RESTORATION
OF CAPACITY
STUDY AND
WORK GROUP
REPORT

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**Disability Rights Florida**

**Guardian Trust**

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- Wynter Solomon-Cuthbert, Court Program Specialist – Guardianship, Ninth Judicial Circuit Court of Florida
- Jamal Tice, Self-Advocate
EXECUTIVE SUMMARY

The Florida Developmental Disabilities Council commissioned a research study to examine guardianship restorations among persons with developmental disabilities. Guardian Trust co-sponsored the project.

Guardianship is a process in which a court appoints someone to exercise certain legal rights on behalf of another in accordance with either Sec. 393.12 or Chapter 744, Fla. Stat. Florida law provides a right to a continuing review of the need for guardianship and a process for the restoration of rights. Guardianships for persons with developmental disabilities should focus on the restoration of rights as individuals gain new capacities.

The purpose of the research study was to collect guardianship and restoration data to determine the need for assistance with restoration among persons with developmental disabilities under guardianship.

The final report covers the first year of a potential three-year project. Year One called for the development and implementation of a research methodology to explore the need for restoration. The research findings were reviewed by a Stakeholders’ Work Group which made recommendations for a pilot program implementation plan. Components of Year One included:

- Literature review
- Review of restoration practices in other states
- Statewide survey of relevant individuals and organizations
- Targeted focus groups
- Guardianship file reviews
- Point of intake data collection

The literature review and review of restoration practices in other states revealed a limited amount of work conducted in the area of guardianship restoration for people with developmental disabilities.

RESEARCH DESIGN AND METHODOLOGY

There is little uniform data collected on guardianships in Florida. The Office of the State Courts Administrator (OSCA) reports at the state level only the number of guardianships filed in a given year and the dispositions of those cases. The state does not keep a record of the total number of persons under guardianship, whether the guardianship is plenary or partial, the nature of the disability of the person under guardianship, or a host of other data crucial to making informed decisions about systems change. Additionally, there is neither central reporting of the number of Suggestions of Capacity filed nor restoration outcomes in general. Therefore, the project focused on a research design that relied on a broad range of sources to obtain data on the status of restoration of capacity in the state.

Web-based Surveys. Information on restoration of capacity was collected using web-based surveys from two groups of individuals with specific knowledge about guardianship. One group was comprised of legal and human service professionals who work in the area of guardianship and who would likely come in contact with persons seeking restoration of capacity. This group included attorneys, clerks of the court, judges, court monitors, agency staff and professional guardians. The second group was composed of persons with disabilities and their family members, some of whom were legal guardians or guardian advocates. The surveys were disseminated over a three month
period. The survey results showed little restoration activity reported by respondents. For example, fewer than two out of three attorneys, clerks, and agency staff, receive inquiries about restoration; the median number of inquiries, among those who receive inquiries, is two per year. More than 25 percent of guardians had at least one person who expressed an interest in having his or her rights restored, but this was over the full course of their professional experience.

Targeted Focus Groups. The Project Team gathered information by conducting three focus groups in both urban and rural settings. The urban focus groups took place in Orlando, Florida, and Tampa, Florida, and the rural focus group was conducted in Gadsden County, Florida. Focus group participants were divided into two groups: guardians/family members and persons under guardianship. Each group was asked selected questions about their experiences with guardianship.

For those participants who had a family member under guardianship under Chapter 744, Fla. Stat. (2013) or guardian advocacy under Sec. 393.12, Fla. Stat. (2013) participants were unaware that they could pursue restoration of rights, or felt that this option was not applicable to their family member. When asked about whether the participants answered the question on their Annual Plans filed with the Florida Clerk of Court about activities towards restoration, guardians noted that they had not explored restoration of rights with their family members. One participant noted working with the person under guardianship to build independence and work towards restoration, and one participant had successfully regained all of his rights with the exception of choosing his residential setting.

A majority of the participants in the focus groups for persons with developmental disabilities were also unaware of the option to pursue restoration of some or all of their rights. Although unaware of restoration of capacity, participants stated interest in building independence by attaining jobs, bank accounts, independent living, and more financial responsibility.

Florida Case File Reviews. There is no current data collection on the frequency and outcomes of restoration activity; therefore, individual case review was the only means of collecting data on the number of restorations and outcomes. Included in a guardian’s annual report is a required section about the activities undertaken by the guardian that advance rights restoration. This was the information the Project Team asked to be reviewed in the case files. The goal was to understand the extent to which persons under guardianship are being provided with the knowledge and skills to develop some or all of the capacities that would lead to greater self-determination.

The Project Team approached three different counties in Florida: two urban (Palm Beach and Orange counties) and one rural (Gadsden County). Court personnel in all three counties were initially receptive to the project. Although none of these requests were denied, two were approved in time for inclusion in the report.

Palm Beach County performed a limited review of a random sample of guardianship files. The senior auditor of the circuit reviewed 76 randomly selected open guardianship files for persons over the age of 18. Among these, over two thirds were of persons with age-related disabilities. Nine of the 76 files (11.8%) selected were of persons with developmental disabilities. After reviewing the files, the senior auditor reported that there were “no cases where the guardianship plan recommended the restoration of any rights.”

In rural Gadsden County, court staff reviewed 15 open guardianship files. Of these, eight persons under guardianship were minors and two were elderly. Among the remaining five, three had developmental disabilities. Over the 15 cases, six had no annual plan filed. None had a suggestion of capacity filed.
The results from the case file reviews triangulated findings from the web-based surveys of guardianship professionals and families of persons under guardianship, as well as the experience of Stakeholders’ Work Group and Project Team members: namely, that restoration activity is rare at best.

Point-of-Intake Data Collection. The Project Team collected data from Disability Rights Florida, the statewide designated protection and advocacy system for individuals with disabilities in the State of Florida. Disability Rights Florida receives more than 7,000 requests for assistance per year from or regarding people with disabilities from across the state of Florida. Of approximately 3,500 calls to the organization during the six-month period from June 2013 to November 2013, eight calls involved restoration.

STAKEHOLDERS’ WORK GROUP

The Stakeholders’ Work Group is made up of a diverse group of individuals who represent the legal community, individuals under guardianship, psychologists, individuals who have had their legal rights restored, family members of persons with developmental disabilities, Exceptional Student Education personnel, the judiciary, and guardians.

The Stakeholders’ Work Group had two primary purposes: first, to examine the current state of guardianship restorations among persons with developmental disabilities; and second, to determine whether there is a need for a program to assist persons in gaining restoration of their legal rights.

Over a series of three meetings: two face to face meetings and one webinar meeting, the Stakeholders’ Work Group reviewed the research design and methodology, reviewed the research findings, deliberated over various options for addressing the findings and recommended a pilot project implementation plan.

The research findings revealed that guardians and people under guardianship are not specifically aware of their rights to continuing review of the need of guardianship and the legal process to obtain guardianship restoration. The Stakeholders’ Work Group recommendations for the pilot project implementation plan are designed to address those unmet needs.

PILOT PROJECT IMPLEMENTATION PLAN

The proposed pilot project is designed to increase awareness of the legal process of restoration in Florida, and consists of the following:

1. Developing a website and accompanying manuals tailored to persons under guardianship and their families, self-advocates, guardians, the legal community and other interested parties;
2. Advocating for the improved collection of data on guardianship and persons with developmental disabilities by the courts and state agencies; and
3. Conducting workshops designed for persons under guardianship and their families, self-advocates, guardians, and the legal community.

There was consensus (100% agreement) from the Stakeholders’ Work Group members that the project was feasible, and that it held great promise for contributing to educating families and individuals under guardianship about the restoration process and providing resources for activities to promote greater independence through person-centered planning.
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OVERVIEW OF RESTORATION OF CAPACITY STUDY AND WORK GROUP PROJECT

PURPOSE AND NEED FOR STUDY

The Florida Developmental Disabilities Council (Council) and Guardian Trust recognized the need to collect guardianship and restoration data to determine the need for assistance with restoration among persons with developmental disabilities under guardianship.

Guardianship is a process in which a court appoints someone to exercise certain legal rights on behalf of another in accordance with either Sec. 393.12 or Chapter 744, Fla. Stat. The legislative intent of guardianship is to preserve and protect property and provide for the health and safety of persons who have been determined to be unable to do so for themselves. Guardianship is the most restrictive form of assistance and should only be imposed as a last resort. By sponsoring projects such as these, the Council along with additional support of the Guardian Trust, demonstrate their commitment to addressing the need for families and individuals to learn about guardianship and other lesser restrictive decision-making options.

Many conditions underlying incapacity, such as dementia, are unlikely to improve over time and the guardianships for those individuals routinely remain in place for the life of the individual. But, in many instances, a person with an acquired disability (such as the effects of a stroke) or a person with a developmental disability (such as Down syndrome) can be expected to gain or regain capacity over time with training, life experience, and rehabilitation. Therefore, guardianships for persons with developmental disabilities should focus on the restoration of rights as individuals gain new capacities. Moreover, Florida law provides a right to a continuing review of the need for guardianship and a process for the restoration of rights.

PROJECT DESCRIPTION AND OBJECTIVES

This report covers the first year of a potential three-year project. Year One called for the development and implementation of a research methodology to explore the need for restoration. The research findings were reviewed by a Stakeholders’ Work Group which made recommendations for a pilot program implementation plan. Components of Year One included:

- Literature review
- Review of restoration practices in other states
- Statewide surveys of relevant individuals and organizations
- Targeted focus groups
- Guardianship file reviews
- Point of intake review
PROJECT TEAM AND STAKEHOLDERS’ WORK GROUP MEMBERSHIP

The Office of Public Guardian, Inc. (OPG) is the contract provider for the Restoration of Capacity Study and Work Group project and is responsible for accomplishing the contract objectives. However, OPG elected to perform its role as contract provider by enlisting the efforts of key individuals using a collaborative teamwork approach. The individuals and organizations represented on the Project Team share the mission of the Council which is to enhance the quality of life for all persons with developmental disabilities by encouraging independence, productivity, inclusion and self-determination. Through their respective occupations and relationships, Project Team members learned from self-advocates, family members and others the impact guardianship has on the lives of people with disabilities, as well as the importance of providing education and training in the area of guardianship alternatives and restoration of rights.

The Stakeholders’ Work Group had two primary purposes: first, to examine the current state of guardianship restorations among persons with developmental disabilities; and second, to determine whether there is a need for a program to assist persons in gaining restoration of their legal rights. The Stakeholders’ Work Group is made up of a diverse group of individuals who represent the legal community, individuals under guardianship, psychologists, individuals who have had their legal rights restored, family members of persons with developmental disabilities, Exceptional Student Education personnel, the judiciary, and guardians throughout Florida. The members of the Stakeholders’ Work Group have significant and impeccable experience in the area of guardianship.1

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1. See Appendices for a list of Project Team and Stakeholders’ Work Group members and their professional and personal experience.
GUARDIANSHIP AND RESTORATION OF CAPACITY

PROGRESSION OF GUARDIANSHIP

Guardianship is an ancient system that developed over centuries of western civilization. As a means of protecting vulnerable citizens who are deemed to be unable to manage their own affairs due to disability, illness or age, it predates not only modern civil rights laws such as the Americans with Disabilities Act, it predates the United States Constitution and the Magna Carta. Guardianship springs from the doctrine of parens patriae, which gave the crown the authority to exercise “royal prerogative over its subjects unable to protect themselves, but with the singular objective of protecting the subjects properties for the crown.”

2. 27 Stetson L. Rev. 1 (1997).

The typical ward has fewer rights than the typical convicted felon--[he/she] can no longer receive money or pay [his/her] bills. By appointing a guardian, the court entrusts to someone else the power to choose where [he/she] will live, what medical treatment [he/she] will get and, in rare cases, when [he/she] will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen…

In response to investigative reporting that revealed serious abuses of the guardianship system, guardianship laws have been revised to provide individuals subject to guardianship with greater due process, limitations on the scope of guardianship and increased monitoring of existing guardianships to prevent exploitation and abuse. In Florida, sweeping changes were made to its guardianship laws by revising Chapter 744, Fla. Stat., in 1989.

