

Programmatic Effects of Individuals Under Guardianship with a History of Violent or Dangerous Behavior



National Guardianship Association Conference
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Griffin Gate Marriott
Lexington, Kentucky

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Noted bioethicist Nancy Dubler (Montefiore Medical Center, letter 2001)

the single greatest category of problems we encounter are those that address the care of decisionally incapable patients . . . who have no living relative or friend who can be involved in the decision-making process. These are the most vulnerable patients because no one cares deeply if they live or die, no one's life will be fundamentally changed by the death of the resident. We owe these patients the highest level of ethical and medical scrutiny; we owe it to them to protect them from over-treatment and from under-treatment; we owe it to them to help them to live better or to die in comfort and not alone

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History of the Office of the Kentucky Public Guardian

1960. KRS 210.290 was passed by Kentucky Legislature giving the State the authority to petition and become appointed as legal guardian(committee) for disabled adults. During this time Guardianship was under the Bureau of Health Services. Guardianship offices were located in the state mental hospitals.

1970s. There was a move to de-institutionalizing individuals with mental illness. There was an increase of appointments for individuals in long-term care facilities.

- **1977** –Legislative Research Interim Subcommittee completed a study on long-term care in Kentucky. The committee reported many areas of concern within the State Guardianship program and made the following recommendations:
 - Department for Human Resources should undertake a study to determine an adequate caseload for Guardianship Officers and limit the number of wards for which they are responsible for.
 - Roles and responsibilities of a Guardianship Officer should be reviewed and clarified immediately.
 - Report questioned the adequacy and appropriateness of the current guardianship statute as they pertained to the realities and of the demands and responsibilities.
 - “Subcommittee believes that the decisions pertaining to Guardianship are extremely complex and to require one person to bear such a grave and awesome responsibility for so many individuals is unfair and not in the best interest of our citizens.”

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History of the Office of the Kentucky Public Guardian

- **1978**–During the legislative session Senate Bill 133, which amended KRS 210.290 to authorize the Department of Human Resources to petition and become guardian, not only for residents of state facilities, but for any “institutionalized individual”, who had been adjudicated incompetent by the courts.

1980s. September 2, 1980 the Secretary for Human Resources signed Administrative Order HR35, which assigned Guardianship under the Office of the Ombudsman.

- Five regional offices were created throughout the state: Prestonsburg, Lexington, Louisville, Frankfort, and Hopkinsville. A supervisor and 2-6 field workers were in each office. During this reorganization the Office of Administrative Services became responsible for the management of Guardianship wards funds. The court mandated for more individualized client services which requires that the which required the guardianship supervisor, as well as the program coordinator (now called branch manager), to be on-call 24 hours a day, 7 days a week.
- Due to the increased oversight Guardianship found 42 facilities out of 488 visited from March 1, 1981-March 1, 1982 that were unsatisfactory to the point that 144 clients were moved due to unacceptable living situations.

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History of the Office of the Kentucky Public Guardian

- 1982 Guardianship Legislation became effective on July 1, 1982. Many changes were enacted most importantly it provided rights to every individual whether they were competent or incompetent.
 - It is the intent and purpose ... to recognize that disabled persons have varying degrees of disability...” and that persons who are partially disabled must be legally protected without a determination of total incompetency and without the attendant deprivation of civil and legal rights that such a determination requires.
 - ...Guardianship and Conservatorship for disabled persons shall be utilized only as is necessary to promote the well-being of the individual, including protection from neglect, exploitation and abuse...
 - Required the court to appointed an Interdisciplinary Team (physician, psychologist, and social worker) to evaluate the respondent and file a report with the court 20 days prior to the hearing.
 - Any person could petition to determine an individual disabled.
 - Any adjudications of incompetency that was entered prior to July 1, 1982 where no guardian was appointed or was currently serving on that date was considered null and void if no guardian was appointed within one year (July 1, 1983).
 - Designated specific rights that the ward would be deprived of.
 - Designated specific powers and duties of a guardian.
 - Designated four types of guardianship: guardian, limited guardian, conservator, and limited conservator.
 - Most stringent reporting requirements to the court.

Prior to this law being implemented each Guardianship regional office would receive about 20-25 referrals a year. After the law became effective referrals increased to an average of 15 a month.

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History of the Office of the Kentucky Public Guardian

1990s. Guardianship Program was moved from the Office of the Ombudsman to the Department of Social Services (DCBS) within the Cabinet for Human Resources. The regional offices were realigned to six offices: Mountain Region, Southern Region, Northern Region, Bluegrass Region, Central Region, and Western Region.

