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ENSURING TRUST: STRENGTHENING STATE EFFORTS TO OVERHAUL THE GUARDIANSHIP PROCESS AND PROTECT OLDER AMERICANS

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ENSURING TRUST: STRENGTHENING STATE EFFORTS TO OVERHAUL THE GUARDIANSHIP PROCESS AND PROTECT OLDER AMERICANS

WEDNESDAY, NOVEMBER 28, 2018

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The Committee met, pursuant to notice, at 2:32 p.m., in room SD–562, Dirksen Senate Office Building, Hon. Susan M. Collins (Chairman of the Committee) presiding.

Present: Senators Collins, Fischer, Casey, Gillibrand, Blumenthal, Donnelly, Cortez Masto, and Jones.

OPENING STATEMENT OF SENATOR SUSAN M. COLLINS, CHAIRMAN

The CHAIRMAN. The Committee will come to order.

Good afternoon. Earlier this month, a former state legislator in Maine was convicted of carrying out one of the worst cases of elder financial abuse in our state's history. The man, who is also a securities agent, was found guilty of stealing more than $3 million from two elderly widows. While these women viewed the man as the protector of their accounts, in reality he actually preyed on their trust and vulnerability after their husbands died. Rather than protecting them, this individual slowly drained their bank accounts over a period of 7 years, according to the court.

Maine's Office of Securities found that the man used his position as a trusted financial professional and a close family friend to groom his victims in order to commit his crimes. He ingratiated himself with these families, assuming power of attorney, and becoming the trustee of their accounts. He used the funds under his control as his personal piggy bank, covering everything from travel and fine dining in the United States and Europe, to purchasing and renovating an expensive home in California's wine country.

Maine plans to seek full financial restitution. The harm that this individual has caused to these women and to their families is, however, irreparable. This abuse, by a trusted advisor, is a crime that no individual or family should ever have to face.

While appalling stories such as these remind us of the fraud that can be perpetuated against vulnerable individuals, there are also many stories of guardians and conservators who have protected seniors against such abuse, preserving both their dignity and their assets. When a pastor in Maine befriended an elderly woman under false pretenses at an assisted living facility earlier this year, it was

her conservator who stepped in and protected her from precisely this type of exploitation. Before the pastor could steal her money and assets, the conservator notified the police and put a stop to the abuse. It is not difficult to imagine the harm that could have come without the intervention of this trusted guardian. We must do more to make success stories like this one the norm.

Today our Committee is releasing a bipartisan report to help change the tide, implement reforms, and restore trust in guardianship. Titled "Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans," the report is the culmination of this Committee's year-long work investigating the guardianship systems.

An estimated 1.3 million adults are under the care of guardians—family members or professionals—who control approximately $50 billion of their assets. Guardianship is a legal relationship created by a court that is designed to protect those with diminished or lost capacity. We have found, however, that in too many cases the system lacks basic protections, leaving the most vulnerable Americans at risk of exploitation and fraud.

Throughout the course of the year, we have heard harrowing tales from families around the country who are struggling with abusive guardians. We also spoke with families who had heartening stories to share—of dedicated and faithful guardians stepping up to protect the assets of seniors with dementia and other conditions affecting their capacity. A good guardian can provide years of support for a protected individual—sometimes it is a disabled child—ensuring a full life directed, wherever possible, by the person's own choices and preferences. Once a guardianship is imposed, however, the individual's rights are removed, and oversight to protect the individual from abuse, neglect, and exploitation becomes critical.

We have gathered during the past year much information, analysis, and recommendations from states, courts, and organizations representing older Americans and those with disabilities around the country. We have received more than 100 comments identifying gaps in the system and, more important, offering solutions. We have found a pattern of barriers to proper oversight, and we have identified a need for greater use of alternatives to guardianship. We have found persistent and widespread challenges that require a nationwide focus in order to ensure the guardianship system works on behalf of the individuals it is intended to protect. The Committee's report outlines policy recommendations at local, state, and federal levels that would improve outcomes for Americans subject to guardianship.

Many of these recommendations are reflected in legislation that the Ranking Member, Senator Casey, and I have authored, called the "Guardianship Accountability Act." This bill would promote information sharing among courts and local organizations as well as state and federal entities, encourage the use of background checks and less restrictive alternatives to guardianships, and expand the availability of federal grants targeted at improvements in the guardianship system. I would invite all of our colleagues to join us in supporting this legislation.

Today we will hear from states that are making progress at better protecting those placed in guardianship arrangements. The number of Americans aged 65 and older is projected to more than double from 46 million today to more than 98 million by the year 2060; therefore, the issue of ensuring strong guardianship oversight will only become more urgent in coming years. And as Commissioner Hamm well knows, Maine is particularly affected by this demographic change as the oldest state in the Nation by median age.

Protecting older Americans from financial fraud and exploitation has long been one of my top priorities as Chairman of this Committee. From our toll-free fraud hotline to new laws such as SeniorSafe that encourage financial institutions to flag suspicious activity, our efforts to combat fraud and crack down on criminals who are always seeking new ways to steal the hard-earned savings of our Nation's seniors have produced results.

On guardianship, the Committee's report uncovers significant challenges that remain. In our hearing today, we will examine the practical steps that can be taken to improve a system that is intended to help safeguard those who need it most.

I am now pleased to turn to our Ranking Member for his opening statement.

OPENING STATEMENT OF SENATOR ROBERT P. CASEY, JR., RANKING MEMBER

Senator CASEY. Chairman Collins, thank you very much. Thanks for holding this hearing and for your work on these issues for many years.

I am pleased that the Committee's 2018 annual report addresses this important subject matter.

This report is the culmination of a year's worth of research and analysis and includes input from, as the Chairman said, over 100 stakeholders, advocates, representatives of the courts, and state officials. It is abundantly clear that something has to be done—as the title of the report suggests—to "ensure trust" in our guardianship system.

While most guardians act in the best interest of the individual they care for, far too often we have heard horror stories—and that is probably an understatement—of guardians who have abused, neglected, or exploited a person subject to guardianship.

As our report notes, there are persistent and widespread problems with guardianship around the country. For instance, we found deficiencies in the oversight and monitoring of guardians. We have also found that courts sometimes remove more rights than necessary by failing to consider less restrictive alternatives to guardianship. And, importantly, it is universally agreed upon that there is also a lack of reliable, detailed data to inform policymakers.

This is simply unacceptable. We have a sacred responsibility to ensure that no one—no one—loses a house or life savings or is needlessly deprived of their rights because a guardian abused their power.

Today I look forward to hearing about steps that states have taken to reform guardianship as well as the steps that must be taken to further improve the guardianship system.

As Chairman Collins mentioned, we are releasing bipartisan legislation which will help states improve guardianship oversight and data collection. We look forward to receiving feedback on the bill so we can work together next Congress to pass legislation to improve guardianship all across our country.

Guardianship is supposed to be protective. Too often, it has not been protective. We must do everything in our power to make sure we get it right all the time.

Again, thank you, Chairman Collins, for holding the hearing, and thanks to our witnesses for lending your time, your expertise, and your knowledge at this critical time.

Thank you.

The CHAIRMAN. Thank you very much, Senator Casey.

We will now turn to our witnesses. First, we will hear from Cate Boyko, who is the senior court research associate at the National Center for State Courts in Williamsburg, Virginia. She testified before this Committee at its 2016 hearing on guardianship when we first started getting into this issue. In her new role at the National Center for State Courts, Ms. Boyko has become a national resource on guardianship issues and opportunity for improved court oversight.

Next I am delighted that we will hear from Bethany Hamm, the Acting Commissioner for the Main Department of Health and Human Services. Commissioner Hamm has served in the department for more than 30 years. Currently the Maine Department of Health and Human Services has legal guardianship and conservatorship relationships with approximately 1,300 adults. I look forward to your testimony this morning.

I now will turn to our Ranking Member to introduce our next witness from the Commonwealth of Pennsylvania.

Senator CASEY. Thank you, Chairman Collins.

I am pleased to introduce Karen Buck. Karen is from Philadelphia, Pennsylvania, as one of our witnesses today, but more importantly for purposes of today's subject matter, Karen is the executive director of the SeniorLAW Center, which is located in Philly. It provides legal services to older Pennsylvanians. It provides as well direct representation, referral services, advice, and many other services to help ensure that seniors have access to justice.

In addition to her role at SeniorLAW Center, Karen serves in many leadership positions promoting access to justice itself, including her role as a member of Pennsylvania's Supreme Court Advisory Council on Elder Justice.

We thank Karen for being here today. We look forward to her testimony. Thanks.

The CHAIRMAN. Thank you.

Next I would like to turn to Senator Cortez Masto to introduce another witness, and I want to also recognize the work that the Senator has done on this issue and that the State of Nevada has done, because your state has been a real leader.

Senator CORTEZ MASTO. Thank you. Thank you, Chairman Collins and Ranking Member Casey. And I so appreciate you holding this hearing on an issue that, as you well know, is very important to me, to Nevada, and to all of us. And I appreciate all of the work

that you have done and this Committee has done on this report. Thank you.

We are fortunate enough today to hear and have Barbara Buckley, who is not only a friend of mine but was one of the chief architects of these reforms on guardianship in the State of Nevada, and she helped create one of the most advanced systems in the entire Nation for protecting seniors from abuse. Barbara served as the Speaker of the Nevada Assembly from 2007 through 2010, becoming the first woman in the state's history to hold this position. We are a state of firsts. She is currently executive director of the Legal Aid Center of Southern Nevada, which provides free legal assistance and representation to those who cannot afford an attorney.

Barbara helped create the Legal Aid Center's Guardianship Advocacy Program which provides that representation to seniors and adults with disabilities under guardianship to ensure that adults' legal rights are protected. The right to counsel is a vital part of Nevada's new guardianship system and crucial to protecting those who are the most vulnerable.

So welcome, Barbara, and thank you for being here. And, again, thank you for this important hearing, Madam Chair.

The CHAIRMAN. Thank you very much.

I also want to acknowledge the three other Senators who are here and may be returning: Senator Fischer, Senator Jones, and Senator Donnelly. And a special word to Senator Donnelly. He has been a terrific member of this Committee, and I just wanted to say that we will very much miss your service here. I know how deeply you care about issues affecting our older Americans, and I just wanted to personally thank you for your service on the Committee.

Ms. Boyko, we are going to start with your testimony.

STATEMENT OF CATHY (CATE) G. BOYKO, MPA, SENIOR COURT RESEARCH ASSOCIATE, NATIONAL CENTER FOR STATE COURTS, WILLIAMSBURG, VIRGINIA

Ms. BOYKO. Chair Collins, Ranking Member Casey, and members of the Senate Special Committee on Aging, thank you for inviting me here to discuss the efforts to overhaul the guardianship process and protect older Americans. My name is Cate Boyko, and I am a senior court research associate at the National Center for State Courts. The National Center is a nonprofit organization with headquarters in Williamsburg, Virginia, whose mission it is to promote the rule of law and to improve the administration of justice in state courts and courts around the world.

My areas of expertise include elder abuse and exploitation, and guardianship and conservatorship. Because terminology varies from state to state, we used generalized terms. Guardianship refers to those cases in which the court has appointed an individual to handle the medical and well-being issues of another person, while conservatorship refers to those cases in which an individual has been appointed by the court to manage the finances of another person.

As Chair Collins stated, in the U.S. there are approximately 1.3 million active adult guardianship or conservatorship cases. Nationally courts oversee at least $50 billion of assets under adult conservatorships. My written testimony addresses issues that can

dramatically improve efficiencies and oversight of guardianships and conservatorships, including improved data collection, modernization of processes and professional auditing, the use of differentiated case management strategies to prevent and address exploitation, the development of interactive online training programs to provide basic education for nonprofessional guardians and conservators, and expanding collaborative efforts such as Working Interdisciplinary Network of Guardianship Stakeholders groups, or WINGS groups.

For this hearing, I will focus on the first two items: improved data collection and modernization.

The National Center'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 national data is highly problematic. In 2016, to determine if the quality of data had improved and to explore challenges in documenting adult conservatorship exploitation, the National Center undertook a survey of courts for guardianship and conservatorship data. Five data elements were requested: new cases filed, total active cases, total dollar value of conservatorship cases, and cases in which a conservator was removed for cause or criminally charged. Fifty-one states and territories responded, but only 39 states were able to provide some level of data. No state was able to provide data on all five elements.

The three primary themes why courts could not provide data were: the authority and practices are highly localized, a lack of standards for data reporting, and outdated technology and case management systems.

So why is data a concern? Many courts may not be aware of which cases are open and should be monitored and which cases are closed or no longer need their attention. There are states that have taken on reviewing each case, updating records and accompanying data. Texas, Nevada, and New Mexico are reviewing case files to determine if each case should remain open, what filings or accountings are missing and needed follow-up. Texas, Indiana, and Pennsylvania have all established statewide guardianship/conservatorship registry systems to help them track and monitor cases.

Determining the open or closed status of a case, although very basic, is an essential step for court reform in guardianship and conservatorship case management and oversight. The Texas process could be adopted as a model for court case review.

