

Guardianship in Wyoming: The State’s Most Pressing Human Rights Concern

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All people have rights to due process, privacy, marriage, property ownership, participation in elections, employment, education, and community life.¹ However, thousands of Wyomingites living under plenary guardianship may be systematically denied these rights under current guardianship law. In this paper, we first examine the implications of guardianship for Wyoming citizens. We identify seven key issues with the current system, including problematic legal terminology, unchecked judicial oversight, and contradictions with Wyoming’s core values. We argue that restrictive guardianship measures are often unnecessary and explore alternatives that offer protection while protecting individuals’ rights. We propose a more dignified and inclusive approach to decision-making and explore less restrictive legal alternatives to guardianship. Finally, we present six recommendations to steer Wyoming guardianship on a course to pursue freedom and self-determination in decision-making.

Understanding Guardianship

Guardianship is when a court gives authority to a person to make decisions for someone else. Outside of incarceration or involuntary commitment, guardianship is the most restrictive of a person’s rights² as it can take away their legal rights and restricts their independence and

¹ United Nations, “Decl. Of Human Rights.”

² Johns, “Due Process and Guardianship.”

self-determination. In Wyoming guardianship law, the person for whom rights are taken away is called a “ward” and “proposed ward.”³ While language like “mental deficiency,” “incompetent,” and “ward” is used when citing the law specifically, out of a desire to empower and respect people living under guardianship, readers will see person-first language (ex. Person living under guardianship, people legally deemed “mentally incompetent”) throughout this paper. This is intended to linguistically emphasize the person's humanity first and legal status second as well as bring more humanity into this discussion of guardianship.

There are four types of guardianship arrangements in Wyoming: plenary, limited, emergency, and standby.⁴ Guardianship can be limited in two ways: scope (decisions guardians can make) and/or time (how long someone is a guardian for). Plenary guardianship carries the full range of duties allowable by law and is not limited in scope or time. Limited guardianship may be limited in either scope or time and is typically only appointed to minors. Limited guardianship is also usually limited to no more than one year and only applies to educational, medical, and dental purposes. Emergency guardianship is limited in scope and time and only applies to educational, medical, and dental purposes and typically last no longer than 90 days.⁵ Standby guardianship is limited to taking effect only in the event of some specified event or the existence of a mental or physical health condition.

This paper focuses on plenary guardianship, because it is the most restrictive option out of the four types. It is also the type of guardianship pursued most often in Wyoming. People with intellectual and developmental disabilities (IDD) experience higher rates of guardianships than people without IDD; however, guardianship also affects people with mental illness, people with substance use disorders, and people of advanced age.⁶

³ Wyo. Stat. § 3-1-101, “Definitions.”

⁴ Wyo. Stat. § 3-1-101, “Definitions.”

⁵ Wyo. Stat. § 3-2-106, “Provisions.”

⁶ Wyoming Statute § 3, “Guardian and Ward.”

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Guardianship Issue #1: Broad Definitions of “Incompetence”

In Wyoming, for someone to be subject to guardianship, they must be deemed “incompetent” by a judge.⁷ There are two types of incompetence under the law:

(ix) “Incompetent person” means an individual who, for reasons other than being a minor, is unable unassisted to properly manage and take care of himself or his property as a result of the medical conditions of advanced age, physical disability, disease, the use of alcohol or controlled substances, mental illness, mental deficiency or intellectual disability;

and

(xii) “Mentally incompetent person” means an individual who is unable unassisted to properly manage and take care of himself or his property as the result of mental illness, mental deficiency or intellectual disability.

Note the important distinction between “incompetence” and “mental incompetence” in this statute, which is that only people who have “mental illness,” “mental deficiency,” or “intellectual disability” can be subject to the “mental incompetence” definition and restrictions. This is important because being deemed “mentally incompetent,” more severely limits someone’s rights. For example, “mental incompetence” disenfranchises people from voting.⁸

Another distinction is that only “mentally incompetent” people are stripped of their legal power to “convey, encumber or dispose of property in any manner.”⁹ When someone is deemed “mentally incompetent” all their property is “subject to the possession of the [guardian]”¹⁰ meaning their property and assets are not their own. Ultimately, people living under guardianship, and especially people subject to the definition of “mentally incompetent,” have severe rights restrictions.