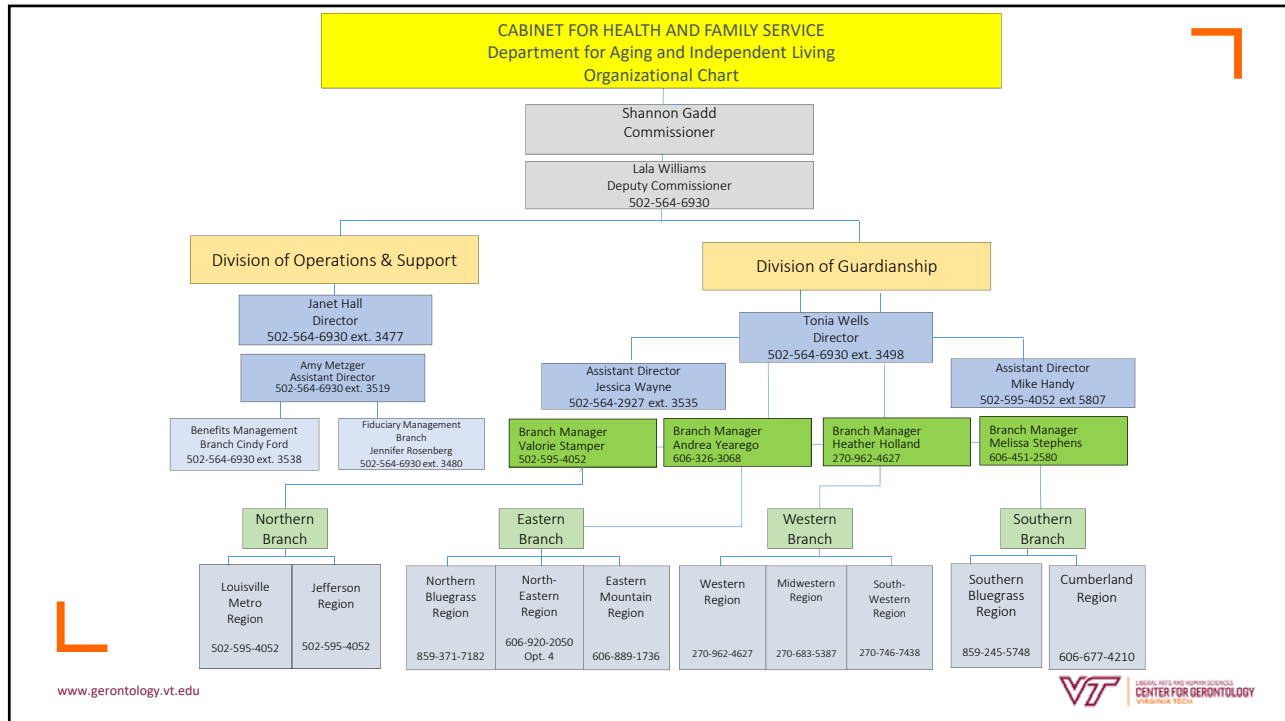
2006. Department for Community Based Services (DCBS) was realigned from 16 regions to 9 regions. With this realignment a guardianship regional office was created in each service region.

2008. The Office of the Public Guardian moved from supervision by the Department of Community Based Services to the Department for Aging and Independent Living, where it resides as of this writing. In May 2019 the Division of Guardianship was realigned to 10 regions: Louisville Metro, Jefferson, Northern Bluegrass, Southern Bluegrass, Eastern Mountain, Northeastern, Cumberland, Southwestern, Southern Bluegrass, Midwestern, and Western. Currently the Guardianship's management team includes 10 regional supervisors, 4 branch managers, 2 assistant directors, and 1 director.

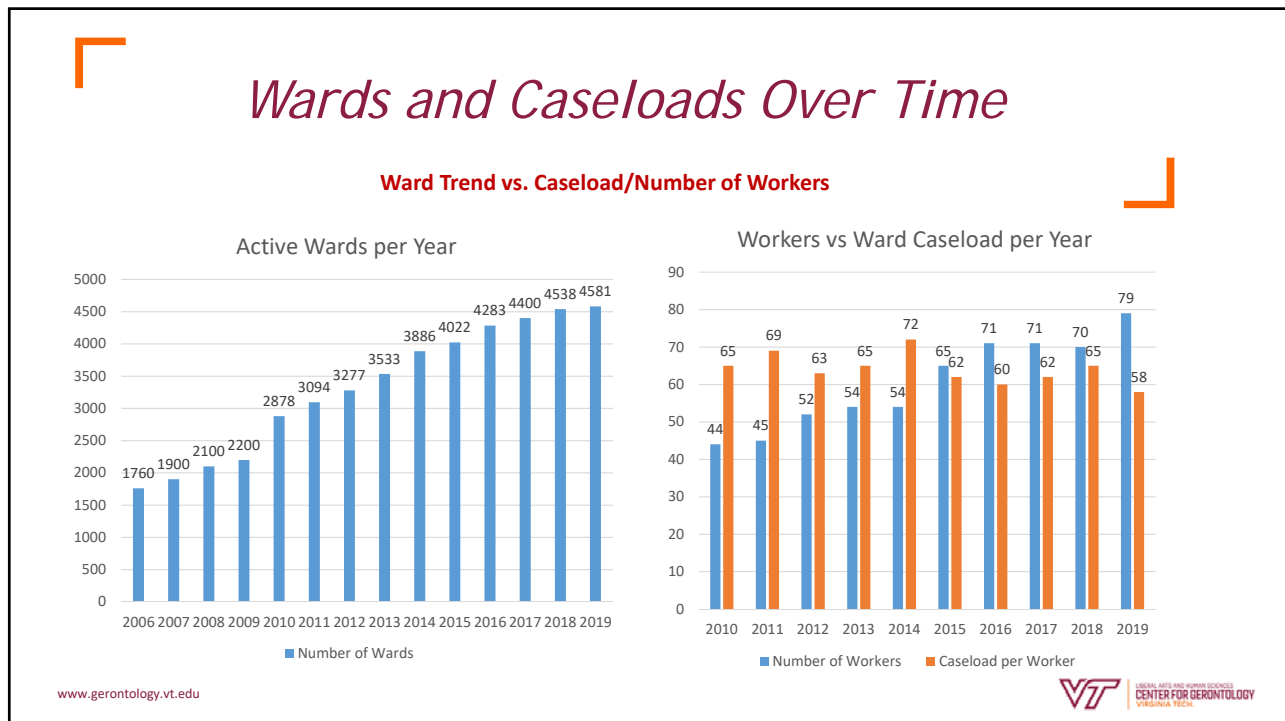
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Wards with a History of Violent or Dangerous Behavior and The Effects on Kentucky's Public Guardian Program

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Purpose of the Study

- **This study, conducted from 2016-2018, sought to understand characteristics of the March 2016 population of public guardianship wards with a history of dangerous or violent behavior as well as their service implications for the state public guardianship system.**

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Approvals



- We secured permission to conduct this study from the Commissioner of the Department of Aging and Independent Living, Cabinet for Health and Family Services. Both Virginia Tech and the University of Kentucky IRBs and the Cabinet Review Group reviewed and approved all study protocols.