Courts lack resources and skills to monitor and oversee these cases. The National Center will soon launch a project that could transform the conservatorship system in courts. With funding from the Office for Victims of Crime, the National Center will work with two courts to pilot the concept where conservators would be required to sign up with a financial monitoring company that will identify suspicious transactions based on personal financial profiles created through machine learning. The company will send alerts to the court's Rapid Response team. The team will respond to each instance and resolve the issues through education, removal of exploitative conservators, repayment of assets, and referral to investigative agencies in a very quick timeframe.

I thank you for this opportunity, and I welcome your questions.

The CHAIRMAN. Thank you very much.
Commissioner Hamm.

STATEMENT OF BETHANY HAMM, ACTING COMMISSIONER, MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES, AUGUSTA, MAINE

Ms. HAMM. Chairman Collins, Ranking Member Casey, and members of the Committee, I am Bethany Hamm, Acting Commissioner of the Maine Department of Health and Human Services. Thank you for the opportunity to testify today.

My testimony provides background information on Maine's Adult Protective Services and public guardianship program. I will also outline recent changes to Maine's probate code that relate to guardianship of adults and how we anticipate the recently enacted probate code changes will serve to protect adults under guardianship and conservatorship in Maine.

Maine DHHS is required by state law to carry out the mandates of the Adult Protective Services Act, or the APS Act. In accordance with the APS Act, Maine's program within DHHS' Office of Aging and Disability Services is specifically responsible for protecting incapacitated adults from abuse, neglect, and exploitation through thorough, investigative, protective, and supportive efforts.

When APS determines that an incapacitated adult needs a guardian or is subject to abuse, neglect, or exploitation, we will conduct a search for a suitable private guardian. If none are available, APS will petition for public guardianship. Public guardianship or conservatorship is only considered as a last resort.

If DHHS is appointed public guardian, the department files a detailed guardianship plan annually, and more frequently as necessary.

Licensed social workers who serve as guardianship representatives are assigned to maintain contact with each adult under guardianship and coordinate with service providers, medical professionals, and family and friends to ensure the health and safety of each adult under guardianship. Guardianship representatives may also seek to terminate or modify a guardianship relationship if necessary. Currently, Maine DHHS has legal guardianship and conservatorship relationships with approximately 1,300 adults. Approximately 15 percent are limited guardianship relationships.

During the most recent state legislative session, Maine enacted the Maine Uniform Probate Code, or UPC, to recodify and revise the state's probate code. While the Maine UPC maintains the same requirements for public guardianship, a number of mandates relative to private guardianship of adults in the UPC are scheduled to go into effect July 1, 2019.

The Maine UPC establishes, for the first time in the state, the private guardian's duty to report annually on the condition of the adult and account for money and other property in the guardian's possession or subject to the guardian's control. Additionally, the Maine UPC effectuates a requirement for the courts to establish a system for monitoring and reviewing each report at least annually. The court will use the guardian's report to determine if additional actions or modifications, including termination, are appropriate.

The Maine UPC also highlights the importance of exploring all options to limit or preclude the need for guardianship at the outset, including the use of technological assistance and employing supported decision-making. Similarly, the UPC language underscores the viewpoint that autonomy should be preserved as much as possible, and an adult who has a guardian or conservator must still have a seat at the table when decisions are being made.

The department anticipates that the Maine UPC's statutory requirements will substantially improve data collection on guardianship. Similarly, requiring annual reporting of all guardians will allow the courts to more effectively provide oversight and bring concerns to the attention of appropriate entities, such as APS and law enforcement. The emphasis on reviewing all less restrictive alternatives to guardianship in statute, alongside the requirement for annual review, will help to ensure that guardianship is not imposed unnecessarily and is removed if no longer needed.

Overall, the Maine Department of Health and Human Services is strongly committed to protecting the health and safety of incapacitated adults through its investigative and public guardianship functions. We believe that the UPC's revised focus on what is in the best interest of the incapacitated adult is a significant step forward to guardianship reform in Maine.

Thank you for inviting me to speak and for taking the time to focus on this significant topic.

The CHAIRMAN. Thank you very much, Commissioner.

Ms. BUCK.

STATEMENT OF KAREN C. BUCK, ESQ., EXECUTIVE DIRECTOR, SENIORLAW CENTER, PHILADELPHIA, PENNSYLVANIA

Ms. BUCK. Thank you, Senator Collins, Senator Casey, and members of this Committee. It is a real pleasure to be here on this panel with these esteemed colleagues.

As a proud public interest attorney and nonprofit leader who has advocated for older Americans for the past 21 years, I am so pleased to be able to testify today about the challenges of the guardianship system and some ideas on solutions and best practices for improvement.

SeniorLAW Center fights for justice for older Pennsylvanians. We are a nonprofit legal services organization of attorneys and advocates, celebrating our 40th year of representing older people, focusing on those in the greatest economic and social need. We envision a world that values older people, that hears their voices and guarantees their rights. This vision, I think, really captures the essence of why we are here today.

Few legal proceedings have more impact on an individual's fundamental rights and liberties than guardianship. Putting life decisions of one into the hands of another is daunting. At SeniorLAW Center, we do much to prevent the need for guardianship. Guardianship has overwhelming impact on an individual's health, safety, economic security, shelter, family, happiness, quality of life, and, yes, even, longevity. And it is ripe for abuse, neglect, and exploitation in the wrong hands. It has created situations of enormous family anguish and pain. It is at the same time an important tool

to provide for the care of our most vulnerable citizens. It is often misunderstood.

I will now highlight the major points detailed in my full statement, my full written statement.

The first is about data collection, and it is so great to hear from my colleagues here about what they are doing in other states and at the State Center. We know there is a paucity of guardianship data, much less reliable data, in Pennsylvania and elsewhere around the country. Data is essential, as we heard, to addressing the size and scope of the problem, what is working and what is not, tracking the caseload, the guardians and individuals, wards, or alleged incapacitated persons who are involved, and, most importantly, their health and safety.

In this area, Pennsylvania is making great strides. I am proud, as the Senator mentioned, to be an appointed member of the Pennsylvania Supreme Court's Elder Law Task Force and its Advisory Council on Elder Justice in the Courts, which have both spent enormous time and effort in examining guardianship and its challenges and best practices, elder abuse and neglect, and access to justice. The task force released its report with 130 recommendations in November 2014, and I cannot wait to take this new report back to the Supreme Court in Pennsylvania. I do have to add, though, that in presenting this testimony, I do so on behalf of SeniorLAW Center and myself and not on behalf of the court or its council.

We are so proud of the groundbreaking work of the court's task force and council, and of the Administrative Office of the Pennsylvania Courts, who together have created and in 2018 released a new Guardianship Tracking System, GTS, which will transform guardianship data in Pennsylvania, and we believe set a gold standard for the country. It will streamline and modernize the filing, reporting, and monitoring functions of the court in a sophisticated data base and enable courts to share information about guardians and counsel to identify red flags when abuse or exploitation may be involved, track caseloads, and both financial and personal care information, and much more. Providing accurate information to courts who are making these profound determinations about individuals will have an extraordinary impact on individual lives and freedom.

Data collection is great, but we also need other responses to abuse and exploitation of those under guardianship, and so many of the recommendations are in my written testimony, but just to point out a few.

Certainly training is an enormous issue of judges, court staff, families, the aging network, and others about the process and what rights we have under guardianship.

A Bill of Rights for both Incapacitated and Alleged Incapacitated Persons, and I know my colleague Ms. Buckley will speak about that in Nevada.

Volunteer pro bono systems who do guardianship monitoring or professional monitors, training and certification of professional guardians, and reasonable investigation into their backgrounds.

And supporting advocates and legal services to represent and advocate for individuals who are being abused and exploited or who

allege such abuse or exploitation. Legal services are an essential tool in the fight against guardianship and abuse, as are statewide senior legal helplines, which are now available in 26 states and provide free, accessible, effective, and cost-efficient legal advice, information, and representation to seniors in critical civil areas of law.

I have a number of comments on least restrictive alternatives, but in the spirit of my time, I will just end with the right to counsel and access to justice, which is the essence of the work that we do at SeniorLAW Center and has really been my professional passion. We are especially concerned about the right to counsel and representation of alleged incapacitated persons in guardianship proceedings and ensuring fair, unbiased, and zealous advocacy. In many jurisdictions across the country, including Pennsylvania, counsel is frequently not appointed, and I would submit that the scales of justice are, therefore, imbalanced. We believe individuals should participate in their hearings, be present when at all possible, and start with the presumption that they can be.

I will end by thanking you for this opportunity to participate in this important discussion. We are delighted to see the report that has been issued today, and we look forward to being involved in your next efforts to pursue justice for older Americans.

Thank you.

The CHAIRMAN. Thank you very much.

Ms. BUCKLEY.

STATEMENT OF BARBARA E. BUCKLEY, ESQ., EXECUTIVE DIRECTOR, LEGAL AID CENTER OF SOUTHERN NEVADA, LAS VEGAS, NEVADA

Ms. BUCKLEY. Thank you, Chair Collins, Ranking Member Casey, members of the Committee. For the record, my name is Barbara Buckley, and I am the executive director of Legal Aid Center of Southern Nevada. I am honored to be here today to discuss a critical issue facing our country: exploitation of the elderly and adults with disabilities in the guardianship arena.

Guardianship abuse hit many in Nevada. It destroyed the lives of countless individuals, depriving them of their liberty, their right to see their family, and their assets. Guardians were being appointed without notice, often when there was no real need for a guardian. The court bypassed family members to appoint professional guardians or others who proceeded to loot the estate and then isolate the individual from their loved ones.

All of the fees incurred by the guardian and the guardian's attorney robbed the protected person sometimes of their entire life savings, with little or no oversight. The elderly adult or adult with disability at the center of the case was often the only party without an attorney or the ability to object in court. They were left stranded without being able to express their wishes and had no one to enforce their rights.

It became clear that reforms were needed after families and protected persons, with their voices magnified by the press and others who believed in them, began coming forward about their victimization. In 2015, Nevada Supreme Court Chief Justice James Hardesty enacted a Guardianship Reform Commission which sug-

gested numerous reforms, all adopted by the Nevada Legislature and approved by our Governor. My testimony today focuses on the three most significant reforms enacted.

The first, right to counsel. The right to counsel for individuals facing or in guardianship is one of the most important recommendations emanating from Nevada. Since individuals face significant deprivation of rights and liberties, it was determined that individuals should have the same right to counsel as set forth in the landmark case of Gideon v. Wainwright. The goal of counsel is to ensure that the least restrictive alternative to guardianship is the first thing examined so as to maximize the independence and legal rights of those who are facing guardianship, to provide a voice in court proceedings, for those who want to contest a guardianship either because it is unnecessary or because the guardian is abusing their power, and to protect the due process rights of those waylaid into the system.

The commission recommended and the legislature agreed that counsel would follow a client-directed model, and that model requires the attorney to zealously advocate for the wishes of their client and not to substitute their own judgment for what they think should happen in the case.

Nevada also decided that legal aid attorneys should provide this representation. We have now become experts in the field of elder law and guardianship and share best practices amongst ourselves in Nevada.

Since the advent of this program, there is a completely different landscape in guardianship proceedings. As soon as a petition is filed, a legal aid attorney is appointed, we go visit the client where they are to learn what they want. We get their input from the very beginning. The client makes the decision whether to support or oppose the guardianship or who is being proposed to be the guardian.

We have had unscrupulous guardians removed, unnecessary actions dismissed, and our clients' assets recovered. We ended a structural imbalance that was just spoken about where the most important person in the case previously had no voice.

The second important reform, creation of a Bill of Rights for a protected person. In Nevada, like many other places, there seems to be almost a callous indifference about the rights of the individual under guardianship where their opinion did not really matter. To combat this sometimes callous treatment, we scoped all of the Bill of Rights throughout the country—Texas—we looked at different areas, rights given to individuals with mental illness and the like, and we compiled a Nevada-centric version. A person has the right to be treated with dignity, respect, be in the least restrictive environment, be represented by counsel, to not have their visitors restricted. It is a comprehensive end to the previously lack of consideration for those under guardianship.

Last, I would like to talk about our Nevada Guardianship Compliance Office. This is the third plank of the Nevada reforms. This office opened in January 2018 and provides auditing and investigative services to the district courts. They may locate a protected person who is not where they are supposed to be. They may report on the appropriateness of the guardian and the care and treatment.

They have opened 121 cases involving appropriateness of guardians and 50 audit cases just in that short time.

It is hard to describe the heartache and suffering that was going on in Nevada prior to these reforms. We are proud of the strides we have made. I would be remiss if I did not thank our then-Chief Justice, now-Justice James Hardesty, our courts, our legal aid team, our lawmakers, and our victims' families for bringing these issues to the forefront and for their solutions.

There is still a lot of work left to do in Nevada, so I want to thank you for this hearing, for your report, and all of the work that you have done on this issue. I would also like to thank our Senator Cortez Masto for her work as AG in regulating private professional guardians, bringing that issue up for the first time and all she does for our state.

