



Disability and Abuse Project Disability and Guardianship Project

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United States Senate
Special Committee on Aging

Re: Hearing on Guardianship and Alternatives: Recommendations

Dear Committee Members and Staff:

We commend the committee for holding a hearing focused on ways to improve state guardianship systems by encouraging the use of less restrictive alternatives when they are feasible. When guardianships are necessary, Congress should encourage states to adopt monitoring mechanisms to eliminate or reduce financial exploitation and violations of personal rights.

To this end, we are offering a few concrete recommendations on what Congress can do to accomplish these goals.

We reaffirm several proposals that we submitted to the Senate Judiciary Committee's Subcommittee on the Constitution two years ago.

<https://disabilityandguardianship.org/judiciary-committee-proposals.pdf>

Funding positions for lawyers in the Disability Rights Section at Department of Justice (DOJ) who will focus exclusively on violations of the Americans with Disabilities Act by judges and attorneys in state guardianship and conservatorship proceedings. Right now, the lawyers in this section are sitting on complaints for years without taking action, probably due to under-funding.

Funding lawyers in the criminal division of the DOJ and investigators in the FBI who will focus on guardians and conservators who are violating federal criminal laws and thus making seniors and people with disabilities victims of federal crimes. Presently, federal prosecutors and investigators are ignoring these cases, probably due to under-funding.

Require that a certain percent of federal funds that are allocated to protection and advocacy agencies (like Disability Rights California) must be used to protect the rights of people with disabilities who are entangled in guardianship and conservatorship proceedings. Despite receiving tens of millions of federal

dollars to protect the rights of people with disabilities, these agencies have been doing almost nothing for this particular population.

Require that any state or local courts that receive federal funds for any purpose must require attorneys who are appointed by the court to represent protected persons in guardianship or conservatorship proceedings to attend periodic training programs on the application of the Americans With Disabilities Act and section 504 of the rehabilitation act to guardianship and conservatorship proceedings. Right now, the courts (and appointed attorneys) act as though the ADA does not apply to these proceeding, which is not true.

More than six years ago, Congress passed S.178 which was intended to protect elders from abuse and to stimulate improvements in state guardianship proceedings. Section 505 of the bill directed the Department of Justice to “publish best practices for improving guardianship proceedings.” On November 1, 2017, we wrote to Acting Assistant Attorney General John Gore to encourage the DOJ to issue a guidance memo that encourages state judicial proceedings to comply with the Americans with Disabilities Act as an essential component of “best practices.” <https://disabilityandguardianship.org/john-gore-letter.pdf> To date, the DOJ has never complied with this directive of S. 178. A DOJ guidance memo on guardianship best practices has never been issued. Congress should inquire into why the DOJ has ignored this congressional directive.

Finally, we urge the committee to propose legislation that will provide funding to the states for demonstration projects that encourage supported decision-making (SDM) as a less restrictive alternative to guardianships and conservatorships. For example, [California](#) could use federal funding for counseling on supported decision-making at the self-help centers in superior courts throughout the state as mandated by recently enacted AB 1663. Federal funding could also assist other states to emulate a pilot project in [New York](#) that helps adults with mental disabilities and their families develop safe and effective SDM arrangements.

We applaud the committee for holding this hearing, however, at the same time we wonder how long it will take for Congress to take steps not only to adopt additional remedial legislation but to ensure that reforms already adopted are in fact implemented.

Respectfully submitted:



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