The implications of these broad legal definitions are striking. A study conducted by the Human Services Research Institute (HSRI) and National Association of State Directors of Developmental Disabilities Services (NASDDDS), found that in Wyoming:

- Only about half the rate of people with IDD live without a guardian compared to the national average (29% vs. 54%).¹¹

⁷ Wyo. Stat. § 3-1-101, “Definitions.”

⁸ Wyo. Stat. § 22-1-102(a)(xxvi), “Elections Qualifications.”

⁹ Wyo. Stat. § 3-1-202(a), “Powers of Ward.”

¹⁰ Wyo. Stat. § 3-1-203, “Title to Ward’s Property.”

¹¹ HSRI & NADDDDS, “Guardianship,” 32.

- Only about half the rate of people with IDD live under limited guardianship (5% vs. 9%).¹²
- As mentioned above, more than twice the rate of people with IDD live under plenary guardianship (65% vs. 28%; HSRI & NADDDDS, 2023).¹³

Data indicates that Wyoming is not opting for the least restrictive option, despite the law stating that people living under guardianship have the right to the “least restrictive and most appropriate” guardianship.¹⁴ These rates show that people with IDD are disproportionately denied autonomy and self-determination. Further, this may indicate that Wyomingites are not aware of and/or do not have access to these alternatives.

While guardianship in Wyoming is predominantly and severely affecting individuals with IDD,¹⁵ it is important to understand that the broad scope can impact Wyomingites without IDD, too. These broad definitions of incompetence can apply to adults who courts deem unable to manage their property or lives because of common life conditions. Things like advanced age, physical disability, disease, the use of alcohol or drugs, mental illness, or intellectual disability.¹⁶ The legal definition of “incompetence” explicitly ties requirements of guardianship to human conditions that affect many Wyomingites.

For example, 1 in 5 (103,877) Wyomingites are “of advanced age.”¹⁷ Mental illness affects 1 in 5 people in Wyoming.¹⁸ In any given month, 235,000 people used alcohol in Wyoming and 55,000 Wyomingites used controlled substances.¹⁹ This establishes that Wyoming law could subject over half of all Wyomingites to guardianship.

Guardianship Issue #2: Human Rights Restrictions with Guardianship

Appointment of a guardian involves removing the individual rights of the person living under guardianship. The only rights of people living under guardianship are as follows: 1) right to the least restrictive and most appropriate guardianship; 2) right to the least restrictive and most appropriate residence, education, and employment; 3) freedom from inappropriate

¹² HSRI & NADDDDS, “Guardianship”, 32.

¹³ HSRI & NADDDDS, “Guardianship,” 33.

¹⁴ Wyo. Stat. § 3-1-205(v), “Rights of Proposed Ward”; Wyo. Stat. §3-1-206(a)(i), “Rights of Ward Least Restrictive.”

¹⁵ HSRI & NADDDDS, “Guardianship,” 32-33.

¹⁶ Wyo. Stat. § 3-1-101, “Definitions.”

¹⁷ Gordon et al., “Wy Aging Population,” 1-2.

¹⁸ NAMI, “Mental Health in Wy,” 1-2.

¹⁹ SAMHSA, “Wy Survey Drugs and Health,” 1-2.

physical or chemical restraints; and 4) all other rights available to residents of facilities or participants of programs that they participate in.²⁰

Guardians authorize or withhold medical and professional care as well as manage the money and property of the person living under their guardianship.²¹ In addition, guardians may, with court approval, commit the person living under their guardianship to a mental health hospital or facility, consent to electroshock therapy, psychosurgery, sterilization, and other long-term or permanent contraception, relinquish their minor child for adoption, and execute advance directives.²²

Concerningly, this signifies that guardians are solely responsible for defining and facilitating the least restrictive and most appropriate guardianship, residence, and educational and social activities for the person living under their guardianship. This may put extreme and unnecessary pressure on the guardian as well as legally exclude someone living under guardianship from the decision-making process. The powers and duties outlined for guardians necessitate that the person living under guardianship loses their autonomy and ability to make the most important decisions in their lives.