I would urge this panel to continue to engage with jurists, lawmakers, and to continue your quest for reform. Our seniors and adults with disabilities deserve no less.

Thank you.

The CHAIRMAN. Thank you very much.

Commissioner Hamm, I am going to start with you. I was interested to learn of the reforms that the State of Maine has made in its probate code to better protect those who need guardians, and part of the reforms that you mentioned were regular reports, I believe, being filed annually. Could you give us some sense of what kind of information is required to be reported to the court? And what is involved in the court's review of guardianship reports?

Ms. HAMM. Certainly. Thank you, Chairman, and I just want to start off by saying Maine is extremely lucky to have you as a champion, particularly on these issues, and not just a champion in Maine but a champion across the country.

The CHAIRMAN. Thank you.

Ms. HAMM. So thank you very much for your work, and I do want to just go back to one statement that you made in your opening remarks about Maine being the oldest state in the Nation, which right now about 20 percent of our folks in Maine are 65 and older, so we have an interest in making sure that they are protected.

So Maine did adopt the Uniform Probate Code which goes into effect July 2019, so the report has generally adopted everything that was in the reporting requirements, the 13 requirements that were laid out. So those were adopted and will be followed. They will review the reports annually, as I described, and just looking here to see a little bit about what the reports will determine.

So the reports provide sufficient information to establish the guardian has complied with the guardian's duty, whether the guardianship should continue, and also whether the guardian's fees, if any, should be approved. So that is just a few examples of those.

The CHAIRMAN. Thank you.

Ms. Buckley, you talked about the reforms which were really major reforms that Nevada implemented. Were these reforms in response to specific cases that occurred? I recall from a previous hearing a particularly egregious case of one individual who had ripped off so many people who were under his care.

Ms. BUCKLEY. Thank you, Senator. Yes, the reform commission started after reports became known through the voices of victims and their families and the press, and there were just so many of them. One particular private professional guardian was particularly egregious. She was the one featured in that New Yorker article that you discussed at your last hearing. She is still in the Clark County detention center and has agreed to a plea bargain, you know, but she destroyed hundreds of lives. But it was not just her. It was other private professional guardians. It was other guardians including family members that just suffered from a lack of kind of rights and a structural imbalance.

The CHAIRMAN. And nobody overseeing them really once they are appointed, too.

Ms. BUCKLEY. None whatsoever. I mean, I recall one case where our attorney went to visit someone, and they had had a stroke, and Elder Protective Services asked us to go visit the home. And when we talked with the gentleman and asked him, "Are you happy where you are?" he just looked at us and signaled, you know, "No." We said, you know, "Would you like a change in guardian?" He had been, you know, pretty hurt by a stroke. And he squeezed our attorney's hand so tightly, and when she said, "I will represent you. I will tell the court that you need another guardian," he moved his finger to give her a thumbs up, and a tear went down his face. He had been held prisoner in this home without the ability to address the court, without the ability to escape. That is what the right to counsel began to end in Nevada.

The CHAIRMAN. It is a heart-wrenching story indeed.

Ms. Boyko, you described in your testimony the proposal for a rapid response pilot project that proposes to transform the guardianship system in the courts, and I was intrigued that part of it was that the guardian or conservator would be required to sign up with a financial monitoring company so that suspicious transactions could be identified quickly and alerts sent to the court's rapid response team. Can you tell us the current status of that pilot project?

Ms. BOYKO. Yes. Thank you, Chair Collins. That project is just about to go underway. We hope to start it at the beginning of the year. We have received funding from the Office of Victims of Crime, and although it is minimal funding to get it started in two pilot courts, we have a court in Michigan and a court in South Carolina that are going to pilot it. And we are hoping that the proof of concept will be determined to be viable and it will be able to be replicated on a national level.

The CHAIRMAN. And would the funding that is included in the Guardianship Accountability Act that Senator Casey and I have introduced be useful in expanding pilot projects like that?

Ms. BOYKO. It certainly would.

The CHAIRMAN. I knew you would answer that way.

[Laughter.]

The CHAIRMAN. But I just wanted to get it on the record so that we——

Ms. BOYKO. Yes, yes, yes. It certainly would.

The CHAIRMAN. Thank you.

Senator Casey?

Senator CASEY. That was remarkable choreography.

[Laughter.]

Senator CASEY. And we need it.

Karen, I will start with you and also maybe Ms. Boyko on this round of questions. But I wanted to start with this question of data and, more importantly, reliable data. We found in this process that even what we consider, I think most would consider basic information on guardianship is lacking. We do not know often, for example, how many people are subject to guardianship, who their guardians are. Has a guardian been thoroughly vetted? How many people are possibly being abused or exploited by a guardian? Questions to which we often do not know the answer.

Karen, I wanted to start with you on this and ask you, in light of the really limited information sometimes, we know that Pennsylvania has created the Guardianship Tracking System, a data base for guardianships that will be up and running in all 67 counties in Pennsylvania by the end of December. I guess, first, could you explain how the system would address this gap in data?

Ms. BUCK. Yes, I would be happy to, Senator. Thank you. And, again, thank you for your leadership on behalf of older Americans. We are really thrilled to have you on this Committee and as our voice in Washington.

So the Guardianship Tracking System, as I mentioned, came out of the work of the Supreme Court's Elder Justice Council and Task Force, and it was a recommendation of that initial report that was released in 2014. Similar to Nevada, our courts really took leadership in this role. And as we were working as a leadership entity through the problems of access to justice, guardianship, elder abuse and neglect, we surveyed courts. We did some recon to find out what was the status of data on guardianships in Pennsylvania, and what we found was very disheartening.

As you know, Senator, we have 67 counties in Pennsylvania. Many of our judicial and Orphans' Court branches are quite small. For example, we have one county in Pennsylvania which has one judge. He does it all. He is the president judge and the only judge. So the challenge is we recognize that there are challenges, and keeping up with the data was one of them, and having enough resources to review reports, make sure they were filed, follow up with guardians and track the data.

So the Supreme Court had recommended through its council that we develop this tracking system, and it has been a year and a half in the making. This is our profile, GTS, and if you go on the Supreme Court Council Web site, the Pennsylvania Supreme Court Web site, there is actually a video about our new tracking system.

I just wanted to mention a couple things about how it was created. This was a project of the Office of Pennsylvania Courts, and they put a whole team of IT experts on this project—five analysts, five developers, four data base administrators, and a separate migration team. It really was transformative. They are currently migrating all active guardianship caseloads into the system and working with courts and with guardians to ensure that information is as accurate as possible as it is migrated into the new system.

As you mentioned, it is new and will not be fully implemented until the end of this year. But it will really make various informa-

tion that was never available before on a statewide basis available, including the frequency of contact of guardians, the caseloads, the relationship to incapacitated persons. Ms. Buckley talked about we would like family members to be guardians of their loved ones if it is at all possible.

Criminal background checks, of course, is an issue, and next year it will become a requirement in Pennsylvania. Bond information, whether the individual is leaving the community and moving into a nursing home, and that is a big problem with guardians, as Ms. Buckley mentioned, and others—selling the house, moving that individual under their care, not where they want to be, but what might be more effective for the guardian. Sometimes it is the right decision, but we want to have that information, and, also, significant transfers of funds, so that also flashes the financial information.

There is a page in our manual—several pages which are all the flags that judges and their staff can input into the GTS, concern of loss and neglect flags. So a series of over 34 flags that judges and their court staff can input into the system to say this guardian or this case is problematic or potentially problematic, and then that information will be available to all judges who are looking at guardianships in Pennsylvania.

And then, finally, I would just say I heard the federal funding question, and this transformation of data for our courts is going to require a lot more effort to review the information, to have eyes and ears on it. So any type of additional funding for the courts and the court staff to do that important work would be much welcome in Pennsylvania.

Senator CASEY. Well, thank you very much. I know that I am over time. Let me just ask one more for Ms. Boyko, the same general question about reliable data. But I guess from more of a national perspective, what improvements to the collection of data are needed to ensure we can have consistent, reliable data from across the country on guardianships?

Ms. BOYKO. Thank you, Senator Casey, and I reiterate I do not think the issues in Pennsylvania that Ms. Buck identified are unique to Pennsylvania. I think they are reflective nationwide as far as the data picture goes.

I think the No. 1 thing that is needed is a national identification of what data elements would be beneficial for courts to collect, and then an avenue to assist courts in finding ways to collect that data. And as Ms. Buck identified in Pennsylvania, the resources needed to get to that level are essential and extensive, and any assistance to courts—because courts are very localized, it is a very individual court issue as far as the collection of data. So assisting courts at the very local level in establishing a mechanism to gather this data would be essential.

Senator CASEY. Thank you very much.

The CHAIRMAN. Thank you.

Senator Blumenthal?

Senator BLUMENTHAL. Thank you very much, Madam Chairwoman.

This topic is immensely important. Many of us in this room will encounter this situation. In Connecticut, guardianship or con-

servatorship decisions are made by a local probate court judge who is elected and need not be a lawyer. I do not know how often that occurs elsewhere in the country, but these judges are essentially beyond any oversight. And very often they have their own fiefdoms, literally their own private kingdoms. They make a ton of money.

[Applause.]

Senator BLUMENTHAL. So I gather from the applause that many of you are familiar with these situations. Maybe you have been in a sense involved in them. I hear from my constituents all the time. We are carrying on this conversation at a very high level of abstraction, but the impact on lives, real-world situations, is enormous. And I say that as a lawyer in Connecticut who has never handled a guardianship or conservatorship case, but I think we need to figure out a way to assure greater accountability in this system.

[Applause.]

Senator BLUMENTHAL. And I think we need more information. But I do not need more information to have seen some of the ways that the probate courts or the other parts of the system operate. And you can all speak for your own states. Maybe Connecticut is an outlier; maybe the rest of the system is perfect, and Connecticut is the one place in the universe where there have been these issues. But I wonder if you could comment on the quality of judging—I assume it is mostly judges who appoint these guardianships. I have always assumed it in other states as well, judges who are elected. Are they appointed? Do we know? What kind of oversight is there? I realize these are all big questions, but maybe you can give us some feedback on it. And, most importantly, what is the quality of this decision-making?

Ms. BUCKLEY. I will answer that. So, Senator, I am from Nevada, and when we started our reform journey, there were 8,000 open adult guardianship cases. After the cases were scrubbed, it was found that there was only 3,000 actually where the person had not died. There was no oversight of the financial issues or the care of the guardian. The cases were basically rubber-stamped. If a lawyer said this person needs guardianship, it was granted without even a hearing. And so the protected person did not have a voice. We had a very sad case where a neighbor came to protest that she was looking after the neighbor in her cul-de-sac, but the hearing was canceled. The private professional guardian was appointed. She moved the person out of the home, sold her lovely home, liquidated all her assets, overcharged her, and every time the neighbor looks at her former neighbor's house, it breaks her heart. That is what happens when there is no oversight.

Ms. BUCK. I might just add a comment as well, Senator. Karen Buck from Pennsylvania. I know we have a lot of family members here who have experienced a lot of anguish and pain as a result of guardianship and maybe some bad decisions. We have worked with a lot of Orphans' Court judges who are doing excellent work, and I would not make any blanket statements about any judges, and I probably would not be here complaining about judges either. We know that our judges are also elected in Pennsylvania, so there is a real challenge there.

I would say, however, that having a right to counsel, having an attorney representing the alleged incapacitated person, as well as incapacitated persons already determined to be under guardianship who may not need to any longer be under guardianship, having access to counsel to fight abuse, exploitation, and neglect to challenge what is going on in the courtroom is really an essential first step. We have been talking about the access to legal services, which I would agree with Ms. Buckley, as an independent, usually nonprofit organization, profit is not the goal of our work in legal services. So, to me, that would be one of the great recommendations that we have unbiased, independent, nonprofit attorneys helping to represent these individuals.

Ms. BOYKO. If I could just address that question, Senator Blumenthal, I am Kate Boyko from the National Center for State Courts, and the Conference of Chief Justices and the Conference of State Court Administrators are very interested in reform in the courts in the area of guardianship and conservatorship. A document referred to in my written testimony on the guardianship improvement process has been supported and resoundingly approved by the Conference of Chief Justices and the Conference of State Court Administrators, and I think that that is a step in the right direction to provide an increase in oversight and to start reform in this—or continue the reform in some areas, but in some instances start reform in this area.

Ms. HAMM. Senator, thank you for the question. In Maine, our probate judges are elected as well. Generally, I would say that they are thoughtful in their oversight or thoughtful in their decision-making. There is little oversight, as my colleague said. They are locally represented, and one thing I would say is there is a general need for more education around the guardianship issues amongst the probate judges. And I would also echo the need for more requirements around the noticing and rights to attorneys, et cetera.

Senator BLUMENTHAL. Well, I want to thank all of you. I apologize that I have gone over my time, Madam Chairwoman. And I do not mean to impugn every probate judge in Connecticut or elsewhere. There are some very fine and dedicated individuals doing this hard work. But it is an area which is largely invisible. Every other judge in our system has an appeals court, whatever it is called, above him or her, and then another appeals court, and then the United States Supreme Court eventually, theoretically. But probate court decisions are unto themselves, and I understand that the right to counsel is a protection, but if you said to the ordinary litigant, "Well, you have no right to appeal this decision, but you do get a lawyer," they would say, "That is not really good enough."