It is widely recognized that Florida provides for greater due process than many states. In order to ensure that individuals faced with guardianship do not have their civil rights restricted unnecessarily, Florida law provides that alleged incapacitated persons have an attorney appointed to represent them, a three-person examining committee (including a physician) to determine which rights they lack capacity to exercise, consideration by the court of less restrictive alternatives, the right to attend a hearing to determine their capacity and to present evidence and cross-examine witnesses. For those individuals under guardianship, Florida law provides that guardians annually report on less restrictive options that may be available and restoring rights when appropriate. It also provides a process for restoration of rights.
INTERNATIONAL AND NATIONAL BEST PRACTICES FOR GUARDIANSHIP AND RESTORATION

The United Nations Convention on the Rights of Persons with Disabilities calls on signatory states to recognize the legal capacity of all persons with disabilities on an equal basis with others. Also, it has recognized that alternatives to guardianship should be considered whenever possible. The increased focus on “supported decision-making” as opposed to “surrogate decision-making” is perhaps the most significant development that will impact people currently in guardianship as well as those who may be able to avoid guardianships that would have otherwise been inevitable. Supported decision-making is described this way in the Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities:

With supported decision-making, the presumption is always in favor of the person with a disability who will be affected by the decision. The individual is the decision maker; the support person(s) explain(s) the issues, when necessary, and interpret(s) the signs and preferences of the individual. Even when an individual with a disability requires total support, the support person(s) should enable the individual to exercise his/her legal capacity to the greatest extent possible, according to the wishes of the individual... Paragraph 4 of article 12 calls for safeguards to be put in place to protect against abuse of these support mechanisms.6

This language is a welcome statement of human rights in the face of the reality that, “the guardianship system in much of the world violates the basic tenets of international human rights law, due process, and human dignity.”7

Nationally, a groundswell of support has occurred for examining guardianship from a human rights perspective. The Third National Guardianship Summit held in Utah in 2011, like the two previous summits before it, generated many ideas for improvements in guardianship theory and in practice. The topics covered included an overview of status of and need for standards in guardianship, surrogate decision-making, the need for person-centered planning, specific discussions of various areas of guardianship decision-making, and increased monitoring. While not legally binding, many of these ideas were subsequently incorporated into the National Guardianship Association Standards of Practice. These standards emphasize the need to include the individual under guardianship in decision-making and engaged in person-centered planning at every opportunity. Additionally, they establish that the guardian has a responsibility (standards which mirror what is already in Chapter 744, Fla. Stat., Florida’s guardianship statute) to facilitate the individual’s gaining or regaining functional capacity and his or her ability to seek restoration.8

Following the Summit, many states sought revisions of their statutes. One change to state law that is of particular interest in the context of restoration is in Illinois, which now allows the court to modify or revoke letters of guardianship based on a verified petition signed by the person under guardianship and the guardian which indicates that the person has regained capacity.9 While this may make it easier for restorations to occur when the guardian is supportive, it should be noted that Illinois law also provides that a petition for restoration not supported by the guardian must be supported by clear and convincing evidence, which is actually a higher standard of proof than in Florida.

9. 755 ILCS 5/11a-20
Michigan has also significantly revamped its guardianship system and there are several changes to the Michigan statute that are notable. One is that courts are required to review the continued need for a guardian one year after appointment and every three years thereafter. Another is that the individual under guardianship is entitled to an independent evaluation by a physician or professional of his or her choice, which will be paid for by the state if they are indigent; and, the individual is entitled to a trial by jury on the issue of incapacity. Finally, Michigan law gives priority to the guardian of the individual’s choosing over all others, including relatives.\(^{10}\)

In addition to the statutory changes outlined here which are designed to increase the self-determination of individuals either by raising the bar for imposing guardianship in the first place or granting more autonomy and authority to individuals once they are under guardianship, there are some efforts underway to assist individuals with having their rights restored. As an example, Disability Rights North Carolina includes on their website detailed instructions on how to petition the court for restoration.\(^{11}\)

The Quality Trust for Individuals with Disabilities launched the “Jenny Hatch Justice Project” in 2013. The Quality Trust provided legal representation to Jenny Hatch, a 29-year old woman with Down syndrome living in Virginia, who fought to have the guardianship of her parents lifted so she could live where and how she wanted. The case brought national attention to the issue of people with developmental disabilities having their rights restricted under guardianship. Also, it has brought together national leaders and scholars on guardianship reform to develop new paradigms that would replace guardianship with more person-centered models based on the principles of self-determination.\(^{12}\)

**THE GUARDIANSHIP PROCESS IN FLORIDA**

The process for creating guardianships is established in Florida in the Florida Guardianship Law, Chapter 744, Fla. Stat. The legislative intent emphasizes the preservation of autonomy, including the affirmative requirement that guardians provide opportunities for the individual under guardianship to regain their abilities to the extent possible.

1. A petition is filed with the court to determine the person’s incapacity. The petition must include a description of the alleged incapacity and a list of the rights the person allegedly cannot exercise.

2. The court appoints an attorney to represent the alleged incapacity person (AIP), gives notice of the petition, and appoints a three-member examining committee. At least one person on the committee must be a physician.

3. The examining committee submits a report detailing the physical, mental and functional condition of the AIP and a list of the rights that the committee recommends should be removed.

4. A hearing is held to review the report of the examining committee. If the person is found by the court to be incapacitated, the court must first determine whether there are less restrictive alternatives before appointing a guardian.

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If a guardian is appointed, the court determines whether the guardianship should be plenary (all delegable rights removed) or partial (only certain rights removed) and creates Letters of Guardianship detailing rights delegated to the guardian. The guardian is required to submit an annual guardianship plan which must address the issue of restoration of rights to the person under guardianship (ward) and include: (a) a summary of activities during the preceding year that were designed to enhance the capacity of the ward; (b) a statement of whether the ward can have any rights restored, and (c) a statement of whether restoration of any rights will be sought. Also, the court, in its discretion, may require reexamination of the ward by a physician at any time.

The legal process for guardian advocacy is only available to individuals with at least one of the five developmental disabilities as defined in Sec. 393.12, Fla. Stat. (2013) and is lacking the decision-making ability to perform some, but not all of the tasks necessary to care for his or her person, property, or estate. Rather than a determination of incapacity by a team of experts (the examining committee), the judge can use educational evaluations, individual education plans, support plans, and habilitation plans to address the persons area(s) of incapacity to determine whether the person “needs” to have a guardian advocate to exercise certain rights. If a guardian advocate is appointed, the duties and responsibilities are essentially the same as a guardian under Chapter 744, Fla. Stat.

**THE RESTORATION PROCESS IN FLORIDA**

Under the Uniform Guardian and Protective Proceedings Act (UGPPA), guardians have an affirmative duty to encourage the person under guardianship to participate in decisions and assist the person in regaining capacity. Under Florida law, individuals under guardianship or guardian advocacy who gain or regain capacity are entitled to seek restoration through a well-defined process that includes due process protections (see Table 1).

Any interested party, including the individual under guardianship, may file a petition called a “Suggestion of Capacity” with the court where the guardianship is pending. Although there are some formalities involved, a Suggestion of Capacity simply must state that the person has regained the ability to exercise some or all of the rights that were removed and a good faith reason for the belief. The court will appoint a physician to evaluate whether the person has regained some capacity. If the physician recommends no restoration, or a timely objection is filed, the court will set a hearing and appoint an attorney to represent the individual under guardianship. The process is substantially similar for individuals under guardian advocacy, Sec. 393.12, Fla. Stat. (2013), except that the court relies on reports and other relevant information about the person's abilities rather than appointing an examining physician.
TABLE 1: Restoration of Rights Process in Florida

<table>
<thead>
<tr>
<th>Suggestion of Restoration of Rights</th>
<th>Guardian Advocacy Chapter 393.12(12), Florida Statutes</th>
<th>Guardianship Chapter 744, Florida Statutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any interested person, including the person under guardian advocacy, may file a Suggestion of Restoration of Rights which must state that the person has regained the ability to exercise some or all of the rights that were given to the guardian advocate, along with evidentiary support or a statement of the good faith reason for the belief.</td>
<td>Any interested person, including the person under guardianship, may file a suggestion of capacity stating that the person is currently capable of exercising some or all of the rights which were removed.</td>
<td></td>
</tr>
<tr>
<td>Physician's Review</td>
<td>Since the guardian advocacy process does not include an examining committee (which involves the evaluation by a physician), the restoration of rights process does not require an examination by a physician.</td>
<td>The court will immediately appoint a physician to examine the ward and submit his report within 20 days.</td>
</tr>
<tr>
<td>Court Action</td>
<td>If no evidentiary support is attached, the court must immediately set a hearing wherein the court can consider all reports and testimony relevant to the person’s decision-making abilities.</td>
<td>If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court shall set the matter for hearing. If the ward does not have an attorney, the court shall appoint one to represent the ward.</td>
</tr>
<tr>
<td>Order for Restoration of Capacity</td>
<td>At the conclusion of the hearing or review of the evidence submitted, the court will enter an order denying the suggestion or restoring some or all of the individual’s rights.</td>
<td>At the conclusion of the hearing or review of the physician’s report, the court will enter an order denying the suggestion or restoring some or all of the individual’s rights.</td>
</tr>
</tbody>
</table>

BARRIERS TO RESTORATION

Individuals under guardianship may encounter barriers to restoring rights. These barriers can include the unavailability of rehabilitative and supportive services to help gain capacity, guardians not supporting or encouraging the regaining of some or all rights that have been removed, starting the restoration process, proving that capacity has been restored, family members or other interested parties objecting to any suggestion of capacity, and appealing the court’s decision if rights are not restored.

The legal system is not the only barrier to restoration. Unless the individual under guardianship has access to rehabilitation and education that aims to build capacity and a guardian who has included him or her in making decisions, the individual is likely to be ill equipped to demonstrate their functional capacity to make and carry out decisions. The availability of services in the community can also have a profound impact on an individual’s ability to regain their rights. Person-centered planning could take the place of guardianship for many individuals with developmental disabilities if the services and supports they require are available in the community.
Persons under guardianship generally have three options for beginning the restoration process:

1. communicate directly to the court, e.g., through writing a letter or speaking up at a hearing;  

2. contact an advocate or an attorney (this may be more difficult if the right to contract has been removed under guardianship); or  

3. rely on the guardian or the attorney for the guardianship to either file the Suggestion of Capacity or communicate with the court that restoring right(s) is desired.

These options can create barriers to beginning the process of restoring rights. For example, it may not be easy to know how to communicate directly with the court. An individual has to know the name of the judge handling the guardianship and then find the judge’s contact information.

Additionally, if an individual is successful in filing a “suggestion of capacity,” the court is required to appoint a physician. Persons under guardianship may have a difficult time proving to the physician appointed that they have gained or regained the ability to manage their affairs, or the physician may not be familiar with developmental disabilities and lack knowledge of supports and services available.

Also, the statute requires the guardian and other interested persons be given notice of filing. Other interested persons could be family members that turn capacity restoration into adversarial proceedings. An individual has to demonstrate he or she has regained abilities when there may be someone on the other side who is trying to show just the opposite.

Another barrier to restoration is providing proof of capacity. The level of proof required to show capacity is not presently spelled out in the statute. Florida is one of “[t]hirty-three states [that] do not provide a specific evidentiary standard. There is little case law in the area of restoration and it is not entirely clear what standard of proof should apply.” Although there is one case in Florida that seems to indicate that preponderance of the evidence is the appropriate standard in a Suggestion of Capacity action, this is by no means universally understood. However, regardless of the actual standard of proof, it seems probable that once one has been determined to lack capacity, courts may view the suggestion that the person has gained or regained ability to exercise sound judgment somewhat skeptically, particularly if they fear harm will come to the person if they allow the person to continue without a guardian. This concern is highlighted in a study of public guardianship in which a guardian stated, “[n]obody will be focused on Mrs. Doe’s desire to live at home when she dies in a fire trying to boil water at 2 a.m. They will want to know why I did not provide for her safety.”

One final legal barrier is that if the person wants to appeal a denial of a Suggestion of Capacity, he or she cannot continue to retain an attorney without a court order if he or she has the right to contract removed.

13. Although in many jurisdictions the court will treat any such request as a “Suggestion of Capacity” and appoint a physician and often an attorney for the Ward, the statute does not actually require the appointment of an attorney unless the examination is not a recommendation for complete restoration or a timely objection is filed.
RESEARCH DESIGN AND METHODOLOGY

GOALS AND OBJECTIVES

According to the contract agreement with the Council, the goal of the research was to collect data and document the need for restoration of capacity for individuals with disabilities in Florida.

Court records in Florida are not currently organized in such a way that detailed guardianship data can be readily generated at the state or even circuit level. The Office of the State Courts Administrator (OSCA) reports at the state level only the number of guardianships filed in a given year and the dispositions of those cases (see Figure 1). The state does not keep a record of the total number of persons under guardianship, whether the guardianship is plenary or partial, the nature of the disability of the person under guardianship, and a host of other data crucial to making informed decisions about systems change. Additionally, there is neither central reporting of the number of Suggestions of Capacity filed nor restoration outcomes in general.

