship and conservatorship cases are needed. The long-term nature of guardianships and conservatorships and the need for ongoing monitoring raises the level of reporting that should be done. NCSC suggests the development of a set of reporting guidelines that include several tiers, the basic level being the minimum required data submitted to the CSP, with additional levels to include case and event details needed by local courts and states to monitor active cases and detect the problem of financial exploitation.

### **Outdated Technology Contributes to Poor Reporting**

Outdated technology and case management systems are not flexible with data collection fields. It is a time intensive and expensive task to reconfigure the data collection systems and process, and therefore, paper or hard copy files remain the most common location where detailed data is captured. Additionally, many state courts

do not have a single case management system that covers all jurisdictions, and instead must combine information collected on multiple systems with varying data elements and level of detail.

*The lack of reliable and comprehensive data at the local court level results in a large number of states unable to provide reliable state-level data on the number of active adult guardianship or conservatorship cases.*

## **MOST STATES HAVE UNRELIABLE DATA**

The lack of reliable and comprehensive data at the local court level results in a large number of states unable to provide reliable data on the number of active adult guardianship or conservatorship cases. Survey data reported by the states often lacked basic distinguishing detail such as the age of the individual (minor or adult, and age of adult) and whether the guardianship case included guardianship of the person, conservatorship, or both. Often states could provide only high-level totals, such as total guardianship cases filed or active cases. Also, states were unable to provide reliable counts of the number of cases in which a conservator was removed for cause, a conservator was criminally charged, and the total dollar value of assets under court oversight.

## **NATIONAL DATA ESTIMATES**

Sixteen states provided reliable data on adult guardianship or conservatorship cases that were used to create national estimates. However, a number of states were unable to differentiate between cases that involve a guardianship of the person, conservatorship, or both. For these reasons, estimates refer to guardianship and/or conservatorship cases.<sup>2</sup>

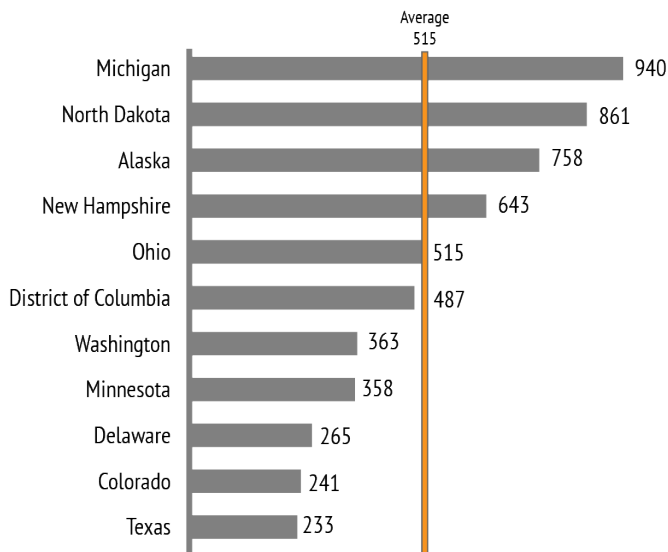
### **Caseloads**

- In 2015, an estimated 180,000 new adult guardianship and/or conservatorship cases were filed in the United States. This estimate is based on an average (from 16 states) of 71 cases being filed per 100,000 adult population.

<sup>2</sup> Data and practices presented in this paper were collected in the fall of 2016, and do not necessarily reflect current state information.

- An estimated 1.3 million guardianship and/or conservatorship cases were active or awaiting a hearing or review in 2015. This estimate is based on an average (from 11 states) of 515 active cases per 100,000 adult population.

**Figure 1** Active Adult Guardianship or Conservatorship Cases



## ASSETS UNDER COURT WATCH

Data on the total dollar value under court oversight for conservatorship cases was difficult for states to report. Four states were able to report asset data totaling \$5.4 billion or an average \$16.2 million under court conservatorship per 100,000 population. When applying that to the national population, an estimated \$50 billion is under court oversight for adult conservatorship cases in the United States.