And I do not know what the solution is for us because we are up here on the dais and up here symbolically as Senators and we cannot really dictate to states how to run their justice systems. But I really appreciate all your hard work, and I appreciate the Chairwoman and Ranking Member focusing on this issue. Thank you.

The CHAIRMAN. Thank you.

Senator Gillibrand, you have been very patient.

Senator GILLIBRAND. Oh, I very much enjoy my colleagues' work and your insightfulness, so I am very grateful to be here.

Thank you all for your work. Obviously, you are all public servants and helping people who desperately need your help. Many advocates argue that there are far too many individuals in guardianship arrangements and that states need to provide better guidance to courts to use when determining when it is appropriate to subject an individual to such arrangements.

Ms. Hamm, in your written testimony, you touch on the importance of exploring all options to limit or prevent the need for a guardianship arrangement when appropriate, including the use of technological assistance and employing supportive decision-making? Can you describe in more detail some of the alternative arrangements to full guardianship? What steps can Congress take to support greater adoption of these alternatives?

And for Ms. Buck, in your testimony, you discuss the importance of education about guardianship alternatives for courts, families, and communities. How can Congress improve access to education in this area so that families facing undergoing complex guardianship proceedings are aware of all of their options before such a life-changing event?

Ms. HAMM. Thank you, Senator. Well, I think that the UPC code and the enactment in Maine is moving in the right direction around less restrictive alternatives, by way of supported decision-making approaches, identifying a team or an individual that can help somebody make those important life decisions rather than move toward full guardianship. Single-issue orders, examples of that might be medical or financial, and then limited guardianships, examples of that might be residential placement or medical or financial.

So I think that we are making progress, but my esteemed colleagues certainly represent those on the ground in the forefront and probably have some more thoughtful ideas around that.

Ms. BUCK. Yes, Senator, thank you so much for the question. The alternatives to guardianship are an enormous issue in this realm. There have been proposals from the American Bar Association that guardians—that states should require consideration of alternatives to guardianship in their guardianship statutes, to add that requirement, which I think is an important one. And you also questioned about education and training. In Pennsylvania, we are doing a lot to really energetically start that training of all judges so that they understand the full panoply of issues affecting older people, whether it is elder abuse and neglect or capacity or the aging brain, family dynamics, domestic and family violence, et cetera, and, of course, guardianship, because the issues of elder abuse and neglect are not aligned only with the guardianship field, as we know, and they do affect all aspects of the judicial system, whether it is the family court, the housing court, the orphans' court or others, landlord-tenant court, et cetera.

So in Pennsylvania, we have created bench books that we are about to release in 2019 that every judge who handles guardianship will have so that they are clearly familiar with their duties, the roles and responsibilities of guardians, the rights of individuals, and, of course, the additional alternative means to guardianship. We would very much like to see less guardianships and more alternatives to guardianship, whether it is supported decision-making,

whether it is making sure people have done all of their advance and life planning issues, done power of attorney duly executed while they have capacity, and having judges recognize the legitimacy of those documents and referring to those first.

So we are also doing lay guardianship and training programs. We are training district attorneys and others. But I think there is a lot of misunderstanding not only about guardian but the full panoply of alternatives.

If I could just go back quickly to Senator Blumenthal's question, I did want to point out that in Pennsylvania many of the judges are part and parcel of crafting the solutions. So I think they do understand in many instances that there are serious challenges in our judicial system.

Senator GILLIBRAND. Ms. Buckley or Ms. Boyko, do you have any comments you want to add?

Ms. BOYKO. One comment that I would add to promote the alternatives to guardianship, the National Center for State Courts is currently working with the American Bar Association, with funding from the Elder Justice Initiative, to provide some online training for lay persons that will speak to alternatives to guardianship in hopefully promoting people before they come to the court that they know that there are other alternatives out there.

Senator GILLIBRAND. Thank you, Madam Chairwoman. Thank you, Mr. Ranking Member.

The CHAIRMAN. Thank you very much.

Senator Cortez Masto?

Senator CORTEZ MASTO. Thank you, Madam Chair. And thank you all for being here. I apologize. I have other committee hearings going on at the same time. That seems to be a thing here. So if this question was asked, excuse me.

I want to jump back to the idea of these proposed rules and duties for attorneys as they represent those in guardianship, and maybe, Ms. Buckley, let me start with you. Describe the difference. What we are talking about here is the duties for attorneys. It is not the duties that we typically have as attorneys in our roles that we are trained in law school and the rules and responsibility and what we carry out and the oath that we take specifically. These are duties that are unique to guardianship, the special interest model for attorneys that are engaging in this. Do you see a distinction? In other words, is there training that is necessary for an attorney that is taking on one of these roles that would be different than what they normally carry out in their day-to-day functions and other representation?

Ms. BUCKLEY. Thank you, Senator, for the question. The short answer is yes and no. The longer answer is we want an attorney for someone in a guardianship arena to follow the traditional attorney-client model. The person facing guardianship has the right to have their opinion matter and direct the course of the attorney. It is not a guardian ad litem role where the attorney says kind of what I think, "Oh, I think this person is better than this person," because sometimes attorneys are not very good at that, right? They are trained in law. They are trained in how to be a lawyer. They are trained in what to do when there is a client in need. So our attorneys zealously advocate for our clients.

If they are unable to communicate with us, let us say they are in a coma, we will then represent their legal and constitutional rights; if they have done estate planning, to make sure that is honored; if they are not in the least restrictive alternative, right? That is how we operate as attorneys for protected persons.

Senator CORTEZ MASTO. And how do you ensure—so this is best practice. So better jurisdictions are going to favor best practices. How would you help them to understand, yeah, that is something that—how does that export to part of best practices?

Ms. BUCKLEY. So what we have done is we have learned from our brethren throughout the country who study these issues, there are national trainings, and for attorneys in Nevada, we have put together a manual on how to represent a protected person. We are going to be offering a pro bono program, which is what we usually do, where we represent individuals directly, and then we ask attorneys in the community to come forward so they get to see unmet legal needs, so they can add their voices to Supreme Court commissions. And so in my written testimony I have provided a link to it and would encourage all throughout the country to look at it and to add their thoughts to it, and a major shout-out to our attorney, Jim Berchtold. It is really a masterpiece and really could be a model throughout the Nation.

Senator CORTEZ MASTO. Thank you. And I know, Ms. Buck, this is an area that you have advocated as well. Is that something similar to what you have seen as well?

Ms. BUCK. Yes, absolutely. But I think Ms. Buckley makes a very important point that we want attorneys to be zealous advocates for incapacitated or allegedly incapacitated persons, not to serve as a guardian ad litem. These are not children. They are adults. I started my legal career representing abused and neglected children, and part of the education of courts and others is we need to treat seniors as adults who have rich histories and experiences and not to be infantilizing them, to really check our paternalism and ageism at the door. And I think that is a big part of what we all do who advocate for older people.

Senator CORTEZ MASTO. Right, both for seniors and people with disabilities that require the guardianships. Thank you.

Thank you, Madam Chair.

The CHAIRMAN. Thank you.

Ms. Buck, I am impressed by the work that the SeniorLAW Center Project Stop Abuse and Financial Exploitation, the SAFE program that you have, and the free legal representation that is provided to and abusive situations. What are the barriers that you have found to the successful prosecution of financial crimes?

Ms. BUCK. That is an excellent question, Senator. Thank you. Project SAFE, Stop Abuse and Financial Exploitation, is one of our most successful projects and one that is really growing and expanding enormously because of the extraordinary need of older victims who are facing so many forms of abuse, domestic violence, family violence, and the financial exploitation issues that you are all so familiar with.

We have a real challenge just keeping up with the need, but I am happy to say—it is a two-part answer, some happy, some not happy. I am happy to say that we have had really successful civil

and criminal justice partnerships with our district attorneys in Philadelphia and district attorneys around our Commonwealth. That being said, we need more resources and more attention by prosecutors to these issues of financial exploitation and other forms of elder abuse, and sometimes they do not get the attention that they need. And it is often a resources question.

In Philadelphia, we have the largest percentage of seniors of the ten largest cities in the country and one of the poorest, and we are still working with a new district attorney to develop an elder justice unit in the district attorney's office.

Another positive note is that, as you probably know, the U.S. Attorneys, the Department of Justice, have now Elder Justice Coordinations in almost every one of——

The CHAIRMAN. We pushed very hard for that.

Ms. BUCK. Yes, and we thank you. In Pennsylvania, and particularly in the Eastern District, near Philadelphia, that is going to be transformative for us, and we are working very closely with them to try to pursue additional prosecutions.

The CHAIRMAN. Thank you.

Commissioner Hamm, obviously it is important that we prosecute those who have ripped off our seniors and betrayed their trust. I have a feeling that at times when it is a family member involved, that there is a reluctance on the part of the victim to proceed with the case. But my question for you is: What more can we do in the area of prevention, of making sure that these abuses do not occur in the first place, whether the guardian is a family member, a close fried, or a professional guardian who is unconnected to the family?

Ms. HAMM. Thank you, Senator. That is an excellent question and one that I asked my team before I came here today to talk with everyone. So it is a difficult thing to tackle, for sure, and I think you can recall a situation in the State of Maine up in the Lincoln area where a family member did just what you described and was eventually prosecuted, so that was a good thing. But we are deploying things like SeniorSafe, which I know you are intimately familiar with. We partner with the Maine Council for Elder Abuse and Prevention and do regulate APS outreach in the community. We work very closely with our Legal Services for the Elderly folks. We contract with them to investigate or represent individuals who do not have representation.

So those are some of the things that we are doing and will continue to do moving forward.

The CHAIRMAN. Thank you very much.

Senator Casey?

Senator CASEY. Thank you very much.

Karen Buck, I will go back to you about the issue of background checks. I know we have talked about the right to counsel, but several of the individuals and organizations that have provided feedback to the Committee recommended that courts adopt a process for investigating backgrounds. I think that is fundamental. While this surely will not prevent all instances of abuse or exploitation, or both, it could weed out some really bad actors.

The General Assembly in Pennsylvania is considering a bill to require these background checks of prospective guardians before

being appointed, and the question I have for you is: If these checks are implemented with the proper safeguards, do you believe they could play an important role in providing additional information to the court as it considers whether to appoint a person as a guardian?

Ms. BUCK. Thank you, Senator. Yeah, the issue of criminal background checks is an important one. I am familiar with the legislation that you are referring to by Senator Haywood and others. One great stride we have been making as a result of some very egregious guardians in Philadelphia and surrounding counties who had very significant criminal convictions in other states that were not revealed by the guardianship process and were not known to the courts. As a result of that, Philadelphia has changed its rules and now currently requires criminal background checks to be part of the guardianship petition in all cases.

The Pennsylvania Supreme Court has changed its rules, and as of next June, July, criminal background checks will be required in the filing of all guardianship petitions in Pennsylvania as well.

As legal services attorneys, we think that as much information as possible is the way to go. I think the real question is: How is that information used? The judge should have all possible information at his or her disposal when they are making those decisions, and to Senator Cortez Masto's question, that is one of the areas and ways that we can prevent the appointment of bad or exploitive guardians. We do not condone blanket applications or exclusions of individuals with criminal backgrounds. It really should be a case-by-case basis on what was the criminal conviction. Is it relevant? And will it make the guardian less able to do their job? Of course, there are many that immediately should raise red flags, and that information will go into our Guardianship Tracking System as well.

Senator CASEY. The bill in the General Assembly, is it bipartisan?

Ms. BUCK. I believe so, yes.

Senator CASEY. OK. Thank you very much, Madam Chair.

The CHAIRMAN. Thank you, Senator Casey.

A vote has just started. Senator Cortez Masto, I want to give you a chance for one more question before we close out the hearing.

Senator CORTEZ MASTO. Thank you.

For Ms. Boyko, thank you for your testimony and all of the work that you are doing. Data is key. I think it is key to everything that we do. It informs us. It helps us develop best practices, identify trends, things that we need to improve upon.

Let me ask you this: Is there anything that the Federal Government can do to assist in distributing and encouraging some of these best practices that you have identified? Or what more can we do to help states address the issue of a lack of data or standardizing some of this data across the country so we can compare it?

Ms. BOYKO. Thank you for that question. I think one of the key things is encouraging collaboration. There are a lot of good ideas out there. There are a lot of states and local courts that are doing fabulous things to reform this area and improvements in data such as Pennsylvania that we have heard of today, and I think providing some type of national resource center for the clearinghouse of that information, to get that information to a variety of local courts and

local states, accompanied by resources—there is a lack of resources, but sharing information. We do not need to reinvent everything. We can use the best practices that are in place some places and just share those with other places so that courts can implement them.

Senator CORTEZ MASTO. Thank you. That was a good segue into the final recommendation, because the recommendation, one of them in there, is a national resource center, which is fantastic. So thank you.