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Methods



1. We analyzed administrative data provided by the Office of the Public Guardian, Department of Aging and Independent Living, Cabinet for Health and Family Services (CHFS). The data contained demographic information on each specified ward (e.g., gender, age in 2016, county of guardianship, and past and current history of dangerous or violent behavior noted in case file notes and identified by CHFS staff).
2. In addition to the client characterization, we also conducted an online survey of CHFS staff in order to understand how the population of wards with a history of dangerous or violent behavior affected how public guardian staff members serve them in particular as well as how these clients affect public guardians serving wards without this history (e.g., benefits, placement, available treatments, time allocations, health care decision making). Although staff members were invited to participate by the Assistant Directors of Kentucky Public Guardianship, their participation in the study was anonymous and entirely voluntary.

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Definitions of Types of Crimes

- **Non-violent crimes** were categorized as those crimes that do not involve the use of any force or injury to another person. The seriousness of a non-violent crime is usually measured in terms of economic damage or loss to the victim. Most non-violent crimes involve some sort of property crime such as larceny or theft.
- **Violent crimes or violent offenses** involved the use of force or injury to the body of another person. The seriousness of a violent crime is usually determined by the degree of physical harm caused to the victim. The use of a weapon can raise the seriousness of the crime. Some crimes are classified as violent crimes even if the victim was not injured. For example, crimes that involve the threat of injury to a person may qualify as a violent crime. Moreover, the characteristics of the victim may alter the seriousness of the charges. For example, if a police officer, woman, or child was the victim of the violence, the crime will likely be subject to increased charges. <https://www.legalmatch.com/law-library/article/non-violent-vs-violent-crimes.html>

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Kentucky Public Guardian Active Client Population by Case Region

Case Region	No Dangerous or Violent Behavior	Dangerous, Nonviolent Behavior	Violent Behavior	Total
Cumberland	444 (75.8)	26 (4.4)	116 (19.8)	586
Eastern Mountain	174 (64.7)	60 (22.3)	35 (13.0)	269
Jefferson	687 (81.1)	67 (7.9)	93 (11.0)	847
Midwestern	251 (87.8)	12 (4.2)	23 (8.0)	286
North Central	410 (84.9)	28 (5.8)	45 (9.3)	483
Northeastern	204 (91.1)	10 (4.5)	10 (4.5)	224
Northern Bluegrass	203 (76.3)	40 (15.0)	23 (8.7)	266
Southern Bluegrass	360 (88.9)	11 (2.7)	34 (8.4)	405
Southwestern	278 (86.1)	20 (6.2)	25 (7.7)	323
Western Kentucky	371 (77.9)	47 (9.9)	58 (12.2)	476
Out of State	12 (63.2)	2 (10.5)	5 (26.3)	19
Total	3394 (81.1)	323 (7.7)	467 (11.2)	4184

Data reflect the active client population as of August 26, 2016. Results are N (%). Row per cents total to 100%.

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Age and Sex of Kentucky Public Guardian Active Ward Population by Case Region and Criminal Behavior

Case Region	No Dangerous or Violent Behavior		Dangerous, Nonviolent Behavior		Violent Behavior	
	Age	% Male	Age	% Male	Age	% Male
Cumberland	54.3	50	50.1	69	44.1	73
Eastern Mountain	58.1	49	48.1	65	45.2	71
Jefferson	56.2	46	58.0	51	41.2	66
Midwestern	61.5	47	47.5	75	43.1	91
North Central	56.1	46	51.0	43	43.8	67
Northeastern	56.4	51	54.0	50	43.3	80
Northern Bluegrass	60.1	47	55.9	72	50.2	87
Southern Bluegrass	55.2	47	38.9	73	42.7	82
Southwestern	56.3	53	46.3	45	44.6	76
Western Kentucky	50.8	44	49.1	66	49.6	71
Out of State	69.3	58	59.0	100	59.6	80

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Data reflect the active client population as of August 26, 2016. Age results are means.



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Reported Criminal Behavior of the Kentucky Public Guardian Active Ward Population by Level of Care

