

# 2017 ANNUAL REPORT



MASSACHUSETTS GUARDIANSHIP POLICY INSTITUTE

[www.guardianship.institute](http://www.guardianship.institute)

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## Introduction

The Massachusetts Guardianship Policy Institute (the “Institute”) was established in 2014 to advance public policy for persons with decisional needs – especially those who are the poorest and most socially isolated – by calling attention to their plight and proposing workable solutions.

This mission carries forward the guardianship reform efforts that began a generation ago in Massachusetts, through the work of then-Attorney General Scott Harshbarger and others in both public and private agencies, who sought to bring state guardianship laws into alignment with changing views of incapacity and the rights of the disabled. This aim was only partially accomplished when the Massachusetts Legislature adopted a version of the Uniform Probate Code in 2008.

Today the Institute’s work centers on the unfinished business of allowing the indigent the same access to legal resources and social support that is available to those with the means and the connections to get decisional help privately. Massachusetts continues to rely upon a two-tiered system that bestows more and better options for decisional support upon persons with financial means than it offers to those who are poor and isolated.

Please visit our website, at [www.guardianship.institute](http://www.guardianship.institute), to learn more about the people of the Institute and its initiatives.

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## 1. Changing a Two-Tiered System

The Institute's focus for the past three years has been on equal access to guardianship services for those who, in addition to decisional impairment (or perhaps because of it) are indigent and isolated.

Guardianship law favors those with the financial, social and family resources to retain counsel and obtain expertise and support, or who have the funds to pay qualified professionals to meet their decisional support needs. Many people – thousands, in fact – do not have these resources.

Ironically, fewer resources usually results in *more restrictive outcomes* throughout the guardianship process. It also contributes to poorer health, social isolation, chronic housing problems and other deficits.

Quality of life for persons with decisional impairment of any kind, whether related to dementia, mental illness or intellectual/developmental disability, depends upon several factors:

- *A qualified family member, friend or paid professional to serve as guardian, conservator or voluntary agent, who has the time and resources to fulfill all of the obligations of a fiduciary;*
- *Attention to preserving maximum autonomy, through limited guardianship, respect for individual preferences, and collaborative decision-making whenever possible.*
- *Access to critical housing, health care and social services for the individual;*
- *Time with the individual to build a genuine relationship.*

The poorest and most isolated individuals routinely do not have access to these critical resources.

*Yet Massachusetts has no guardian-of-last-resort for the indigent.* Less than 25% of the estimated 3,800 to 4,800 individuals in Massachusetts who cannot afford decisional help through their own resources receive it through any public agency.<sup>1</sup>

Those who fall outside of the agency mandates must wait weeks or months for a fiduciary to be found who can serve *pro bono*. While waiting, these individuals remain at risk for abuse or financial exploitation, lack of adequate housing, declining health, and a further spiral into poverty and destabilization.

After the appointment, the same resource limitations often result in a lower quality of service for low-income individuals, such as less-individualized care plans, broader guardianship decrees and significantly less time spent with the individual by the fiduciary.

Many deeply-committed stakeholders are interested in ending the neglect of these individuals. There are a number of models for public guardianship that would provide better outcomes than the current system.

Whatever the model, the Institute believes that outcomes will not change until there is a public office that is mandated specifically to oversee decisional help. The issues are complex, and important legal rights are at stake in every guardianship case.

Yet, when guardians are not available at all, the rights to protection from abuse, neglect, homelessness or illness may be lost completely. Without a public guardian-of-last-resort, such outcomes will continue to fall disproportionately on the poorest and most isolated individuals in Massachusetts.

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<sup>1</sup> To be sure, there are public programs, but only for those who qualify on separate grounds – such as age – for services from one of the three agencies that have guardianship programs (the Executive Office of Elder Affairs, the Department of Mental Health and the Department of Developmental Services). These agencies provide guardians for a total of about 1,000 people.

