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ARTICLE

ADULT GUARDIANSHIP IN GEORGIA: ARE THE RIGHTS OF PROPOSED WARDS BEING PROTECTED? CAN WE TELL?

BY ELEANOR M. CROSBY* AND ROSE NATHAN**

I. Introduction

Laws providing for guardianship or conservatorship[1] have existed in the United States since colonial times. While guardianship varies across the states according to state law,[2] its imposition in many states typically has involved

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[1] Most states use the term "guardianship" to refer to decision-making about personal matters and the term "conservatorship" to refer to decision making for another about financial matters. Georgia law currently employs the terms "guardianship of person" and "guardianship of property" respectively. For the purposes of this article, we will use the general term "guardianship" to refer to decision-making over both person and property, unless otherwise noted.

[2] There is no national system of guardianship. Rather, each state bases its law on it's own state constitution. However, in 1997, the National Conference of Commissioners on

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the removal of all decision-making authority from individuals found to be "incompetent." However, a new consciousness and concern about guardianship, it's fit for the individual, it's legal basis, and it's administration emerged in the late 1980s.[3] This was spurred in large part by an investigation of the Associated Press, which resulted in a series of articles in 1987 that exposed widespread problems in the guardianship system in virtually every state studied. These problems included cursory evaluations by doctors not trained to assess capacity, ineffective due process protections, poor advocacy on behalf of proposed wards, and inability of overworked courts to monitor existing guardianships, among other things.[4]

National scrutiny of guardianship policies and practice by scholars and legal, health, and social service practitioners followed. This resulted in a succession of forums, studies, and recommendations aimed at improving the guardianship system. One such forum was the Wingspread conference, convened by the American Bar Association (ABA) in 1988. Experts from a variety of fields met to produce a groundbreaking set of recommendations for reforming guardianship.[5] Wingspan, a second national guardianship conference addressing reform issues in 2001, [6] produced in a second series of recommendations.[7] The recommendations from these two conferences proposed greater protection for the proposed ward's liberty interests and right to self-determination, to the extent possible that it is consistent with one's functional abilities. The recommendations also point to the need for zealous

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Uniform State Laws finalized and approved a Uniform Guardianship and Protective Procedures Act (UGGPA) to serve as a model and encourage consistency among state laws. UGGPA, 8A U.L.A. 137 (Supp. 2001). In 1988, a bill imposing some federal standards on features of state guardianship systems was introduced in Congress, but failed to pass. As a result, the standards for imposition of adult guardianship differ widely among states, as do the guardianship process and the requirements for guardians. UGGPA available at <http.// www.law.upenn.edu/bll/ulc/ugppa/ugppa97.pdf>

[3] Prior to this time, some state courts already had begun limiting the broad powers provided in their state guardianship statutes, as discussed in this article.

[4] *Guardians of the Elderly, A Failing System*, Associated Press, 1987.

[5] Commission on Mentally Disabled and Commission on Legal Problems of the Elderly, *Guardianship: An Agenda for Reform - Recommendations of the National Guardianship Symposium and Policy of the American Bar Association,* 12 A.B.A. 1989 [hereinafter *Wingspread Recommendations*].

[6] The Borchard Foundation Center on Law and Aging, the National Academy of Elder Law Attorneys, and the Stetson University College of Law were the primary sponsors of the Wingspan conference.

[7] Symposium, *Wingspan – The Second National Guardianship Conference* 31 Stetson L. Rev. 573 (2002).

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advocacy by counsel on behalf of the proposed ward.

The National Commissioners on Uniform State Laws in the Uniform Guardianship and Protective Proceedings Act (UGPPA)[8] incorporated these and other recommendations, and a majority of states revised their statutes to implement many of these recommendations. Against this backdrop, guardianship reform also began in Georgia. This article recounts Georgia's reform efforts and examines the current guardianship code and practice in light of the considerable constitutional and policy interests at stake. For the latter, we rely upon information gathered in two statewide guardianship surveys examining guardianship files from 1994 and 2000.

II. Interests at Stake and Constitutional Requirements in Guardianship

A judicial finding of incapacity and the granting of a guardianship can result in a grave deprivation of individual liberty interests, legally precluding the right to make and carry out the most basic decisions about how to live one's life. A ward "may be deprived of control over his residence, his associations, his property, his diet, and his ability to go where he or she wishes." [9] A 1987 Congressional study found guardianship "in many ways to be the most severe form of civil deprivation which can be imposed on a citizen of the United States." [10] Looked at in stark terms, "guardianship, in reality, reduces the disabled person to the status of a child".[11] In addition, a ward faces the stigma that attaches to an adjudication of "incompetence," a label courts have found individuals have a constitutionally protected interest in avoiding.[12]

When the government infringes on an individual's liberty,[13] substantive

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[8] Uniform Guardianship and Protective Procedures Act, 8A U.L.A. 137 (Supp. 2001).

[9] Bobbe Nolan, *Functional Evaluation of the Elderly in Guardianship Proceedings*. Law, Medicine, & Health Care 210, 214 (October 1984).

[10] *Abuses in Guardianship of the Elderly and Infirm: A Disgrace*, National H. R. (Comm. Print 100-639 at 13, Dec. 1987).

[11] *Hedin v. Gonzalez*, 528 N.W. 2d. 567, 572 (Iowa 1995).

[12] *Addington v Texas*, 441 U.S. 418 (1979).

[13] The use of the term "liberty" in this article is intended to encompass both the personal as well as property rights at stake in a guardianship. See *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972) (recognizing in a different context that there is no real dichotomy between personal liberties and property rights).

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and procedural due process and equal protection guarantees under the Fifth and Fourteenth Amendments to the U.S. Constitution are invoked.[14] This is also the case when the state is acting pursuant to it's *parens patriae* power. As Justice Burger stated in his concurring opinion in *O'Connor v. Donaldson,*[15] "Of course, an inevitable consequence of exercising the *parens patriae* power is that the ward's personal freedom will be substantially restrained, whether a guardian is appointed to control his property, he is placed in the custody of a private third party, or committed to an institution. Thus, however the power is implemented, due process requires that it not be invoked indiscriminately."[16]

The Eleventh Circuit has recognized the state's "inescapable duty to vouchsafe due process" where liberty is in jeopardy pursuant to a civil commitment action.[17] Although there are no controlling judicial opinions on constitutional issues under the Georgia guardianship statute, persuasive authority exists in other jurisdictions that have applied a constitutional analysis to guardianship. Some courts in those jurisdictions have found that the liberty interests at stake in guardianship are sufficiently similar to those in civil commitment, requiring comparable constitutional protections.[18] The Georgia guardianship code itself provides that persons alleged or determined to be incapacitated "shall not be deprived of any civil, political, personal or property rights without due process of law."[19]

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[14] The Georgia Constitution also guarantees due process and equal protection. Ga. Const. art. I, §1, ¶¶ 1, 2.

[15] 442 U.S. 563 (1975)

[16] *Id.* at 583.

[17] *J.L. & J.R. v. Parham*, 412 F. Supp.112, 138 (M.D. Ga., 1976), *rev 'd sub nom. Parham v. J.R.*, 442 U.S. 584 (1979).

[18] *In re Guardianship of Reyes*, 731 P.2d 130 (Ariz. Ct. App. 1986) (guardianship involves a significant loss of liberty interest similar to that present in an involuntary civil commitment for treatment of mental illness); *See also Hedin v. Gonzales*, 528 N.W.2d 567, 575 (Iowa 1995) (guardianship involves such a significant loss of liberty that . . . the ward is entitled to the full panoply of procedural due process rights comparable to those present in an involuntary civil commitment proceedings); *In re Boyer*, 636 P.2d 1085, 1092 (Utah 1981) (recognizing that although the deprivation of personal freedoms is greater in commitment cases and that differences exist in the extent of the curtailment of personal freedoms, the interests at stake in guardianship are not so different as to require a different standard of proof).

[19] Ga. Code Ann. §29-5-7(a) (2001).

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III. Protection Principles and State's Efforts to Achieve Them Through Guardianship Reform

During the last decade of reform, common principles for safeguarding the proposed ward's protected interests in guardianship have emerged. These include: (1) applying a "substantial harm" standard, which requires a showing that without the protective assistance provided by a guardian, substantial harm to the proposed ward is likely to result; (2) applying a "least restrictive alternative" standard, which requires proof that guardianship is the least restrictive alternative to offer the protection required by the proposed ward; (3) as a corollary, that any order of guardianship is narrowly tailored to grant only those powers necessary for this protection; (4) employing a functional capacity framework, which assesses and considers the proposed ward's actual limitations *and* adaptive abilities in determining both the need for a guardianship and in fashioning any order appointing a guardian; and (5) ensuring fairness in the process by providing for notice, participation by the proposed ward in the proceedings to the greatest practicable extent, and a vigorous defense, consistent with the proposed ward's wishes.

Just as many states have undertaken guardianship reform in a quest to achieve the appropriate balance between individual liberty and necessary protection of incapacitated persons, Georgia, has made and continues to make efforts both of a statutory and non-statutory nature. Statutory reforms include removing "advanced age" as a diagnostic basis for finding incapacity, prohibiting the same person from serving simultaneously as guardian *ad litem* and as attorney, and providing language aimed at promoting the ward's autonomy. Additional reforms are highlighted in the next section, followed by an examination of guardianship practice in this state, as gleaned from the statewide survey findings.