Level/Type of Care	No Dangerous or Violent Behavior	Dangerous, Nonviolent Behavior	Violent Behavior	Total
Acquired Brain Injury	34 (63.0)	8 (14.8)	12 (22.2)	54
Acute Hospitalization	46 (78.0)	5 (8.5)	8 (13.6)	59
Assisted Living	13 (82.9)	0	1 (7.1)	14
Caretaker	21 (77.8)	1 (3.7)	5 (18.5)	27
Community Integrated Services	39 (60.9)	10 (15.6)	15 (23.4)	64
Family	133 (80.6)	12 (7.3)	20 (12.1)	165
Group Home/Boarding Home	13 (65.0)	2 (10.0)	5 (25.0)	20
Homeless	3 (42.9)	2 (28.6)	2 (28.6)	7
Intermediate Care	552 (90.8)	37 (6.1)	19 (3.1)	608
Jail	0	14 (45.2)	17 (54.8)	31
Licensed Family Home	28 (87.5)	0	4 (12.5)	32
Living with Other	14 (56.0)	4 (16.0)	7 (28.0)	25
Personal Care Home	415 (71.2)	63 (10.8)	105 (18.0)	583
Psychiatric Hospital	55 (50.5)	20 (18.4)	34 (31.2)	109
SCL	1223 (85.4)	75 (5.2)	134 (9.4)	1432
Self	181 (69.1)	36 (13.7)	45 (17.2)	262
Skilled Nursing	608 (90.3)	33 (4.9)	32 (4.8)	673
VA Medical Foster Home	4 (100.0)	0	0	4
Other	10 (83.3)	0	2 (16.7)	12
AWOL	2 (66.7)	1 (33.3)	0	3
Total	3394 (81.1)	323 (7.7)	467 (11.2)	4184

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Data reflect the active client population as of August 26, 2016. Results are N (%). Row per cent = 100%.



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Frequency of Reported Violent or Dangerous Behavior

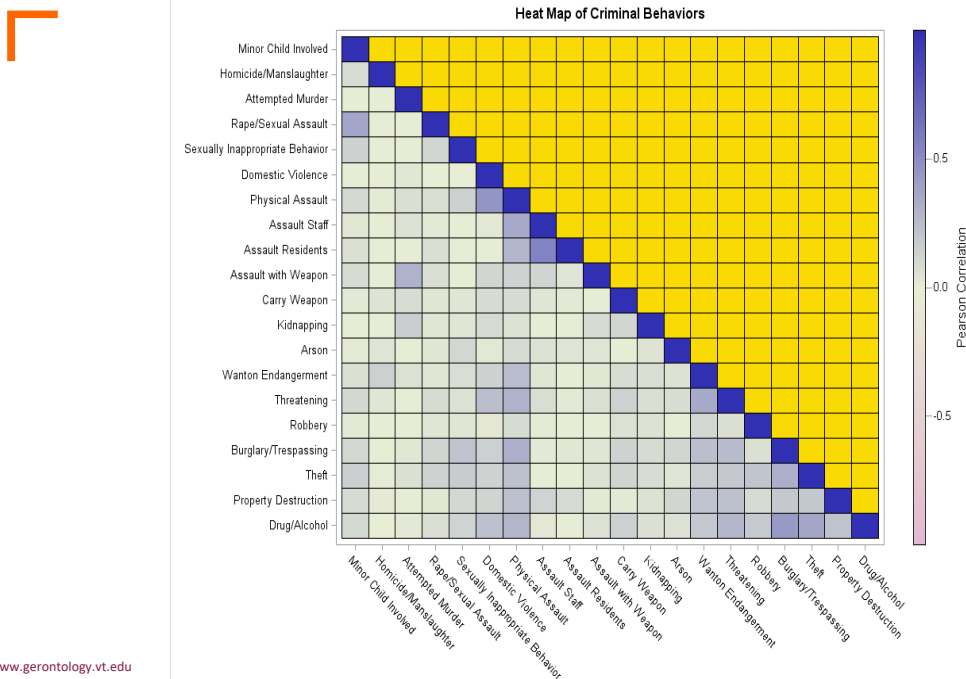
Description	No Dangerous or Violent Behavior (N=323)	Violent (N=467)
Minor Child Involved	10 (3.1)	30 (6.4)
Homicide/Manslaughter	0	11 (2.4)
Attempted Murder	0	4 (0.9)
Rape/Sexual Assault	6 (1.9)	49 (10.5)
Sexually Inappropriate Behavior	11 (3.4)	37 (7.9)
Domestic Violence	16 (5.0)	128 (27.4)
Physical Assault, Non-Domestic	52 (16.1)	176 (37.7)
Assaulted Staff	23 (7.1)	27 (5.8)
Assaulted Residents	18 (5.6)	18 (3.9)
Assault with Weapon	0	10
Carry Weapon	3 (0.9)	25 (5.4)
Kidnapping	1 (0.3)	8 (1.7)
Arson	8 (2.5)	24 (5.1)
Wanton Endangerment	6 (1.9)	50 (10.7)
Threatening	30 (9.3)	116 (24.8)
Robbery	5 (1.5)	23 (4.9)
Burglary/Trespassing	52 (16.1)	115 (24.6)
Theft	68 (21.1)	108 (23.1)
Property Destruction	30 (9.3)	74 (15.8)
Drug/Alcohol Offense	120 (37.2)	161 (34.5)

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Percent listed is percent of column. Wards may have multiple behavior, and so column per cents do not total to 100%. "Minor Child Involved" includes child abuse, sexual assault, and unlawful transaction with a minor; "Sexually Inappropriate Behavior" includes indecent exposure, sexting with minors, sexual aggression, peeping tom, loitering for prostitution, and sexual deviancy; "Kidnapping" includes kidnapping and unlawful imprisonment; "Theft" includes theft by unlawful taking, theft by deception, cold checks, shoplifting, receiving stolen property, and theft of services; "Property Destruction" includes criminal mischief and leaving the scene of an accident; "Drug/Alcohol" includes possession, cultivation, distribution, driving under the influence, alcohol intoxication, and public intoxication.



