



## Alternatives to Guardianship Project

Hulme Resources Inc.

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April 6, 2023

Honorable Paul C. Wilson  
Chief Justice  
Missouri Supreme Court  
207 West High Street  
Jefferson City, Missouri 65101

Sent via email:

[betsy.aubuchon@courts.mo.gov](mailto:betsy.aubuchon@courts.mo.gov)

Re: Federal Innovation Grants for Improving State Guardianship Proceedings

Dear Chief Justice:

I am writing on behalf of Alternatives to Guardianship which is funded by the Department of Mental Health on behalf of the Missouri Developmental Disabilities Council. Information about our mission and activities is found at: <http://alternativestoguardianship.com/>

The purpose of this letter is to bring to the attention of the Supreme Court existing and proposed federal initiatives to improve access to justice in adult guardianship proceedings and to promote alternatives to guardianship when feasible. We urge the Court to apply for a grant under existing guidelines and to begin creating an infrastructure that would allow the Court to seek a grant under the Guardianship Grant Flexibility Act when it is passed and becomes operative.

### Existing Grant Opportunities

A federal agency known as the Administration for Community Living has been funding [grants](#) to help states to improve the administration of justice in adult guardianship proceedings. [Improving Guardianship](#) grants can range from \$100,000 to \$1,000,000 for a three year period. We urge the Missouri Supreme Court to seek such a grant during the next funding cycle.

[Last year](#), more than \$2.6 million was awarded. The Administrative Office of Pennsylvania Courts received a grant to help the courts assure due process for incapacitated persons and to promote alternatives to guardianship. The District of Columbia Courts received a grant to help the courts improve capacity assessments, including the recruitment of social workers to assist with this process. A grant was awarded to the Supreme Court of Virginia to help the courts support alternatives to guardianship, "by capturing information which will ultimately result in individuals losing fewer rights and the ability to exercise greater self-determination." Missouri could seek a grant to develop a project with social work programs at the University of Missouri through which graduate students in social work would assist court-appointed attorneys in guardianship cases to explore and develop less restrictive alternatives, such as supported decision-making, for their clients.

Although the Legislature passed legislation in 2018 ([RSMo Section 475.075\(13\)](#)) that requires Missouri courts to consider and rule out less restrictive alternatives before ordering an adult into a guardianship, a review of hundreds of court dockets by the Alternatives to Guardianship Project

*Funded by the Missouri Developmental Disabilities Council*

indicates that this mandate is not being implemented by local courts. Consistent with our findings, the number of new guardianship petitions filed annually and the number of persons living under an order of guardianship remain relatively constant from year to year, despite the 2018 legislation. A grant could be sought by the Missouri Supreme Court to determine the extent to which local courts are implementing this law, and if not, why not.

In 2021, the judicial branch in seven states received grants (AK, MA, MD, MN, NV, NY, OR) for a variety of guardianship improvement projects. With its grant, the Maryland Court of Appeals is conducting a “comprehensive statewide assessment of the existing guardianship process and system to identify current strengths, weaknesses, concerns, and needs” Such a review is sorely needed in Missouri. Minnesota is contracting with Volunteers of America to provide training in supported decision-making to inform judges, guardians, conservators, interested parties, and court visitors. Missouri could seek a grant to do the same. Our research indicates that judges in Missouri are receiving less than adequate education on alternatives to guardianship and that court-appointed attorneys are receiving no training on this topic and lack performance standards to guide them in advocating for supported decision-making. Working with the Missouri Bar, the Supreme Court could use a grant to develop such standards and to educate court-appointed attorneys about their obligations through a mandatory training program.

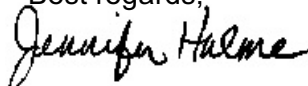
### **Guardianship Grant Flexibility Act**

A bill has been introduced by U.S. Senator Mike Braun to allow state court programs to apply for an Innovation Grant “for recruiting and training law students through clinics supervised by a licensed attorney to provide representation for respondents in guardianship cases.” Braun is the ranking member of the Senate’s Special Committee on Aging. The committee is chaired by Senator Bob Casey. This bill by Senator Braun, and a companion bill by Senator Casey were introduced following a recent hearing titled “Guardianship and Alternatives: Protection and Empowerment.” Information about these bills and this hearing is attached to this letter.

We urge the Missouri Supreme Court to begin discussions with the State Bar and law schools in Missouri to develop a mechanism that will allow a grant to be awarded to Missouri under Senator Braun’s bill when it is enacted and funds become available. Law students could assist court-appointed attorneys to advocate for less restrictive alternatives to guardianship – something that our research indicates is seldom being done in these cases. Perhaps this is so because court-appointed attorneys lack support staff to assist with this process. In Jackson County, for example, all guardianship cases are assigned to one attorney. He has an annual caseload of more than 400 clients. He has no support staff.