FIGURE 1: Example of Report Available from Florida Office of the State Courts Administration (OSCA)

<table>
<thead>
<tr>
<th>Summary Reporting System (SRS)</th>
<th>Summary for the month of July</th>
<th>2011 through June 2012</th>
<th>State Total - Probate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Probate</td>
<td>Guardianship</td>
<td>Trust</td>
</tr>
<tr>
<td>Cases Filed</td>
<td>47,884</td>
<td>6,207</td>
<td>902</td>
</tr>
<tr>
<td>Cases Disposed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-Dismissed Before Hearing</td>
<td>21,592</td>
<td>668</td>
<td>213</td>
</tr>
<tr>
<td>2-Disposed by Judge</td>
<td>23,696</td>
<td>3,255</td>
<td>479</td>
</tr>
<tr>
<td>3-Disposed by Non-Jury Trial</td>
<td>222</td>
<td>1,783</td>
<td>2</td>
</tr>
<tr>
<td>4-Other</td>
<td>156</td>
<td>76</td>
<td>31</td>
</tr>
<tr>
<td>Total Disposed</td>
<td>45,666</td>
<td>5,782</td>
<td>725</td>
</tr>
<tr>
<td>Cases Reopened</td>
<td>8,129</td>
<td>65,391</td>
<td>134</td>
</tr>
</tbody>
</table>

17. The court’s e-filing system does not currently include the data discussed above.
Since case-by-case data were not available, information on restoration of capacity activity was collected from two groups of individuals with specific knowledge about guardianship. One group was comprised of legal and human service professionals who work in the area of guardianship and who would likely come in contact with persons seeking restoration of capacity. These included attorneys, clerks of the court, judges, court monitors, agency staff and professional guardians. The second group was composed of self-advocates as well as family members of persons with disabilities, some of whom were legal guardians or guardian advocates.

Different techniques were used to reach the target groups. Web-based surveys were used to contact attorneys, clerks of the court, agency staff, family members, and guardians. Family members and persons with disabilities were interviewed in focus groups in both rural and urban settings. Also, one judge and one court monitor were members of the project Stakeholders’ Work Group, and provided their perspectives over the course of three meetings.

The Project Team also sought permission to review court records in several counties to document restoration activity as reported in guardians’ court-mandated annual guardianship plans. Finally, the Project Team identified points-of-intake for restoration requests and developed a point of intake system to track phone inquiries regarding the restoration of capacity. Thus, the research design would rely on a broad range of sources to obtain data on the status of restoration of capacity activity in the state (see Table 2).

### TABLE 2: Data Sources

<table>
<thead>
<tr>
<th>Method</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Web-based surveys</td>
<td>Attorneys, clerks of the court, agency staff, guardians, families of persons under guardianship</td>
</tr>
<tr>
<td>Focus groups</td>
<td>Persons under guardianship and their families</td>
</tr>
<tr>
<td>Case file reviews</td>
<td>Restoration proceedings</td>
</tr>
<tr>
<td>Point-of intake tracking</td>
<td>Tracking inquiries about restoration</td>
</tr>
</tbody>
</table>
SOURCES OF DATA

WEB-BASED SURVEYS

Separate survey instruments were developed for professionals involved in guardianship (attorneys, clerks of the court, agency staff, and guardians) and family members of persons under guardianship. The areas covered in the survey of professionals included extent of restoration of capacity activity in their offices and practices, procedural issues regarding restoration, and outcomes of restoration inquiries. The survey of guardians included items about their professional experience and training, current numbers of persons for whom they serve as guardian, information about restoration of capacity procedures with which they have been involved, and their familiarity with Florida law. Family members of persons with disabilities were also asked their familiarity with Florida law, as well as their relationship to the person with disabilities.

Generating comprehensive lists of these professionals for the purpose of canvassing or even drawing a random sample proved not to be feasible. The process would have required: lists of organizations dealing with guardianship and restoration; permission from each organization to conduct the research; and creation of email contact lists for staff involved in guardianship -- and in particular, restoration.

Each of these steps would be time-consuming and often problematic. Most offices did not organize their files in a way that would make retrieval of restoration information straightforward; thus, requests for this information would have added a burden to staff. Finding initial email contacts for certain professional groups was also more difficult than anticipated. For example, there is no central list of email addresses for the clerks of court in Florida's counties, and many clerks list only their phone numbers – not their email addresses – on their websites. Additionally, concerns about client confidentiality needed to be addressed at every level.

Since comprehensive email lists across agencies could not be obtained, the Project Team turned instead to convenience sampling techniques to try to answer questions on the status of restoration of capacity: we obtained email lists from professional contacts both inside our Project Team and Stakeholders’ Work Group. Agency personnel were represented by staff at the Florida Agency for Persons with Disabilities; a state-wide training workshop on less restrictive alternatives (Lighting the Way to Guardianship and Other Decision-Making Alternatives) to guardianship provided a large email list that included attorneys, guardians, family members, and other professionals; and finally, clerks of the court were contacted individually through information provided on their websites.

While non-probability techniques such as convenience sampling can and do provide a wealth of information, they do not meet the criteria for statistical inference: that is, because they are not based on random samples, they do not lend themselves to generalizing from sample findings to a larger population. Consequently, it is not possible to report statewide estimates of restoration activity in Florida, e.g., numbers of suggestions of capacity filed, numbers of successful restorations, etc. On the other hand, using multiple sources of data – surveys, focus groups, case file reviews -- presents a richer and more realistic understanding of the complex issues surrounding guardianship, restoration of capacity, and ultimately self-determination of persons with disabilities.

18. See Appendices for copies of the web-based surveys.
Web-based Survey Returns and Findings

Surveys were distributed from March through May of 2013. Email invitations were sent to potential respondents to alert them of the survey two days in advance of the mailing. There were 256 usable surveys returned to the team from an original list of 1,405 emails sent, a return rate of 18 percent. All four targeted groups were well represented in the sample (see Table 3).

<table>
<thead>
<tr>
<th>Target group</th>
<th>Number returned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency staff</td>
<td>77</td>
</tr>
<tr>
<td>Attorneys</td>
<td>108</td>
</tr>
<tr>
<td>Clerks of the court</td>
<td>24</td>
</tr>
<tr>
<td>Guardians</td>
<td>47</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>256</strong></td>
</tr>
</tbody>
</table>

TABLE 3: Survey Returns

Survey respondents reported very little restoration activity, consistent with the experience of the Stakeholders’ Work Group members and Project Team members. Among attorneys, clerks, and agency staff, only 62 percent reported that their offices received inquiries about restoration; the median number of inquiries among those who receive them is two per year. Some of these may result in the filing of a suggestion of capacity and the appointment of an attorney to represent the person under guardianship. But, according to the sample data, few of these inquiries seem to get that far. Among 38 attorneys responding to this item, 26 had not pursued a restoration case in 2012, and another six had pursued just one (see Figures 2 to 4).

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19. Return rates are less critical in non-probability samples than in random or stratified samples, as sample findings are not generalized to an entire population.
FIGURE 2: Do individuals contact your office to seek information about the restoration of rights for persons under guardianship (n=149)

FIGURE 3: Approximately how many contacts about the restoration of rights for persons under guardianship have you had in the past 12 months? (n=144)

FIGURE 4: How many restoration cases did you pursue in 2012? (n=38)
In the offices and practices of this sample of attorneys, clerks, and agency staff, inquiries into restoration of capacity have not generally necessitated the creation of unique procedures for handling them. Less than one in three respondents reported having standard procedures for addressing restoration inquiries, and only one in ten had mechanisms for tracking these inquiries further along the process. The majority of cases are referred to attorneys and legal services, although a significant number get sent to public guardians or directly to the court (see Figures 5-6).

**FIGURE 5:** Does your office have a standard procedure for addressing restoration inquiries? (n=149)

- Yes: 63%
- No: 37%

**FIGURE 6:** If you make referrals, do you have a system for following up on the outcome of the request? (n=42)

- Yes: 10%
- No: 90%
Information received from guardians provided insight into not only their own training and experience, but also into the knowledge of the persons for whom they serve as guardians. About half the guardians responding to the survey served as guardian for only one person; these were most likely family guardians. Another third were professional guardians, serving as guardian for between three and “more than ten” persons.

Guardians responding to the survey reported more experience with restoration of capacity than attorneys, clerks and agency staff. More than 25 percent had at least one person who expressed an interest in having his or her rights restored. Similarly, nearly 20 percent had initiated a restoration process (see Figures 7-8).

**FIGURE 7:**
Have any persons for whom you serve as guardian expressed an interest in having some or all of their rights restored? (n=42)

- YES: 26%
- NO: 74%

**FIGURE 8:**
Have you ever initiated a process for restoration of rights for a person under guardianship? (n=42)

- YES: 19%
- NO: 81%
Responses from guardians raised serious concerns about their training and the extent to which persons under guardianship understand their rights. In Florida, non-professional guardians are required by law to complete an eight-hour guardianship training course and professional guardians are required to complete a 40-hour guardianship training course, both designed to provide information on their legal responsibilities as well as their charge to seek training or activities that would lead to the least restrictive environment for persons under guardianship as well as reporting this activity in annual guardianship plans. However, more than one third had received no training at all (see Figure 9).

**FIGURE 9:**
Which guardianship training course did you complete? (n=45)

Persons under guardianship were not universally aware of their right to an attorney. Only 47 percent (12 of 26) of the guardians reported that their clients knew of their right to an attorney. Nearly the same number (11 of 26, or 42 percent) reported that few of persons they served under guardianship knew of their right to an attorney (see Figure 10). The lack of awareness among persons with disabilities of their legal rights is a cause for concern. Working towards the restoration of rights once they have been removed, and the associated training in skills that foster independence and self-determination, are cornerstones of a person-centered system.
What we have learned from these respondents is that restoration of capacity is rare in their professional experience. Whether this is an indication of a system that is not working properly or simply the result of proper placement into guardianship is impossible to determine except on a case-by-case basis.

Findings from the surveys show that there is widespread lack of education and knowledge among families of persons with disabilities and guardians regarding the rights of persons under guardianship and the duties of guardians themselves, the consequences of which are two-fold. First, families and guardians may be unaware that there are mechanisms in place for restoring some or all of the rights of persons under guardianship in Florida, and that a primary responsibility of the guardian is to seek ways to accomplish that goal. Second, restoration is only the potential outcome of a more important process – developing in the person under guardianship the skills for self-determination and independent living. We have concluded that there is a need for outreach and education to persons under guardianship, their families and their guardians. Data collected from the focus groups highlight that the need is urgent.
FOCUS GROUPS

The Project Team gathered information by conducting three focus groups in both urban and rural settings. The urban focus groups took place in Orlando, Florida, and Tampa, Florida, and the rural focus group was conducted in Gadsden County, Florida.

To target focus group participants, the Project Team received assistance from the Agency for Persons with Disabilities (APD) in locating and confidentially mailing focus group invitations to clients currently being served or on the waiting list for the Medicaid Home and Community-Based Services (HCBS) waiver, excluding those persons currently residing in an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

Focus group participants were divided into two rooms (one for family members/guardians, the other for individuals under guardianship or guardian advocacy) and asked about their experience with guardianship, as well as their knowledge about restoration of capacity. Focus group participants are referred to as “families” for the purpose of this study. A family consisted of 1) one or more persons with a developmental disability under guardianship or guardianship advocacy in Florida and 2) one or more family members or legal guardian of the person under guardianship.

For the first urban focus group, APD invited 150 families within 60 miles of Orlando, Florida, to participate. Of those 150 focus group invitations, 20 invitations were returned to APD as not deliverable to the addresses noted at the agency. For the second urban focus group, APD invited 200 families within 60 miles of Tampa, Florida, to participate. Of those 200 focus group invitations, 19 invitations were returned to APD. For the rural focus group in Gadsden County, Florida, APD invited all 258 APD clients residing in Jackson, Gadsden, Liberty, and Jefferson counties. Of those 258 invitations, 10 invitations were returned (see Table 4).

<table>
<thead>
<tr>
<th>Invitations mailed by APD</th>
<th>Invitations returned as undeliverable</th>
<th>Number of families confirmed</th>
<th>Number of families participating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orlando</td>
<td>150</td>
<td>20</td>
<td>10</td>
</tr>
<tr>
<td>Tampa</td>
<td>200</td>
<td>19</td>
<td>5</td>
</tr>
<tr>
<td>Gadsden County</td>
<td>258</td>
<td>10</td>
<td>15</td>
</tr>
</tbody>
</table>

TABLE 4: Focus Group Mailouts And Participation
Table 4 shows the total amount of participants grouped by families in each of the three focus groups. Each family consists of one person with a developmental disability under guardianship, and at least one family member/guardian. Of the 16 total participant families, 64% (nine families in total) participated in the rural focus group in Gadsden County, Florida, while 36% (five families in total) participated in the urban focus groups in Orlando, Florida and Tampa, Florida.

Project Team members conducted the focus groups. Participants were divided into two separate rooms; one room contained persons with a developmental disability under guardianship, and the other room contained the family member/guardian of the person with a developmental disability. Both rooms were asked a set of open-ended questions about their experiences with guardianship. To collect more data, a survey was completed by the family member/guardian to collect demographic information about the person under guardianship (see Figure 11).

Figure 12 illustrates the gender of the persons with a developmental disability under guardianship that participated in the focus groups. Of the 16 total participants, 64% (nine people in total) were male and 36% (five people in total) were female.
Figure 13 illustrated the race/ethnicity of the persons with a developmental disability under guardianship that participated in the focus groups. Of the 16 total participants, 57% (eight total participants) identified as African-American, 21.5% (three total participants) identified as Hispanic, 21.5% (three total participants) identified as white.