Thank you, Madam Chair.

The CHAIRMAN. Thank you very much.

I want to thank all of our witnesses for being here today and for your enormous contributions to this debate. I have a fairly lengthy closing statement, but in the interest of our all making the vote, I am going to just put it into the record.

I do want to take this opportunity to thank the two staffers who worked the hardest on this report, Amber Talley on my staff and Kevin Barstow on the Ranking Member's staff, who were the chief authors of the report. Many other staff members also played a role, and I want to thank them as well.

I also want to indicate that Committee members have until Friday, December 7th, to submit questions for the record, so you may be receiving some additional communications from our Committee. But, again, my thank you to the witnesses today. You have really helped enhance our understanding. My hope is that states will take a hard look at the recommendations in our report and that the legislative reforms that we have proposed will be enacted as well.

Senator Casey?

Senator CASEY. I will submit a statement for the record as well.

Thank you, Madam Chair. Thank you to the witnesses.

The CHAIRMAN. Thank you. This hearing is now adjourned.

[Whereupon, at 4 o'clock p.m., the Committee was adjourned.]

APPENDIX

Prepared Witness Statements

Written Testimony to the U.S. Senate Special Committee on Aging

Cathy (Cate) G. Boyko, MPA, Senior Court Research Associate
National Center for State Courts, Williamsburg, Virginia

I. Introduction

Chair Collins, Ranking Member Casey, and Members of the Senate Special Committee on Aging, thank you for inviting me here to discuss the efforts to overhaul the guardianship and conservatorship process. Many older Americans rely upon these systems to provide for their safety and protect their financial interests when they are no longer able to do so independently. My name is Cate Boyko, and I am a Senior Court Research Associate and the Director of the Center for Elders and the Courts[1] at the National Center for State Courts ("the National Center"). The National Center is a non-profit organization with headquarters in Williamsburg, Virginia, whose mission is to promote the rule of law and to improve the administration of justice in state courts and courts around the world.

My areas of expertise include elder abuse and exploitation, and adult guardianships and conservatorships. Because terminology varies from state to state, the NCSC's Court Statistics Project uses generalized terms. Guardianships generally refers to those cases in which the court has appointed an individual to handle the medical and well-being issues of an incapacitated person, while conservatorships refer to those cases in which an individual has been appointed by the court to manage the finances of another person.

The National Center works with the highest courts of the states and territories, and their administrative offices to compile and report data across a broad range of general case types, one of which is guardianship and conservatorship. We estimate that there are approximately 1.3 million active adult guardianship or conservatorship cases. We also estimate that our state courts oversee at least $50 billion of assets under adult conservatorships nationally. Court practices tend to be highly localized and variable,

[1] See www.eldersandcourts.org

sometimes as a matter of practice and sometimes as a matter of the applicable state laws. There are, however, national standards and innovative practices that have implications throughout the United States. The issues that are most relevant for this testimony are:

- Data;
- Modernization and auditing;
- Differentiated case management strategies;
- Training and assistance for nonprofessional conservators; and
- Collaboration.

I will address each of these matters below.

II. Data

The National Center'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 is highly problematic. To determine if the quality of data had improved and to explore challenges in documenting adult conservator exploitation, the NCSC undertook a national survey of administrative offices of the courts in fall 2016.[2] The project team also collected additional information from some individual states that have been working to reform and improve 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 guardianship and conservatorship cases filed;

[2] http://www.eldersandcourts.org/~/media/Microsites/Files/cec/OVC%20Briefs/OVC-Brief-7.ashx
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.

- Total active guardianship and conservatorship cases;
- Total dollar value for conservatorship cases;
- Cases in which a conservator was removed for cause;
- Cases in which a conservator was criminally charged; and
- 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. Accordingly, these states were not able to provide further information (Kansas, Maine, Oklahoma, Rhode Island). 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. No state was able to fully report all data elements in the detail requested.

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.

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. For example, 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, even within the same state, 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.

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. Texas, Indiana and Pennsylvania have all established statewide guardianship/conservatorship registry systems to help them track and monitor these cases.

Determining the open or closed status of a case, although very basic, is an essential step in the process for court reform in guardianship and conservatorship case management and oversight. This should be the starting point for any court that cannot easily identify this status.

III. Modernization and Auditing

Most state laws require conservators to submit an initial inventory and annual accountings. Beyond those requirements, it is up to individual courts to track submissions, review accountings, and take actions when problems arise. At one end of the spectrum, some courts fail to record the receipt of annual accountings, do not follow up when conservators miss submission deadlines, and approve accountings without any examination or audit. This is in stark contrast to higher performing courts that may require electronic submission of individual transactions, schedule "show cause" hearings when conservators miss their accounting deadlines and subject each accounting to a professional audit. To date, the Minnesota Judicial Branch leads the nation in its use of modern tools to improve court oversight of conservatorships.

Minnesota is the only state that requires all conservators to use software to electronically submit transaction level data.[3] They have a centralized team of professional auditors to audit those accountings. The National Center worked with the Minnesota Judicial Branch, with funding from the State Justice Institute, on the Conservatorship Accountability Project (CAP). There are two aspects of CAP, the use of predictive analytics to develop a set of risk indicators, and technical assistance to help other states pilot similar types of software. One of the outcomes of the National Center's work is to examine whether better tools can be developed that help courts predict high risk cases for the purposes of a speedy audit and follow-up court actions to address the problem.

In this context, the National Center analyzed over 1,300 audited accountings from Minnesota. Our goal was to identify specific factors that predicted a level 4 [4]audit finding—cases in which the auditor has a "concern of loss" (8.3% of the accountings). Examples of issues that arise in level 4 cases include cash withdrawals, missing income, unauthorized purchases of high-end items, loans from the protected person's funds, fraudulent documentation, and excessive fees. In some cases, there are legitimate reasons or data entry errors that explain the transactions. In other cases, the transactions noted in the level 4 audit are part of larger efforts to exploit or steal the protected person's assets. For example, checks may have been written to family members to provide services that never transpired, or the protected person's assets were used to purchase a vehicle for the conservator. For this reason, the National Center research team focused on the subset of level 4 cases. We used a variety of sophisticated statistical tools to ultimately develop ten risk indicators that successfully predicted 80% of the level 4 audits. The indicators are a huge leap from the anecdotal information that has predominated the literature on "red flags" associated with conservatorships. For example, we found that more than 12 separate vehicle expense transactions in a year was a predictor of a level 4 finding. The ten risk indicators were

[3] See https://www.aging.senate.gov/imo/media/doc/SCA_Boyko_11_30_16.pdf
[4] See page 8 for explanation of audit levels:
https://www.aging.senate.gov/imo/media/doc/SCA_Boyko_11_30_16.pdf

programmed into the Minnesota software for the purposes of testing their validity and refining the indicators as needed.

To determine the validity of the risk indicators, the National Center analyzed 13 months of data (November 2016 to October 2017) from Minnesota. The results, unfortunately, were not as promising as we had hoped. Although the risk indicators did provide a dimension of risk between cases, Level 4 cases had more risk indicators than level 3 and level 3 more than level 2 etc., there was not a clear differentiation between level 4 cases and level 1,2, and 3 cases. Level 4 cases, concern of loss or exploitation, were not identified with a substantially higher number of risk indicators.

In the CAP project, the risk was evaluated comparing each accounting to other accountings; case A to case B to case C. The project identified that between cases, consistency and completeness of data can vary. For example, in case A income from Social Security may be entered monthly. However, in Case B, the income from Social Security is entered quarterly, and then in Case C it is entered annually. Establishing comparisons within a case, month-to-month, proved difficult based on the limited data available in this project (13 months). However, these findings led to looking for alternate ways to identify risk in conservatorship cases, such as using existing financial data analytics monitoring. The National Center has received funding for a pilot project to test the concept of the Rapid Response project.

The Rapid Response Project proposes to transform the conservatorship system in the courts[5]. With funding from the Office for Victims of Crime, the National Center will work with two courts to pilot the concept where conservators would be required to sign up with a financial monitoring company that will identify suspicious transactions based on personal financial profiles created through machine learning. The company will send alerts to the court's Rapid Response team. The team will respond to each instance and resolve the issues

[5]See http://www.eldersandcourts.org/~/media/Microsites/Files/cec/Rapid-Response-Conservatorship_060818.ashx

through education, removal of exploitative conservators, repayment of assets, and referral to investigative agencies in a very quick timeframe.

The Conservatorship Accountability Project included technical assistance to help other states adopt software similar to Minnesota. To this end, the National Center worked with 5 states—Indiana, Iowa, Nevada, New Mexico, and Texas—to develop pilot programs. Each state court's information technology division had access to Minnesota's source code for the goal of adapting the software to meet the needs of their state. This component of the project was hindered by the fact that states have different terminology, laws, business practices, and case management systems, thus creating obstacles for the implementation of the Minnesota software. Additionally, the lack of resources and competing priorities led to a halt in software development and implementation in two of the five states—Iowa and New Mexico. Texas has been the most successful of the pilots and is developing their own automated tool, based on the Minnesota model, to allow guardians and conservators to file their annual reports electronically. Indiana and Nevada continue to work on the possibility of implementing an online system.

Modernization of the process to improve oversight and efficiencies should be the goal. While funding remains the primary challenge, the potential of combining technology with predictive analytics and professional auditing is enormous. Our Center for Elders and the Courts, working with the Conference of Chief Justices and Conference of State Court Administrators, drafted the *Adult Guardianship Initiative*.[6] The Initiative envisions a national resource center that would help states report basic guardianship and conservatorship data, develop software or adapt the Rapid Response concept, and draft judicial response protocols that emphasize guardian and conservator accountability and the return of assets that have been misappropriated.

IV. Differentiated Case Management Strategies

The National Center has worked with courts nationwide to apply the concept of "differentiated case management" or DCM to a wide variety of case types. The goal of DCM is

[6] See http://eldersandcourts.org/~/media/Microsites/Files/cec/Guardianship%20Strategic%20Action%20Plan%202016.ashx.

to implement processes that lead to timely and just decisions consistent with the needs of each case and to optimize the use of court resources. For example, conservatorship petitions that are contested when filed or the subject of repeated family complaints may require additional resources and oversight than uncontested cases. Similarly, accountings that are "flagged" because they include transactions that have been empirically linked to potential exploitation deserve greater scrutiny than accountings without such transactions. DCM may be practiced formally or informally, and in the case of conservatorships, is aimed at preventing exploitation. An example of the informal use of DCM is demonstrated by the Richland County Probate Court in South Carolina, which uses some of the following tools:

- In cases in which the nominated conservator has difficulty securing a bond or has a questionable credit history and there are no other qualified candidates willing or able to serve, the judge may order the conservator to establish a restricted account, which limits or prevents conservators from withdrawing funds;
- The judge may require conservators who appear to have difficulties handling their financial responsibilities to report more frequently to the court, submit monthly bank statements, establish automatic payments to service providers, and prove that the funds were spent appropriately;
- The judge may send a special visitor or guardian ad litem to the residence to verify certain expenditures and to review specific transactions. A full audit of current and past accountings can be ordered;
- When an expenditure is considered inappropriate, the judge may require a hearing to receive testimony on the issue. If funds were misappropriated, the judge may remove the conservator, set up a repayment schedule for the conservator, and hold a conservator in contempt if warranted;
- In cases where assets were misappropriated, in addition to referring the case for prosecution in the most egregious of circumstances, the judge may take several actions to prevent further exploitation and to provide relief to the protected person. For example, the judge may freeze assets, order a deed to be voided if real estate was transferred without permission from the court and to the disadvantage

of the protected person, and order the repayment of funds if a vehicle was transferred without receiving full market value.

The DCM strategies described above are an outcome of an individual judge's leadership and commitment to this issue. But generally, the National Center has found that judges and judicial officers often handle conservatorships as part of a larger caseload and do not have background or training that would allow them to proactively and quickly respond to exploitation. For this reason, the National Center is collaborating with the National College of Probate Judges on a project to develop a guide for judges on responding to evidence of abuse, neglect or exploitation in adult guardianship and conservatorship cases.

The courts' abilities to address exploitation by conservators is the subject of great concern, and federal agencies and state courts have recently begun to grapple with the problem. In 2015, the Office for Victims of Crime entered into a cooperative agreement with the National Center to carry out a study on conservatorship exploitation and convene a national multidisciplinary forum. The National Center worked with the American Bar Association, the Virginia Tech Center for Gerontology, and the Minnesota Judicial Branch to carry out the project. The project included several research components: the collection and assessment of data, the identification of innovative programs, an analysis of judicial responses to level 4 cases in Minnesota, and an exploration of the experiences of victims of conservatorship exploitation. The national forum, which took place in March 2017, resulted in recommendations that address data issues as well as judicial monitoring practices, systemic approaches to detect exploitation, laws and practices to address and prevent further exploitation, and how to safeguard the rights and assets of individuals victimized by conservator exploitation. The final report is under review by the Office for Victims of Crime. Eight briefs created for the project are available[7] (see Appendix.) The purpose of these eight briefs is to raise awareness of issues in conservatorship cases and promote state legislation and court rules; raise awareness of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA) provisions; provide a basis for education and training

[7] http://www.eldersandcourts.org/Other-Resources.aspx

of all stakeholders; focus Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) discussions; and inform programmatic and funding initiatives at state and federal level.