IV. Guardianship Reform Activities in Georgia

In 1992, in response to the evolving national guardianship reforms and to recent amendments to the Older Americans Act,[20] Georgia consumers, social

[20] 42 U.S.C. §3058j (b)(8)(A((2003). Addresses state leadership and advocacy in the

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service providers, judges, attorneys and others convened at an Elder Rights Forum with the purpose of designing a state elder rights plan.[21] Over 250 people in attendance identified adult guardianship as an area of particular concern. The following year, an Elder Abuse Task Force, appointed by the Lieutenant Governor, also determined that Georgia's guardianship laws needed revision.[22]

In response, in 1995, more than 200 people attended an Adult Guardianship Forum.[23] Again, participants included a broad spectrum of persons interested in adult guardianship, including probate judges, adult protective services workers, attorneys, consumers, mental health advocates and others. Recommendations from the Forum in many ways mirrored those of Wingspread, and included 1) the need for a definition of "capacity" based on a functional assessment of a proposed ward's limitations and capabilities, and 2) the need for effective advocacy to assure that where ordered, guardianships allow wards to retain rights to the greatest extent possible. The 1996 Georgia General Assembly appointed a Joint Senate and House Adult Guardianship Rewrite Study Committee to identify problems in the adult guardianship system and to make recommendations for reform. After holding public hearings about adult guardianship, the committee endorsed five recommendations.[24] The same year, the Fiduciary Law Section of the State Bar established a committee to review the entire guardianship code, and to draft specific language for submission to the General Assembly. This committee is expected to present a draft bill in 2003.

In addition to these legislative efforts, state bar groups and members of the judiciary held training events and created training materials for attorneys,

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area of adult guardianship and less restrictive alternatives.

[21] The Georgia Division of Aging Services convened this forum.

[22] The final report of the task force was issued in December of 1994 (on file with the Georgia State Senate Research Office).

[23] The State Bar Elder Law Committee, the Georgia Division of Aging Services, and the Gerontology Center and College of Law at Georgia State University convened this forum with support from the ABA Commission on Legal Problems of the Elderly and AARP.

[24] *See*, Joint Report of the Senate and House Guardianship Rewrite Study Committee, December 1997 (on file with the Senate Research Office). These recommendations included: (1) providing a functional definition of capacity; (2) modifying the emergency guardianship statute; (3) expanding the pool of authorized evaluators to include clinical nurse specialists; (4) increased training for judges, attorneys, evaluators, and guardians; and (5) changing the standard forms to encourage more limited guardianships.

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judges, petitioners and guardians.[25] From 1998-2002, annual continuing legal education programs addressed adult guardianship practice. Guidelines for attorneys representing proposed wards were also developed and widely disseminated. In 1999, the annual continuing judicial education seminar for Georgia probate judges included a program on adult guardianship.[26] Further, the Council of Probate Court Judges produced and distributed three training videos on adult guardianship, a handbook for guardians, and material for petitioners on alternatives to guardianship.

V. Studies of Guardianship Practice in Georgia: The Guardianship Surveys

In response to the Wingspread participants' acknowledgment of the need for additional information on the national status of guardianships, Georgia began statewide surveys of adult guardianship cases in 1995. The first survey, conducted in 1995, examined closed guardianship files from 1994.[27] The second survey, conducted in 2001-2002, examined files from 2000.[28]

A. Survey Design and Methodology

[25] The bar groups were the State Bar Younger Lawyers Division (YLD) Elder Law Committee and the State Bar Elder Law Section.

[26] The Elder Law Committee partnered with the Georgia Institute on Continuing Judicial Education to present this program.

[27] The State Bar YLD Elder Law Committee conducted the first survey, with funding from the ABA Commission on Legal Problems of the Elderly and the American Association of Retired Persons.

[28] The State Bar Elder Law Committee conducted this survey with funding from the Borchard Foundation Center on Law and Aging. Objectives of the first survey were to: (1) obtain information on the status of guardianship practice in Georgia, including the characteristics of persons involved in the guardianship process; (2) determine how the guardianship process operates within the context of the constitutional and policy issues discussed in this article; and (3) determine how to best target education and other interventions. Objectives of the second survey were to (1) obtain updated information on the operation of the guardianship system following the intervening training, materials development and dissemination, and other interventions since the time of the first survey; and (2) from this, obtain evidence on areas ripe for legislative reform as well as for additional non-legislative measures.

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Graduate and law students, social workers, and lawyers reviewed a representative sample of closed guardianship cases throughout the state and interviewed judges in the counties surveyed. In each survey, surveyors reviewed approximately 500 randomly selected files (out of a total of approximately 3000 estimated yearly adult guardianship cases statewide) in nineteen randomly selected counties, which included both large urban and smaller rural areas. The survey questionnaire consisted of eighty-six questions that tracked the statutory process. The methodology for randomly selecting both the counties and the files for the surveys is described in greater detail in Annex A.

There are some limitations of the surveys. First, the surveys consisted of a review of material in closed case files. Since no transcripts are maintained, information about the nature of the proceeding, testimony of witnesses, and similar matters that can shed light on guardianship practice may not have been included in the case file. [29] Unless information was noted in the file, it was not captured by the survey even though it may have been relevant to the outcome of a particular case. However, because much of the information sought by the surveys relates to constitutional requirements and important policy considerations, one might expect some information on the fulfillment of these in at least one of the records in the file.

Second, surveyor interpretation of file information was required, although surveyors received training and instruction prior to reviewing the files. [30] Finally, the closed file review did not capture court-specific practices that might explain some of the findings. Through interviews, some probate judges revealed that they employ a variety of practices that may affect the number of adult guardianship cases filed, as well as their disposition. For example, one judge routinely engages in an informal pre-filing conference, to screen out cases in which guardianship is not appropriate. Another judge employs a "probate ombudsman" to assist families and participants in all aspects of a case. Judges in the smaller, less populated counties may have a less formal approach since they may know many of the participants personally.

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[29] Although Georgia law requires that adult guardianship hearings be recorded electronically, these recordings are not routinely transcribed due to the costs involved. Thus, the files surveyed typically consisted of the petition, return of service, order of evaluation, evaluation report, any responsive pleadings that were filed, and the final order.

[30] Additionally, some questions were not answered in the survey of 1994 cases. This could mean that the surveyor could not determine the answer from the file or that the surveyor neglected to mark the answer.

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VI. Demographic Information from the Surveys

These surveys represent the first time that extensive data on adult guardianship cases in Georgia have been collected. While the Administrative Office of the Courts collects and maintains data on the number and types of cases reported by Georgia courts, including probate court data, many counties do not routinely report case information. Of those that report regularly, recorded information concerns numbers of cases and case types. Guardianship cases are reported in the aggregate, without information on whether the case involves adult or juvenile guardianship, or whether it is an initial filing, emergency case, termination, or modification of a current order. For this reason, little was known, until now, about the adults currently under guardianship in Georgia, i.e., who petitions for guardianship, who represents the proposed ward, and how the case progresses. These data can serve not only as a baseline against which future demographic shifts can be measured, but also can provide information regarding the current operation of the system in Georgia.

A. Data on the Petitioner

Data on the petitioner were virtually identical in the 1994 and 2000 files. Approximately 36% of petitioners were the children of the proposed ward and 9% were spouses. In both surveys, approximately 80% of the petitions were filed by a family member. Adult Protective Services was the petitioner in 10% of cases, while nursing homes and hospitals petitioned in only 5% of the cases. Researchers had anticipated that the number of hospital-filed petitions might decrease due to the passage of the Temporary Health Care Placement Decision-Maker For An Adult Act in 1999, which provides for an abbreviated procedure enabling a hospital to transfer a patient who is stable, but unable to consent, to (and who has no family to authorize) transfer to an alternative placement such as a nursing home.[31] However, this appears to have had no impact on the number of cases involving a hospital as petitioner. Likewise,

[31] GA. Code Ann. §31-36A-1 (2001).

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the number of cases involving two petitioners, as opposed to a sole petitioner supported by a medical affidavit, remained at approximately 60-65%. The additional time and expense involved in obtaining the affidavit may lead more petitioners to include a second petitioner rather than using the medical affidavit. In any event, inclusion of the medical affidavit had no discernible impact on whether the petition moved forward, as virtually all petitions filed went forward.

B. Data on the Proposed Ward

In 1994, 75% of cases concerned a proposed ward who was sixty years of age or older and in 2000, 70% concerned a proposed ward who was at least sixty years old. The gender distribution was virtually identical between the two surveys, with 60% of proposed wards being female and 40% of proposed wards being male. In both surveys, proposed wards that were male tended to be younger than those who were female.

The location of the proposed ward noted in the petition was quite similar between the two surveys, with approximately 20% residing in a nursing home, 20% living in a private home with others, and 20% in a hospital. There was an increase in the number of proposed wards residing in personal care homes. In 1994, this category represented 5% of cases and in 2000 it had doubled to 10% of cases. One notable difference between the findings of the two surveys concerns the number of proposed wards living in a private home alone when the petition was filed. In the 1995 survey, this category constituted only 8% of cases while in the 2001-2002 survey, this figure was 19%, more than double that which was reported in the first survey. Researchers expected this number to be higher in both surveys, anticipating that people living alone might need guardianship more than those who are receiving some assistance through living arrangements with relatives or in institutional settings.

Information on whether the person received supportive services, such as home delivered meals or in-home health services, under Medicare or a Medicaid waiver would not necessarily be noted in the case file. However, a thorough evaluation through the court-ordered process should contain this information. Also, the fact that such a large number of proposed wards are in a protective or safe living arrangement could suggest that a greater use of limited guardianships might be appropriate.