**FIGURE 13: Race/ethnicity of persons under guardianship participating in focus groups (16 total participants)**

Participants in the family/guardian groups were asked a series of questions which included the following questions:

- How did you learn about guardianship? What has been your experience with guardianship?
- Do you know that once a person has a guardian, the law says that the individual can try to get some or all of his or her rights back?
- What activities are you doing to help the person under guardianship towards more independent living?
- Do you talk with your family member about restoration of rights?

Individuals in the participants under guardianship groups were asked a series of questions, which included the following questions:

- Do you know you have a guardian that helps you?
- Who is your guardian?
- What does your guardian help you with?
- Do you live on your own? Do you want to live on your own?
- Do you manage your own money?
- Do you know that the law says that you can try to get some or all of your rights back?
- Have you wanted any of your rights back?
Focus Group Summaries

ORLANDO, FLORIDA

The first urban focus group was conducted in Orlando, Florida, on June 6th, 2013. The Agency for Persons with Disabilities (APD) invited 150 families to participate, and two families participated. The family consisted of two parents with two adult children with developmental disabilities. One public guardian and an adult with a developmental disability also attended the focus group.

The family who participated in the focus group had both a plenary guardianship under Chapter 744, Fla. Stat., for one of their family members, and a guardianship advocacy under Sec. 393.12, Fla. Stat., for their other family member. The parents, who serve as guardian and guardian advocate for their adult children, noted that they were brought into the guardianship process when their oldest child, currently under a plenary guardianship, was nearing the age of adulthood. The family was instructed by the child’s school to pursue guardianship. The parents approached a legal aid organization, who assisted in locating a pro bono attorney to represent them in the guardianship proceeding. Also, the family learned about guardian advocacy at a Family Care Council (FCC) meeting where they had attended to find more information on guardianship for their other child.

The family also noted that they had attempted multiple times to contact a legal aid organization for assistance with guardianship for their second child, as well as more recently for information on trusts. The family was not aware that there were other less restrictive alternatives to guardianship that might be more appropriate for their children.

One member of the focus group for persons with developmental disabilities under guardianship was originally under plenary guardianship under Chapter 744, Fla. Stat. By working with his public guardian, the participant successfully had all rights restored except the right to choose his residential setting. The participant had previously been employed and was looking for other opportunities for employment. The participant’s guardian noted that they were currently assisting on the right to choose his residential setting. The guardian also noted that the person under guardianship had elected instead for the use of a supported living coach to assist with activities of daily living.

Another participant of the focus group for persons with developmental disabilities had noted working with a Medicaid Waiver Support Coordinator to plan activities related to daily living skills. The person under guardianship currently holds a part-time job and manages a bank account through the assistance of a family member/guardian advocate.

TAMPA, FLORIDA

The second urban focus group was conducted on October 13th, 2013 in Tampa, Florida. The Agency for Persons with Disabilities (APD) invited 200 families to participate, and five families participated.

The focus group for family members/guardians consisted of three families actively pursuing guardianship, a family that obtained a plenary guardianship, and a family that chose less restrictive alternatives to guardianship.

The families who were pursuing guardianship were instructed by their school districts that legal guardianship was the most effective way to ensure the protection of their family members with a developmental disability. One family member noted that they were not active participants in their child’s Individual Education Plan (IEP) and often faced difficulties when the family desired to be included. Another family member stated that the guardianship process was extremely expensive and that they had not successfully obtained an attorney to represent them pro bono.

The family member that had chosen to pursue less restrictive alternatives to guardianship had elected to use a Durable Power of Attorney.
When asked about the choice to pursue the Durable Power of Attorney, the family member stated that as a special education teacher within the school system, it was important to examine less restrictive alternatives and to assist in decision-making. The family member also noted that the use of less restrictive alternatives to guardianship is a necessary aspect to explore for families when working on the Department of Education's Individual Transition Plan (ITP).

The family member who successfully obtained guardianship in Florida is the plenary guardian of her grandchild. The guardian had transferred guardianship from a U.S. territory. When asked about restoration, the guardian expressed the opinion that due to a lack of capacity and the need for a constant caregiver, restoration would not be applicable to their situation.

The focus group participants who were under guardianship, or whose family members were actively seeking guardianship, expressed interest in obtaining jobs and living independently. While one focus group participant lives in an apartment with a roommate that the person had chosen, another focus group participant had noted that for cultural reasons, it was customary to live in the family home.

GADSDEN COUNTY, FLORIDA

The rural focus group was conducted in Gadsden County, Florida on December 7th, 2013. The Agency for Persons with Disabilities (APD) invited 258 APD clients both receiving services and on the waiting list in Jackson, Gadsden, Liberty, and Jefferson counties. Of those invitations, nine families participated in the focus group.

Participants in the family/guardian group consisted of families with plenary guardianships under Chapter 744, Fla. Stat., families actively seeking guardianship, and a family who had elected for a less restrictive alternative to guardianship.

For the family members who obtained guardianships, one member expressed difficulties in working with the school district.

The family member noted that her adult child had been removed from the Gadsden County School system due to physical altercations and difficulties in the classroom. Another family member shared that her family member under guardianship was given a choice in activities of daily living and employment. A public guardian, another focus group participant, does speak with her client about restoration of rights and activities towards building independence.

There were two family members who were actively pursuing guardianship. One participant said her family member with a developmental disability had been financially exploited by other family members, and that she had spoken with an attorney about less restrictive alternatives, but had not found those to be suitable for her family member. Another family member expressed interest in guardianship since her family member with a developmental disability had been physically abused while under the care of the school system.

One family member had elected for a less restrictive alternative to guardianship. The family member had been prevented from assisting in making medical decisions for his family member when the family member became 18 years of age. The doctor instructed the family member to examine guardianship as a way of assisting in medical decision-making. The family member had spoken with an attorney who helped obtain a Durable Power of Attorney over medical decisions.

Most of the participants in the focus group for persons with developmental disabilities had not heard of restoration of capacity, although some focus group participants stated that they desired more independent living. One focus group participant expressed interest in living on her own, but noted that while she had the ability to clean her room, make her bed, and assist her parent/guardian in the family business, her parent was uncomfortable with her living on her own because of seizures. Another focus group member stated that her family handles financial obligations, but that she hopes to attain a job in the future and would like to learn to drive. A third focus group...
participant spoke of his desire to have a job since he had one before.

One focus group participant working towards restoration with his professional public guardian stated that he had been working towards independence and planned on pursuing a less restrictive alternative to guardianship. Another participant with a professional public guardian stated that while she handled her own bills and was employed at two jobs, she wanted a bank account and had spoken with her guardian about opening a checking account.

To assist the families participating in the focus groups in all three locations in identifying resources and learning more about less-restrictive alternatives to guardianship, the Project Team instructed the families on how to locate and obtain resources including those available from the Council. The Project Team provided the families with copies of the Council’s “Lighting the Way to Guardianship and Other Decision-Making Alternatives” handbook. Also, the families were told of the free database of resources through the Agency for Persons with Disabilities (APD). The families were also provided the Council’s “Planning Ahead” guide to provide information in planning for the future and activities to support independent living.

**Focus Group Findings**

For those participants who had a family member under guardianship or guardian advocacy most were unaware that they could pursue restoration of rights, or felt that this option was not applicable to their family members. When asked about whether the guardians/guardian advocates answered the question on their Annual Plans filed with the court about activities towards restoration, they noted that they had not explored restoration of rights with their family members. One participant was working with the person under guardianship to build independence and work towards restoration, and one individual under guardianship had successfully regained all of his rights with the exception of choosing his residential setting.

Most of the participants in the focus groups for persons with developmental disabilities were also unaware of the option to pursue restoration of some or all of their rights. Although unaware of restoration of capacity, participants stated interest in building independence by attaining jobs, bank accounts, independent living, and more financial responsibility.

In all three focus groups, participants noted difficulty in obtaining public services or information about resources. One focus group participant reported attempting to contact a legal aid organization on multiple occasions and had not received a response. Participants were also unaware of the Agency for Persons with Disabilities (APD) database of resources and were unfamiliar with the Council’s resources.

Although the focus group invitations specifically asked for persons under guardianship in Florida, some participants in the focus groups were unaware of the difference between a court-appointed guardian/guardian advocate and acting as a representative on behalf of the person without court approval. Some participants were unaware of the difference between a plenary and a partial guardianship. Participants often felt that if they were the parent of the person with a developmental disability, they were the guardians despite their child being 18 or older. Two participants who had pursued guardianship or less restrictive alternatives to guardianship chose to do so because of difficulties faced by not being able to make decisions for the person with a disability who had reached the age of 18.

Three focus group participants noted difficulties in navigating the legal process in Florida. One participant stated that although multiple attempts had been made to find an attorney to represent them, finding an affordable attorney or an attorney that would represent them pro bono had been unsuccessful. Another participant stated that the process was too expensive and that it was not economically feasible to pursue guardianship for their family member.
Members of the focus groups noted that they had been made aware of guardianship in Florida through their family member’s school district. Many had been told that guardianship was the only way to ensure protection of their family members and assist in decision-making after their family member had turned 18 years of age. One focus group member, a special education teacher through the Florida Department of Education, stated that participation in the student's Individual Education Plan (IEP) and Individual Transition Plan (ITP) had low inclusion of guardians and family members. That same focus group member stated that multiple attempts to contact family members and assist them with less restrictive alternatives to guardianship had resulted in few responses.

The Project Team found that the most common response in the focus group was the lack of knowledge of less restrictive alternatives to guardianship. Most focus group participants were unaware that there were other forms of assistance in decision-making for persons with disabilities other than through the Florida legal system. Of the focus group members who were aware of alternatives to guardianship, two were professional state workers: one working for the Department of Education and one working for the Agency for Persons with Disabilities.

**FLORIDA COURT CASE FILE REVIEWS**

The goal of reviewing individual guardianship case files was two-fold: first, it was the most accurate way to determine the frequency and outcomes of restoration activity, and secondly, it would provide a snapshot of activities that are being performed to advance an individual’s independence. Included in a guardian’s annual report to the court is a required section about the activities undertaken by the guardian that advance the individual under guardianship towards greater independence. This information is critical in understanding the extent to which persons under guardianship are being provided with the knowledge and skills to develop some or all of the capacities that would lead to greater self-determination, and potentially, restoration of rights. There is no current data collection on the frequency and outcomes of restoration activity; therefore, individual case review was the only means of collecting data on the number of restorations and outcomes.

The Project Team approached three different counties in Florida: two urban (Palm Beach and Orange counties) and one rural (Gadsden County). Court personnel in all three counties were initially receptive to participating in the project. Although none of these requests was denied, two were approved in time for inclusion in the report.

Palm Beach County performed a limited review of a random sample of open guardianship files. The senior auditor of the county reviewed 76 randomly selected open guardianship files for persons over the age of 18. Among these, over two thirds were of persons with age-related disabilities. Nine of the 76 files (11.8%) selected were of persons with developmental disabilities. After reviewing the files, the senior auditor reported that there were “no cases where the guardianship plan recommended the restoration of any rights.”

In rural Gadsden County, court staff reviewed 15 open guardianship files. Of these, eight persons under guardianship were minors and two were elderly. Among the remaining five, three had developmental disabilities. Over the 15 cases, six had no annual plan filed. None had a suggestion of capacity filed.

The results from the case file reviews triangulated findings from the web-based surveys of guardianship professionals and families of persons under guardianship, as well as the experience of Stakeholders’ Work Group and Project Team members: namely, that restoration activity is rare at best.
POINT OF INTAKE SYSTEM

To better assess the demand for restoration of capacity in the community, the Project Team approached three identified points of intake for restoration requests: the Statewide Public Guardianship Office at the Department of Elder Affairs, Florida Legal Services, and Disability Rights Florida. The goal of having a point-of-intake system at an agency that receives requests for information about guardianship was to determine the number of requests addressing restoration of capacity, in particular.

Two barriers arose when attempting to collect data from the identified points of intake named above. The Statewide Public Guardianship Office at the Department of Elder Affairs was unable to provide intake tracking as the nature of the disability could potentially violate HIPAA confidentiality regulations. Secondarily, Florida Legal Services works primarily with local legal aid offices that individually prioritize guardianship on a local level, and therefore had no central point of intake available to collect the data.

Therefore, the Project Team collected data from Disability Rights Florida, the statewide designated protection and advocacy system for individuals with disabilities in the State of Florida. Disability Rights Florida receives more than 7,000 requests for assistance per year from or regarding people with disabilities from across the state of Florida.