States were often only able to report dollar value for cases under a public or professional conservator, not those with a family member or friend acting in that role. Other states were only able to report a subset of counties or courts that report dollar value as these localities are part of an optional guardianship registry or have data capabilities beyond the rest of the state. Also, very few states were able to distinguish the dollar value for minor estates separately from those of adult estates. Table 1 outlines available asset data.

**Table 1** Assets Under Court Oversight

State	Total Assets Under Court Oversight (rounded)		Assets per 100k population (rounded)
Idaho	\$342 Million		\$21 Million
Minnesota	\$909 Million		\$17 Million
Texas	\$4 Billion		\$15 Million
Delaware	\$125 Million		\$13 Million
<b>Total</b>	<b>\$5.4 Billion</b>	<b>Average (per 100k)</b>	<b>\$16.2 Million</b>

**Next Steps:** NCSC has developed court performance measures for trial courts as well as problem-solving courts and on particular case types, including elder abuse. Performance measures are desperately needed on guardianship/conservatorship cases that emphasize procedural satisfaction and accountability. Examples of performance measures in this area may be the percentage of cases in which there is a bond, the percentage of cases in which complete annual accountings have been submitted by the due date, and timeliness measures (e.g., number of days from petition to hearing, from appointment to inventory submission, from accounting submission to audit, from audit report to court hearing), and percentage of assets recovered. Other measures may focus on issues such as background checks and credit histories (e.g., number/percentage conducted, use of extra safeguards where necessary). The goal should be to develop a performance management system in which the court periodically reviews findings and makes system improvements that are constantly informed by data. Data used to inform the measures should be developed into a “dashboard” for judges that will display specific measures and provide alerts to judges when cases may need greater attention—for instance, accountings are delinquent.

## CONSERVATORS REMOVED / CHARGED FOR EXPLOITATION

Five states were able to provide some information on cases where guardians were removed or charged, potentially due to exploitation. However, none of the five were able to provide a complete picture for the state or verify that removal or charges were for financial exploitation. Specific details are listed below for each of the five states.

In **Delaware**, guardianship data is filed electronically since 2007 and therefore staff can conduct key word searches to identify cases within the system where there are concerns of exploitation or where a conservator was removed. However, this is a manual process to search, find, and review cases. The process also relies on correct search terms, and requires users to know and use these terms to capture information.

**Indiana** reported guardians who have been revoked or removed, however the specific reason for removal is not known, therefore financial exploitation is not necessarily the cause. Also, revocation or removal data is only available for counties that participate in an optional guardianship registry system, and therefore complete state-level data is unavailable at this time.

**Minnesota** has incorporated a “finding of loss” data element in their case management system to be able to track if conservatorship removal was due to financial loss. However, at this time this is not part of a regular report and requires manual checking. Judicial Officers may also handle exploitation cases in multiple ways: ordering repayment, removing a conservator, making it difficult to get a complete picture of all cases where exploitation occurred.

**Texas**, in accordance with state code, tracks the number of investigations and removals of guardians by county. Texas was able to provide state-level data for removals; however, the data quality is suspect based on county by county review by the Guardianship Compliance Project. At this time criminal charge information resulting from investigation is not available.

**Washington** began tracking both removal and criminal charge data in 2015 for professional guardians and conservators only. Currently, the process and data collection for counting these removals and charges is a paper process.

Comprehensive case-level data are necessary to document case events and provide even a minimal level of accountability. At the system level, data are necessary to make improvements to the process and to measure effectiveness. For person’s subject to conservatorship

and those who strive to safeguard their assets, reliable and accurate data are the crucial first step to detect late, absent, or irregular accountings that can tip court staff into follow-up inquiries and stop exploitation.

*This series of background briefs was produced by the National Center for State Courts and its partners under Grant No. 2015-VF-GX-K019, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this report are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

#### **Primary Authors**

National Center for State Courts: Brenda K. Uekert, PhD, Kathryn Holt, Kathryn Genthon  
American Bar Association: Erica Wood, JD, Lori Stiegel, JD, Dari Pogach, JD  
Virginia Tech Center for Gerontology: Pamela Teaster, PhD, Karen Roberto, PhD, Chris Grogg, MPH  
Minnesota Judicial Branch: Cate Boyko, Stepheni Hubert