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VII. The Georgia Guardianship Code and Its Application: Findings from the Surveys

This section examines the survey findings in light of common principles that have emerged from state statutory reforms, judicial interpretations of civil commitment and guardianship laws, and commentaries and recommendations on guardianship. For each principle, we begin with a discussion of the public policy and constitutional issues, continue with highlights of statutory provisions in other states, and end with an analysis of the guardianship law and practice in Georgia.

A. Requirement of Substantial Harm to the Proposed Ward in the Absence of a Guardianship

1. Public Policy and Constitutional Issues

As a threshold constitutional matter in civil commitment cases, "probable dangerousness to oneself or others" must be proven before a person may be involuntarily committed.[32] "Loss of liberty calls for a showing that the individual suffers from something more than in demonstrated by idiosyncratic behavior."[33] Reasoning that guardianship is similar to civil commitment in terms of the jeopardy to liberty, some state courts have adopted a standard of "substantial harm" in the guardianship context. In the analyses, these courts have found guardianship statutes that do not apply a "danger or substantial harm" standard to be vague and overbroad.

For example, in *In Re Boyer*,[34] Utah's guardianship statute authorized appointment of a guardian over an incapacitated person, defined as one "who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions. . ." [35] The court found the

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[32] *Addington*, 441 U.S. at 427.
[33] *Id.*
[34] 636 P.2d 1085 (Utah 1981).
[35] *Id.* at 1087.

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breadth and imprecision of the incompetency standard to be too subjective because it allowed the appointment of a guardian over a person who possessed sufficient capacity to make personal management decisions without any threat of injury.[36]

To save the statute, the court interpreted an "inability to make responsible decisions" to mean "that the proposed ward's decision-making process is so impaired that he is unable to care for his personal safety or unable to attend to and provide for such necessities as food, shelter, clothing, and medical care without which physical injury or illness may occur." [37] The court in *Hedin v. Gonzalez*[38] followed the *Boyer* court's reasoning and made a similar finding based on the Iowa statute. That statute authorized the appointment of a guardian when "by reason of mental, physical or other incapacity [the proposed ward] is unable to make or carry out important decisions concerning the proposed ward's person or affairs. . ." [39] According to the court, a finding of the ward's inability to care for him or herself, with resulting harm, was necessary to save the statute. Since the statutory language was so subjective, the court found a potential for arbitrary and non-uniform evaluation of what is decided by the proposed ward, rather than whether the decision was the product of reasoned decision-making.

2. Statutory Provisions in Other States

Presently, guardianship statutes in approximately one-half of the states impose a "substantial harm" standard. For example, under the Florida statute, an incapacitated person is one who lacks capacity to manage at least some of the property and meet at least some of the essential elements of health and safety by taking those actions necessary for health, safety, food shelter, clothing, personal hygiene or other care, without which serious and imminent physical injury or illness is more likely than not to occur.[40] The Idaho code defines "incapacity" to include a requirement that the proposed ward has suffered, is suffering, or is likely to suffer substantial harm due to an inability to provide for personal needs for food, clothing, shelter, health care or safety, or an inability to manage his or her property or financial affairs. The Idaho

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[36] *Id.* at 1088.
[37] *Id.* at 1089.
[38] 528 N.W.2d 567 (Iowa 1995).
[39] *Id.* at 575.
[40] Fla. Stat. Ann. §744.102(10)(b) (West 1997).

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code further requires that the determination of incapacity be based on acts or occurrences within twelve months of filing the petition. The acts or occurrences cannot be mere isolated instances of simple negligence, improvidence, lack of resources, or other acts or occurrences that are the products of informed judgment.[41]

The cases and statutes highlighted above demonstrate courts' and legislatures' attempts to ameliorate the potential of subjective decision-making that is often present in guardianship. Thus, adoption of a threshold standard of "substantial harm" has been determined in these jurisdictions to be the first step in protecting the proposed ward's right to liberty and self-determination.

3. Examination and Application of the Georgia Statute

The Georgia statute's definition of "incapacity" is almost identical to that of the Utah statute and very similar to the Iowa statute, even though the courts in those jurisdictions found these statutes to be vague and overbroad. The Georgia code authorizes the appointment of a guardian over the person of adults "who are incapacitated by reason of mental illness, mental retardation, mental disability, physical illness or disability, chronic use of drugs or alcohol, or other cause, to the extent that such adults lack sufficient understanding or capacity to make significant responsible decisions concerning their persons or to the extent that they are incapable of communicating [such decisions]." [42] Authorization of guardianship over property follows a parallel scheme, with the added criterion that the appointment of a guardian is necessary because the property will be wasted or dissipated without proper management, or because the property is needed for the support, care, or well being of the proposed ward or others entitled to his or her support.[43]

A major problem with the definition of incapacity in the Georgia code (sa with the previous codes in Utah and Iowa) is that it turns on a diagnosis or condition of the proposed ward. Thus, it fails to tie the condition to how it

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[41] Idaho Code §15-5-101(a)(1)-(3) (Supp. 2001); *See also*, N.H. Rev. Stat. Ann. §464-A:2(VII) & (XI) (1992 & Supp. 2001) (functional limitations resulting from the proposed ward's incapacity defined similarly, requiring at least one act or occurrences to have occurred within 20 days of filing the petition).

[42] Ga. Code Ann. §29-5-1(a)(1) (2001).

[43] Ga. Code Ann. §29-5-1(a)(2) (2001).

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affects the proposed ward's functional ability to provide for his or her necessities and safety. Also, "significant responsible decisions" is not defined or connected with the ability to provide for necessities or safety, such that substantial harm is likely to result from the proposed ward's inability to make or communicate these decisions. Waste or dissipation of the estate is not defined in terms of depleting resources required to provide for necessities. Due to these omissions, the Georgia statute could be found to be vague and overbroad, following persuasive authority in other jurisdictions.

The guardianship forms do not encourage application of this constitutional principle. The petition form merely asks the petitioner to provide a diagnostic reason, selecting from a list provided (mental illness, mental retardation, mental disability, chronic use of alcohol or drugs, etc.). It then asks for facts to support the claim of incapacity and the type of and any limits on the duration of the guardianship.[44] There is no specific direction to the petitioner, or to the court-ordered evaluator, about providing evidence on or assessing the proposed ward's ability to care for his or her personal safety and attend to such necessities as food, shelter, clothing, and medical care.[45]

On the other hand, the petitioner in an emergency guardianship must allege that the proposed ward is "gravely incapacitated." Facts that establish an immediate, clear and substantial risk of death or serious injury, illness, or disease in the absence of the appointment of a guardian over the person also must be set forth. For an emergency guardian over the property, the petition must allege an immediate, substantial risk of irreparable waste or dissipation of the estate.[46] In emergency cases, therefore, a clear danger standard is imposed, at least for guardianship over the person. [47]

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[44] Ga. Code Ann. Sec. 29-5-6 (a)(2)(D) & (E) (2001).

[45] Ga. Code Ann. §29-5-8(a)(3) (2001). The petition for guardianship in both emergency and non-emergency cases must be accompanied by the affidavits of two persons attesting to the need for a guardianship or an affidavit by a physician or psychologist who has determined that the proposed ward is incapacitated to manage his or her person and/or property according to the statutory definitions of incapacity. In an emergency guardianship, although the petitioner must allege facts supporting a claim of imminent danger, the evaluator is not provided with any direction for evaluating the alleged emergency nature of the situation.

[46] Ga. Code Ann. §29-5-8(a) – (c)(2001). The petitioner in an emergency guardianship also may set out facts supporting the appointment of a limited or permanent guardianship after the emergency guardianship terminates.

[47] The Code fails to define a standard for the determination that the ward is gravely incapacitated, however. In an emergency case, the court is directed by Ga. Code Ann. §29-5-8 (c.1) & (d) to determine if there is probable cause to order an evaluation or dismiss the

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The survey questionnaire asked surveyors to examine the facts alleged in the petitions and evaluation reports to support the claims of incapacity. Surveyors found that 18% of the 1994 petitions contained facts to support a conclusion that a threat to safety, or risk of substantial harm, existed. In the 2000 files, that figure rose to 37%. Eighteen percent of evaluator reports in 1994 and 25% of reports in 2000 contained facts to support a conclusion that a proposed ward faced a threat to safety. In emergency cases,[48] 80% of petitions alleged facts supporting a finding that an imminent threat to health or safety existed in the 1994 files. In the 2000 files, 88% of petitions contained facts supporting the emergency allegations.[49]

In the 1994 and 2000 files, surveyors found the most commonly alleged facts supported a conclusion that the proposed ward was unable to manage funds, cited in 32% of the 1994 cases and in 40% of the 2000 cases. The other commonly listed allegations included need for consent to treatment (7% of cases in 1994 and 18% in 2000) and financial abuse (6% of cases in 1994 and 10% in 2000). The figures above include cases where there was support for a conclusion of threat to safety or substantial harm, and included in these are cases in which the need for consent to treatment and financial abuse were alleged. [50]

It cannot be confirmed from the survey findings that the threshold "substantial harm" standard largely is being met in practice because there is no evidence of this in the records. However, in emergency cases, where there is a specific statutory requirement for a showing of imminent, clear, and substantial risk of death or serious injury or illness, along with forms that solicit information on this, the proportion of cases in which the record reflects the substantial harm standard to have been met is significantly greater, at

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petition hearing based on the allegations in the petition related to the immediate, clear and substantial risk of death, illness, injury or irreparable dissipation of the estate. Ga. Code Ann. §29-5-8 (d)(6)(e)(1)(A) also requires the court to conduct a hearing, in the event the evaluation supports a finding of probable cause of grave incapacity, to determine if the proposed ward is gravely incapacitated and in need of an emergency guardian.