We would welcome an opportunity to discuss these suggestions with the State Courts Administrator, the Missouri Bar, and appropriate staff at the schools of social work and the law schools in Missouri.

Best regards,



Jennifer Hulme  
Project Director

cc: Thomas F. Coleman, Project Consultant  
United States Senator Mike Braun  
Kathy S. Lloyd, State Courts Administrator

# Casey Holds Hearing on Guardianships, Introduces Bill to Promote Alternative Options for Seniors, People with Disabilities, and their Families

MARCH 30, 2023

*There are approximately 1.3 million adult guardianships in the United States and an estimated \$50 billion in assets under guardianship arrangements*

*Casey's Guardianship Bill of Rights Act would create standards to protect the civil rights of people under guardianships and promote alternatives*

Washington, D.C. - On Thursday, March 30, U.S. Senate Special Committee on Aging Chairman Bob Casey (D-PA) held a hearing entitled, **"Guardianship and Alternatives: Protection and Empowerment."** Guardianships are legal relationships created when a court determines that a person is incapable of making important decisions on their own. The majority of people in guardianships are seniors and people with disabilities. Many need permission to see a doctor, take or refuse medication, live in their own homes, spend their own money, and even vote. They also face increased risk of abuse, neglect, and exploitation by unscrupulous guardians. The hearing examined these issues as well as alternatives to guardianship, such as supported decision-making, a less restrictive model that appoints trusted advisors—such as friends, family, or professionals—to serve people who need support making decisions, rather than having choices made on their behalf.

Chairman Casey also introduced the **Guardianship Bill of Rights Act**, which would promote alternative arrangements to guardianships and create standards that would protect the civil rights of people living under guardianships. There is currently little consistency across the country regarding the rights of people who are being considered for guardianships—this legislation would establish a federal role in advocacy and protection efforts.

**"More than a year after Britney Spears' case brought guardianships into the national spotlight, there are still countless families across the Nation fighting against exploitative or abusive guardianships with little recourse. My legislation would address the Nation's patchwork guardianship system and explore alternatives to guardianships to protect Americans' civil rights while getting them the support they need,"** said Chairman Casey.

In July 2021, Chairman Casey and U.S. Senator Elizabeth Warren (D-MA) sent a **letter** to Health and Human Services Secretary Xavier Becerra requesting information on what data efforts are in place to determine the status of guardianships across the country and what efforts the Department was making to promote alternatives to guardianships. In 2018, Chairman Casey and then-Chairman Susan Collins (R-ME) produced an Aging Committee report entitled **"Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Adults."** Its recommendations included increasing oversight of guardians, promoting alternatives to guardianships, restoring the civil rights of those living under a guardianship, and increasing data collection from the states.

In October 2021, Chairman Casey introduced the **Guardianship Accountability Act**, which would provide accountability and oversight into guardianships, promote best practices, and provide funding and training to spot abuse. He also published an **Op-Ed in BuzzFeed News** about how Britney Spears' conservatorship case helped shed light on broader issues surrounding guardianships and conservatorships for seniors and people with disabilities.

The American Bar Association (ABA) has identified incidents of fraud and exploitation by appointed guardians and lawyers charged with representing people with guardianship arrangements. Incidents of fraud include draining retirement funds of people under guardianship by their guardians, selling of assets such as homes by guardians, diverting trust funds to guardians, exorbitant fees charged by private guardians, lack of medical care for those under guardianships, and much more.

Chairman Casey invited Ryan King, a guardianship reform advocate, to testify at the hearing about his experience in a guardianship. He testified, **"I didn't like being under guardianship because I had to let the court know everything I did, like going to events, doctor appointments, and church. No one else in my family did that...[Quality Trust for Individuals with Disability] used Supportive Decision Making to show what I could do and all the people who help me. My family, my friends, and programs I am in are part of my team."**

**The Guardianship Bill of Rights Act is cosponsored by U.S. Senators John Fetterman (D-PA), Elizabeth Warren (D-MA), and Bernie Sanders (I-VT).**

Read more about the Guardianship Bill of Rights Act **here**.

# U.S. SENATOR BOB CASEY



CHAIRMAN Special Committee on Aging

## The Guardianship Bill of Rights Act

### Why do we need the Guardianship Bill for Rights Act?

While guardianship is intended to be protective for older adults and people with disabilities, it can also lead to the loss of rights, fraud, exploitation, and abuse. Within the past two months there have been numerous reports in the news media about guardianship abuses including in [Miami, Florida](#), [Boston, Massachusetts](#), [Clark County, Nevada](#), and the [tri-state area](#) around New York City. A devastating report of guardianship abuse in the October 2017 [New Yorker](#) detailed cases in multiple states where guardians took advantage of those under their charge. How widespread such abuses are around the country is difficult to determine because of the sparse data collected on guardianship arrangements. The most recent study, a 2016 GAO report, is now 7 years old. The conclusion of that report was that “the extent of elder abuse by guardians is unknown due to limited data on the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian.”