V. Training and Assistance

There are three types of guardians and conservators: public, professional and family/personal. The majority of guardians and conservators are family members, who may or may not have the experience and background to serve as competent guardians and conservators. Most courts provide a basic level of instruction, usually through a written handbook or video. Conservators may also be able to find resources online, such as the free publication from the Consumer Financial Protection Bureau, *Managing Someone Else's Money: Help for Court-Appointed Guardians of Property and Conservators.*[8] The National Guardianship Association's, *The Fundamentals of Guardianship: What Every Guardian Should Know,*[9] is a great resource for guardians at minimal cost. Some courts offer in-person training sessions, usually sponsored by members of the probate bar or professional conservators. For example, the District of Columbia Superior Court's Probate Division offers monthly seminars for the public on how to prepare an inventory and offers tips on handling the finances of a vulnerable person and has recently opened a more extensive self-help center providing free legal assistance in adult guardianship and conservatorship cases.

Training opportunities tend to be offered on a court-by-court basis and depend on the resources available in the community. But this is beginning to change as more states implement training programs such as those that emerged from an innovative partnership between the North Dakota Supreme Court and the National Center. The North Dakota Supreme Court determined that one of the challenges in getting people to serve as guardians or conservators was the lack of user-friendly resources on the basic roles and responsibilities required of the position. The North Dakota-National Center partnership resulted in an interactive online course that is free and includes exercises and scenarios that require the

[8] Available at http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_guardians.pdf.
[9] https://www.americanbar.org/products/inv/book/263049081/

learner to participate in decision making that supports the interests of the protected person.[10] Minnesota[11] and Texas[12] have also partnered with the National Center to develop similar courses. These courses can be revisited as frequently as desired and are available around the clock. The courses can be easily modified as statutes or court practices change.

Currently, the National Center, through a contract with the U.S. Department of Justice's Elder Justice Initiative, is developing an online interactive course. The National Center is partnering with the American Bar Association to create and deliver *Enhancing Choice and Fulfilling Duties: National Training Resource on Decision Support and Guardianship*. The interactive course will focus on the range of decision supports, alternatives to guardianship and conservatorship, and best practices in guardianship and conservatorship. While practices vary from state to state, the National Probate Court Standards and National Guardianship Standards provide a template on best practices. Online interactive training based on adult learning instructional design, though dependent on access to the Internet, is highly accessible to the majority of the population.

VI. Collaboration

When discussing guardianship and conservatorship reform, it is imperative to mention Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS). Courts have begun to recognize that to make real change in the guardianship and conservatorship process, they need to collaborate with involved stakeholders. The National Center's High-Performance Court Framework states that courts should "engage in a vigorous campaign to organize and mobilize partners." To date 27 states and territories have created WINGS or WINGS like groups to enhance communication among state entities advance guardianship and conservatorship reform. [13]

[10] The course can be found at http://ndtraining.org/course/guardianship-training/.
[11] The course can be found at https://mng.courtlms.org/
[12] The course can be found at https://guardianship-txcourts.talentlms.com/catalog/info/id:144

[13] Alabama, Alaska, District of Columbia, Florida, Georgia, Guam, Idaho, Indiana, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Virginia.

WINGS are multidisciplinary entities for problem-solving that bring together key stakeholders to formulate and act on strategic plans. The Social Security Administration (SSA) has initiated a structured set of contacts with state WINGS groups by appointing a regional "SSA WINGS representative" for each of the 27 states. The intent is to enhance coordination between state courts with guardianship jurisdiction and the SSA representative payment program. SSA sponsors a quarterly or periodic conference call with WINGS state coordinators and SSA representatives. These calls resulted in the development by SSA of a set of judicial training slides called Social Security Representative Payees: Judicial Training Guide, which is currently in the final stages of review. SSA has indicated willingness to appoint additional regional representatives to upcoming new state WINGS under the Elder Justice Innovation Grant program.

VII. Conclusions

The National Center, other non-profit organizations, and individual states and territories are making substantial efforts to reform and improve guardianship and conservatorship processes. The Conference of Chief Justices and the Conference of State Court Administrators support these efforts and have passed a resolution urging Congress to appropriate funds for the Elder Abuse Prevention and Prosecution Act.[14] This testimony mentions some of the current and potential reforms including modernization, differentiated case management, training and collaboration.

Data. 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 persons subject to guardianship and 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.

Modernization. The guardianship and conservatorship processes can be vastly improved through modernization. Many of the tools exist or are already in development, but what is

[14] See https://www.ncsc.org/~/media/Microsites/Files/CCJ/Resolutions/08222018-Congress-Appropriate-Funds-Elder-Abuse.ashx

lacking are the resources to modernize systems on a grand scale. In terms of monitoring and holding conservators accountable, the necessary ingredients are: development of common data elements and basic case review to determine open and closed cases, use of financial monitoring analytics and rapid response teams or transaction-based accounting software (preferably integrated with court case management systems) coupled with a team of professionals auditing conservatorship accountings; and trained judges who have the tools to prevent exploitation and quickly restore assets when funds are misappropriated. Modernization is not a cheap proposition, but it will bring accountability and efficiencies to the courts and greatly enhance the protection of assets of some of our nation's most vulnerable persons.

Differentiated Case Management. Differentiated case management is a "hands on" approach that recognizes the uniqueness of each case. As such, greater scrutiny of a subset of cases can both prevent exploitation and provide an early warning system when exploitation does occur. By developing different levels of oversight based on the circumstances of the case, competent and honest conservators are not hindered by unnecessary layers of oversight, while those conservators who may have little knowledge of fiduciary practices or have less than honorable intentions are subject to additional and more frequent levels of monitoring.

Training. Technology, especially as it pertains to the development of online courses using adult learning instructional design, is a game changer that has the potential to reach millions of persons. The new technologies incorporate interactive exercises, including scenarios that require learners to make decisions and offer instant feedback as to whether those decisions were the most appropriate given the circumstances.

Collaboration. Courts have increasingly embraced collaborative approaches that introduce multidisciplinary perspectives to specific problems, such as guardianships and conservatorships. The WINGS concept continues to expand to new states and territories and is a driving force of change.

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

Testimony of Bethany Hamm
Acting Commissioner of the Maine Department of Health and Human Services,
Augusta, Maine

Before the
United States Senate
Special Committee on Aging

November 28, 2018

I. Introduction

Chairman Collins, Ranking Member Casey, and Members of the Committee, I am Bethany Hamm, Acting Commissioner of the Maine Department of Health and Human Services. Thank you for the opportunity to present testimony today regarding this important topic.

My testimony today provides background information on Maine's Adult Protective Services and public guardianship program. I also outline recent changes to Maine's probate code that relate to guardianship of adults and how Maine DHHS anticipates recently enacted probate code changes will serve to protect adults under guardianship and conservatorship in Maine.

II. Maine Adult Protective Services and Public Guardianship

Maine DHHS is required by state law to carry out the mandates of the Adult Protective Services Act (APS Act).[1] In accordance with the APS Act, Maine's Adult Protective Services program within DHHS's Office of Aging and Disability Services is specifically responsible for the following:

1) Receiving, promptly investigating, and determining the validity of reports of alleged abuse, neglect, and exploitation of incapacitated and dependent adults and the substantial risk thereof;
2) Taking appropriate action, including providing or arranging for the provision of appropriate services and making referrals to law enforcement; and
3) Petitioning for guardianship or a protective order when all less restrictive alternatives have been tried and have failed to protect the incapacitated adult.

APS regularly investigates allegations of abuse, neglect, and exploitation that are reported through a State-wide APS Intake phone line and reported through a web referral form. Certain professionals are mandated by statute to make reports to APS.[2] During an investigation, APS may determine that an incapacitated adult needs a guardian or that a private guardian is subjecting an individual under guardianship to abuse, neglect,

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[1] 22 M.R.S. ch. 958-A.
[2] 22 M.R.S. § 3477.

or exploitation. In these cases, APS will conduct a search for a suitable private guardian or, if there are no capable family or friends to take on the role, APS will petition for public guardianship. Public guardianship or conservatorship is only considered as a last resort.

Maine's Probate Code contains strict requirements related to providing notice to several parties as part of any guardianship petition. The allegedly incapacitated person, the person's spouse, parents, and adult children, any current guardian or caregiver, and an adult friend of the incapacitated person (if the person does not have family to notify) must receive notice. In any case where an allegedly incapacitated person seeks to contest a petition for guardianship, the court is required to appoint the individual with an attorney. Emergency petitions are considered by the courts only on a limited basis when an incapacitated person is at serious risk of immediate harm. Additional safeguards are built in to determine whether any issues exist with respect to whether the appointment is in the allegedly incapacitated person's best interest.

At the time DHHS is appointed public guardian for an individual, Maine's probate code requires that a guardianship plan be filed with the appropriate probate court. Each plan must include the following:

- The type of proposed living arrangement for the individual subject to guardianship;
- How the individual's financial needs will be met;
- How the individual's medical and other remedial needs will be met;
- How the individual's social needs will be met;
- A plan for the individual's continuing contact with relatives and friends; and
- A plan for the management of the individual's or protected person's estate in the case of a public conservatorship.

Thereafter, DHHS submits a report reviewing each of the guardianship plan areas on at least an annual basis (and more frequently as necessary).

Licensed social workers who serve as "guardian representatives" are assigned to maintain contact with each adult under guardianship and coordinate with service providers, medical professionals, and family and friends (if available) to ensure the health and safety of each adult under guardianship. Guardian representatives may also seek to terminate or modify a guardianship relationship if an individual no longer requires a guardian or if modification to the guardianship authority (including limitations to increase an individual's independence) would be appropriate. Currently, Maine DHHS has legal guardianship and conservatorship relationships with approximately 1,300 adults (a combination of full guardianships, limited guardianships, conservatorships only, and guardianship plus conservatorship relationships). Approximately 15 percent of the relationships are limited guardianship relationships.

III. Changes to Maine's Probate Code and Anticipated Improvements related to Adult Guardianship

During the most recent State legislative session, Maine enacted the Maine Uniform Probate Code (UPC) to recodify and revise the State's probate code. While the Maine Uniform Probate Code maintains the same requirements for public guardianship, a number of mandates relative to private guardianship of adults in the UPC are scheduled to go into effect July 1, 2019. Notable changes include the following:

1) Reporting requirements for private guardians;
2) A court-maintained system for monitoring guardianship reports; and
3) A strong focus on self-determination, supported decision making and alternative arrangements to guardianship as appropriate.

One significant provision in the Maine UPC establishes (for the first time in the State) the private guardian's duty to report annually on the condition of the adult and account for money and other property in the guardian's possession or subject to the guardian's control. The reports will contain information in thirteen areas, including actions that have been taken on behalf of the adult, the extent to which the adult has participated in decision making, whether the guardian has delegated any duties and the reasons therefore, plans for future care and support, and a recommendation as to the need for continued guardianship or any modifications to the scope of the guardianship.[3]

Concurrently, the Maine UPC effectuates a requirement for the courts to establish a system for monitoring and reviewing each report at least annually to determine:

1) Whether the report provides sufficient information to establish that the guardian has complied with the guardian's duties;
2) Whether the guardianship should continue; and
3) Whether the guardian's requested fees, if any, should be approved.

The court, in reviewing a guardian's report, may appoint a visitor to interview the guardian and the adult under guardianship or investigate any matter involving the guardianship. The court may also modify or terminate the guardianship due to a guardian's noncompliance with guardianship duties based on the information in the guardian report or lack thereof.

The Maine UPC also highlights the importance of exploring all options to limit or preclude the need for guardianship at the outset when appropriate, including the use of technological assistance and employing supported decision making. Similarly, the UPC language clearly outlines the duties of all guardians, emphasizing the duty to promote self-determination of the individual under guardianship and make decisions on behalf of the individual under guardianship that are consistent with the individual's current and prior direction, preferences, opinions, and values. Only if the individual under guardianship's beliefs are unknown or if the decision the individual would make would cause unreasonable harm, does the guardian then make decisions based on a "best interests of the adult" standard.[4] This language underscores the viewpoint that autonomy should be preserved as much as possible, and an adult who has a guardian or conservator must still have a seat at the table when decisions are being made.

The Department anticipates that the Maine UPC's statutory requirements will substantially improve data collection on guardianship centralized through the State's court system. Similarly, requiring annual reporting of all guardians will allow the courts to more effectively provide oversight and bring concerns to the attention of appropriate entities, such as APS and law enforcement. The emphasis on reviewing all less

[3] 18-C M.R.S.A. § 5-317.
[4] 18-C M.R.S.A. § 5-313.

restrictive alternatives to guardianship in statute, alongside the requirement for annual review, will help to ensure that guardianship is not imposed unnecessarily and is removed if no longer needed.