[48] In 1994, 25% of files reviewed were emergency petitions. In 2000, 35% were emergency petitions.

[49] The survey questionnaire did not seek information on facts supporting an emergency finding in evaluator reports in emergency case files.

[50] In interpreting the data, allegations of financial abuse and need for consent to treatment were considered as facts giving rise to a threat of substantial harm. However, a mere allegation of inability to manage funds, without some accompanying indication that this inability was likely to prevent the proposed ward from being able to provide for his or her necessities or safety, or that of his or her dependents, was not.

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more than 80%.

B. Requirement that Guardianship be the "Least Restrictive Alternative" and that the Order be "Narrowly Tailored"

1. Public Policy and Constitutional Issues

A legitimate and substantial governmental purpose "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." [51] The Eleventh Circuit Court of Appeals applied this principle to find that Alabama's jail detention of persons awaiting involuntary commitment proceedings violated substantive and procedural due process rights.[52] Similarly, the District Court for the Middle District of Georgia found involuntary hospitalization to be unauthorized if optimal treatment of a mentally disabled person could be provided in a group home.[53] Given the liberty interests involved in guardianship and the similarity in civil commitment cases, it follows that the appointment of a guardian should be the alternative of last resort. It should be imposed only when there is no less restrictive alternative to protect the proposed ward from substantial harm.

The UGPPA and the National Probate Court Standards, both of which require a finding that there is no less restrictive alternative prior to the entry of a guardianship order, have embraced this concept.[54] Among the Wingspan recommendations is one that "statutes require that guardianship petitions include a review of alternatives and a statement as to why none are appropriate."[55] A commentator on guardianship suggests that the first inquiry should be whether the individual facing guardianship actually requires assistance. If the individual does not have many assets or any medical problems requiring attention, protective assistance may not be necessary.[56] If

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[51] *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

[52] *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir.1984) (applying the *Shelton* least restrictive alternative doctrine to the facts before it).

[53] *J.L. & J.R. v. Parham*, 412 F. Supp. 112, 138-40 (M.D. Ga. 1976), *rev'd sub nom. Parham v. J.R.*, 442 U.S. 584 (1979).

[54] UGGPA §311(a)(1)(B) (1997); Nat'l Prob. J. J., *Standards, National Probate Court Standards* 3.3.10, Less Intrusive Alternatives available at http://www.ncpi.org/standard.html .

[55] Symposium (Recommendation 20), *supra* note 7, at 599.

[56] Sheryl Dicker, *Guardianship: Overcoming the Last Hurdle to Civil Rights for the Mentally Disabled*, 4 U. Ark. Little Rock L.J. 485, 507 (1981).

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specific needs do exist, interested family, friends, or governmental agencies should be called upon to explore options to address them.[57] If these needs can be met through the provision of services that the proposed ward will accept, there is a less restrictive alternative to guardianship.

An equally important application of the least restrictive alternative principle is that the powers granted to the guardian must be narrowly tailored to the specific needs of the ward.[58] "Logic makes a compelling case for limiting the deprivation of rights through a tailored guardianship order that matches the particular disabilities of the individual rather than the wholesale removal of rights through plenary orders." [59] UGPPA provides that protected persons should have personal liberties and prerogatives restricted only to the extent necessary under the circumstances, instructing courts to look for a least restrictive protection approach.[60] It further provides that the petition should set forth whether a full or limited guardianship is being sought.[61]

Wingspread participants recommended that there should be a presumption in favor of limited guardianship in all cases.[62] Wingspan participants further recommended the development of procedures to accommodate the need for single transactions,[63] the adoption of statutory forms to enable courts to fashion appropriate limited orders, and the requirement of proof in an order establishing a full guardianship to demonstrate why the guardianship should be plenary instead of limited.[64] Similar requirements are found in many states' statutes.

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[57] *Id.* at 507. Dicker's analysis echoes the sentiment expressed by the Supreme Court in *O' Connor v. Donaldson,* 42 U.S. 563, 574 (holding that a state cannot constitutionally confine a non-dangerous individual who is capable of surviving safely in freedom by himself or *with the help of willing and responsible family members or friends*) (*emphasis added*).

[58] *See, e.g., In Re Boyer*, 636 P.2d 1085, 1091 (Utah 1981) (Prior to the Utah statute's amendment, the appeals court in *Boyer* saved the statue by construing it to require tailoring the guardian's powers to the specific needs of the proposed ward. Although the statute granted the same powers to a guardian over an adult as those granted to a parent of an unemancipated minor, the Court required consideration of the interest of the ward in retaining as broad a power of self-determination as possible, consistent with the reason for appointing a guardian).

[59] Sally Balch Hurme, *Current Trends in Guardianship Reform*, 7 MD. J. Contemp. Legal Issues, 143, 161 (1995-96).

[60] UGGPA, Prefatory Note, 8A U.L.A. 440 (Supp. 2001).

[61] *See Id.*, §304 b 7 (Supp. 2001).

[62] *Wingspread Recommendations, supra* note 5 (Recommendation III-D).

[63] Symposium (Recommendation 36), *supra* note 7, at 602.

[64] Symposium (Recommendation 39), *supra* note 7, at 603.

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2. Statutory Provisions in Other States

The guardianship schemes in Colorado, Rhode Island, and California, among other states, codify a "least restrictive alternative" standard for determining if guardianship is appropriate. In Colorado, the statute explicitly provides that an order appointing a guardian is justified only if the incapacitated person's identified needs cannot be met by less restrictive means.[65] The Rhode Island petition form inquires into less restrictive alternatives that the petitioner has explored and deemed inappropriate.[66] Under California law, supplemental information must be filed along with the guardianship petition, addressing alternatives considered, reasons they are not available, and health or social services provided during the preceding year.[67]

With regard to narrowly tailored orders, the New York guardianship statute requires the Court to grant powers to the guardian that are the least restrictive form of intervention, that are consistent with functional limitations of the incapacitated person and his or her understanding and appreciation of the likely harm, and that preserve his or her wishes, preferences, and desires regarding managing his or her activities of daily living.[68] Louisiana law provides that a petition for full interdiction must state the reasons interdiction is necessary and the reasons limited interdiction is inappropriate.[69] After *Boyer*, the Utah code now directs the court to prefer a limited guardianship and to grant a full guardianship only if no other alternative exists.[70] If the court does not grant a limited guardianship, it must make a specific finding that nothing less than a full guardianship is adequate.[71] The Georgia code also includes language requiring a narrowly tailored order, discussed in more detail below.

Applying a longstanding constitutional principle of broad applicability to guardianship cases, these statutes not only assure that guardianship is the intervention of last resort, but also require evidence to support fulfillment of the standard. Such a standard imposed by statute and applied by courts helps

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[65] Colo. Rev. Stat. Ann. §15-14-304(1) (1997 & Supp.2001).

[66] R.I. Gen. Laws §13-15-47 (1995 & Supp.2000).

[67] Cal. Prob. Code §1821(3)-(4) (West 1999).

[68] N.Y. Mental Hyg. Law §§81.01, 81.22 (1996 & Supp. 2000); *See, also*, Fla. Stat. Ann. §§744.334 (4), 32151(1) (West 1997) (order must be the least restrictive appropriate alternative that reserves to the ward the right to make decisions in all matters commensurate with his ability to do so).

[69] La. Code Civ. Proc. Ann. art. 4541(4) (West 1998 & Supp. 2001).

[70] *Boyer*, 636 P.2d at 1085.

[71] Utah Code Ann. §75-5-304(2) (1993).

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minimize the exercise of substituted judgment inherent in guardianship. Seeking evidence on this point in the petition and evaluation can weed out ill conceived or premature cases.

3. Examination and Application of the Georgia Statute

The Georgia code does not explicitly require guardianship to be the intervention of last resort. Information on the proposed ward's specific needs, functional abilities to meet them, or support services available to fill any identified needs is not sought from the petitioner or evaluator. Statutory forms do not solicit evidence from the petitioner about alternatives explored prior to seeking guardianship. However, the code does require that an order of guardianship be narrowly tailored. If a petition proceeds to hearing and the Court determines a guardianship is necessary, O.C.G.A. section 29-5-7(h) provides that all guardianships "shall be designed to encourage the development of maximum self-reliance and independence in the ward and shall be ordered only to the extent necessitated by the person's actual and adaptive limitations." [72] In the case of the appointment of an emergency guardian, the guardian should only have those powers and duties absolutely necessary to respond to the immediate, threatened risk to the ward alleged in the petition. Thus, under the plain language of the guardianship statute, the guardianship order must be narrowly tailored to the ward's functional limitations.

An odd element of the Georgia law is section 29-5-7 (d), which *automatically* removes most powers from the ward *unless* the court's order specifies that one or more enumerated powers is to be retained by the ward.[73] Some evidence that the proposed ward has capacity to retain the powers is required and this evidence likely will have to come from the proposed ward. This is because neither the petition nor the evaluation is required to address the proposed ward's functional capabilities, evidence that is important for

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[72] Ga. Code Ann. §29-5-7(h) (2001).