When an individual loses the capacity to make informed decisions regarding their personal and financial interests, a guardian can serve as an important ally. However, the reports of abuse and fraud have led national organizations such as the American Bar Association, the American Civil Liberties Union, and the National Council on Disability to call for increased transparency, better data collection, and protection of the rights of people being considered for guardianships or living under guardianship arrangements. A common concern voiced by these organization is that guardianship is used as the first course of action when a person needs support with financial, health, or other life decisions, instead of as a measure of last resort. Civil rights, aging, and disability advocates have been calling for national reform of guardianship. The Guardianship Bill of Rights is a means to protect the civil rights of those living under guardianship arrangements and to promote less restrictive arrangements to support people needing assistance with their daily and life decisions.

### What will the Guardianship Bill of Rights Act do?

Across the country there is little consistency regarding the rights of people being considered for or living under a guardianship arrangement. The Guardianship Bill of Rights Act would create the Guardianship and Other Protective Arrangements and Supported Decision Making Council, a national council charged with promoting less restrictive arrangements for people living under or being considered for guardianships. It would also be charged with creating recommended practices for assisting someone out of a guardianship, averting placement in a guardianship, and methods for modifying a guardianship. Currently, health care and education professionals make referrals suggesting guardianship for youth with disabilities, or social service professionals recommend guardianships for older adults. The Council would examine and make suggestions on how to interrupt this “guardianship pipeline.” Finally, the Council would be responsible for collecting data on the guardianship practices at both the national and state level.

The bill would also provide funding for state to have a protection and advocacy agency focused on the rights of people being considered for and living under a guardianship. This network of state agencies would be built upon the existing network of protection and advocacy agencies authorized by the Developmental Disabilities Act of 2000.

# Braun, Casey introduce Guardianship Grant Flexibility Act

Thursday, March 30, 2023

**WASHINGTON**—Today, U.S. Senate Special Committee on Aging Ranking Member Mike Braun and Chairman Bob Casey introduced their bipartisan *Guardianship Grant Flexibility Act* to allow Administration for Community Living (ACL) grants to be used for programs that train and recruit law students to help with the guardianship system.

“Many law student are eager to support vulnerable people in the guardianship system, which is facing attorney shortages. This legislation would allow law students to step in and help people in the guardianships while increasing awareness of guardianship proceedings.” —**Ranking Member Braun**

“Older adults and people with disabilities fighting against exploitative or abusive guardianships are being stymied by unnecessary barriers to accessing legal representation. This legislation would help prepare new lawyers to assist people who need legal services related to guardianships and similar arrangements, building out the legal system in place to fight abuse or fraud.”—**Chairman Casey**

The *Guardianship Grant Flexibility Act* would:

- **Amend the Elder Justice Act to make ACL's Elder Justice Innovation Grants for Improving Guardianship more flexible by allowing grants to be used for programs that train and recruit law students to help with the guardianship system.**
- **State courts could recruit and train law students to provide representation for respondents and to serve as guardians ad litem.**
- **Eligible programs would work through clinics supervised by a licensed attorney.**

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend title XX of the Social Security Act to expand the activities  
authorized under adult protective services demonstration grants.

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IN THE SENATE OF THE UNITED STATES

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Mr. BRAUN (for himself and Mr. CASEY) introduced the following bill; which  
was read twice and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To amend title XX of the Social Security Act to expand  
the activities authorized under adult protective services  
demonstration grants.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Guardianship Grant  
5       Flexibility Act”.

6       **SEC. 2. EXPANDING ACTIVITIES AUTHORIZED UNDER**  
7               **ADULT PROTECTIVE SERVICES DEMONSTRA-**  
8               **TION GRANTS.**

9       Section 2042(c)(2) of the Social Security Act (42  
10      U.S.C. 1397m–1(c)(2)) is amended—

1           (1) in subparagraph (E), by striking “or” at  
2     the end;

3           (2) by redesignating subparagraph (F) as sub-  
4     paragraph (G); and

5           (3) by inserting after subparagraph (E) the fol-  
6     lowing new subparagraph:

7           “(F) State court programs for recruiting  
8     and training law students through clinics super-  
9     vised by a licensed attorney to provide represen-  
10    tation for respondents in guardianship cases,  
11    and to serve as guardians ad litem; or”.