These calls can sometimes include complaints about abuse, neglect or exploitation from individuals under guardianship or who do not agree with the actions of their guardians and want their rights restored. Although Disability Rights Florida does receive calls pertaining to restoration of rights, it is only able to provide legal services to assist with restoration in a limited number of cases due to time and expense involved. For the point-of-intake research methodology, a system was developed to monitor incoming calls to the organization: when the call involved questions about guardianship, the caller was asked several additional questions to determine whether information on restoration of rights was being sought. Of approximately 3,500 calls to the organization during the six-month period from June 2013 to November 2013, eight calls involved restoration.
SUMMARY OF DATA COLLECTION FINDINGS

• Overall, there was very little restoration activity reported by respondents. Fewer than two out of three attorneys, clerks, and agency staff, receive inquiries about restoration; the median number of inquiries among those who receive inquiries is two per year. More than 25 percent of guardians had at least one person who expressed an interest in having his or her rights restored, but this was over the full course of their professional experience.

• Few of these inquiries appear to develop into restoration proceedings: among 38 attorneys responding to this item, 68 percent had not pursued a restoration case in 2012, and another 16 percent had pursued just one.

• Training of guardians was inconsistent: Despite the fact that Florida law requires guardians to complete either an eight-hour or 40-hour course, more than one third had apparently had this requirement waived or not enforced and received no training at all.

• There is a need for outreach and education to persons under guardianship and their families. Persons under guardianship needed more education about their rights under guardianship. Fewer than half knew of their right to an attorney. Families are also uninformed about the resources for fostering greater independence and self-determination in their family members with disabilities. This finding came out in both the survey and focus group research.

• Focus group respondents were not clear on the difference between a legal guardian and a caregiver or family member. Several focus group family members identified themselves as guardians when in fact they had not gone through the process to become a legal guardian.

• Focus group respondents reported difficulties in navigating the legal process or in obtaining public services. This often stemmed from a lack of resources and an overtaxed system. Family members were not aware that while they may have difficulty finding attorneys to establish guardianship, the restoration process permits the appointment of a court-appointed attorney. During the focus groups, members of the Project Team provided information and resources to families.

• Families reported that they were advised most commonly by the school system to pursue legal guardianship when their dependent children turned 18 years of age. As a result, families did not pursue alternatives to guardianship, such as durable power of attorney.
STAKEHOLDERS’ WORK GROUP

The primary purpose of the Stakeholders’ Work Group was to examine the current state of guardianship restoration and determine the feasibility of developing a program to assist individuals in gaining restoration of their legal rights.

DELIBERATIONS AND CONSENSUS

Three Stakeholders’ Work Group meetings were held over the course of the first year of the project. Stakeholder membership consisted of a judge, attorneys with experience in guardianship, a circuit court guardianship monitor, self-advocates, a family guardian, a special education teacher, the deputy director of Florida Legal Services, two neuropsychologists, and members of affiliated agencies with experience in guardianship and restoration of capacity.

The first Stakeholders’ Work Group meeting took place in Orlando, Florida, on June 7th, 2013. The stakeholders were presented with the data that had been collected by the Project Team during the research phase of the project. With that knowledge, stakeholders were asked about their personal experience with guardianship and restoration. Stakeholders were also asked to assist in designing a feasible outline for a project to assist persons with disabilities, their families, and the legal community with restoration of rights. The Work Group anticipated that through the use of education, awareness surrounding restoration would increase, and activities assisting in building capacity would lead to more successful restorations on a larger scale. While the suggestion arose about the use of more pro bono attorneys, it was the reaction of some of the stakeholders that an increase in workload for attorneys was not a sustainable project or effective for increasing the number of restorations.

Attorney Karen P. Campbell presented stakeholders the current process for guardianship and restoration of rights in Florida. Melinda Coulter from the Agency for Persons with Disabilities (APD) presented on person-centered planning and self-determination. Amelia Milton from Curva and Associates, LLC, presented on the national best practices of restoration of capacity, examples of successful restoration cases, and a summary of presentations from the National Guardianship Association (NGA) Colloquium on Guardianship. Dr. Sande Milton, Ph.D., presented the research design and analysis of the data collected during the first four months of the project.

In subsequent discussion, the Stakeholders’ Work Group acknowledged that there was not an existing “place” where those inquiring about restoration of capacity could easily access information. Most agencies and attorneys surveyed during the research had multiple methods for addressing restoration inquiries, from referrals to legal aid or other attorneys. The Stakeholders’ Work Group concluded that the most effective way to address restoration of capacity would be further outreach, education and an easily accessible website. It was also suggested that some people would not have Internet access, and offering the materials in manual form would be beneficial. The Project Team facilitated the discussion of what components would make up the website.

Components of the website and manual suggested by the Stakeholders’ Work Group included an easy-to-understand explanation of the restoration of capacity process in Florida, a database of useful available resources, tools to be developed by the Project Team during the second year of the project, examples of forms used for filing a Suggestion of Capacity, person-centered planning information, and activities to build towards independence.

The second Stakeholders’ Work Group meeting took place in Tampa, Florida, on October 11th, 2013. The Project Team presented the Stakeholders’ Work Group with further data collected since the first Stakeholders’ Work Group meeting. Attorney Phoebe Ball from Disability Rights Florida
presented relevant cases to restoration of rights nationwide. Members also heard a presentation by Dr. Jacquelyn Olander, Ph.D. and Dr. Susan Spicer, Ph.D., regarding examining committee assessments for alleged incapacitated persons.

Stakeholders were then presented with the outline for the pilot project for restoration of capacity based on their recommendations in the previous meeting. From the suggestions made, stakeholders were asked to assess the functionality of the pilot project, as well as the feasibility of the pilot project. The Project Team asked the stakeholders to assist in identifying additional materials not addressed by the model, and if in their opinion, the program would assist individuals in gaining knowledge about the restoration of rights process in Florida.

Members of the Work Group noted that data collection was difficult for the restoration of capacity project and that a supplemental component of the pilot project should be to advocate for an increase in data tracking on guardianship and identify those groups that could facilitate the collection of data to further enhance the tracking of guardianship and restoration status, such as the Agency for Persons with Disabilities, Quality Council on Leadership and Delmarva. Stakeholders also noted that the Florida courts e-filing system does not currently collect information pertaining to guardianship restoration of rights and the nature of the disability, and suggested that the Work Group write a letter to request that the data be collected.

A final suggestion by the Stakeholders’ Work Group was to raise awareness about the pilot project to any interested groups assisting in rewriting of Chapter 744, Fla. Stat., on guardianship. Presentation of the data collected and pilot project materials will be provided to groups identified by the Stakeholders’ Work Group to assist in facilitating systems change for restoration of capacity.

The third Stakeholders’ Work Group meeting was presented as a webinar on December 14th, 2013. The Project Team presented the final outline of the pilot project and an implementation plan for the projected years Two and Three of the restoration of capacity project. Stakeholders were asked for final comments related to the project. Stakeholders were given a draft of the final report outline and provided input into its final presentation. Stakeholders were notified that copies of the first year’s final report would be provided to them.

To further assist with the construction of the pilot project, the Project Team noted that members of the Stakeholders’ Work Group would be asked to serve on an advisory committee if the proposed Year Two of the pilot project is approved by the Council.
PILOT PROJECT DESIGN

The proposed pilot project is designed to increase awareness of the legal process of restoration in Florida, and consists of the following:

1. Developing a website and accompanying manuals tailored to persons under guardianship and their families, self-advocates, guardians, the legal community and other interested parties;
2. Advocating for the improved collection of data on guardianship and persons with developmental disabilities by the courts and state agencies; and
3. Conducting workshops designed for persons under guardianship and their families, self-advocates, guardians, and the legal community.

WEBSITE AND MANUALS

In Year Two of the proposed pilot project, the website and accompanying manuals will be developed and will consist of tools identified or designed by the Project Team. The website and accompanying manuals will be designed for persons under guardianship, their families, self-advocates, guardians, the legal community, and other interested parties, to assist in facilitating the restoration process. The website and manuals are intended to be a key resource for persons seeking information about restoration of capacity, and a supplemental set of information to the Council's "Lighting the Way to Guardianship and Other Decision-Making Alternatives" handbook.

The Project Team, with assistance from the Stakeholders’ Work Group, has identified the following tools to be designed:

- An easy-to-understand explanation of the restoration process in Florida.
- A directory of resources and activities for self-determination, independent living, and least-restrictive alternatives, e.g. "Lighting the Way" (LTW) publications and resources.
- Directories of relevant agencies and legal offices.
- Instructions on developing a Progressive Capacity Restoration Plan which identifies activities and goals towards building independence and acquiring abilities.
- Resources for physicians that focus on assessing functional abilities instead of the existence of a diagnosis only.
- Resources for attorneys to assist in the restoration process including relevant statutory law, relevant case law, sample briefs and legal pleadings.

Two manuals will be developed, one for persons under guardianship, families, guardians and other interested parties; and the other for attorneys and other legal professionals. These manuals will contain the same material as the website for those persons that cannot access the website. The manuals will also be offered as part of the workshop trainings in Year Three of the proposed pilot project.
IMPROVED DATA COLLECTION

In Year Two of the proposed pilot project, the Stakeholders’ Work Group identified the following four opportunities to advocate for improved data collection on restoration of rights:

- Quality Council – Delmarva Reviews
- Questionnaire for Situational Information (QSI) – APD Needs Assessment
- Rewrite of the guardianship statute (Chapter 744, Fla. Stat.)
- E-filing with the Florida courts

Delmarva representatives work with the Agency for Persons with Disabilities (APD) and are contracted by the Agency for Health Care Administration (AHCA) to conduct reviews of providers and those receiving services funded by Medicaid waivers and administered by the agency. Delmarva currently has identified questions related to guardianship and restoration of rights as potential additions to their performance reviews for future data collection. The Quality Council on Leadership may assist in advocating for these additional questions.

The Questionnaire for Situational Information (QSI) conducted by APD is an assessment tool used by APD that gathers key information about a person receiving services funded by the Medicaid waiver and their need for services and supports. Additional items added to the assessment instrument pertaining to legal representatives, guardianship, and restoration of rights may assist in increasing data collection.

The Stakeholders’ Work Group has suggested that groups working to rewrite the Florida guardianship statutes be made aware of the Council’s Restoration of Capacity project. Specifically, these groups should be asked that any of their recommended changes include a mandate for improved data collection, as well as communicating the importance of less restrictive alternatives to guardianship. Changes to the guardianship statutes should also include improving the examining committee process and qualifications of examining committee members.

The judicial system does not currently gather data on guardianship and people with developmental disabilities. For example, it is impossible to know the nature of incapacity in guardianship cases or the number of restorations filed during a particular period without examining an individual court file. Key contacts in the judicial system should be identified and informed of the importance of collecting these data elements on a statewide basis and advocate a change in current policy. Similarly, thousands of individuals with disabilities and their families receive supportive services in Florida, but data on a person’s use of decision-making supports are currently not collected. Identifying existing opportunities where data can be collected will be beneficial.

To further facilitate better data collection, the Work Group should recommend that the Florida court system include detailed information in their e-filing system pertaining to guardianship and restoration of rights for better tracking of persons under guardianship.
TRAINING WORKSHOPS

In Year Three, the Project Team will conduct a minimum of three live workshops in strategically selected locations throughout the state in an effort to reach as many individuals as possible. Each live workshop would be conducted over two days: one day for persons under guardianship, families, guardians and other interested parties, and the other for attorneys and others in the legal community. The website and manuals developed in Year Two will contain the information and resources that will be used for the live workshops, and will:

a. focus on raising awareness of a person under guardianship's rights, including the right to a continuing review of the appropriateness of the guardianship and the legal process for restoring rights;
b. focus on building independence and autonomy for persons under guardianship;
c. provide training to guardians on the responsibilities of a guardian to engage in activities that build independence and work towards restoration; and,
d. provide resource materials for attorneys representing persons seeking restoration of rights and resources for the judiciary, clerks of court, service providers and other interested parties to assist persons seeking restoration.

The first day of the workshop will be training entitled “Building Independence”, and will be designed for persons under guardianship, their families, guardians, and other interested parties. This workshop will be facilitated by members of the Project Team, and will offer training in new tools developed, as well as identifying activities for self-determination, filing a Suggestion of Capacity, and resources for independent living.

The second day of the workshop will be a legal workshop which will present a review of restoration of capacity and will assist in the use of the website and manual. CLEs will be offered in this workshop, and will be facilitated by members of the Project Team and other identified legal professionals. Legal workshops will offer information on tools developed to improve the examining committee process, self-determination and person-centered planning, examples of successful Progressive Capacity Restoration Plans, examination of the current status of guardianship in Florida, different models of assessment instruments (psychological assessments, functional assessments, activities of daily living, etc.) and assistance in implementing the tools developed by the Project Team.