[73] These include the power to: (1) contract marriage; (2) make other contracts; (3) consent to medical treatment; (4) establish a residence or place of abode; and (5) bring or defend a lawsuit (except an action relating to the guardianship), other than through the guardian or a guardian ad litem. Additionally, Ga. Code Ann. §29-5-3(b)(2) provides that the guardian of the person is entitled to custody of the person of his ward and may establish the ward's place of abode. A parallel scheme applies for the automatic removal of powers pursuant to a guardianship over the property absent some act on the part of the Court to have the ward retain them. Ga. Code Ann. §29-5-7(e) (2001).

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tailoring an order. Such a situation shifts the burden from the petitioner, where the due process places it, to the proposed ward.

The 2000 survey questionnaire asked whether there was any information in the file to suggest that alternatives to guardianship had been considered, attempted, or exhausted. Such information was found in 19% of case files. Documentation of legal arguments made on this point was found in only 1% of the cases in both the 1994 and 2000 cases. In approximately 80% of cases, surveyors were unable to conclude from the information in the file that alternatives to guardianship had been considered. In the absence of a requirement for the least restrictive alternative, 20% of files did include a discussion of alternatives. However, given the constitutional importance of meeting this standard, files should contain evidence that the standard was raised and considered as a routine matter. Several survey questions were designed to solicit information on whether evidence of the proposed ward's abilities was presented to the court to support a narrowly tailored order. Surveyors found that only 2% of petitions or accompanying medical affidavits included any such evidence. Survey results indicated further that some, typically limited, information regarding what the ward was able to do was contained in approximately 33% of evaluation reports in the 1994 survey and in 53% of reports in the 2000 survey. From the information contained in the files, it could only be determined that attorneys argued for a limited guardianship in only 1% of cases. However, these arguments may have been made in many more cases than the files reflect.

Courts granted guardianship in 90% of cases in both of the survey years. Both surveys also demonstrated that courts issued limited orders in a small percentage of files reviewed, approximately 7%. This figure represents guardianships that allow a ward to retain at least one right other than the right to make a last will and testament to vote [74] or that place some limits on the guardian's powers to make decisions for the ward. In the 7% of cases where this occurred, the rights retained by the ward typically involved the management of a small bank account or the right to choose where to live.

Interviews with judges indicated that they were willing to consider less than full guardianship over the person and property where counsel for the proposed ward argued that such an arrangement was appropriate in a

[74] Ga. Code Ann. §29-5-7(f) (2001). The rights to make a last will and testament (because of a different legal standard for "testamentary capacity") and to vote require an independent determination by the court.

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particular case. However, Wingspread participants recommended that even " in the absence of statute, judges should use their inherent or equity powers to limit the scope of and tailor the guardianship order." [75]

Judges also indicated that they were sensitive to the time and costs involved in the guardianship process and that they may be less inclined to enter a limited order due to concern that the ward will need additional protection at a later point. Judges may deem it a drain on resources to require a guardian to return to court to request additional powers once a ward no longer is able to exercise the powers retained under a limited order. However, in the constitutional balance, costs and inconvenience to family members cannot outweigh the proposed ward's interest in retaining his or her liberty to the greatest extent possible for as long as possible. Wingspread participants addressed this dilemma by recommending that orders facilitate the court's ability to "extend, limit or dissolve guardianships." [76]

C. Functional Capacity Framework for Evaluating and Ordering Guardianship

1. Public Policy and Constitutional Issues

A guardianship process that is focused on an evaluation of the functional capabilities of the proposed ward protects the constitutional and policy interests discussed above. In the absence of a functional evaluation, it is difficult to determine (1) if an individual is able to provide for his or her necessities and safety, (2) if guardianship is the least restrictive form of protection where this is not the case, or (3) exactly what protective assistance is required on the part of the guardian. A functional evaluation collects information on the individual's basic needs and adaptive behaviors[77] in relation to his or her ability to perform activities of daily living. The evaluation looks at adequacy of food, clothing, hygiene, shelter, healthcare, and handling of financial resources. Physical and sensory functioning is also

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[75] *Wingspread Recommendations, supra*, note 5 (Recommendation IV-B).

[76] *Wingspread Recommendations, supra*, note 5 (Recommendation III-D).

[77] Bobbe Nolan, *Functional Evaluation of the Elderly in Guardianship Proceedings*. Law, Medicine, & Health Care 210, 121 (October 1984). For example, Nolan gives an illustration of adaptive behavior by citing to an individual disoriented as to time and date but who uses newspapers or television announcements as cues to compensate.

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evaluated.[78] Additionally, a functional evaluation assesses the proposed ward's ability to obtain assistance from family, friends, community, and emergency services to compensate for any limitations in these areas.[79]

Diagnostic procedures and medical opinions are relevant only to the extent they highlight the proposed ward's functional abilities or limitations.[80] If a medical diagnosis reveals a mental or physical disability and accompanying limitations, but the proposed ward's basic needs and safety nonetheless are provided for, the ward's adaptive functioning should preclude the need for a guardianship. To the extent the proposed ward is at danger of substantial harm, a limited guardianship to provide assistance only in those areas needed to prevent it would be warranted.[81] The functional assessment provides information on what these needs are and what level of protection is required to meet them.

Wingspread participants endorsed the concept of functional capacity and recommended that "a medical diagnosis alone should not be considered evidence of functional impairment."[82] Wingspan participants further recommended that "functional and multi-disciplinary assessment be used in determining diminished capacity."[83] UGPPA and the National Probate Court Standards likewise adopt a functional framework.

2. Statutory Provisions in Other States

Several states have embraced a functional assessment as an essential element in guardianship proceedings, incorporating statutory provisions embodying the Wingspread and Wingspan recommendations, UGPPA, and National Probate Court Standards. For example, the New Hampshire and Idaho statutory definitions of "incapacity" are expressed in terms of functional limitations, making a distinction between a legal disability and a medical one.[84] Rhode Island provides a statutory form requiring the results of

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[78] Nolan, *supra* note 76, at 214. *See, also*, Mark Andrews, *The Elderly in Guardianship: A Crisis Constitutional Proportions*, 5 Elder L. J. 75, 103 (1997).

[79] Nolan, *supra* note 76, at 211; Andrews, *supra* note 77, at 103.

[80] Andrews, *supra* note 77, at 100.

[81] Of course, there likely will be cases where the proposed ward's needs for assistance are so extensive that a plenary guardianship will be necessary.

[82] *Wingspread Recommendations, supra* note 5 (Recommendation III-B).

[83] Symposium (Recommendation 2), *supra* note 7, at 595.

[84] N.H. Rev. Stat. Ann. §464-A (2)(XI) (1992 & Supp.2000). The New Hampshire statute provides that incapacity means a legal, not a medical disability and that the

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a functional assessment that shows specific areas of lack of decision-making ability and the specific assistance needed. The form includes a biological, psychological, social, and self-care assessment, as well as an assessment of the individual's social network and relationships.[85]

Some states employ an evaluation team with appropriate specialties to conduct a comprehensive evaluation. Florida, for example, requires the court to appoint an examining committee, consisting of a psychiatrist plus two more professionals. The other two members must be a psychologist, a gerontologist, another psychiatrist or physician, a registered nurse, a nurse practitioner, a licensed social worker, a person with an advanced degree in gerontology, or another expert with the appropriate skill, knowledge and experience. One member of the committee must have knowledge of the incapacity alleged.[86] In Florida, the comprehensive evaluation and evaluation report consist of a physical examination, a mental health examination, and a functional assessment that specifically include a diagnosis, prognosis, recommended course of treatment, and an assessment of the alleged incapacitated person's ability to retain certain rights.[87]

A functional assessment at the evaluation and order stages enables the finder of fact to make the relevant determinations necessary to ensure that guardianship is applied in a constitutional manner. The functional assessment provides critical evidence concerning what the ward can do for oneself, and what protection is needed where deficiencies jeopardize his or her health or safety. Thus, an evaluation that focuses on a functional assessment of the proposed ward's adaptive limitations and abilities is the linchpin to a process that balances a proposed ward's constitutional interests against his or her need for protective assistance.

3. Examination and Application of the Georgia Statute

Under the Georgia code, if the court determines that the petition provides sufficient evidence to support a reasonable belief that the proposed ward is

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disability must be measured by functional limitations. Incapacity is construed to mean the person has suffered, is suffering, or is likely to suffer substantial harm due to an inability to provide for personal needs. The Idaho code essentially mirrors the New Hampshire statute's language.

[85] R.I. Gen. Laws §33-15-47 (1995 & Supp.2000).

[86] Fla. Stat. Ann. §744.331(3)(a) (West 1997).

[87] Fla. Stat. Ann. §744.331(3)(c)-(d) (West 1997).

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"incapacitated," it orders an evaluation by a licensed physician or psychologist. No particular specialty, expertise, or experience is required. The evaluator's report is used then by the court to determine if there is probable cause to support a finding of incapacity, (or grave incapacity in the case of an emergency petition) which requires a hearing (or an emergency hearing).[88]

The report form used by the evaluator relies on the same diagnostic labels as those provided in the petition without seeking the context for the diagnosis. It also asks the evaluator to describe the proposed ward's mental and physical state and condition, his or her support, care, education, and well being, and his or her needs and their foreseeable duration.[89] What is lacking, however, is a pointed inquiry into the proposed ward's ability to provide for his or her own daily necessities and safety, and specific evidence demonstrating his or her adaptive behaviors in relation to the ability to perform activities of daily living (looking, for example, at adequacy of food, clothing, hygiene, shelter, healthcare, and handling of financial resources.) Also lacking is evidence of whether or how the diagnostic condition affects these abilities. As with the definition of "incapacity," the inquiry centers on *why* someone may be incapacitated rather than on *how* the incapacity affects functional abilities.