## 2. Programs That Engage the Issues

The Institute sponsored five events from November, 2015 to November, 2017 to engage policy-makers and stakeholders in renewing the public conversation about a guardian-of-last-resort. Four of these events comprised our Colloquium Series, each of which focused on a different aspect of the agenda for reform:

*(1) On November 10, 2015, the First Colloquium addressed the scope of access problems for guardianship services. This included a presentation of results from Phase I of a needs assessment that is being done under a grant from Guardian Community Trust, Inc. Over 60 stakeholders affiliated with more than 30 public and private social service agencies attended.*

*(2) On June 13, 2016, the Second Colloquium on Volunteer Guardianship in Massachusetts brought the Executive Director and Regional Recruiter of the volunteer-based Kansas Guardianship Program to Boston for a day of information, analysis and reflection on the role of volunteers in public guardianship services.*

*(3) The Third Colloquium, on November 16, 2016, discussed the contents of a proposed public guardianship bill, to be filed for the 2017-18 Legislative session.*

*(4) On June 21, 2017, the Fourth Colloquium looked at options for decisional support for persons with intellectual/ developmental disabilities (“IDD”). Those with IDD comprise one of the largest groups of persons with a stake in public policy on guardianship.*

In addition to the Colloquium Series, on September 15, 2016, the Institute sponsored a day-long conference with the Executive Director and Supervisor of Monitoring, Registration and Education for the Florida Office of Public and Professional Guardians (OPPG).

The meeting with the Florida OPPG provided a wealth of information about how public guardianship works in Florida. There was much discussion of how this model might apply to Massachusetts.

Strong turnout for the Florida discussion, along with the Colloquia, shows widespread support for reforming the two-tiered system of guardianship services that prevails in Massachusetts at this time.

Many individuals attended more than one event. As a result, a network of stakeholders who share the goal of improving access to guardians for the disadvantaged has taken shape. Similar networks have emerged at both the national and the state levels since 1988, and today are growing in number and influence under the “WINGS” umbrella (“Working Interdisciplinary Networks of Guardianship Stakeholders”). Supported by grants from the American Bar Association, WINGS groups have formed in more than 25 states to date.<sup>2</sup>

To find reports of the Colloquia and the conference with the Florida OPPG, please visit the Institute’s website, choose “Resources” on the main menu, then “Event Reports” on the drop-down menu. Or enter the following URL directly into your browser’s address window:

[www.guardian.institute/resources-education.html](http://www.guardian.institute/resources-education.html)

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<sup>2</sup> Funding for WINGS grants is provided by the Administration on Community Living Elder Justice Innovation Grant to the ABA Commission on Law and Aging, in collaboration with the National Center for State Courts. Grants are awarded for multidisciplinary efforts that advance guardianship reform, address elder abuse, and promote less restrictive decision making options. Although not a grantee, the work of the Institute and those with whom it is collaborating recently was designated as a state affiliate for Massachusetts within the WINGS network.

### 3. Research Agenda

Guardianship needs, methods and outcomes, including the public costs of not providing a public guardian, are among the least-studied and least-reported areas of social policy today. The Institute is committed to redressing this information gap, for a number of reasons:

- Ethically, we need to understand how guardianship and its alternatives are experienced by those who receive such help, in order to balance decisional help optimally with the maximum autonomy of those served.
- Administratively, we can learn much from social research about how to provide minimally-invasive support, both cost-effectively and sustainably.
- Pragmatically, state Legislatures increasingly demand that social programs have data about the needs they serve, and evidence of the outcomes they achieve, in order to support fiscal outlays necessary for public services.

The Institute's research programs today include projects at all levels of guardianship and its alternatives, through collaborations with nationally-recognized investigators and institutions. To date, one peer-reviewed article has been published from this research, with more publications anticipated over the next two years:

*Needs Assessment.* This is a multi-phase and multi-year project to determine what kinds of guardianship services are available in Massachusetts, the extent of unmet need, and whether a public guardian would help. Phase I has been completed and is published in HealthCare Ethics Committee (HEC) Forum, 2017 June 29(2):171-189. Phases II and III of

the Needs Assessment are slated for completion by the end of 2018.

*Principal Investigator:* Jennifer Moye, Ph.D., Director of Geriatric Psychology at Boston VA Health Care System, and Professor of Psychology at Harvard Medical School.

*Pubic Costs Study.* This is a multi-vector analysis of cost savings in health care, law enforcement, housing and other social programs that may be realized if Massachusetts were to establish a public guardian. Due for completion by mid-2018.

*Principal Investigator:* Eliot Levine, Ph.D., Senior Research Manager in Applied Research and Program Evaluation at the University of Massachusetts Amherst, Donahue Institute.

*Surrogate Decision-Making.* This is a study of decision-making by guardians, with the goal of developing a decision-making training protocol for new guardians and a curriculum for the general public to learn more about guardianship and its alternatives, such as Health Care Proxies and Durable Powers of Attorney.

*Principal Investigator:* Heather L. Connors, Ph.D., Director of Research for Guardian Community Trust, Inc.