PILOT PROJECT IMPLEMENTATION PLAN

The original design of this project spans a three-year period. The main activities in Year One included policy research, collecting data and planning the pilot project. The focus of Year Two will be developing and producing the resource material to be used in the pilot project and advocating for improved data collection. A month-by-month work plan outlining the objectives of Year Two is included in the Appendices. Year Three focuses on live training workshops.
ADDITIONAL RECOMMENDATIONS

The Stakeholders’ Work Group recommended that Year Three would also include disseminating information about the website and manuals to various offices identified as points of intake for restoration inquiries. These points of intake would include:

- Florida Developmental Disabilities Council, Inc.
- Disability Rights Florida
- Florida Legal Services, Inc.
- Family Café
- Statewide Public Guardianship Office
- Agency for Persons with Disabilities
- Florida’s Voice on Developmental Disabilities
- Judiciary and Clerks of Court
- Florida Department of Education and School District ESE Personnel

Also, the Manual for Individuals with Disabilities and Families and the Manual for Attorneys and Judges would be translated into Spanish in sufficient time for use in the live workshops.

An additional recommendation from the Stakeholders’ Work Group was for the continuation of the Council’s publication of “Lighting the Way to Guardianship and Other Decision-Making Alternatives” handbook for families and the legal community. This material would supplement the training provided through the restoration of capacity workshops, as well as emphasize the use of less restrictive alternatives to guardianship and person-centered planning.
FEASIBILITY STUDY

The design of the feasibility study took the form of a participatory evaluation model in which members who are themselves involved in the system under study (i.e., Stakeholders’ Work Group), and who are likely to be affected by the findings, play a significant role in the research.

The choice of a participatory evaluation model was influenced by two factors. First, the membership of the project Stakeholders’ Work Group (the Work Group) represented a broad array of persons with diverse experience in guardianship, and some with experience with restoration of rights as well, as described earlier in the report. Second, Work Group members played an integral role in the interpretation of the research findings and the design of the pilot project.

The involvement of the Work Group evolved over three meetings: two face-to-face and a phone webinar. During the morning of the first meeting, the Project Team explained the need for the study and presented preliminary reviews of other studies in restoration, the theoretical framework adopted by the Project Team, and initial findings from the survey research, among other presentations.

Most importantly, the afternoon meeting was committed to the sharing of ideas from the Work Group on a wide range of issues. In particular, members of the Work Group debated two alternative explanations for the results of the survey. One was that the relatively low number of rights restorations was an indicator that the system was working because persons have been appropriately placed under guardianship. The other interpretation was that the finding reveals a dysfunctional system, characterized by antiquated and paternalistic views of guardianship, limited knowledge of the rights of individuals under guardianship, incomplete utilization of less restrictive alternatives, and the undue burden placed on attorneys who accept these cases. There was consensus that greater awareness of rights and the restoration process would benefit the entire system.

One other activity that took place during the afternoon meeting was the development of the framework that the pilot project would adopt. The Project Team brought initial ideas and facilitated the discussion. Members of the Work Group proposed an initial design for the pilot project, which included a website containing information on restoration of capacity, a manual associated with the website, and the development of workshops designed to assist persons with the use of the website and manual. Two different workshops would be designed: one for legal professionals and the other for persons under guardianship, their families, guardians, and other interested persons.

After the first Work Group meeting, the Project Team elaborated on the framework developed for the pilot project. Potential content for the website and manual was itemized; possible structure, organization, and locations of the workshops were fleshed out; and an overall project management plan was drafted.

These documents became a focus of the second Work Group meeting. The Work Group worked with the expanded version of the pilot project design that they had produced at their first meeting. These deliberations led to recommendations for additions to and deletions from the current draft, as well as a reaffirmation of support for the direction the project was taking.
Again, the Project Team incorporated the comments from the Work Group and forwarded the new version of the pilot project design to members. The final step of the Feasibility Study was conducted during the third Work Group meeting, a webinar held in December, 2013. Work Group members discussed the latest pilot project design, expressing that the Project Team had captured the intent of the Work Group.

*The Project Team then queried each member as to whether he or she felt the proposed pilot project was “feasible.”* There was consensus (100% agreement) from the Stakeholders’ Work Group members that the project was feasible, and that it held great promise for contributing to educating families and individuals under guardianship about the restoration process and providing resources for activities to promote greater independence for persons with developmental disabilities.*
APPENDICES

APPENDIX A: List of Project Team Members
APPENDIX B: List of Stakeholders’ Work Group Members
APPENDIX C: Restoration Process: Guardian Advocacy and Guardianship
APPENDIX D: Web-based Survey Forms
APPENDIX E: Focus Group Survey Questions
APPENDIX F: Pilot Project Year Two Work Plan
APPENDIX G: Literature Review
APPENDIX A
PROJECT TEAM MEMBERS

The Agency for Persons with Disabilities (APD) provides assistance to people with developmental disabilities and their families. The APD’s representative on the project team is Melinda Coulter. The APD’s area of responsibility on the project team was to facilitate and coordinate outreach to self-advocates and family members and assist with staffing the Stakeholders’ Work Group. Melinda Coulter previously staffed Governor Jeb Bush’s Task Force on Guardianship and the Developmentally Disabled and currently is employed as the agency’s statewide coordinator for provider training as well as their client rights champion. She also collaborated with the Florida Developmental Disabilities Council, Disability Rights Florida and the Real Property, Probate and Trust Law Section of the Florida Bar to establish the restoration of rights process into Sec. 39.12, Fla. Stat.

Curva and Associates LLC is an organization that provides research, evaluation and advocacy services to various organizations including health and human services organizations. Curva and Associates LLC under the former organizational name, PolicyWorks, Inc. served as lead staff on the Task Force on Persons with Disabilities (a legislatively created task force). Fely Curva, Ph.D., Sande Milton, Ph.D. and Amelia Milton of Curva and Associates LLC designed and implemented the research component of this project.

Disability Rights Florida, Inc., is the designated protection and advocacy system for individuals with disabilities in the State of Florida. Phoebe Ball, Esq. is a Disability Rights Florida staff attorney. She helped draft a restoration process into the guardian advocacy law. Ms. Ball was instrumental in conducting the literature review and legal research for this project.

The Office of Public Guardian, Inc., (OPG) is a regional public guardianship organization serving North Florida. OPG has first-hand experience advocating and promoting creative strategies for restoration of rights. OPG served as the Restoration of Capacity Study and Work Group contract provider and provided administrative and logistical support to the project. Karen P. Campbell, Esq., is the executive director of OPG.

Susan Dunbar served as the parent representative on the project. Ms. Dunbar assisted in conducting the focus groups and is primarily responsible for editing the project’s written materials. Ms. Dunbar previously served as the Parent Representative on Governor Jeb Bush’s Blue Ribbon Task Force on Inclusive Community Living, Transition and Employment of Persons with Developmental Disabilities. Ms. Dunbar has generously shared her experience of assisting her family member with a disability accomplish successful independent living. Ms. Dunbar has served in other organizations and committees focusing on transition issues, community living, employment and education for persons with disabilities.
APPENDIX B

STAKEHOLDERS’ WORK GROUP MEMBERS

Erika Dine, Esq. Attorney Dine is the founding attorney of Dine Law, P.L. Her practice focuses on Guardianship, Probate and Estate Administration, Medicaid, Veterans Administration and Estate Planning. She practices in the 12th Judicial Circuit. Attorney Dine is also active in her community. She teaches a seminar with area prosecutors on exploitation of the elderly to law enforcement personnel. She provides hundreds of hours of pro bono legal services each year. Attorney Dine is active in the following civic and professional organizations: Director of Aging Safely, Inc., Manatee Chapter of the Florida Association of Women Lawyers, Sarasota County Bar Association, the Manatee County Bar Association and the Florida Bar Association’s Young Lawyers Division, Real Property Probate and Trust Law and Elder Law Sections.

Travis Finchum, Esq. Attorney Finchum is a Board Certified Elder Law attorney and a parent of a child with a developmental disability. He is the Managing Partner for the law firm Special Needs Lawyers, P.A, and is a Partner with the law firm of Karol, Hausman, Sosnik & Finchum, LLP. Mr. Finchum specializes in Medicaid qualification for institutionalized individuals as well as Special Needs Trust drafting and administration. His practice consists of estate planning, probate, trust administration and guardianship, with a special emphasis on helping families plan for a member with special needs. He also helps families plan for incapacity through alternatives to guardianship. He is a past chair of the Special Needs Trust Committee of the Florida Bar’s Elder Law Section and currently serves on the Elder Law Board Certification Committee. Mr. Finchum serves on the Board of Directors for Florida’s Voice on Developmental Disabilities, the UPARC Foundation, the Advisory Board for the National Alliance on Mental Illness, Pinellas County Chapter, and on the National Non-profit for Americans with Disabilities, Inc. Mr. Finchum serves as Co-Trustee of the Guardian Trusts which assists individuals with disabilities in protecting their assets for use during their lifetimes without disqualifying them for much needed public benefits. He graduated from the University of Florida with his Bachelors of Science and Juris Doctor degrees.

Teresa Goodson, Esq. Attorney Goodson, as the Executive Director of the Statewide Public Guardianship Office, is responsible for the registration of Florida's professional guardians; the oversight and monitoring of Florida's public guardians, development of the initial professional guardian training course and the approval of continuing education courses for professional guardians.

Antonina Gregory. Ms. Gregory received a Master of Arts Degree from the College of Education at University of South Florida. She serves as the Parent Services and Assistive Technology Resource Teacher for FDLRS Gulfcoast Associate Center, serving Hernando, Pasco and Pinellas County School Districts. She provides training and assistance to parents, teachers, administrators, and district staff on Parent Services, Transition and Assistive Technology initiatives. She is also a parent of a 24 year old daughter with special needs, and loves to impart her insights and experiences of raising a child with a disability.
Rebecca Morgan, Esq. Professor Morgan is the Boston Asset Management Faculty Chair in Elder Law, the director of the Center for Excellence in Elder Law at Stetson University College of Law and the director of Stetson’s online LL.M. in Elder Law. Professor Morgan teaches a variety of elder law courses in the J.D. and LL.M. and oversees the elder law concentration program for J.D. students. Professor Morgan served on the Florida Attorney General’s Task Force on Elder Abuse and the Florida Legislative Guardianship Study Commission. Professor Morgan served as the reporter for the Uniform Guardianship and Protective Proceedings Act. She is a prolific writer and international speaker on the subject of guardianship. She is currently working on two new publications, Standards for Financial Decision-Making by Guardian; and Comparative Ethics in Incapacity and Guardianship Matters, in Comparative Perspectives on Adults Guardianship.

Candi Nelson. Ms. Nelson is the sister and legal guardian for her brother who has a developmental disability. Over the past twenty years, Ms. Nelson’s brother has lived in group homes, supported independent living and an intermediate care facility. Her brother is currently a resident at Sunland Center in Marianna, FL. Ms. Nelson has also been very active advocating for the legal rights of all persons with developmental disabilities. She has served on the State of Florida, Human Rights Advocacy Committee and the Sunland Center Parents and Guardians Committee. She is an active volunteer at Good News Outreach which works primarily with homeless persons in Tallahassee.

Casey O’Halloran. Casey O’Halloran is a graduate of public schools (and home schooling), Casey has broken the stereotype of what the general public believes a person with Down syndrome can accomplish. He was the first student with his disability to be fully included in typical classrooms in his school district. Mr. O’Halloran participated in activities, clubs and sports, and served as a school-wide class representative his junior and senior year. He is an Eagle Scout. Mr. O’Halloran lives in his own condo with Smokey, his feline roommate. He has worked at the Lee County Courthouse for the past eleven years as a permanent part-time clerical assistant and started his own part-time business as a “runner” for various law and private investigation firms. As part of the first group of micro enterprise projects through the University of South Florida, he started his own company, Casey Enterprises, to inspire, educate, and motivate other individuals with disabilities to become more independent. Mr. O’Halloran gives speeches and seminars to help others become more aware of the potential of individuals with disabilities. He was twice appointed by President Bush to serve on the 21- citizen-member President’s Committee for People with Intellectual Disabilities. He was one of only two individuals with an intellectual disability serving on the second advisory group. He was the only individual with an intellectual disability during his first appointment.

Jacquelyn Olander, Ph.D. Jacquelyn Olander received her Ph.D. in counseling psychology from the University of Miami. She also completed a two-year residency in clinical neuropsychology through the Orlando Regional Healthcare. Prior to her doctoral and residency training, Dr. Olander obtained a M.Ed. from the University of Washington specializing in school psychology, reading disabilities, and guidance counseling. She earned her Bachelor of Education at the University of Florida in elementary education. She is currently certified in school psychology through the Department of Education in the State of Florida and State of Washington. In the State of Washington, Dr. Olander is also certified as an elementary and secondary teacher and as a guidance counselor. Dr. Olander is in private practice with Psychological Affiliates, Inc. in Winter Park, Florida. Her specialties include forensic and clinical neuropsychology and psychology related to issues of competency (child, adolescent, and adult), mitigation; various neuropsychological and psychological issues; and independent medical evaluations. In addition, she provides evaluations for learning disabilities.

20. Utah L. Rev. 2012 (forthcoming)
Attention-Deficit/Hyperactivity Disorder, and other academic-related issues. Dr. Olander has testified regarding numerous neuropsychological and psychological issues throughout the State of Florida. Dr. Olander also provides individual and family therapy from preadolescent through adulthood. Dr. Olander is a member of the National Academy of Neuropsychology, the International Neuropsychological Society, and the American Psychological Association.