Survey data revealed that the most common reason for incapacity cited from the list of diagnostic labels in the 1994 and 2000 petitions and evaluations was the alleged mental illness, mental retardation, or mental disability of the proposed ward. In the 1994 files, this was cited in 63% of petitions and 80% of evaluations. In the 2000 files, it was cited in 80% of both petitions and evaluations. Physical illness or disability was cited in 50% of petitions and 38% of evaluations in 1994 and in 43% of petitions and 32% of evaluations in 2000. Most notable, perhaps, is that in the 1994 files, 41% of petitions and 36 % of evaluations cited "advanced age" as a reason for incapacity. Although the statute was amended in 1995 to remove advanced age as a basis for seeking or granting guardianship, 3% of the 2000 petitions and 1% of the evaluations surveyed still listed "advanced age" as a reason for incapacity. The same argument used by advocates to support removal of "advanced age" as a reason for incapacity, namely that incapacity does not always attach to the condition, could be used by advocates for the mentally ill or disabled.

In a substantial number of cases, the terms "Alzheimer's" and "senile

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[88] Ga. Code Ann. §29-5-8(d)(1) (2001).
[89] Ga. Code Ann. §29-5-6(c)(6) (2001).

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dementia" were used by the petitioner as the basis for the allegation of incapacity; however, any evidence that a medical diagnosis had ever been made rarely accompanied these terms. Often, once the term was used in the petition, it was repeated in the evaluator's reports and in the final order without any evidence that the "diagnosis" had been substantiated according to clinical criteria. [90]

Although the Georgia statute does not address functional capacity, the survey questionnaire sought information on the degree to which the evaluation reports contained any language supporting the proposed ward's functional abilities. Even in the absence of any requirement that the evaluator examine and report on this information, approximately one-third of reports in 1994 and one-half of reports in 2000 included some information, albeit limited, on the proposed ward's abilities. This language almost always was found in the section concerning the overall social care of the proposed ward. Information about the proposed ward's ability to access assistance from family, friends, and service providers to compensate for limitations he or she may have also been sought, but generally is lacking in the evaluation reports. The figures on functional capabilities show a significant improvement between the two surveys. However, information about the proposed ward's abilities is so relevant that it should be present in all files where these abilities are present. Where no functional abilities exist, this also should be noted.

Survey data shows that in 1994, 93% of evaluations took forty-five minutes or less, with the majority of evaluations taking between thirty and forty-five minutes. In 2000, 70% of the evaluations took forty-five minutes or less; however, 25% took sixty minutes or more. The average length of the evaluation, without more, does not necessarily indicate a problem.[91] However,

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[90] According to the Alzheimer's Disease and Related Disorders Association, "There is no one diagnostic test that can detect if a person has Alzheimer's disease. Standard clinical methods combine physical and neuropsychological testing with caregiver input and the physician's judgment, and the diagnostic process may take more than one day. New diagnostic tools and criteria make it possible for physicians to make a positive clinical diagnosis of Alzheimer's with around 90 percent accuracy." However, "(a) diagnosis of definite Alzheimer's can be made only at the time of autopsy and requires examination of brain tissue. A brain autopsy is the only way to diagnose the disease with 100 percent accuracy . . . " at http://www.alz.org/AboutAD/Diagnosis/Understand.htm (accessed July 4, 2002). In Georgia, court-ordered evaluations typically last between 30-45 minutes, as discussed below. Therefore, the accuracy of a diagnosis of Alzheimer's Disease absent an independent assessment is questionable.

[91] In some cases, a shorter evaluation clearly would be appropriate, such as where the proposed ward clearly is unable or unwilling to participate in any meaningful way in the

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the length of the evaluation in conjunction with the other survey findings suggest that the process does not always produce information to help the court determine the need for, or appropriately tailor, a guardianship. Courts in some counties report difficulty finding physicians or psychologists willing to perform the evaluations for the statutory fee of seventy-five dollars. Furthermore, in a typical evaluation, the physicians and psychologists authorized by Georgia law to conduct evaluations may not be properly trained to conduct an evaluation of functional abilities and adaptive supports.

In approximately 90% of cases in both 1994 and 2000, the evaluator's report concludes that the proposed ward meets the standard for guardianship of either person or property or both. Since the vast majority of guardianships granted in Georgia are plenary, it is reasonable to infer that the evaluations do not provide sufficient information to enable courts to craft tailored orders where they may be appropriate.

D. Procedural Protections

1. Public Policy and Constitutional Issues

When liberty and related interests (e.g., stigma avoidance) are at stake, procedural due process protections are guaranteed by the Constitution. Procedural due process requires, among other things, notice, the right to a hearing, the right to legal representation, the right to participate in the hearing, the right to confront and cross-examine witnesses, and the right to an adjudication by clear and convincing evidence. [92] Specific findings of fact as to the need for the guardianship (getting at the issues of "substantial harm"), whether guardianship is the least restrictive form of protective assistance, and the basis for the powers granted to the guardian, also should be required.[93] With these specific findings, it will be clear that guardianship is necessary for the ward's protection and that the order of guardianship has been narrowly tailored to meet the ward's precise needs without unnecessarily infringing on his or her liberty, autonomy, and dignity.

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evaluation.

[92] *Addington*, 441 U.S. at 418; *See also Greene v. McElroy,* 360 U.S. 474, 496-7 (1959).

[93] *Hedin*, 528 N.W.2d at 579 (Court of Appeals court required the lower court to make findings of fact to support the powers conferred on the guardian).

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Other important issues in guardianship cases include supervision of the guardianship through ongoing monitoring of the ward's status and appeal rights of the proposed ward. However, these issues are beyond the scope of this article since the data collected for this study does not address the post-order phase of the guardianship proceeding.

2. Statutory Provisions in Other States

Many of the states that provide strong substantive provisions also offer strong procedural protections. For example, the California Probate Code requires a court investigator to explain to the conservatee the notice of, nature, purpose, and effect of the proceeding and his or her rights. The investigator also determines if the conservatee is able and willing to attend the hearing, if the conservatee wishes to contest the conservatorship, and if the conservatee wants to have an attorney appointed, among other things.[94] The New York code imposes similar requirements upon a court evaluator, who plays an important role in ensuring procedural protections. In addition, the evaluator plays a substantive role in evaluating the proposed ward, investigating the circumstances, and attending all court proceedings and conferences. [95] These laws also require specific findings in the court's order. The New York statute, for example, requires specific findings of the individual's functional limitations which impair his or her ability to provide for personal needs, his or her lack of understanding and appreciation of the nature and consequences of the functional limitations, the likelihood that he or she will suffer harm as a result, the necessity of the appointment of a guardian, and the specific powers which constitute the least restrictive form of intervention, among other things.[96]

3. Examination and Application of the Georgia Statute

a. Notice

If the Court determines from a review of the guardianship petition that there is sufficient evidence of "incapacity" (or "grave incapacity"), it is

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[94] Cal. Prob. Code §1826 (1991 & Supp. 2002).
[95] N.Y. Mental Hyg. Law §81.09 (1996).
[96] N.Y. Mental Hyg. Law §81.15 (1996).

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required immediately to notify the proposed ward of the proceedings and to deliver all pleadings by personal service by an officer of the court. The notice also informs the proposed ward of the place and time to submit to the court-ordered evaluation, and informs him or her of the right to obtain independent counsel or the right to be appointed counsel by the court.[97] The proposed ward's attorney is charged by statute with making reasonable efforts to explain the order and the proposed ward's rights to the proposed ward.[98] The spouse and adult children, or next of kin or adult friends, of the proposed ward are also notified by mail.[99] If, following the evaluation, the court determines there is probable cause to proceed, it notifies the proposed ward of the hearing and provides a copy of the evaluation report. The proposed ward then has the opportunity to submit a response to the court-ordered evaluation, including the findings of independent evaluations, affidavits, and a statement of applicable law.[100]

In terms of its notice requirements, the Georgia statute appears to go beyond what strictly is required constitutionally, by providing notice to interested parties as well as to the proposed ward. Data from the files show that this notice was provided in most cases. However, 11% of the 2000 files surveyed contained no return of service or other indication that the ward had been personally served. Undoubtedly, this figure includes cases where service was perfected, but not placed in the file. Even taking into account misfiled or misplaced returns, this figure still seems high.

b. Appointment of Counsel

Appointment of counsel is another important protection afforded by Georgia law. In 95% of cases in both surveys, the court appointed counsel for the proposed ward. Even with counsel, the files contained responsive pleadings such as an answer, motion, affidavits, discovery, or other pleadings in less than 10% of cases (8% in 1994 and 5% in 2000).

The attorney for the proposed ward consented to the guardianship in 14% of the 1994 cases and in 11% of the 2000 cases. In the remaining cases, there was very little evidence in the files that arguments were made to challenge the

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[97] Ga. Code Ann. §29-5-6(b)(2)(b) (2001). A court appointed attorney is paid $75.00 for his or her representation.

[98] Ga. Code Ann. §29-5-6(f)(2) (2001).

[99] Ga. Code Ann. §29-5-6 (b)(2)(A)-(C) (2001).

[100] Ga. Code Ann. §29-5-6 (d)(1) (2001).