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Public Guardian Staff Survey

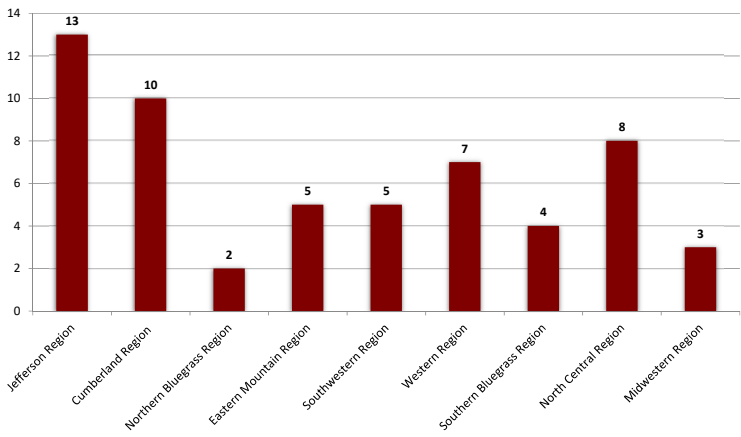


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Location of Survey Respondents by Region

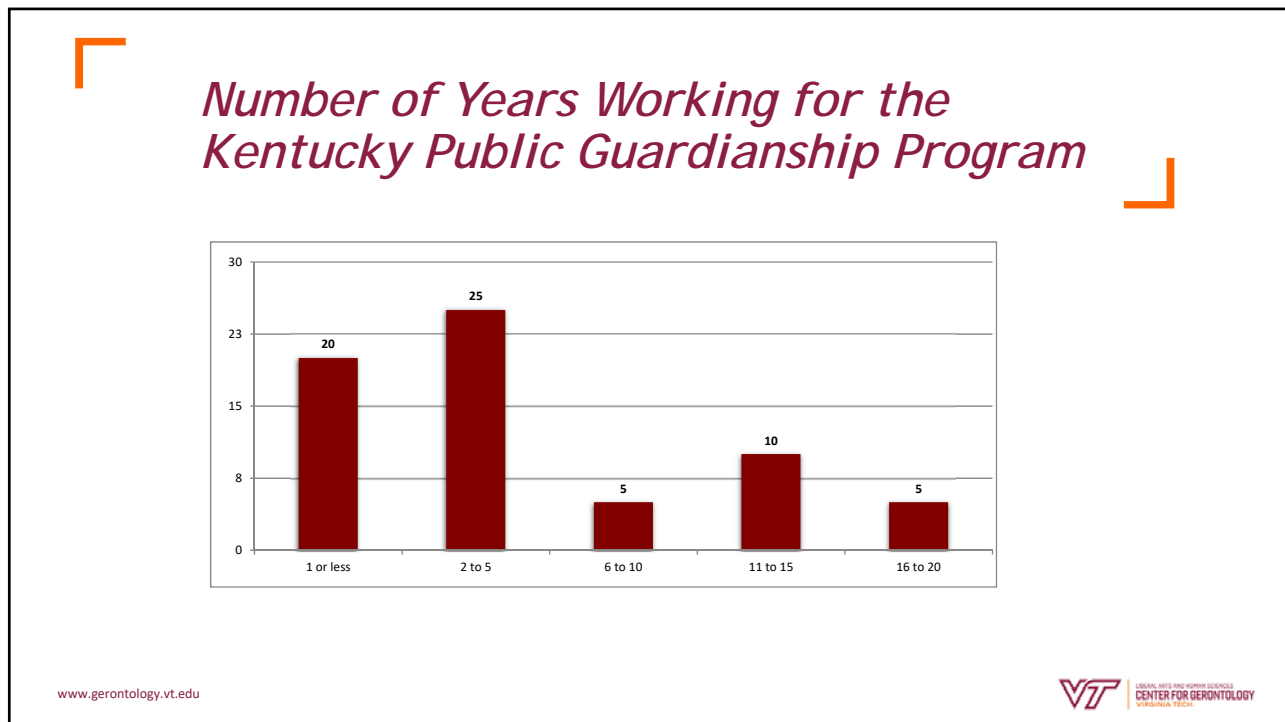


Region	Number of Respondents
Jefferson Region	13
Cumbebland Region	10
Northern Bluegrass Region	2
Eastern Mountain Region	5
Southwestern Region	5
Western Region	7
Southern Bluegrass Region	4
North Central Region	8
Midwestern Region	3