Overall, the Maine Department of Health and Human Services is strongly committed to protecting the health and safety of incapacitated adults through its investigative and public guardianship functions. We believe that the UPC's focus on limited guardianships and other protective arrangements, as appropriate; the requirements for annual review; the establishment of a system to monitor guardianships; and the clear language on promoting self-determination are significant steps in guardianship reform in Maine. Thank you for inviting me to speak today and for taking the time to focus on this significant topic.

SeniorLAW Center

Protecting the Rights of Older Pennsylvanians

Karen C. Buck, Esq., Executive Director

Testimony before the
U.S. Senate Special Committee on Aging

November 28, 2018

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As a proud public interest attorney and nonprofit leader who has advocated for older Americans for the past 21 years, I am pleased to present testimony on the challenges with the guardianship system we see and some ideas on solutions and best practices for improvement. I am a proud Pennsylvanian (with deep connections as well to the state of Maine), and share the gratitude of our staff, board, thousands of clients and supporters for the leadership Senator Collins, Senator Casey and this Committee are providing to focus attention on the most critical needs of older people in our country. We are proud to have Senator Casey represent us in Washington and on this important Committee.

SeniorLAW Center fights for justice for older Pennsylvanians and advocates for elder justice around the country with national colleagues. We are a nonprofit legal services organization of attorneys and advocates, celebrating our 40th year of providing *free* legal representation, education and advocacy on critical issues of law affecting older people, focusing on those in the greatest social and economic need. From devastating elder abuse and financial exploitation, to the complex issues of homelessness prevention, homeownership, and challenges of older tenants, to serving senior veterans, immigrants and grandparents raising grandchildren, and much more, SeniorLAW Center protects the rights of older individuals and their families, and advocates for systems which treat them with fairness, respect and compassion. Our mission is to seek justice for older people by using the power of the law, educating the community and advocating on local, state and national levels. We envision a world that values older people, hears their voices and guarantees their rights

Few legal proceedings have more impact on an individual's fundamental rights and liberties than guardianship. Putting life decisions of one into the hands of another is daunting. Few of us would choose to be in such a situation and at SeniorLAW Center, we do much to *prevent* the need for guardianship. Guardianship has overwhelming impact on an individual's health, safety, economic security, shelter, family, happiness, quality of life, and, even, longevity. And, as we have seen, is ripe for abuse, neglect and exploitation in the wrong hands. It has created situations of enormous family anguish and pain; it is at the same time an important tool to provide for the care of our most vulnerable citizens. It is often misunderstood. Today, it has become controversial. It is thus a tool that demands our attention as family members, advocates and decisionmakers. We thank you for the opportunity to provide our thoughts and insights.

We have organized our testimony in alignment with key areas of significance as relates to guardianship in our country:

1. DATA COLLECTION

We know that there is a paucity of guardianship data (and an even less amount of reliable data) in Pennsylvania and many other parts of the country. This is an excellent place to begin as data is essential to addressing the size and scope of the problem, what works and what doesn't, and even tracking the caseload, the guardians and individuals/wards/alleged incapacitated persons involved, and their health and safety.

Yet, in this area, Pennsylvania is making great strides. I am proud to be an original appointed member of the Pennsylvania Supreme Court's Elder Law Task Force and its current

Advisory Council on Elder Justice in the Courts, two bodies of diverse leaders which have spent enormous time and effort in examining guardianship and its challenges and best practices, elder abuse and neglect, and access to justice. The Task Force released a 284-page report with 130 recommendations at the conclusion of its work in November 2014. The Advisory Council on Elder Justice in the Courts takes that work forward to seek to implement and promote those recommendations. I must emphasize that in presenting this testimony, I do so on behalf of SeniorLAW Center and myself, not on behalf of the Court's Advisory Council.

We Pennsylvanians should be proud of the groundbreaking work of the Court's Task Force and Council, and of the Administrative Office of the Pennsylvania Courts (AOPC), which together have recently created and released a new Guardianship Tracking System which will do much to address the data gap in guardianship in our Commonwealth, or at least begin to do so. With 67 counties, Pennsylvania's court system, AAA, protective services and aging network systems are fragmented and guardianship processes, data collection, tracking and reporting are disparate. Support for development and implementation of data tracking is important as well as articulation of the need for such systems, including sharing information about guardians and counsel to identify "red flags" when abuse or exploitation may be involved, as well as individuals who do not need or no longer need guardians, families that are unable to access their loved ones, guardians that are handling an unreasonable number of guardianships, guardians with a history of exploiting or neglecting or abusing older or vulnerable people and/or *relevant* criminal records or convictions which may have an impact on their ability to serve as a guardian, etc. Providing accurate information to courts making these decisions, which have such an extraordinary impact on individual lives and freedom, is essential.

2. AVOIDING GUARDIANSHIP ABUSE AND EXPLOITATION

Data collection and enhanced tracking systems will also help enable courts to oversee guardianships and help respond to abuse and exploitation. We also recommend:

- enforcement of full and timely reporting by guardians on their actions and the safety and security of those in their care, and ensuring that reporting forms are comprehensive and updated, with focus on the individual's rights and well-being
- thorough and timely review of those reports by judicial or other professionals
- training of judges, court staff, families, the public, the aging network and others about the guardianship process, responsibilities of guardians, signs of abuse and exploitation, and rights of individuals subject to guardianship
- a Bill of Rights for both Incapacitated and Alleged Incapacitated Persons (drafted in PA)
- guardianship monitoring systems, whether well-trained and supervised volunteer pro bono systems (good examples in PA – Dauphin County and others) or professional paid staff
- guardianship advocates and/or visitors (well-trained and supervised, including the CASA Model of advocates proposed by our partners and officemates CARIE, the Center for Advocacy for the Rights and Interest of the Elderly)
- requiring training and certification of professional guardians and reasonable investigation into the backgrounds of all guardians before appointing them

- raising visibility about guardianship abuse and exploitation and ways to identify and avoid through partnerships of courts, legal services, advocates, families and other stakeholders
- ensuring right to counsel of both Incapacitated and Alleged Incapacitated Persons
- supporting advocates and legal services to represent and advocate for individuals who are being abused and exploited or allege such abuse or exploitation

In addition to working to *prevent* the need for guardianship through our Life Planning services, SeniorLAW Center's team of attorneys and advocates provide community education and professional training, legal information, counsel and advice through our statewide legal HelpLine, and direct legal services for senior victims of abuse and exploitation of all kinds. Senior legal services, senior legal hotlines and helplines, pro bono and law school programs, and court-based access to justice projects can all play important roles in crafting solutions to the challenges of ensuring trust and fairness in the guardianship system and proceedings.

3. GUARDIANSHIP AND LEAST RESTRICTIVE ALTERNATIVES

Monitoring and tracking guardianships, the actions of guardians and the safety, security, health and estates of those under guardianships will do much to determine whether guardianship is needed and whether it is an appropriate and necessary relationship. Funding advocates and legal services (see above) to represent and advocate for individuals who no longer need guardianship, or believe so, is fundamental. Currently there is little support for such services and those individuals likely have no or little access to their funds to pay for legal or advocacy services to help them and may also have restrictions on their ability to access help.

We further recommend required training about guardianship alternatives, including newer concepts such as supported decisionmaking, for courts, the Bar, the aging network, families and communities, and guardians, community and judicial education on the requirement to use the least restrictive alternative. Per the Recommendation of the American Bar Association, states should be encouraged to explore the specific addition of language to their guardianship statute requiring consideration of alternatives to guardianship, such as supported decisionmaking. Attorneys, advocates and aging and disability network service providers, among others, should be trained in the full panoply of alternatives to guardianship to understand them and how to pursue.

Ensuring individuals subject to guardianship -- and their families and advocates – know their rights, and are given a Bill of Rights and how to enforce them is essential to identifying those who no longer need guardianship or the form of guardianship imposed. We must continue to recognize that there are few if any other court actions that so harshly remove an individual's rights and freedoms.

4. RIGHT TO COUNSEL

In addition to those identified above, we are especially concerned about the right to counsel and representation of alleged incapacitated persons in guardianship proceedings, and ensuring fair, unbiased and zealous advocacy for individuals. Asking for and honoring their request for counsel of their choice, if feasible, is recommended.

Setting a goal that individuals participate in and are present at all hearings affecting their lives, if they are at all able to participate, is also very important, starting with a presumption that they are, vs. the opposite, and requiring evidence that the individual absolutely cannot attend, if they are excluded.

We are grateful for the opportunity to participate in this important discussion and look forward to being involved further as it evolves. SeniorLAW Center is committed to pursuing justice for older people of all walks of life through our work and through vibrant and diverse partnerships. Our elders represent our past as well as our future, where we have come from and where we are going. Surely we want justice to be there when older Americans – including our loved ones and yes, even us -- arrive.

Respectfully submitted,

KAREN C. BUCK
Executive Director

Written Testimony of Barbara E. Buckley, Esq.
Executive Director
Legal Aid Center of Southern Nevada

For

Hearing on "Abuse of Power: Exploitation of Older Adults by Guardians and Others They Trust"

United States Senate Special Committee on Aging

November 28, 2018

November 28, 2018
Senate Guardianship Testimony of Barbara Buckley

INTRODUCTION:

I am honored to be here today to discuss a critical issue facing our country: exploitation of the elderly and adults with disabilities in guardianship court proceedings. As was noted in the last hearing, a compelling article, "How the Elderly Lose Their Rights" was written about the guardianship experience in my jurisdiction. This story is a poignant account of how a "private professional guardian" destroyed the lives of countless individuals, depriving them of their liberty, their right to see their family, and their assets. Guardians were being appointed without notice, often when there was no real need for a guardian. The court bypassed family members to appoint professional guardians or others who proceeded to loot the estate and isolate the individual from their loved ones. Family members were often disparaged in court records and dismissed as unsuitable to be guardian with no credible evidence to support the claim. The guardian, with access to the purse strings, would engage in a legal battle against the vulnerable person's family members who only wanted a better outcome for their loved one. All of the legal fees incurred by the guardian were billed against the protected person's estate with little to no oversight over the accountings. Lawyers for the guardians often charged exorbitant sums, further decimating the estate. The elderly adult or adult with disability at the center of the case was often the only party without an attorney as legal counsel for them was never appointed. They were left stranded without being able to express their wishes in court and had no one to enforce their rights. Cases were open for years without reports being filed about the person or estate over which guardianship had been granted.

It became clear that reforms were needed after families and protected persons, with their voices magnified by the press and others who believed in them, began coming forward about their victimization. In 2015, Nevada Supreme Court Chief Justice James Hardesty created a Guardianship Commission to examine the guardianship system and recommend reforms. Sixteen legislative recommendations were made along with fifteen court rule recommendations and nine policy statements. My testimony today focuses on the most significant of these reforms and what other states and communities can and must do to protect the rights of the elderly and adults with disabilities in guardianship court. The three main areas of reform I will address are: the right to counsel, the protected person's Bill of Rights and other statutory reforms, and the establishment of the Guardianship Compliance Office.

THE RIGHT TO COUNSEL:

The right to counsel for individuals facing guardianship or in a guardianship action is one of the most important recommendations from the Guardianship Commission, enacted by the Nevada Legislature, and approved by our Governor. It was determined that individuals facing and under guardianship should have the same constitutional right to counsel guaranteed an indigent criminal defendant in the landmark case of Gideon v. Wainwright. The concept of a "civil Gideon" has been discussed for years, and its applicability in guardianship proceedings where

significant deprivation of rights and liberties occur quickly garnered widespread support in Nevada. The goal of counsel is:

- To ensure that the least restrictive alternative to guardianship is explored and selected before guardianship is considered so as to maximize the independence and legal rights of those who would otherwise be placed under guardianship.

- To provide a voice in court proceedings for seniors and individuals with disabilities who want to contest a guardianship, either because it is deemed unnecessary or because the guardian is abusing their power.

- To protect and represent the due process rights of seniors and individuals with disabilities who are currently saddled with an inappropriate guardian who ignores their needs, exploits them, and/or overbills them.

- To advocate for the wishes of seniors and individuals with disabilities in a guardianship action when they want to remain in their home, or, when this is not possible, live in a place of their choosing where they feel safe and comfortable.

- To stop guardians from unilaterally liquidating the property, keepsakes, and heirlooms of a person under a guardianship.

- To ensure that seniors or individuals with disabilities are fully able to communicate their wishes directly to the guardianship court and have those wishes acted upon.

- To recover the property and/or funds of an individual under guardianship through the civil law process when the assets were improperly taken by a guardian or other person.

Model of Representation:

The Commission recommended and the Legislature agreed that counsel would follow a client-directed model of representation rather than a guardian ad litem model. The client-directed model requires the attorney follow their client's direction and work to achieve the client's stated goals. If the client is unable to form a traditional attorney-client relationship, the attorney represents the client's legal and constitutional interests. Nevada decided that legal aid attorneys should provide this representation. Under this program, legal aid attorneys become experts in the field of elder law and guardianship, attend trainings, and share best practices with each other. In addition to providing top-notch representation, this process is financially prudent by providing legal representation at a fraction of the cost of a private sector attorney.