For copies of Dr. Moye's article and the Donahue Institute review, please visit the Institute's website, choose "Resources" on the main menu, then "Research" on the drop-down menu. Or enter the following URL directly into your browser's address window:

[www.guardian.institute/resources-research.html](http://www.guardian.institute/resources-research.html)

## 4. Advocacy & Initiatives

The Institute meets on a regular basis to plan, implement and review its educational and research missions. In order to carry these missions to a larger group of active stakeholders, a Steering Committee was established in 2016, that brings together leaders of public and private organizations with particular projects related to access to guardianship for the disadvantaged.

There have been six meetings of the Steering Committee. The projects discussed at these meetings include the following:

1. Private hospital evaluations of the cost to medical facilities for patients who do not have decisional capacity, and for whom no guardian is available. Extrapolation of these findings suggest that the annual cost to all hospitals in the Commonwealth may exceed \$10M per year.
2. Proposals by a public agency, a private trade group and major law school in Massachusetts to recruit, train and supervise volunteers as guardians for indigent persons, or to assist professional guardians if a public agency is created.
3. Potential for replicating Senior Partners for Justice as a resource for a public guardian. Pioneered by retired Probate Court Justice Edward Ginsberg, Senior Partners connects *pro bono* legal services with the Probate Courts to help review and respond to annual Guardianship Reports filed with the Court.
4. Discussion of ways to provide decisional support for persons who do not want to be placed under guardianship, called “supported decision making.” A group of supportive family

and/or advocates signs a contract with the individual to provide limited guidance and support, only if asked, that will enable that person to make his or her own decisions. Medical, financial and other providers are expected to honor the contract by accepting the decision of the individual, even if his or her appearance or presentation may evoke questions of capacity.

5. Outreach to the intellectual/developmental disability community, which has had limited involvement in Institute events, including ways to engage this community.

Another initiative by the Institute was its entry into the 2017 Pioneer Institute’s Better Government Competition, which resulted in the selection of its public guardianship model as a feature on the organization’s “Aging” blog. As the blog entry notes,

[This model] hopes to resolve [the access to guardianship] problem through a public-private partnership. The Institute strives to provide private funding for a non-profit Public Guardian, while creating a new state agency to oversee this guardianship program, in order to ensure quality care for the seniors that it serves.

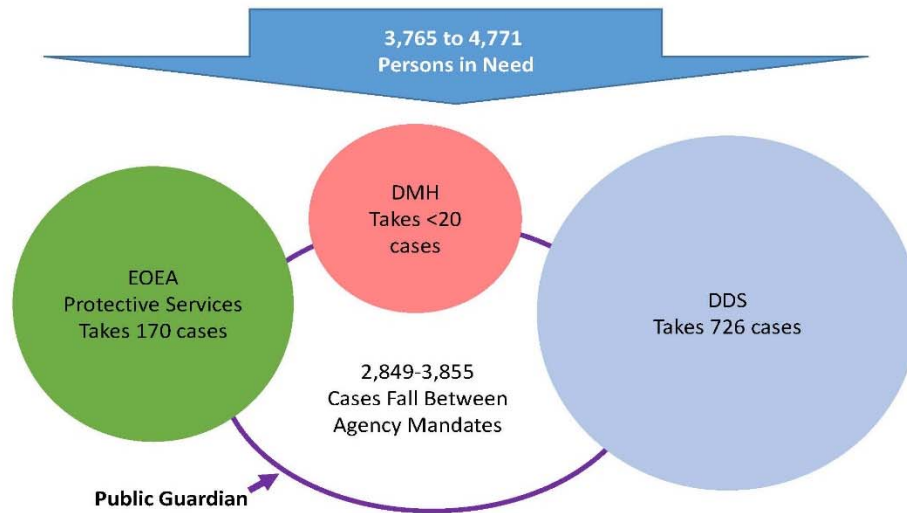
To view Reports of Steering Committee meetings, and to read the full Pioneer Institute blog, please visit the Institute’s website choose “Resources” on the main menu, then select “Initiatives” on the drop-down menu. Or enter the following URL directly into your browser’s address window:

[www.guardian.institute/resources-initiatives.html](http://www.guardian.institute/resources-initiatives.html)

## 5. Prospects for Reform

In order to solidify statewide support for a public guardian, the Institute formed a Statutory Drafting Committee in 2016, which drafted a proposed public guardianship bill, called the “Adult Guardianship & Decisional Support Act.” Based upon this effort, Sen. Cynthia Creem and Rep. Paul Brodeur filed matching bills in the Senate and House, respectively, in January, 2017. This proposed legislation is supported by more than 25 co-sponsors.