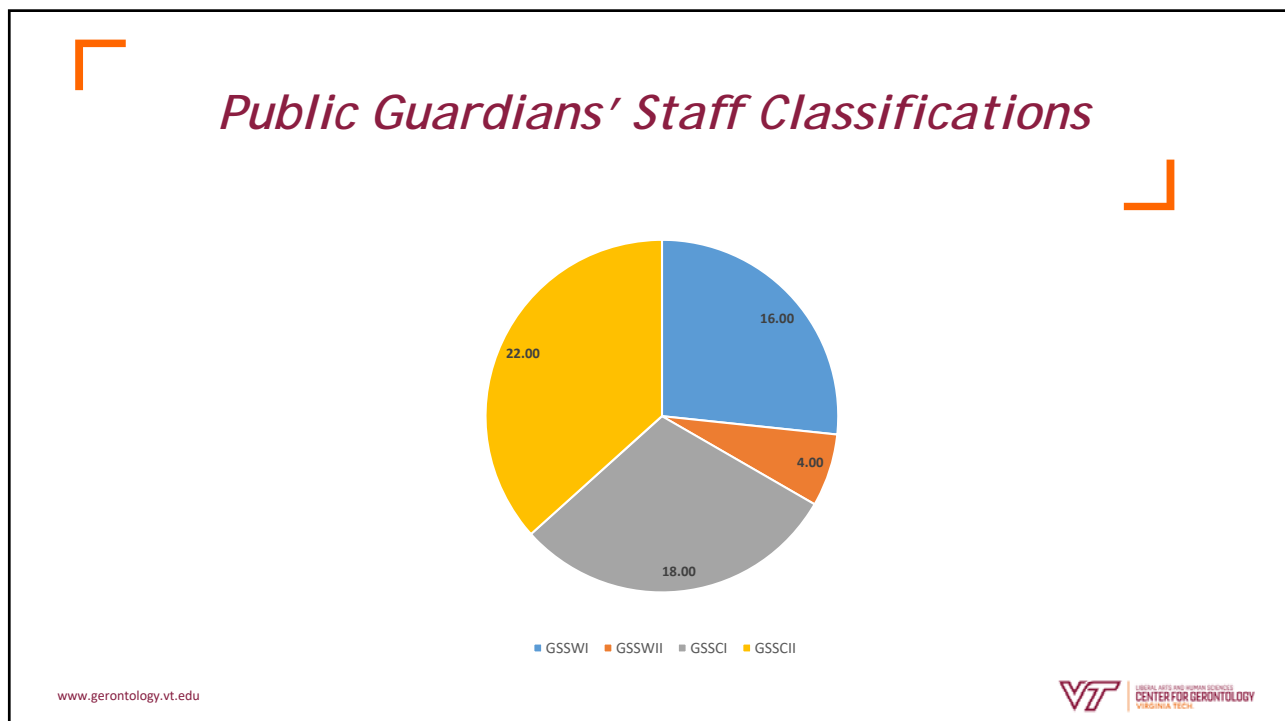
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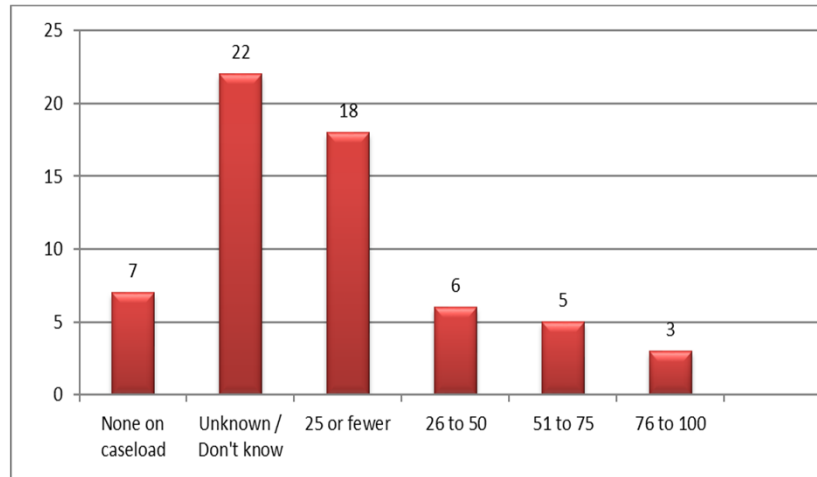


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Caseload Numbers for Wards with a History of Dangerous or Violent Behavior

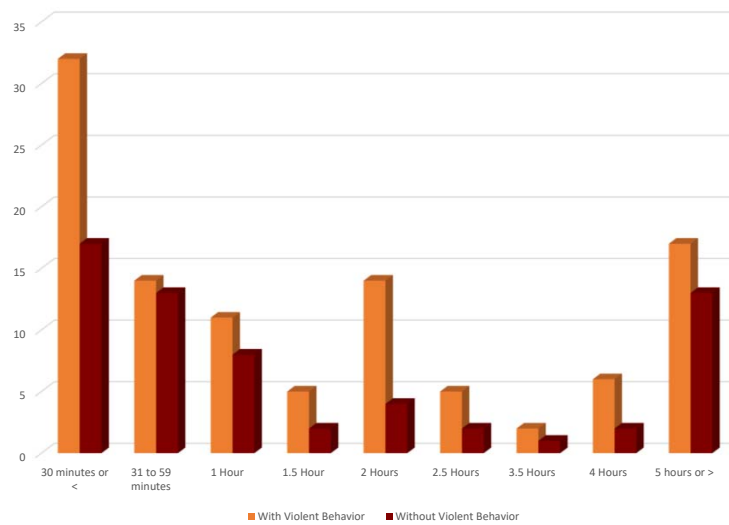


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Time Spent Per Week with Wards with a History of Violent Behavior v. Those Without



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Wards with a History of Dangerous or Violent Behavior Without Family or Friends

Caseload Estimate	%	N
None on caseload	6.94%	5
25% or fewer	38.89%	28
26% to 50%	12.50%	9
51% to 75%	9.72%	7
76% to 100%	13.89%	10
Unknown/Don't know	18.06%	13

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Wards with a History of Dangerous or Violent Behavior Who Were Homeless

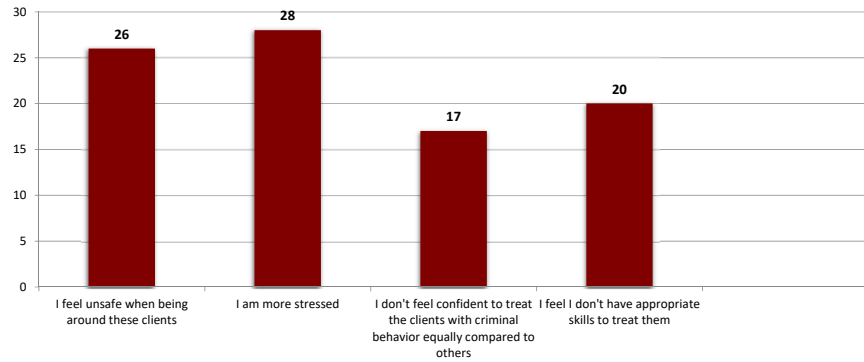
Caseload Estimate	%	N
None on caseload	11.27%	8
25% or fewer	30.99%	22
26% to 50%	8.45%	6
51% to 75%	9.86%	7
76% to 100%	4.23%	3
Unknown / Don't know	35.21%	25