The Honorable Don T. Sirmons. Judge Sirmons is a retired Circuit Court Judge who during his tenure handled guardianship cases. He is also the parent of an adult with a developmental disability. Judge Sirmons participated in an advocacy group, People Without Guardians, that addressed the guardianship needs in the Panama City area. Judge Sirmons is active in the community. For example, he actively supports and coaches a special needs golf team with 14 golfers and a special needs bowling team with 42 adult bowlers. Judge Sirmons also serves on the Board for the St. Andrews Bay Center Inc. serving adults with developmental disabilities.

Twyla Sketchley, Esq. Attorney Sketchley, a Florida Bar Board Certified Elder Law Attorney, has devoted her career to serving the elderly and adults with disabilities. Currently, she serves as Immediate Past Chair of the Florida Bar’s Elder Law Section. She is the recipient of the Elder Law Section’s Charlotte Brayer Public Service Award, and was a nominee for the Elder Rights Advocacy Hall of Fame by The National Association of Legal Service Developers. Ms. Sketchley has rendered outstanding service to her community. Among the public recognitions for her service includes the Florida Bar President’s Pro Bono Service Award for the Second Judicial Circuit in 2009 for providing legal services to indigent senior citizens, and the Smith-Williams Service Center Foundation’s Distinguished Woman Award in 2008. Ms. Sketchley has successfully represented a number of persons with developmental disabilities pursue restoration of their rights.

Wynter Solomon-Cuthbert. Ms. Solomon-Cuthbert is a Guardianship Court Monitor for the Ninth Judicial Circuit. Her responsibilities involve investigating guardian conduct and reporting her findings to the court. She assisted in the development of database software programs for us in tracking guardianship case data. She monitors professional guardian’s compliance with Florida guardian registration laws for the Ninth Judicial Circuit. Ms. Solomon-Cuthbert has been designated by the Florida Office of the Attorney General as a Florida Elder Crime Prevention Practitioner.

Susan M. Spicer, Ph.D. Dr. Spicer received her PhD in Clinical Psychology from Fielding Graduate University with a specialty in neuropsychology. She earned a Master of Arts degree from Vermont College of Norwich University and a Bachelor of Arts degree from Central Michigan University. Dr. Spicer is a postdoctoral resident with Psychological Affiliates, Inc., of Winter Park, Florida. Her practice specialties include neuropsychological assessment of children and adults with ADHD, learning disabilities, brain injuries, and developmental disorders, as well as forensic evaluations for child abuse, divorce, and criminal matters. Dr. Spicer also specializes in hypnotherapy and therapy for trauma related disorders. Dr. Spicer has 12 years of experience working in the Michigan Court system, Community Mental Health centers, and shelters for battered women and children. She worked for two years at Phoenix Children’s Hospital in the Department of Neuroscience and Behavioral Medicine, conducting pediatric neuropsychological evaluations for children with a wide range of disorders including epilepsy, autism, meningitis, and chromosomal abnormalities. Dr. Spicer has a published chapter on brain hemispheric functioning and lateralization and is a contributing author to the Encyclopedia of Neuropsychological Disorders. She has lectured internationally on topics related to cognitive development of right hemisphere functioning. She continues to participate in research on frontal lobe functioning of brain injured individuals and other topics related to brain functioning. Dr. Spicer is a member of the National Academy of Neuropsychology (NAN), the International Neuropsychological Society (INS), and the American Academy for Clinical Neuropsychology (AACN).
Anne Swerlick, Esq. Attorney Swerlick is the Deputy Director of Advocacy for Florida Legal Services, Inc., a state support center for legal aid providers in Florida. She specializes in legislative and administrative advocacy and litigation on health law issues affecting the poor. Ms. Swerlick was formerly employed as Managing Attorney with the Advocacy Center for Persons With Disabilities, Inc. (1987- 1991) and as staff attorney and Deputy Director with Jacksonville Area Legal Aid, Inc. (1977-1987). Ms. Swerlick received her B.A. from the University of Virginia and her J.D. from the University of Virginia, School of Law.

Jamal Tice. Mr. Tice is an adult with an intellectual disability who has been in guardianship since 2007. Mr. Tice has engaged in numerous attempts and activities to regain capacity and have his legal rights restored. His suggestion of capacity is currently pending before the probate court.
APPENDIX C
RESTORATION PROCESS – GUARDIAN ADVOCACY AND GUARDIANSHIP

Guardian Advocacy
Sec. 393.12, Fla. Stat.

SUGGESTION OF RESTORATION OF RIGHTS. — Any interested person, including the person with a developmental disability, may file a suggestion of restoration of rights with the court in which the guardian advocacy is pending. The suggestion must state that the person with a developmental disability is currently capable of exercising some or all of the rights that were delegated to the guardian advocate and provide evidentiary support for the filing of the suggestion. Evidentiary support includes, but is not limited to, a signed statement from a medical, psychological, or psychiatric practitioner by whom the person with a developmental disability was evaluated and which supports the suggestion for the restoration. If the petitioner is unable to provide evidentiary support due to the lack of access to such information or reports, the petitioner may state a good faith basis for the suggestion for the restoration of rights without attaching evidentiary support. The court shall immediately set a hearing if no evidentiary support is attached to inquire of the petitioner and guardian advocate as to the reason and enter such orders as are appropriate to secure the required documents. The person with a disability and the person’s attorney shall be provided notice of the hearing.

(a) Within 3 days after the filing of the suggestion, counsel shall be appointed for the person with a developmental disability as set forth in subsection (5).
(b) The clerk of the court shall immediately send notice of the filing of the suggestion to the person with a developmental disability, the guardian advocate, the attorney for the person with a developmental disability, the attorney for the guardian advocate, if any, and any other interested person designated by the court. Formal notice shall be served on the guardian advocate. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion.
(c) Any objections to the suggestion must be filed within 20 days after service of the notice. If an objection is timely filed, or if the evidentiary support suggests that restoration of rights is not appropriate, the court shall set the matter for hearing. The hearing shall be conducted as set forth in s. 744.1095. The court, at the hearing, shall consider all reports and testimony relevant to the person’s decision-making abilities at the hearing, including, but not limited to, the person’s current individual family plan or individual support plan, the individual education plan, and other professional reports that document the condition and needs of the person.
(d) Notice of the hearing and copies of the objections shall be served upon the person with a developmental disability, the attorney for the person with a developmental disability, the guardian advocate, the attorney for the guardian advocate, the next of kin of the person with a developmental disability, and any other interested person as directed by the court.
(e) If no objections are filed and the court is satisfied with the evidentiary support for restoration, the court shall enter an order of restoration of rights which were delegated to a guardian advocate and which the person with a developmental disability may now exercise.
(f) At the conclusion of a hearing, the court shall enter an order denying the suggestion or restoring all or some of the rights that were delegated to the guardian advocate. If only some rights are restored to the person with a developmental disability, the court shall enter amended letters of guardian advocacy.
(g) If only some rights are restored to the person with a developmental disability, the order must state which rights are restored and amended letters of guardian advocacy shall be issued by the court. The guardian advocate shall amend the current plan as required under chapter 744 if personal rights are restored to the person with a developmental disability. The guardian advocate shall file a final accounting as required under chapter 744 if all property rights are restored to the person with a developmental disability. The guardian advocate must file the amended plan or final accounting within 60 days after the order restoring rights and amended letters of guardian advocacy are issued. A copy of the reports shall be served upon the person with a developmental disability and the attorney for the person with a developmental disability.

Guardianship

(1) VENUE.—A suggestion of capacity must be filed with the court in which the guardianship is pending.

(2) SUGGESTION OF CAPACITY.—
(a) Any interested person, including the ward, may file a suggestion of capacity. The suggestion of capacity must state that the ward is currently capable of exercising some or all of the rights which were removed.
(b) Upon the filing of the suggestion of capacity, the court shall immediately appoint a physician to examine the ward. The physician must examine the ward and file his or her report with the court within 20 days after the appointment.
(c) The court shall immediately send notice of the filing of the suggestion of capacity to the ward, the guardian, the attorney for the ward, if any, and any other interested persons designated by the court. Formal notice must be served on the guardian. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion of capacity.
(d) Any objections to the suggestion of capacity must be filed within 20 days after service of the notice.
(e) If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court shall set the matter for hearing. If the ward does not have an attorney, the court shall appoint one to represent the ward.
(f) Notice of the hearing and copies of the objections and medical examination reports shall be served upon the ward, the ward’s attorney, the guardian, the ward’s next of kin, and any other interested persons as directed by the court.

(3) ORDER OF RESTORATION.—
(a) If no objections are filed, and the court is satisfied with the medical examination, the court shall enter an order of restoration of capacity, restoring all or some of the rights which were removed from the ward. The order must be issued within 30 days after the medical report is filed.
(b) At the conclusion of a hearing, conducted pursuant to s. 744.1095, the court shall enter an order either denying the suggestion of capacity or restoring all or some of the rights which were removed from the ward.
(c) If only some rights are restored to the ward, the order must state which rights are restored, and the guardian shall prepare a new guardianship report which addresses only the remaining rights retained by the guardian. The guardian must file a copy of the new report with the court within 60 days after the entry of the order.
APPENDIX D-1
SURVEY FOR AGENCY STAFF, SUPPORT COORDINATORS, GROUPS HOME MANAGERS

Survey for the following respondents/organizations:
Statewide Public Guardianship Office (Florida Department of Elder Affairs, Florida Legal Services, Disability Rights Florida, Support Coordinators, Centers for Independent Living group home managers, Florida Agency for Persons with Disabilities, Office of Criminal Conflict and Civil Regional Counsel, Florida Bar Referral Services, Adult Protective Services, Legal Aid

Q1 Organization name: ________________________________________________

Q2 Do individuals contact your office to seek information about the restoration of rights for persons under guardianship (wards), or who are dissatisfied with a current guardianship? Yes / No

Q3 How many such contacts have you had in the past 12 months? (circle one)
   None  1-2  3-5  6-10  More than 10

Q4 Which of the following have contacted you (check all that apply)
   ☐ Person under guardianship  ☐ Guardian  ☐ Family member
   ☐ Friend or acquaintance  ☐ Attorney  ☐ Physician
   ☐ Other

Q5 How do they typically find your organization?
   ☐ Website  ☐ Phone directory  ☐ Referral
   ☐ Other

Q6 If persons were referred to your organization, who referred them? ________________

Q7 Does your office have a standard procedure for addressing restoration inquiries? Yes / No

Q8 Please briefly describe your procedure for addressing restoration inquiries. If possible, please attach any supporting documentation. ________________________________

Q9 Where do you typically refer individuals seeking information about restoration of rights (check all that apply)?
   ☐ Attorney  ☐ Court  ☐ Legal Services
   ☐ Office of Public Guardian  ☐ Other (Please specify) ____________________________

Q10 If you do referrals, do you have a system for following up on the outcome of the request? Yes / No
APPENDIX D-2
SURVEY FOR ATTORNEYS

Q1 Firm/organization name: ________________________________________

Q2 What are your areas of professional practice? ________________________

Q3 Do individuals contact your office to seek information about the restoration of
rights for persons under guardianship (wards), or who are dissatisfied with a current
guardianship? Yes / No

Q4 How many such contacts have you had in the past 12 months? (circle one)

   None       1-2       3-5       6-10       More than 10

Q5 Which of the following have contacted you (check all that apply)
   □ Person under guardianship  □ Guardian  □ Family member
   □ Friend or acquaintance    □ Attorney  □ Physician
   □ Paid provider of services (e.g., support coordinators, group home directors)
   □ Other

Q6 How do they typically find your office?
   □ Website  □ Phone directory  □ Referral  □ Other

Q7 If persons were referred to your office, who referred them? ______________

Q8 Does your office have a standard procedure for addressing restoration inquiries?
   Yes / No

Q9 Please briefly describe your procedure for addressing restoration inquiries.
   If possible, please attach any supporting documentation. ____________________________

Q10 How many restoration cases have you pursued over the past three years? _________

Q11 Of these cases, how many of these clients did you represent during the initial
guardianship proceedings? ________________________________

Q12 Of these cases, how many of these clients were re-examined by a physician who also
served on the initial guardianship examining committee? ________________________________

Q13 Of these cases, how many resulted in full or partial restoration of rights? _________
APPENDIX D-3
SURVEY FOR JUDGES

Q1  Circuit/county name: ________________________________________________

Q2  Do individuals contact your office to seek information about the restoration of
rights for persons under guardianship (wards), or who are dissatisfied with a current
guardianship? Yes / No

Q3  How many such contacts have you had in the past 12 months? (circle one)
None  1-2  3-5  6-10  More than 10

Q4  Which of the following have contacted you (check all that apply)
☐ Person under guardianship  ☐ Guardian  ☐ Family member
☐ Friend or acquaintance  ☐ Attorney  ☐ Physician
☐ Other

