

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/ensuring-that-guardianship-lives-up-to-its-name>

Public Facing Advocacy Writing

Concluding a year-long investigation into guardianship abuse allegations in 45 states and the District of Columbia, the federal Government Accountability Office (GAO) recently released [a report](#) identifying serious deficiencies in the process for screening and monitoring court-appointed guardians. Investigators examined 20 cases in which guardians collectively misappropriated at least \$5.4 million in assets from 158 incapacitated, mostly elderly people who were ostensibly in their care.

Given guardians broad responsibilities for their wards finances, property, home care, and medical treatment, it is crucial that prospective guardians undergo thorough scrutiny by the court and receive ongoing supervision throughout their term of guardianship. In six of the 20 cases the GAO studied, however, state courts failed to effectively screen candidates, leading to the appointment and ongoing service of guardians whose criminal and financial histories should have prevented them from handling the affairs of vulnerable people.

Examples of unsuitable appointments in the report include a Missouri cab driver who had been convicted of bank robbery and other crimes. He kept his elderly ward in a filthy basement while he embezzled \$640,000. A certified public accountant in Iowa became conservator of two people despite a \$25,783 IRS tax lien against him. He later misappropriated \$167,325 of his wards assets.

Early in 2004, in the wake of myriad news articles and studies documenting abuses like these committed by ill-trained or unscrupulous guardians in New York State, the Vera Institute of Justice identified guardian abuse and neglect as among its top-priority reform initiatives. As a result, Vera, working in collaboration with the New York State Office of Court Administration, designed and launched [The Guardianship Project](#) in 2005 to test a new collaborative model of institutional guardianship.

The Guardianship Project offers a promising, cost-effective solution to the types of deficiencies in guardianship practices across states chronicled in the GAO report. Our team of 14 is divided into four task-based departments: finance; legal; case management; and executive, and each employee is subject to a multi-state criminal background, credit history, and bankruptcy check. Multiple staff across the Projects departments review all incoming activity and outgoing withdrawals in both wards and program operating fund accounts. There are caps on each individual staff members signing authority. Because the Projects structure is replete with internal checks and balances, no employee has the access, signatory power, or opportunity to embezzle a wards funds.

The Projects legal team ensures fiduciary oversight and compliance. Staff seek court approval for any major expenditure, liquidation, or transfer involving a wards assets and before making significant changes affecting a wards life, including relocation, significant property repairs, and end-of-life decisions. Using a data-management program, staff document every service provided on behalf of wards, from phone calls to home visits to bedside hearings, and records the time spent on each task. Unlike many of the guardians cited in the GAO report, The Guardianship Project timely files initial and annual accountings, with supporting documents detailing all expenditures made on behalf of wards and all tasks performed.

The Guardianship Projects team design not only endows it not only with a high standard of fiduciary integrity, it also equips the Project with the resources needed to effectively handle the many time-consuming, varied, and complex needs of incapacitated seniors and disabled adults. Guardianship requires expertise across a variety of fields, such as Medicaid and other public benefits, home care planning, financial and property management, and litigation. Private guardians working alone may lack the incentive, resources, and spectrum of expertise needed to effectively provide these services over time, particularly in low-asset cases.

With a property manager on staff who tracks wards property ownership across state lines, and its innovative case management, fiscal, and legal team design, The Guardianship Project has the breadth of knowledge needed to respond to diverse ward circumstances, as well as the staffing required to devote sufficient attention to each person in its care. Each ward is typically visited at least monthly, far more frequently than the statutory requirement, and weekly and ad hoc team treatment meetings ensure that critical issues are quickly addressed.

The GAO report drives home how important it is for guardians and courts alike to adhere to the highest standard of fiduciary care. In addition to more stringent court oversight, however, a true solution requires changing the way guardians operate.

At present, The Guardianship Project handles only 200 of the thousands of cases in New York City. If replicated on a larger scale, however, we believe that this model could play an important role in improving the integrity of an ailing system and assuring that incapacitated elderly and disabled people are not victimized by the very people who are entrusted to protect them.

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