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Attitudes About Working with Wards with a History of Violent or Dangerous Behavior

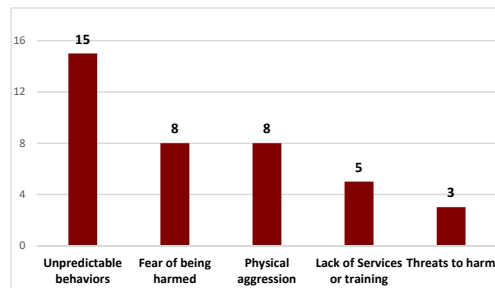


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Reasons Why Staff Members Feel Unsafe



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Staff Members' Comments Concerning Staff Safety When Working With Wards With a History Of Dangerous Or Violent Behavior

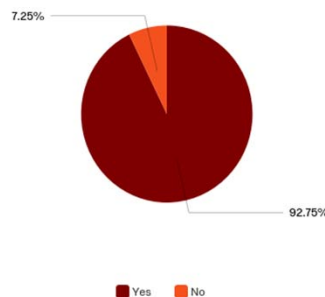
- ❖ "Yes, you never know what to expect."
- ❖ "...I have been grabbed by a client in the past."
- ❖ "We are required to make face to face visits with the wards and as front-line workers, we have no protection from them."
- ❖ "I feel these wards can hurt me at any time and their behavior are unpredictable. Also, I am not trained to deal with criminal behavior unlike the Police are..."
- ❖ "We receive little or no help from hospitals or police department as support."
- ❖ "I feel this way because you never know when they are going to try to attack you as worker when they cannot have their way."
- ❖ Some wards actually have admitted that they would do the criminal behavior again which causes fear in one of the respondents.

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Continuation of Criminal Behavior after Appointment of a State Guardian



The wards continue to have criminal behavior, having a guardian does not decrease the behavior. Oftentimes, the wards become violent with the guardianship worker and exhibit this behavior with the guardianship worker, which puts the guardianship worker in danger.

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Case Scenarios of Wards with Dangerous or Violent Behavior

- W.S. has an extensive criminal history including manslaughter, assault and arson. Several years ago he set a fire in his parents' home that caused the death of his sister. He was charged but found incompetent to stand trial. During a later hospitalization he severely assaulted a psychologist at a state hospital. The doctor later died from the injuries. While in a treatment facility he attacked a peer with a craft hammer and another one with a broken bottle. In addition, he has self-injurious behaviors such as jumping from a fire escape breaking his femur, several vertebrae and incurred a head injury.
- W.H. has a history of violence and sexual assaults. He served time in 2008 for imprisoning his daughter in the basement and repeatedly raping her.
- J.M. has a history of physical and sexual assault. He is accused of raping a staff member at a state hospital and breaking another staff person's back
- L.M. knocked a residential staff person unconscious by hitting him over the head with a table. He continued punching and biting the staff in the head while he was unconscious. Charges were filed but he was found incompetent to stand trial and was released back into the SCL program where his assaultive behaviors continue.
- M.P. has a long criminal history including assault, wanton endangerment, terroristic threatening, and alcohol/drug charges but has been found incompetent to stand trial. CHFS was appointed as guardian after he physically assaulted a 3 ½ month old and 3 year old child by striking them in the head with closed fists. The Judge advised guardianship office not to visit M.P. in the community, he is only to be seen at the office where security will be present. He lives in the community in his own apartment.

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Recommendations

- **Caseloads.** The number of clients in the Kentucky public guardianship program have seen a 150% increase over a ten-year period. While, commendably, in the past five years, there were additional positions added to the public guardian program, the numbers of wards appointed to the program have risen even more sharply. Caseload numbers over the past eight years have averaged one staff member to 65 wards and have ranged from a high of 1:72 to a low of 1:60. Even so, caseload numbers are far too high for individuals whose problems are so complex (Teaster, 2010).
- **Wards with a History of Dangerous or Violent Behaviors.** It appears that 20% of the ward population fits this category, one that appears, not surprisingly, to be highest in the case region with the highest population (Jefferson). Administrative data reveal that the majority of these wards are males between the ages of 38-69. There were 25% or fewer of these wards on caseloads who were without family or friends and homeless. Non-violent behavior was related to alcohol and drug offenses, while violent behavior was most often physically assaulting non-domestic victims. For the wards who had a history of dangerous or violent behavior, the most common care arrangement or type was jail and psychiatric hospitals. These care levels indicate a high level of need for each ward.

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Recommendations

- Inappropriate Orders.** That some jurisdictions in the state are particularly prone to order state guardianship for this ward population is to endanger the lives of other wards, the public guardians who serve them, and the general public. Alternatives must be found outside of public guardians to serve these individuals.
- Staff Concerns.** It is of concern that most staff members did not know that they had wards with a history of dangerous or violent behaviors on their caseloads and that, of those who were aware of this fact, Alarming was that over half of the respondents reported feeling unsafe, and in lower but still significant numbers, stressed that they were inadequately supported and trained to address the complex needs of this ward population.