The filed legislation serves as a set of talking points for legislators, who have been asked to enact a bill in whatever form they feel is suitable. The model in the proposed bill is a public-private partnership that fills gaps in the current system, without asking for any changes in public programs that are being operated presently by the Executive Office of Elder Affairs, the Department of Mental Health and the Department of Developmental Services:



The public element of the partnership is an Office of Public Guardian that will establish service targets, designate a private non-profit to provide direct services, oversee and evaluate the services provided by the non-profit, and report annually to a Guardianship Commission consisting of not more than 30 community leaders or stakeholders appointed by the Governor.

The proposed service provider is a completely self-funded non-profit agency. The pooled trust program operated by Guardian Community Trust, Inc. (a co-founder of the Institute) is the primary source for these private dollars. Anticipated funding for the

service component by the non-profit sector is estimated to represent up to 50% more than the state will spend to fund the public agency component.

To view a copy of the proposed statute, a Fact Sheet, an Executive Summary, a sketch of the proposed agency structure, and an article about the Joint Judiciary Committee hearing, please visit the Institute’s website, choose “Resources” on the main menu, then “Statute” on the drop-down menu. Or enter the following URL directly into your browser’s address window:

[www.guardian.institute/resources-statute.html](http://www.guardian.institute/resources-statute.html)



## 6. Looking Ahead

2018 will be an important year for guardianship reform in Massachusetts. The goals remain far-reaching and challenging:

- To end the two-tiered guardianship system in Massachusetts, where those with family, friends or financial means have access to decisional help, while those who lack those advantages suffer delays that lead to higher health care risks, recurring housing crises, more isolation and greater loss of autonomy through the guardianship process than befalls the advantaged.
- To raise ethical awareness of the effects of guardianship proceedings on individuals, and to foster less-intrusive forms of decisional help, such as —
  - supported decision-making;
  - voluntary agencies, including durable powers of attorney and health care proxies;
  - better procedures for creating limited guardianship as the norm when involuntary appointments are necessary.
- To promote practice and supervisory standards for guardians, conservators and voluntary agents of all kinds.
- To design and implement programs to train volunteers to assist or serve as guardians, either independently or under auspices of a public guardian.

These changes can happen, or will happen sooner, if a public guardian-of-last-resort — such as the proposed Office of Adult Guardianship & Decisional Support Services — becomes a reality in 2018.

***Our experience in Massachusetts suggests that, without a public guardian-of-last-resort, serious steps to reform guardianship for the most vulnerable very likely will not happen anytime soon.***

We invite you to join with the Institute and like-minded organizations to help bring about the essential first step — a public guardian-of-last-resort — to fix the broken system in Massachusetts. Other organizations that are following our progress on this mission include —

Massachusetts Guardianship Association  
Massachusetts Medical Society  
Massachusetts Chapter of the National Academy of Elder Law Attorneys  
Massachusetts AARP  
Alzheimer’s Association of Massachusetts

Equal justice under guardianship laws for the poor, the vulnerable and the isolated should be a reality in Massachusetts. Let us join together and work to make it so.

## MEMBERS



**Heather L. Connors, Ph.D.**, is Director of Research for Guardian Community Trust, Inc. (GCT), a non-profit organization located in Andover, Massachusetts, that advocates for guardianship reform through research, education and an active grant-making program. Heather has done groundbreaking research on guardianship issues, and prior to joining GCT, Heather was Guardianship Program Manager for Jewish Family & Children’s Services in Worcester, Massachusetts. Heather received her undergraduate degree in Sociology from The College of the Holy Cross and her Ph.D. in Gerontology from the University of Massachusetts Boston.



**John J. Ford, Esq.** has been a legal services attorney for over 40 years, and has served as Director of the Elder Law Project a Neighborhood Legal Services (now the Northeast Justice Center) in Lynn for most of that time. He is past President of the Massachusetts Chapter of NAELA and the Massachusetts Guardianship Association, and presently is a member of the Massachusetts Guardianship Policy Institute. John also has taught at the Gerontology Institute at the University of Massachusetts, and is a frequent contributor to elder law publications and programs. In 2010 he was inducted into the National Association of Legal Services Developers Elder Rights Advocacy Hall of Fame. John received his legal education at Boston University School of Law.