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guardianship in any respect. Wingspan commentary states that "responsible advocacy includes advising the court with respect to material aspects of the ward's financial and health related circumstances that will promote autonomy (i.e., the right to choose one's residence, vote, medical consent, participation in [medical] research)." [101] Of course, it is not ethical for an attorney to oppose a guardianship where a client is willing to accept it, and the authors are not suggesting that legal arguments are necessary in every case. If a client is impaired to the extent that he or she is unable to direct or participate in the representation in any meaningful way, a vigorous defense may not be warranted. Furthermore, it is impossible to discern whether the absence of a written record is indicative of a failure to argue these issues since the issues may have been raised at trial. However, if this lack of documentation does reflect a lack of effort on the part of the attorney, this is significant because effective advocacy is critical in order for a proposed ward to avail himself or herself of the constitutional protections that exist under the Georgia code and under the U.S. and Georgia constitutions.[102]

c. The Hearing

According to the Georgia code, the hearing is provided for in a regular courtroom or at another location set by the judge. The proposed ward's appearance may be waived at the request of the ward or his or her attorney for good cause.[103] The proposed ward has the right to subpoena and cross-examine witnesses, including the evaluating physician or psychologist.[104] Files revealed that the proposed ward was present at the hearing in 20% of cases in both 1994 and 2000. In virtually all cases where the proposed ward was not present, counsel, as required by statute, had waived the proposed ward's appearance. There was no reason noted in 15% of the case files in 1994 and in 25% of the case fiels in 2000, as the statute requires to be in

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[101] *See supra* note 60.

[102] Since constitutional arguments must be raised at the trial level to preserve them for appeal and since there is no permanent transcript in guardianship cases, some documentation in the file should exist when constitutional arguments are made. Based on the earlier discussion concerning certain problems with the statutory provisions and the survey findings, it is reasonable to conclude that constitutional arguments would be applicable in at least some cases.

[103] Ga. Code Ann. §29-5-6(e)(1) (2001).

[104] Ga. Code Ann. §29-5-6(e)(3) (2001). Potential affordability issues with respect to being able to pay an expert witness fee to depose or compel testimony are not addressed in the statute.

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writing. The most common reason for waiver of appearance, cited in 25% of all cases in both surveys, was that the proposed ward was unable to understand or participate in the hearing.

d. Specified Findings and Conclusions

The court is charged by statute with making an independent determination of the need for a guardianship based upon the evaluation report, any response filed by the proposed ward, and the evidence taken at the hearing. The court must apply a "clear and convincing evidence" standard [105] and set forth findings of fact and conclusions of law that support the grant or denial of the petition.[106] There are no requirements for findings of fact specifically addressing the likelihood of substantial harm[107] or for identifying the functional limitations or abilities of the proposed ward. Similarly, there are no requirements for findings with respect to the existence of less restrictive alternatives or limitations to the powers granted. Rather, the order form used by the courts includes standardized findings from which to choose and limited space for individualized findings of fact. As a result, the survey only looked at whether orders contained specific findings of fact related to the ward's functional abilities. These were present in approximately 2% of case files.

The adoption of a standard form practice can be a helpful way to prompt those courts that only rarely hear adult guardianship cases. Standardized forms also have a potential to achieve uniformity of practice and application of the law across a large number of independent county systems. A change in the wording of Georgia's forms to encourage the court to specify how it considered evidence in relation to each of the principles discussed in this article could help demonstrate the constitutionality of guardianship proceedings across the state.

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[105] Ga. Code Ann. §29-5-6(e)(4) (2001).

[106] Ga. Code Ann. §29-5-6(f)(1) (2001).

[107] Under the emergency provisions of the statute, there are no special findings of fact required, although the clear danger standard is likely to prompt specific findings in this regard (if there is sufficient evidence from the court ordered evaluation or other information presented).

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VIII. Summary and Discussion

Guardianship requires a careful balance of interests. Weighted against the interest of protecting the proposed ward from substantial harm is the interest of protecting his or her liberty and promoting his or her autonomy and dignity to the greatest extent possible. Some states have incorporated a range of protections in fashioning statutory reforms. In addition to imposing unambiguous constitutional standards, these states also require specific factual information in the petition, evaluation form, and other pleadings to ensure there is sufficient evidence for the court to enter an order that demonstrates constitutional requirements have been met. These statutes prompt the parties, as well as the court and its agents, to meet constitutional requirements and policy goals, and to create a record that preserves evidence demonstrating that the proposed ward's interests have been protected.

Review of Georgia's statutory provisions and their application from the survey findings suggest the need for further efforts to meet the five reform principles discussed in this article and to meet or exceed the accomplishments of other states to reform guardianship.

A. The Substantial Harm Standard

The current statutory grounds for imposing a guardianship and defining incapacity in Georgia could be interpreted to be vague and overbroad. The standard imposed, the ability to make or communicate "significant responsible decisions," allows for subjective judgment by the petitioner, evaluator and finder of fact. Therefore, unless the Georgia code is interpreted and applied to require an outcome of potential substantial harm resulting from the proposed ward's impaired decision-making ability, the statute is in danger of being challenged. Although the court surely considers the safety of the proposed ward throughout the process, evidence of threat to safety generally is not reflected in the record. A comparison of survey results related to a showing of "substantial harm" between emergency and non-emergency case files suggests that explicit statutory language, where reflected in standardized forms, may play a critical role in the development of the court's information.

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B. The Least Restrictive Alternative Standard

The survey results uncovered little evidence showing whether guardianship was the least restrictive alternative available to provide the protective assistance required by the proposed ward. Results indicated that although the Georgia statute contains language helpful to support the use of tailored guardianships, it also contains contradictory provisions. There was limited evidence in case files (in the petition, the evaluation report, or responsive pleading filed by counsel for the proposed ward) to enable a court to order a tailored guardianship. Indeed, virtually all guardianships ordered were plenary in nature.

Therefore, while the Georgia statute promotes a narrowly tailored order, survey results indicate that this requirement imposed by statute alone is insufficient. Of particular concern is that it is difficult to confirm that this principle is promoted by vigorous attorney practice and precise evaluation information (elicited by well-crafted forms and meaningful diagnostic procedures) that provide information of a functional nature.

1. Functional Assessments

A meaningful evaluation of the proposed ward's abilities and needs along with information about adaptive and supportive services is the key to a court's capability to craft a guardianship that is protective, yet minimizes restrictions on rights. Many advocates in Georgia, as well as nationally, agree on the importance of this. However, the Georgia statute, forms, and practice have yet to incorporate a functional evaluation. As a result, information in case files about a proposed ward's abilities was limited and very few limited guardianship orders were entered. Until this fundamental information is captured, it will be difficult for guardianship practice to change.

2. Procedural Protections

The guardianship statute in Georgia generally meets or exceeds constitutional requirements for notice and appointment of counsel. However, it is impossible to discern from the records whether attorney effort is appropriate for the proposed ward. There often is a lack of factual evidence in

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either the petitions or evaluation reports to support a *prima facie* case of the need for guardianship. Yet, there are few responsive pleadings that address this lack of evidence. In addition, there is little or nothing in the files to show that guardianship was the least restrictive alternative or that the proposed ward was incapable of retaining any rights whatsoever. In other civil cases, one would expect responsive pleadings and motions to be filed where they are proper, even where not technically required by statute, especially when dealing with constitutional issues. In the absence of this information in the file, one would expect that the court order would reflect in some way that these issues were raised and considered in appropriate cases if, in fact, they were. However, the form court order does not lend itself to this.

A significant procedural issue is that the code fails to require a record showing that constitutional guarantees have been considered or met. In the absence of such a requirement, there was often little evidence in the petitions, evaluations, pleadings or court orders to address these constitutional principles.

IX. Recommendations

Our recommendations reiterate many of those already made by practitioners nationally and in Georgia. They largely address amending the statute and the court-annexed forms to unambiguously impose constitutional standards, require specific evidence demonstrating that these standards have been raised, considered, and met, and memorializing this in the record. The recommendations further address educational outreach to families who might be considering guardianship and training to all professionals involved in the guardianship system.

A. Instituting Functional Assessments

Given the importance of a functional assessment in providing the evidence necessary to ensure constitutional standards are met, instituting a functional evaluation should be a priority for guardianship reform in Georgia. As a first matter, the guardianship statute should require, in explicit terms, an evaluation

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that includes a functional assessment in appropriate cases.[108] Additionally, the statute should contain instruction for conducting such an evaluation and writing the evaluation report. Among other things, the evaluation and report should be required to address specifically what the proposed ward *can* do for, with or without assistance, in addition to what he or she cannot do. This way, maximum rights can be retained and self-determination fostered.

Ideally, such an evaluation, in appropriate cases, would be conducted by a multi-disciplinary team comprised of professionals with relevant specialties in relation to the alleged disabilities of the proposed ward. In the absence of a multi-disciplinary evaluation team, it is important that whoever conducts the evaluation have some specialized education, training, or experience dealing with the type of disability that the proposed ward is alleged to possess. A licensed clinical social worker, clinical nurse specialist, or other non-physician or relevant specialist may be able to provide a more useful evaluation than a physician or psychologist who is a general practitioner. Going from an evaluation scheme in which one evaluator is paid seventy-five dollars for the entire evaluation to one in which a multi-disciplinary team is used in appropriate cases, if the above recommendation is taken, will require additional resources. Wingspan recommends that Medicaid and Medicare laws be amended to cover the costs of functional evaluations in guardianship. Additionally, there are numerous professional organizations and professionals with a *pro bono* mandate that could be tapped in Georgia. Students working under the supervision of licensed professionals also could assist in the evaluations. Although a court-ordered evaluation system could not rely solely on *pro bono* and student-assisted evaluations, exploring these and the Medicaid option would be a logical step in seeking resources for changes in the evaluation procedure. Research and work with relevant professionals to improve the court ordered evaluation form could be undertaken at little cost.

