

Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans

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- Guardianship is a necessary tool used to support and protect individuals who are unable to make important decisions about their finances and well-being. However, it also creates an opportunity for abuse and exploitation by unscrupulous individuals.
- Individuals lose almost all of their rights when a full guardianship order is imposed on them, increasing the risk of abuse, neglect, and exploitation at the hands of some guardians.
- Aside from incarceration or civil commitment, potentially no other court process infringes on an individual's personal liberties more significantly than the appointment of a guardian.
- In order to protect individuals subject to guardianship from abuse, exploitation, and neglect, governments and courts must be vigilant in their enforcement of laws and procedures that provide oversight of these relationships.
- Once a guardianship is imposed, there are few safeguards in place to protect against individuals who choose to abuse the system. Greater oversight of guardians and guardianship arrangements would protect against abuse, neglect, and exploitation.
- All parties involved in a guardianship should be trained on guardianship responsibilities and the signs of abuse. The Conference of Chief Justices has noted the need for such training.
- States should encourage courts to utilize alternatives to guardianship. Such efforts would officially promote less restrictive alternatives such as supported decision-making.
- Courts often fail to recognize less restrictive alternatives to guardianship. Required comprehensive training for judicial officials, attorneys, and guardians would increase understanding and appreciation of viable alternatives.
- Individuals under guardianship are not always guaranteed independent counsel from their guardian. State laws need to be strengthened to ensure that individuals seeking a restoration of rights are given unbiased legal representation and access to resources for a timely consideration by the courts.
- Congress took action to improve state guardianship systems when it passed the Elder Abuse Prevention and Prosecution Act in 2017. It directed the U.S. Attorney General to publish best practices for improving guardianship proceedings. The Elder Justice Coordinating Council should distribute these new standards when they are completed by the Attorney General.