**Wynn Gerhard, Esq.** is a Senior Attorney in the Elder, Health and Disability Unit at Greater Boston Legal Services (GBLS), in Boston, Massachusetts, where she has worked since 1987. In addition to her legal work for elders through GBLS, Wynn has been committed to guardianship reform in Massachusetts for more than two decades. She was clinical supervisor for the Northeastern University Law School Legal Skills in Social Context Project on Public Guardianship in 2014-15, and presently is a member of the Massachusetts Guardianship Policy Institute. She also chairs the Coalition of Organizations to Improve Elder Care. Wynn graduated from Harvard University and received her JD from the University of Wisconsin – Madison.



**Hon. Gen. Scott Harshbarger** is Senior Counsel at Casner & Edwards. For more than a decade, he has developed a practice specializing in providing strategic advice and counsel for corporate investigations and defense, business ethics, compliance and risk management, corporate and not-for-profit governance and government regulation. During his two terms as Massachusetts Attorney General (1991–1999), Scott made Elder Protection his national presidential priority building on his focus on domestic violence and elder abuse, fraud and financial exploitation. Since returning to private practice, Scott has continued to be involved in public policy reform, including his work with the Institute. He has held varying teaching positions in professional responsibility, legal ethics, government, public policy and other law-related subjects at Boston University Law School, Harvard Law School, Northeastern Law School and Northeastern College of Criminal Justice. Scott appears regularly in the national media and on New England television as a commentator and news analyst.



**Peter M. Macy, Ed.M., J.D.**, is Executive Director of Guardian Community Trust, Inc. (GCT), a non-profit organization that serves as trustee for a large Medicaid-exempt pooled trust program in Massachusetts, and also is a grant-making organization deeply committed to guardianship reform in Massachusetts. Prior to joining GCT, Peter worked in private practice as an elder law attorney, specializing in trust law and guardianship practice. Peter is a graduate of Boston College Law School, Harvard Graduate School of Education, Harvard Divinity School and the University of Puget Sound.

## ABOUT THE INSTITUTE

The Massachusetts Guardianship Policy Institute is a non-profit collaboration based in Massachusetts that is committed to research, education and advocacy on issues of guardianship and its alternatives. Our primary mission is to develop and promote policies to widen the public safety net for the “unbefriended”— persons who cannot manage their own affairs, but have no family, friends or private resources to provide a protective fiduciary while addressing the limitations of traditional guardianship for those who can benefit from other forms of decision-making support.

The Institute was established in 2014 as a collaboration between Guardian Community Trust, Inc. (Community Trust), and Greater Boston Legal Services, Inc. (GBLS), in order to develop and promote better policy for unmet guardianship needs in Massachusetts. In February, 2015, the Northeast Justice Center, Inc. (NJC), joined the Institute. Representative participants for the three constituent organizations are Peter M. Macy, Ed.M, J.D., Executive Director of Community Trust; Wynn A. Gerhard, Esq., Senior Attorney for GBLS; John J. Ford, Esq., founder of the Elder Law Project at NJC (formerly Neighborhood Legal Services); and Heather L. Connors, Ph.D., Director of Research for Community Trust. Hon. Scott Harshbarger, former Massachusetts Attorney General, now in practice at Casner & Edwards, LLP in Boston, joined the Institute in 2016.

Along with public guardianship issues, the Institute is developing policies to improve support for family members and volunteer guardians, who represent the vast majority of appointees statewide. The Institute’s current projects include researching how to contact, train, support and supervise this important sector of fiduciaries in Massachusetts.

## WHAT WE DO

**RESEARCH.** The Massachusetts Guardianship Policy Institute is committed to research that will explore basic questions about the extent of unmet guardianship needs in Massachusetts, the effectiveness of surrogate decision-making by guardians and other fiduciaries, and costs associated with both providing and not providing a public guardian for the most disadvantaged. In collaboration with Boston VA Research Institute, and the Donahue Institute at University of Massachusetts Amherst, several initiatives are underway or in development

**EDUCATION.** The Institute organizes educational events to stimulate public awareness and debate about guardianship reform and related topics, and collaborates with other non-profit organizations to offer training to professionals and families about how to identify and help people in need of decisional support. Through its website, the Institute also makes articles, links and video available to those who want to learn more about guardianship issues for academic or personal reasons.

**ADVOCACY.** As an advocate for change, the Institute brings together community leaders, policy-makers, scholars and other advocates statewide to develop better policy for the unmet guardianship needs in Massachusetts. In addition to initiating research and organizing scholarly exchange, the Institute participates in a Steering Committee that coordinate the efforts of a number of stakeholders who are advancing guardianship reform.

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