B. Other Statutory Changes

The Georgia statute should be amended to impose explicitly the substantial harm and least restrictive alternative standards. Both the petitioner and court-ordered evaluator should be required to supply specified information to the

[108] A functional evaluation would not be necessary in all cases, such as where the proposed ward is totally unresponsive to his or her environment, for example.

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court that will help it determine whether the applicable standards have been met. A record demonstrating that they have been met should be a prerequisite for cases to move forward to the hearing stage. In addressing the least restrictive alternative standard as it relates to granting a narrowly tailored order, the automatic removal of rights from the ward under O.C.G. A. section 29-5-7 (d) should be eliminated from the statute.

Other statutory changes might improve the already protective provisions for notice and participation by the proposed ward in the proceedings, such as a requiring large print notices and oral explanation of the petition and proceedings by the process server. Authorizing the proposed ward or interested party on his or her behalf to request a change in the hearing location or time, if necessary to accommodate any disabilities of the proposed ward, also would help ensure compliance with the Americans with Disabilities Act (ADA).[109]

C. Changes to Statutory Forms

Significant improvements to guardianship procedure could be made by changing the petition and evaluation report forms, as well as the form orders. Because these forms are not statutorily prescribed, there should be flexibility to design them to better capture evidence relevant to assuring that constitutional requirements are being met. Strengthening the forms not only can help ensure that standards are met but also memorialize a record demonstrating the same.

First, the petition form could be changed to require allegations, among others, regarding: (1) what the proposed ward can and cannot do for him or herself to meet his or her necessities and safety; (2) what resulting instances

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[109] 42 U.S.C. §12103(2) (1995). A person alleged to be incapacitated and in need of a guardian likely would be considered an individual with a disability entitled to reasonable accommodation under Title II of the ADA. Such an individual is one with, regarded as having, or having a record of a physical or mental impairment that substantially limits one or more major life activities. Title II prohibits the exclusion from participation in or denial of the benefits of the services, programs, or activities by a public entity to a "qualified individual with a disability",

an individual who, with or without reasonable modifications to rules, policies, or practices, meets the essential eligibility requirements for the receipt of services or participation in programs or activities provided by a public entity. 42 U.S.C. §§ 12131(2), 12132 (1995).

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of harm have occurred (or are likely to occur), and when; (3) what forms of assistance to meet the proposed ward's needs have been tried or considered (and with what result); and (3) what specific protective assistance is required, how the petitioner proposes this will be provided, and how it is likely to resolve the issues giving rise to the petition.

The court-ordered evaluation form could require similar information and ask specifically about the proposed ward's decision-making and functional abilities as well deficiencies. Guidance from states such as California, Florida, and Rhode Island, which use forms that incorporate functional informational requirements, could be useful in improving both the petition and evaluation forms in Georgia. The court also could include in the form a place for petitioners and respondents to address less restrictive alternatives as well as ways the guardianship might be limited. With respect to the court's order, a finding of fact "checklist" of sorts could be inserted into the form in order to assist the court in making individualized findings that provide the factual basis to demonstrate constitutional requirements have been met. Findings of fact as to the proposed ward's abilities and deficiencies in each of the areas of decision-making enumerated in O.C.G.A. section 29-5-7 could take the place of currently prescribed automatic removal of rights in the absence of a court order to the contrary. Specific findings on each of the constitutional and policy principles should facilitate the natural flow of conclusions addressing the powers that should be retained by the ward and those that should be removed.

D. Guidance Documents and Educational Materials

The guardianship bench and bar can work with the aging and mental health networks and medical and disability communities to develop and distribute material for clients and families on the guardianship process and what to expect from a guardianship.[110] Materials also could include information on planning for incapacity and alternatives to guardianship. Referrals for legal planning by health care professionals who uncover capacity issues with their patients could be facilitated.

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[110] Families in crisis may be told, and so believe, that a guardianship will be the answer to their concern about a relative or friend with diminished capacity, when this is not necessarily the case.

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Some training for petitioners, before or at the time they file, could be urged.[111] Sensitization to the balance that must occur between the need for protective assistance and the protection of liberty and the right of self-determination should be highlighted. This would provide the context for an explanation of the legal standards that must be met, and the type of evidence required to demonstrate that the standards have been met, before a case can go forward. A guide for completing the petition could be developed to accompany the petition form. Courts, social service agencies, and attorneys also could make information available on supportive services provided in the community that might obviate or delay the need for guardianship in some cases.

E. Educational Seminars for Evaluators, Lawyers, and Judges

Training covering the topics discussed in the previous recommendation should be required for all professionals involved in guardianship proceedings. If these suggested changes to the forms are instituted, training on the changes could serve as a vehicle for this education. Guardians *ad litem* should be more widely available in order to assure that an attorney feels free to advocate for the wishes of the proposed ward, as appropriate, whether or not the attorney believes this to be in the proposed ward's best interest.

To have a better understanding of capacity with respect to physical and financial harm, judges and attorneys would benefit from receiving training in elder abuse, including indicia of financial or physical abuse, exploitation and neglect, strategies for dealing with victims of elder abuse, and resources in the community to assist victims.

F. Facilitating Planning for Addressing Incapacity

Demographic data from both surveys suggest that education on financial powers of attorney, living trusts and advance health care directives, and other potential alternatives to plenary guardianship should be targeted to persons

[111] Guardians already are required to watch a video describing the hearing process as well as the duties and responsibilities of the guardian prior to receiving the letters of guardianship.

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under age sixty-five since, according to the surveys, a sharp increase in guardianships occurs at this age. Planning for incapacity could be included with other pre-retirement planning. Clients should be encouraged to think about how they want decisions to be made if they become unable to make them for themselves and to provide this information to their families. A benefit to the guardianship system is the court oversight provided. A common concern about financial powers of attorney is that they can be abused, particularly where the principal has lost the capacity to assert an action for breach of fiduciary duty. However, a benefit to powers of attorney is their inherent flexibility. Attorneys, in consultation with clients, can effectively tailor these documents to provide for maximum autonomy on the part of the principal with support from the agent. Powers of attorney and other planning documents could be revised to provide additional oversight, such as requiring that the agent make an accounting to a trusted third party designated by the principal. The principal could also grant authority to this third party the right to bring an action against an agent who does not act in accordance with the interests of the principal.

G. Enhanced Data Collection and Reporting

Participants in both Wingspread and Wingspan noted the need for better data collection in every state. Adults under a guardianship are among our state's most vulnerable citizens, yet we have no readily available means of knowing even how many adult wards are in the state. As the population ages, it can be anticipated that the system will be asked to meet the needs of greater numbers of vulnerable adults. Computer technology should be employed to track those in the system and report information to the Administrative Office of the Courts. This information could be made available to researchers and other interested entities.

X. Conclusion

From this study, the following overarching themes emerge:

(1) Strong statutory provisions are a cornerstone, but alone are not sufficient to ensure that constitutional rights are protected. A strong statute must be complemented by informed practice and awareness

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among all participants in the process.

(2) It is important that the needs and functional abilities of the individual be presented and considered at every stage of the process.

(3) Despite constitutional theory, there is a need for practicality; the full range of procedures may not be necessary where a proposed ward is so severely impaired as to be unable to participate in or understand the guardianship process.

(4) Due to the constitutional issues at stake, thorough documentation is essential to assure the process is fair and appropriate to the circumstances in any given case.

Surveys of adult guardianship case files indicate that, for the most part, little has changed even after increased continuing education efforts. Wingspan and Wingspread recommendations, if adopted in Georgia, would change the focus of the guardianship statute to better assess the proposed ward's abilities and provide for guardianship orders that maximize autonomy, as the current statute requires. Such a change would comport with court decisions in other jurisdictions that have found statutory language similar to Georgia's to be unconstitutional.[112]

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Annex A: Survey Methodology

Researchers gathered data from Georgia's Administrative Office of the Courts on the total number of guardianship cases reported each year by county. One hundred and twenty three of Georgia's 159 counties had guardianship data broken out by age. Approximately 30% of all guardianships filed concerned guardianship of an incapacitated adult. From this, it was assumed that approximately 30% of guardianship petitions filed in the counties without age-specific data also concerned adults. With the estimated number of total adult guardianship cases filed throughout the state, the number of cases needed to comprise a statistically significant sample was decided. Researchers used a cluster sample of thirty files from each county to obtain a sample size of 489 cases from 1994 files and 547 cases from 2000 files.

Counties were weighted and scored based upon the actual or approximate number of adult guardianship cases handled in a year in relation to the total population of the county. In the randomly selected counties where there were thirty or fewer adult guardianship cases in the year, each case was reviewed. In counties where there were greater than thirty cases in the year, methodology was employed to identify which cases would be selected for review. Counties with larger populations received heavier weight scores and were sampled more frequently.[113] Therefore, in the larger counties, between 60 and 150 cases were reviewed. In order to be able to compare the data gathered for the 2001 survey with that of the 1995 survey, the same counties randomly selected in 1995 were surveyed in 2001. The same survey instrument also was used, with a few additional questions.

The Probate Court in each selected county graciously consented to participate in the surveys and interviews, with the understanding that identifying information contained in the guardianship case files would remain confidential.

[113] Sampled counties, in order of their weighted score lowest to highest were Calhoun, Jeff Davis, Upson, Walton, Newton, Oglethorpe, Floyd, Effingham, Spalding, Dougherty, Bibb, Richmond, Liberty, Clayton, Gwinnett, Cobb, Chatham, Dekalb, and Fulton.

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