For example, people living under guardianship cannot consent to medical procedures, marriage, financial agreements, or employment. Because guardians are tasked with the responsibility to choose the least restrictive and most appropriate residence, education, and social activities, people living under guardianship may not make these choices either. People living under guardianship who are deemed “mentally incompetent” are also not able to own property—meaning, all their property belongs to their guardians.

Other states have acknowledged the significant rights restrictions imposed on individuals under guardianship. In fact, every other state in the U.S. has implemented legal protections for guardianship,²³ with stronger evidentiary standards being one such measure. This leads to the next critical issue in guardianship; the alarmingly low evidentiary standard in guardianship proceedings.

Guardianship Issue #3: Preponderance of the Evidence & Judicial Discretion

Outside of incarceration or involuntary commitment, guardianship is the most restrictive of a person’s rights,²⁴ as discussed in the section above. However, Wyoming’s evidentiary

²⁰ Wyo. Stat. § 3-1-206, “Rights of Ward.”

²¹ Wyo. Stat § 3-2-203, “Title to ward’s property.”

²² Wyo. Stat § 3-2-202, “Powers of the Guardian.”

²³ Benish, “WY Behind in Guardianship,” 392.

²⁴ Johns, “Due Process and Guardianship.”

standards do not reflect that fact. Wyoming's burden of proof is only "preponderance of the evidence,"²⁵ making it the only state with this low of an evidentiary standard.²⁶

The burden of proof is the responsibility to prove, through evidence and argument, a claim in a legal case. These levels, ranked from least to most evidence required, are: reasonable suspicion, probable cause, preponderance of the evidence, clear and convincing evidence, and beyond a reasonable doubt.²⁷ Because criminal cases severely limit someone's human rights, for example, they require the strongest evidentiary standards (beyond a reasonable doubt) to protect those rights.

Except for Wyoming, all U.S. states require at least the "clear and convincing evidence" standard for plenary guardianship proceedings. The "clear and convincing evidence" standard in guardianship cases would require a judge to determine that it is "substantially more likely than not" or around 75% likely that a person is unable to care for themselves or their property.²⁸ In contrast, Wyoming's lower standard, "preponderance of the evidence," means it must be only 50% likely that the claim is true²⁹—that a person is unable to care for themselves or their property without assistance. This sets an unacceptably low threshold for such a significant restriction of rights.

This standard enables judges—who are likely not experts in the ability of a person to care for themselves and property—to have complete discretion in whether a guardian should be appointed for a person. Evidentiary standards that fail to protect individual rights and give too much discretion to judges have certainly contributed to the disproportionate number of Wyomingites—especially those with IDD—living under plenary guardianship.

This low evidentiary standard is further complicated for people with disabilities because societal structures (i.e. laws) are influenced by societal attitudes, namely ableism. Ableism is the combination of beliefs and practices that assert a typical body is essential to be fully human, which means that disabled bodies are viewed as less than human.³⁰ Ableist attitudes lead to structural stigma, which are "societal-level conditions, cultural norms, and institutional policies that constrain the opportunities, resources, and well-being of the stigmatized".³¹ In the case of guardianship in Wyoming, the preponderance of evidence standard does not adequately protect the individual rights of Wyomingites, especially those with disabilities. In addition, it provides a legitimate legal avenue that perpetuates and even exacerbates the inequality and power differentials experienced by people with disabilities.

²⁵ Wyo. Stat. § 3-2-104, "Appointment of Guardian."

²⁶ Benish, "WY Behind in Guardianship," 392.

²⁷ Kaplow, "Burden of Proof," 752-56.

²⁸ Kaplow, "Burden of Proof," 779.

²⁹ Kaplow, "Burden of Proof," 743.

³⁰ Reber et al., "Ableism and Attitudes," 3.

³¹ Hatzenbuehler, "Stigma and Psychological Implications," p.445-46.