Q5  Please briefly describe your procedure for addressing restoration inquiries.
If possible, please attach any supporting documentation. ____________________________

Q6  How many restoration cases have you presided over in the past three years? ________

Q7  Of these cases, how many of these cases did you preside over during the initial
guardianship proceedings? ________________________________________________

Q8  Of these cases, how many of these clients were re-examined by one of the physicians
who served on the initial guardianship examining committee? _________________

Q9  Of these cases, how many resulted in full or partial restoration of rights? __________

Q10 What procedure do you use for referring attorneys in restoration of rights cases?
☐ Rotating list of attorneys  ☐ List of attorneys – no rotation
☐ Other (please specify) ________________________________________________
☐ We do not routinely make referrals to attorneys
APPENDIX D-4
SURVEY FOR THE CLERKS OF COURT

Q1  Circuit/county name: ________________________________

Q2  Do individuals contact your office to seek information about the restoration of rights for persons under guardianship (wards), or who are dissatisfied with a current guardianship? Yes / No

Q3  How many such contacts have you had in the past 12 months? (circle one)
   None  1-2  3-5  6-10  More than 10

Q4  Which of the following have contacted you (check all that apply)
   □ Person under guardianship  □ Guardian  □ Family member
   □ Friend or acquaintance  □ Attorney  □ Physician
   □ Other

Q5  How do they typically find your office?
   □ Website  □ Phone directory  □ Referral  □ Other

Q6  If persons were referred to your office, who referred them? __________________________

Q7  Does your office have a standard procedure for addressing restoration inquiries? Yes / No

Q8  Please briefly describe your procedure for addressing restoration inquiries. If possible, please attach any supporting documentation. __________________________

Q9  Where do you typically refer individuals seeking information about restoration of rights (check all that apply)?
   □ Attorney  □ Legal Services  □ Office of Public Guardian
   □ Other (Please specify) __________________________

Q10 What procedure do you use for referring attorneys in restoration of rights cases?
    □ Rotating list of attorneys  □ List of attorneys – no rotation
    □ Other (please specify) __________________________
    □ We do not routinely make referrals to attorneys
APPENDIX D-5
SURVEY FOR GUARDIANS

Q1  For how many persons have you ever served as legal guardian? ________________

Q2  How many of these persons are developmentally disabled? ________________

Q3  Of those persons who are developmentally disabled how many of these were plenary or limited guardianships?  
    Plenary _________  
    Limited _________

Q4  Which guardianship training course did you complete?  
    □ 8-hour course  
    □ 40-hour course  
    □ I was not required to complete a guardianship training course

Q5  Have any persons for whom you serve as guardian expressed an interest in having some or all of his or her rights restored?  Yes / No

Q6  If so, does the person under guardianship know about his or her right to an attorney?  Yes / No

Q7  Have you ever initiated processes for restoration of rights for persons under guardianship?  Yes / No

Q8  Have you ever filed an objection to a restoration of rights for a person under guardianship?  Yes / No

Q9  What actions (if any) did you take to assist the person (e.g., legal services, training for independent living, etc.)?  ________________________________
    ________________________________
    ________________________________
    ________________________________
    ________________________________
    ________________________________
    ________________________________
    ________________________________
    ________________________________
APPENDIX E-1
FOCUS GROUPS

QUESTIONS FOR PERSONS UNDER GUARDIANSHIP

1. **Tell us a little bit how guardianship has helped your family and how you learned about guardianship.**

2. **Did you know that once a person has a guardian, the law says that they can try and get some (or all) of their rights back?**
   - What do you think about that?
   - How does that pertain to your family member?

3. **What activities are you doing to work towards more independent living for your family member?** For example:
   - Do you instruct your family member on how to manage their finances? Who pays their rent and other bills?
   - Do they know how to use a bank and a checking account?
   - Do they know how to check and see how much money they have in their account?
   - Does your family member have a job?
   - Do they take classes to learn new skills (e.g., driving courses, job skills, etc.)?

4. **Do you talk with him/her about restoration?**
   - **YES:**
     - Have you started the process of having some (or all) of your family member’s rights restored?
     - What have been your experiences with it? Has your family member had any of their rights restored?
   - **NO:**
     - Why not?
APPENDIX E-2
FOCUS GROUPS

QUESTIONS FOR FAMILIES OF PERSONS UNDER GUARDIANSHIP

1. Tell us a little bit how guardianship has helped your family and how you learned about guardianship.

2. Did you know that once a person has a guardian, the law says that they can try and get some (or all) of their rights back? 
   • What do you think about that?
   • How does that pertain to your family member?

3. What activities are you doing to work towards more independent living for your family member? For example:
   • Do you instruct your family member on how to manage their finances? Who pays their rent and other bills?
   • Do they know how to use a bank and a checking account?
   • Do they know how to check and see how much money they have in their account?
   • Does your family member have a job?
   • Do they take classes to learn new skills (e.g., driving courses, job skills, etc.)?

4. Do you talk with him/her about restoration?
   a. YES: Have you started the process of having some (or all) of your family member’s rights restored?
      What have been your experiences with it? Has your family member had any of their rights restored?
   b. NO: Why not?
APPENDIX F
PILOT PROJECT YEAR TWO WORK PLAN

March 2014  Review and identify national and state resources and tools for inclusion in website and manual
Develop theme and layout design for website and manual
Designing drafts of evaluation tools
Advisory Committee Invitations

April  Selection of existing tools and resources for inclusion in website and manual
Create drafts of Florida-specific tools and resources
Draft outline of manual and website text
Designing drafts of evaluation tools

May  Editing drafts of tools and resources
Initiate advocacy efforts
Designing drafts of evaluation tools

June  Editing drafts of tools and resources
Logistical planning for evaluation workshop
Continue advocacy effort

July  Editing drafts of tools and resources
Continue advocacy effort

August  Editing drafts of tools and resources
Continue advocacy efforts
Recruit testers

September  Editing drafts of tools and resources
Continue advocacy effort

October  Editing drafts of tools and resources
Continue advocacy effort

November  Editing drafts of tools and resources
Continue advocacy effort
Send draft materials to Advisory Committee for review and comment

December  Preparation for Materials Testing Workshop

January 2015  Materials Testing Workshop and Advisory Committee meeting

February  Material Revision

March  Material Revision and Final Report Drafting

April  Final Report Submitted

May  Contract ends
APPENDIX G
LITERATURE REVIEW

Special Editions


Several important articles by renown scholars on guardianship are included in this special issue of the Penn State Law Review that may be relevant to people with developmental disabilities seeking restoration of rights. Author Michael L. Perlin examines the implications of the Convention on the Rights of Persons with Disabilities (CRPD) on guardianship laws.


In October, 2011, the National Guardianship Network (NGN) convened the Third National Guardianship Summit at the University of Utah, S.J. Quinney College of Law. Ninety-two delegates, observers, authors, funders, and facilitators participated in the summit to develop consensus on post-appointment guardian performance and decision-making for adults. A far-reaching set of recommendations for guardian standards emerged, forming the basis for nationally recognized standards for guardians of adults based on principles of person-centered planning. Additionally, the symposium gave rise to a special issue of the Utah Law Review which contained articles discussing person-centered planning, ethical decision-making and other relevant issues.


This Stetson Law Review report examines the issues raised in guardianship law ten years after the passage of the Uniform Guardianship and Protective Proceedings Act (“UGPPA”). The articles explore developments of the law and problems relating to guardianships as well as solutions to these problems. A national study of public guardianship is also included.


The 2001 Wingspan conference brought together a multidisciplinary group of experts who developed recommendations for guardianship reforms. Important recommendations for change that emerged from this conference included mediation, ethical considerations for attorneys representing individuals facing guardianship and many others.
Reports/Websites


The ABA Commission on Law and Aging 2013 report on the “state of the states” in guardianship law. The ABA has published this report for many years providing a historical record of the nation-wide evolution of guardianship law. For more information on guardianship issues nationwide, please see the American Bar Association Commission on Law and Aging Guardianship Law and Practice website: http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html


This report attempts to capture vital statistics on adult guardianship cases nationwide and demonstrates the urgent need for improved data collection. Included are differences in guardianship procedure and practices from state to state.


GAO identified hundreds of allegations of physical abuse, neglect and financial exploitation by guardians between 1990 and 2010.


This report identifies inconsistent approaches across the nation to incapacity in elderly adults. Although it is not directly relevant to people with developmental disabilities, it identifies some national issues that impact all people facing guardianship.


Discusses the complex role of the guardian and the need for increased monitoring of guardianships in Florida. Notes lack of oversight in some jurisdictions brought on by a lack of resources and statewide monitoring program.


This is the official website of the Secretariat for the Convention on the Rights of Persons with Disabilities (CRPD) at the United Nations. The website provides public information on topics related to disability and the work of the United Nations for persons with disabilities, including changes to guardianship law and the concept of capacity necessitated by the CRPD.
Individual Articles of Note


This paper examines state guardianship statutes concerning restoration of rights in four areas: (1) general procedure; (2) evidentiary standard provided for in the statute; (3) the procedural barriers and safeguards; and (4) the role of the guardian and the court upon termination.


This article discusses the largely untapped potential of using the skills of occupational therapists in making capacity determinations as well as building functional capacity.


This article discusses the Convention on the Rights of Persons with Disabilities and assisted decision making in a historical context and examines the social and legal evolution of guardianship laws. It also identifies and critically analyses the assisted decision-making models which exist internationally and discusses a number of conceptual, legal and practical concerns that remain unresolved.


This article discusses the factors to consider in determining whether guardianship is appropriate for individuals with Autism Spectrum Disorder. Although the focus is on New York law, many of these considerations are relevant in Florida.


The author, a scholar on guardianship issues, discusses how to avoid the need for guardianship.


This article focuses on examining committees, and specifically addresses two issues that can be determinative of whether or not a guardianship should be established. The authors examine whether it is appropriate for courts to be required to dismiss a petition if two of the three examining committee members determine that the person in question has capacity and should examining committee reports be considered hearsay unless there is testimony.


This article traces the history of the separate guardianship law for persons with developmental disabilities in New York and the implications of current trends on that law in light of the recent court decisions by The Hon. Kristin Booth Glen, and also reports on the trends in guardianship reform toward greater use of supported decision-making.


The author discusses Article 12 of the Convention on the Rights of Persons with Disabilities and in particular, its implications on guardianship law and supported decision-making.


The author discusses the evolution of guardianship law and how capacity is determined and how our understanding of psychological and intellectual functioning has impacted guardianship.


The author discusses the practical aspects of using alternatives to guardianship in cases of young adults with developmental disabilities.


The authors discuss the ethical and practical issues involved in representing individuals with disabilities and diminished or lacking capacity, including in guardianship proceedings.


This article examines whether guardianship is itself a violation of the ADA insofar as it undermines the ability of the individual to make fundamental choices and does not require the use of reasonable accommodations to allow the individual to make their own choices.
Jennifer L. Wright, *Guardianship for Your Own Good: Improving the Well-Being of Respondents and Wards in the USA, 33 Int’l J. L. & Psychiatry 350, 353 (2010)*

This article discusses the negative effects of guardianship even when the guardianship is appropriate and non-abusive. The author discusses whether guardianship is in the best interest of the individual and whether outcomes are better for incapacitated individuals under guardianship.


The author discusses the Convention on the Rights of Persons with Disabilities impact on the law surrounding mental and intellectual disabilities as an international human rights issue rather than simply a domestic civil rights issue.

Bryan W. Hudson, Esq., *Ocean State Libertas: Temporary Guardianship As Unconstitutional, R.I.B.J., November/December (2009), at 5, 6.*

The author discusses the constitutionality of emergency temporary guardianships such as those allowed under Florida law, which are often the way that guardianships are initiated.


Winsor Schmidt published the first major study of public guardianship in 1981. This is the second national study, and updates those findings. The authors find that state guardianship statutes governing adjudication of incapacity and appointment have improved significantly with respect to the key parameters originally named by Schmidt in 1981.

Michael E. Bloom, *Asperger’s Disorder, High-Functioning Autism, and Guardianship in Ohio, 42 Akron L. Rev. 955 (2009)*

This article discusses relevant issues with respect to autism spectrum disorders and guardianship.

Judge David Hardy, CELA, *Who Is Guarding the Guardians? A Localized Call for Improved Guardianship Systems and Monitoring, 4 NAELA J. 1, (2008).*

The author discusses the amount of due process usually afforded individuals under guardianship, both in terms of statute and actual practice as well as the impact of guardianship on individuals. Additionally, the author calls for increased monitoring systems for guardianships.

This book is a comprehensive text on guardianship for community health and social service practitioners for their work with adults who have diminished capacities.


The authors discuss statewide efforts at guardianship reform in Georgia as well as findings from a statewide study of guardianship conducted from 1995 to 2002.
RESTORATION OF CAPACITY STUDY AND WORK GROUP REPORT