Since the advent of this program, there is a completely different landscape and culture in guardianship court. As soon as a petition is filed, legal aid is appointed to represent the person who is the subject of the guardianship action. An attorney visits the client where they live and ensures they are informed of the action and what it means to be under guardianship. The client makes the decision whether to support or oppose the guardianship, including who is appointed

guardian. If the guardianship is granted, the attorney advocates for the client's money to be placed in a blocked account. I am also pleased to say that the private professional guardian depicted in the *New Yorker* has been in jail since her arrest in March 2017 on more than 200 counts and will be sentenced shortly following a plea agreement. As a result of the reforms in guardianship court, legal aid attorneys have had unscrupulous guardians removed, unnecessary guardianship actions dismissed, and their clients' assets recovered. We ended a failing system where the most important person in the case had no voice, was ignored, and unrepresented.

In our first full year of operation since the right to counsel law, our office accepted **907 cases**, averaging 75 new cases a month. Most were new cases, but some involved problematic cases that had been open for years. Of the 146 cases closed by our office during this same time period:

- 40% were due to the guardianship case being denied/avoided meaning the initial petition filed by the proposed guardian went nowhere
- 19% of the cases we closed were due to our lawyers advocating for the guardianship to be terminated because a guardian was no longer needed
- 38% of the guardianships were terminated due to the client's death. During these cases, our attorneys advocated on behalf of their client's rights and either had the guardian changed or removed, and/or protected or recovered estate assets.
- 37% of our clients were 81 and above, 14% were 71-80, 22% were 61-70, and 27% were ages 18-60.

The most important person in any guardianship proceeding, the person facing or under guardianship, is no longer silenced by the lack of counsel.

CREATION OF A BILL OF RIGHTS FOR INDIVIDUALS FACING GUARDIANSHIP AND ADOPTION OF OTHER STATUTES PROVIDING FOR SPECIFIC PROTECTIONS FOR PROTECTED PERSONS

In Nevada, like many other places, there seemed to be a callous indifference even among caring people about the preservation of the rights and dignity of the elderly and adults with disabilities in guardianship court. There was, and still is, a sense that if someone is confused at times, they have no capacity and should not be consulted about anything, ever. A guardian acted almost God-like, deciding who could see the protected person, where they should live, and who should visit. Instead of acting as a trusted fiduciary, preserving the important ties between the protected person and their family and friends, and preserving the assets, the guardian acted as if only their opinion mattered while charging exorbitant fees against the estate.

To combat this callous treatment of protected persons, the State of Nevada adopted a Protected Person's Bill of Rights. The Bill of Rights provides:

NRS 159.328 Legislative declaration of protected persons' rights.

1. The Legislature hereby declares that, except as otherwise specifically provided by law, each proposed protected person has the right to have an attorney before a guardianship is imposed to ask the court for relief, and each protected person has the right to:

(a) Have an attorney at any time during a guardianship to ask the court for relief.

(b) Receive notice of all guardianship proceedings and all proceedings relating to a determination of capacity unless the court determines that the protected person lacks the capacity to comprehend such notice.

(c) Receive a copy of all documents filed in a guardianship proceeding.

(d) Have a family member, an interested party, a person of natural affection, an advocate for the protected person or a medical provider speak or raise any issues of concern on behalf of the protected person during a court hearing, either orally or in writing, including, without limitation, issues relating to a conflict with a guardian.

(e) Be educated about guardianships and ask questions and express concerns and complaints about a guardian and the actions of a guardian, either orally or in writing.

(f) Participate in developing a plan for his or her care, including, without limitation, managing his or her assets and personal property and determining his or her residence and the manner in which he or she will receive services.

(g) Have due consideration given to his or her current and previously stated personal desires, preferences for health care and medical treatment and religious and moral beliefs.

(h) Remain as independent as possible, including, without limitation, to have his or her preference honored regarding his or her residence and standard of living, either as expressed or demonstrated before a determination was made relating to capacity or as currently expressed, if the preference is reasonable under the circumstances.

(i) Be granted the greatest degree of freedom possible, consistent with the reasons for a guardianship, and exercise control of all aspects of his or her life that are not delegated to a guardian specifically by a court order.

(j) Engage in any activity that the court has not expressly reserved for a guardian, including, without limitation, voting, marrying or entering into a domestic partnership, traveling, working and having a driver's license.

(k) Be treated with respect and dignity.

(l) Be treated fairly by his or her guardian.

(m) Maintain privacy and confidentiality in personal matters.

(n) Receive telephone calls and personal mail and have visitors, unless his or her guardian and the court determine that particular correspondence or a particular visitor will cause harm to the protected person.

(o) Receive timely, effective and appropriate health care and medical treatment that does not violate his or her rights.

(p) Have all services provided by a guardian at a reasonable rate of compensation and have a court review any requests for payment to avoid excessive or unnecessary fees or duplicative billing.

(q) Receive prudent financial management of his or her property and regular detailed reports of financial accounting, including, without limitation, reports on any investments or trusts that are held for his or her benefit and any expenditures or fees charged to his or her estate.

(r) Receive and control his or her salary, maintain a bank account and manage his or her personal money.

(s) Ask the court to:

(1) Review the management activity of a guardian if a dispute cannot be resolved.

(2) Continually review the need for a guardianship or modify or terminate a guardianship.

(3) Replace the guardian.

(4) Enter an order restoring his or her capacity at the earliest possible time.

2. The rights of a protected person set forth in subsection 1 do not abrogate any remedies provided by law. All such rights may be addressed in a guardianship proceeding or be enforced through a private right of action.

Other Nevada reforms include a requirement that the proposed protected person be present at the hearing where the court can see and hear from them, enhanced notice requirements concerning sale of property belonging to the protected person, and statutes providing that the guardian shall not restrict the right of a protected person to communicate, visit or interact with relatives and friends.

Armed with the Bill of Rights and statutory protections, the elderly and adults with disabilities in the State of Nevada now have clear, specific rights guaranteed to them.

GUARDIANSHIP COMPLIANCE OFFICE:

The third major plank of reform in Nevada involves the creation of the State Guardianship Compliance Office which was inspired by a presentation we received from Palm Beach County, Florida. When the guardianship horrors were revealed, the Eighth Judicial District Court quickly established a hotline to report fraud and abuse. But the Guardianship Commission wanted a strong statewide office to guard against fraud and abuse. The Guardianship Compliance Office opened in January 2018 and employs one manager, two financial forensic specialists and two investigators to provide auditing and investigative services to the district courts during the administration of guardianship proceedings pursuant to Chapter 159. The types of investigations include:

- locating protected persons with whom the court has lost contact;
- pre-guardianship investigations, which provide court information on the necessity of guardianship or whether a lesser restrictive alternative to guardianship exists;
- appropriateness of the guardian;
- investigations into the treatment and care of the protected person by the guardian; and/or
- reports of alleged isolation, restrictive placement or other rights violations.

Audits of estates have been ordered for a variety of reasons, including potential misuse of estate funds by the guardian, routine review of an accounting of a large estate when the court does not have the resources to do so, and to determine, after the death of a protected person, the final disposition of the estate. Many of the issues that caused a district court judge to order an audit into an estate were resolved during or after the conclusion of the audit as the issues stemmed from the guardian's lack of education with regard to their responsibilities. Several guardians have reimbursed estates, while others received education and training related to the proper management of the protected person's estate. Since March 2018, the Guardianship Compliance Office received court orders to investigate 121 guardianships and audit 50 guardianship estates. The total value of estates audited by the Office exceeds $21,471,101.00.

The Office established a hotline that is designed to offer the public a central place to report guardianship issues in Nevada or to ask general guardianship related questions. Reports that raise significant concerns about the treatment and care of a protected person, or the management of their estate are reported to the court and if indicated, to protective services or law enforcement. In addition, the Office provides callers with resource navigation services, which provides referrals to agencies and organizations that might be able to meet their needs if the call is outside the scope of the office. Other initiatives include the development and delivery of training for guardians on their roles and responsibilities, as well as specific issues, such as how to complete an annual accounting and recognize abuse, neglect and exploitation; train for judicial officers on guardianships and lesser restrictive alternatives, such as supported decision making; as well as training for protected person's counsel on guardianship issues.

CONCLUSION:

It is hard to describe the heartache and suffering caused by the lack of oversight that existed in Nevada's guardianship system. Lives were ruined. I remember one salt-of-the-earth Nevadan speak to me about her neighbor – she was becoming frail, but the cul-de-sac was full of caring neighbors. When her neighbor was removed from her home, she went to court to protest, only to find that the hearing was cancelled because no opposition to the guardianship action was filed. When her neighbor's son tried to get guardianship, he was dismissed and demeaned. After all of her estate was looted, and her son finally got guardianship, she was too diminished to return home. Every time this kind neighbor looks at her former neighbor's house, she is saddened by what happened to her friend. This system destroyed individuals and families. It decimated their spirits and robbed them of the little time they had to spend with their loved ones. It created financial devastation to those who tried to fight the system. Those who spoke up against the dysfunctional system that had been in place for so long were branded as troublemakers trying to buck the system. Yet, it was the system that needed to be changed, not the people destroyed by it. We are proud of the strides we have made in a relatively short time with policy and statutory changes and most importantly, our work to change the culture in adult guardianship so that the focus is on the individual who is at the heart of the case. And I would be remiss if I do not cite the arduous work done by Chief Justice Hardesty, our courts, our lawmakers, and our victims' families to make these reforms happen. Our work is not done. There are still some in our system who seek to put their financial gain above the rights of our most vulnerable and who seek to erode the progress we have made. But important historic reforms were enacted and hard work has been done to improve the system for the better, in sharp contrast to the state of affairs just a few years ago.

In closing, I want to thank Senator Catherine Cortez Masto who, as Nevada Attorney General, recognized the danger of unregulated "private professional guardians" in the guardianship arena and requested legislation to regulate them. I also would like to thank her for all she does for our State and for inviting me here today. I would also like to thank this panel for the honor of allowing me to testify. In conclusion, I would urge this panel to place its considerable weight and influence behind ensuring reform happens throughout our country, through legislation, grants, and appropriations. I would urge the panel to engage with jurists, lawmakers, and stakeholders throughout the country to embrace reform. Our most vulnerable deserve a better system.

Additional Statements for the Record

Closing Statement of Senator Susan M. Collins, Chairman

I want to thank our witnesses for your contribution to this important discussion about what States are doing to better protect those placed under guardianship arrangements. Guardianship, conservatorship, and other protective arrangements are designed to protect those with diminished or lost capacity. In most situations the appointment of a guardian is necessary, and many of the individuals charged with caring for others through such arrangements provide compassionate and faithful services, enabling better outcomes for seniors, their families, and their communities.

At the same time, in this Committee's investigation over the past year, we have uncovered opportunities for improving oversight of guardianship arrangements, for the increased use of alternatives to guardianship and the restoration of rights in appropriate situations, and for the collection of more reliable and consistent data. Several States are, however, making significant progress in reforming their guardianship procedures. As we have heard today, Maine, Pennsylvania, and Nevada are real leaders in this effort, and we applaud their efforts and successes.

The report the Committee is releasing today discusses these issues and highlights some of the reforms that have been implemented, and includes recommendations for continued improvements. The Guardianship Accountability Act that Senator Casey and I introduced this morning would further support guardianship reform, providing support for many of those recommendations. This Committee remains committed to addressing the financial exploitation of older Americans by guardians, and we seek your feedback on this legislation as we look toward the 116th Congress. Working together, we can identify the best ways to protect seniors from exploitation and stop the egregious abuses of power by guardians like those in the stories we heard today.

Before I close, I'd like to thank those Members who will be leaving our Committee at the end of the 115th Congress . . . Senators: Hatch, Corker, Flake, Donnelly, and Nelson. Thank you for your service on this Committee, and you will be missed.

Closing Statement of Senator Robert P. Casey, Jr., Ranking Member

Thank you, Chairman Collins, for holding this important hearing. Thank you to our witnesses for being here today and providing valuable insight. As we have heard today, and exposed throughout the Committee's examination of the issue, there are many concerns about how the guardianship system is currently working. Instead of serving as an option of last resort, guardianship is far too often the first course of action. Older Americans and individuals with disabilities are faced with a complete loss of rights that often lasts their entire lives. For too long, we have heard horrific stories of how guardians have exploited people in their care. Once under guardianship, older Americans and individuals with disabilities are provided with little to no resources to lessen or remove a guardianship.

I was encouraged to hear about efforts that are taking place in States across the country to improve their guardianship systems. While great work has been done, it will take a sustained effort to reform the guardianship system. We must work together to ensure individuals subject to guardianship are protected and that their well-being is considered first and foremost.

I would like to thank Kevin Barstow, Rashage Green and Josh Dubensky on my staff, as well as former fellow in my office, Liz Weintraub, who helped kick off this work. I would also like to thank the staff of Senator Collins's office, for their work over the past year to bring this report together. I am thankful to Senator Collins for working with me on legislation that would improve the oversight of guardians and the collection of data. I am committed to working with her and my colleagues in the next Congress to pass this legislation. I look forward to our continued work on the issue.

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