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Recommendation

It is important to underscore what nearly all the guardians emphasized—the violent or dangerous behavior does not stop once a guardianship is in place. Thus, the guardians themselves are inappropriately put at risk when one of these wards is added to their already far too high caseloads.

It is critical to rectify this identified and quantified problem immediately.

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Legislative Changes in 2018

KRS 210.290

(2)(a) Clarified person has to be a citizen or permanent resident of the US and the state of Kentucky.

(Any person who is a citizen or permanent resident of the United States and has resided in a permanent, full time residence in Kentucky for at least the last 6 months prior to being in a hospital, treatment facility, correctional facility or long term care facility may be appointed. Someone in one of the living arrangements listed above, that was not residing in a permanent, full time home (apartment, etc.) in Kentucky is not eligible for appointment to guardianship.)

(2)(b) Provides that except upon written order of the court in "exceptional circumstances" the cabinet shall not be appointed when the person:

1. Has been convicted of, pled guilty to, or entered an Alford plea for a sex crime or an offense that would classify the person as a violent offender; or
2. Is not alive or cannot be physically located.

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Legislative Changes in 2018

KRS 210.290

(2)(c) Before appointing the cabinet, consideration shall be given to the average caseload of each field social worker.

(3) Lays out that the cabinet shall not:

- (a) Assume physical custody of the person;
 - (b) Be assigned as the person's caregiver or custodian; or
 - (c) Become personally liable for the person's expenses or placement, or to third parties for the person's actions. However, the cabinet shall procure resources and services for which the person is eligible when necessary and available.
- 4) (b) Allows the cabinet to pay all outstanding bills related to living expenses, reasonable funeral expenses and estate recovery prior to the release of funds to the person's estate when the person dies with less than ten thousand dollars (\$10,000).
- (5) Allows the cabinet to establish or place funds held as fiduciary in a trust.

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Legislative Changes in 2018

KRS 387.510

(3) the definition of Guardian changed to “manage the personal affairs” of a disabled person and removed language of having full care, custody, and control of the individual.

(4) definition of Limited Guardian changed to include an individual, agency or corporation appointed by the court to assist in managing the personal affairs of a partially disabled person.

(8) Clarified that disabled is a legal disability not a medical disability and changed the age from 14 to 17.

(17) Added definition of “personal affairs” to mean decisions regarding the person of an adult, including but not limited to health care, food, shelter, clothing, or personal hygiene.

KRS 387.540

(1) Allows the interdisciplinary evaluation report to be admitted into evidence and be considered by the court or the jury if one is impaneled. This allows a bench trial or a jury trial. This also adds a physician assistant to the list of evaluators able to complete the interdisciplinary assessment and report.

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Legislative Changes in 2018

KRS 387.570

(1) removes the requirement to have a jury trial.

(3) Provides that the individual has the right to be present at the hearing but is not required to be present.

(7) Lays out the hearing shall be a jury trial unless:

(a) The individual, their attorney, and the Commonwealth attorney all agree to a bench trial;

(b) No objections to a bench trial is made by an interested person or entity; and

(c) The interdisciplinary evaluation report reflects an unanimous consensus and the court finds no cause to require a jury trial.

KRS 387.580

(1) makes adjustment to state what the court (if bench trial) or the jury shall determine at the hearing.

KRS 387.590

Clarifies when a guardian, limited guardian, conservator and a limited conservator shall be appointed and may be the same individual, agency, or corporation in both roles.

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Legislative Changes in 2018

KRS 387.610

Adds that an advanced practice registered nurse or physician assistant working within his or her scope of practice may provide the affidavit supporting the need for continuation of guardianship or conservatorship.

KRS 387.660

(1) Removes the language that a guardian takes custody of the ward

KRS 387.670

Removes subsection (4) requiring the guardian to comply with the reporting requirements of KRS 387.710.

KRS 387.680

(1) Adds language to allow fiduciary to manage financial resources including establishing or placing resources in a trust.

KRS 387.700

Removes guardian so that it is the conservator with the responsibilities for financial resources.

KRS 387.710

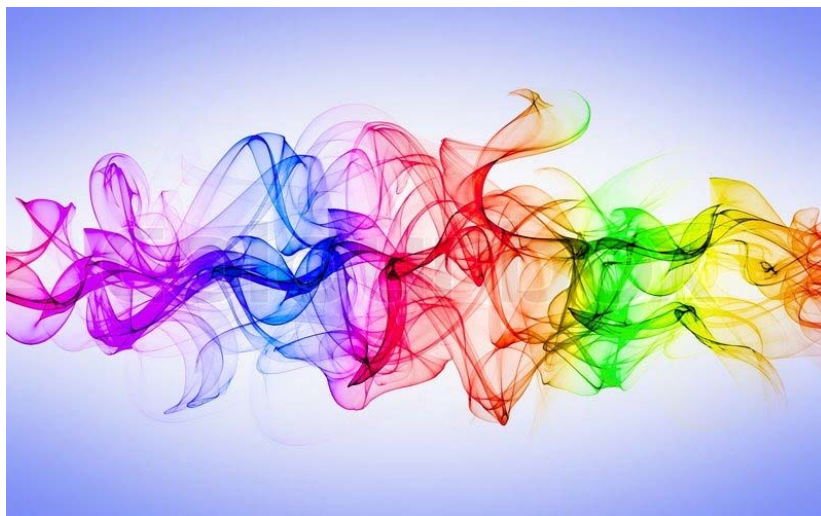
Removes guardian so that it is the conservator with the responsibilities for financial resources.

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Questions and Comments



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