Guardianship Issue #4: Voluntary Guardianship Petitions

Before explaining voluntary and involuntary petitions, the age loophole in Wyo. Stat. § 3-2-102(ii) must be understood. In some guardianship petitions, the person proposed for guardianship has a legal right to be notified, except when the person proposed for guardianship is under 18 years old when the petition is filed.³² It is common practice for a guardianship petition to occur before the person proposed turns 18 years old. Unfortunately, this results in many people never being notified of their petition. Even with involuntary guardianship petitions—which are understood to typically offer more legal protection than voluntary ones—people are still denied their legal rights to notice.

Involuntary petitions, when the age loophole described above is not used, require that the person proposed for guardianship be notified.³³ A voluntary guardianship petition happens when the person proposed for guardianship either requests it themselves or does not oppose the request for guardianship.³⁴ With voluntary cases, notice of the petition filing is not required.³⁵ This is an issue for both the guardian—82% of whom are family members³⁶—and people proposed to live under a guardian, because both groups are misinformed about what guardianship is and does.³⁷

Parents with guardianship of their adult children have reported that they petitioned for guardianship because they believed their children were unable to make decisions for themselves. They also believed that getting guardianship would result in better protection for their adult children. However, when guardianship was defined for these parents, they were surprised to learn that plenary guardianship completely removes the individual rights of their adult children by defining them as “mentally incompetent.” We can conclude from this that adult children with developmental disabilities may have guardianship unintentionally misrepresented to them when they voluntarily petition the courts for guardianship.

Guardianship Issue #5: Lack of Legal Aid

One way to assist people proposed for guardianship through court processes is a guardian ad litem or a court visitor. Guardians ad litem are typically attorneys and court visitors are typically social workers or public health professionals. Guardians ad litem generally inform people who may potentially live under guardianship of their rights during guardianship

³² Wyo. Stat. § 3-2-102(ii), “Notice, When Required.”

³³ Wyo. Stat. § 3-1-205, “Rights of Proposed Ward.”

³⁴ Wyo. Stat. § 3-3-301, “Voluntary Petition”; Dorsey, “Uncontested Guardianships.”

³⁵ Wyo. Stat. § 3-2-102(ii), “Notice, When Required.”

³⁶ HSRI & NADDDDS, “In-Person 2018,” 35-36.

³⁷ Millar, “Disconnect: Self-Determination and Guardianship,” 125.

proceedings. Court visitors typically determine whether a person needs a guardian once a petition has been filed.

Some states have required that guardians ad litem and/or court visitors be assigned in guardianship cases.³⁸ Wyoming law states that a person proposed to live under guardianship has a right to guardian ad litem.³⁹ However, in a survey of 256 guardianship cases petitioned to the Wyoming Supreme Court in 2021, only 102 (40%) cases had appointed guardians ad litem and only 2 (.7%) had an attorney representing them.⁴⁰ Further, guardian ad litem offices in Wyoming are inadequately funded, which contributes to their limited usefulness.⁴¹ With court visitors or guardians ad litem, informed consent for the voluntary petition could be assessed more accurately. This lack of legal representation contributes to the high rate of plenary guardianship in Wyoming and reveals the undemocratic nature of guardianship practices in Wyoming.

Guardianship Issue #6: Guardianship is Antithetical to Wyoming Values

One way to understand guardianship in Wyoming is through the lens of its political culture which emphasizes traditionalism, moralism, constitutionalism, and individualism.⁴² Traditionalistic values can reinforce ableism by creating a hierarchy where able-bodied individuals are considered "fully human," while those with disabilities are viewed as less than human.⁴³ However, this perspective contradicts three other core values present in Wyoming's political culture: moralism, constitutionalism, and individualism, which all support equality, personal rights, and autonomy.

Wyomingites have a moral desire to advance public interest and generally oppose government intervention in individuals' lives.⁴⁴ That is good news for Wyoming's culture because research shows that the best way to promote wellbeing, and therefore, public interest, is to promote individual rights and self-determination.⁴⁵ Current guardianship practices and laws in Wyoming do not promote individual rights or self-determination. Wyoming's strong adherence to constitutionalism is in conflict with current guardianship law. Legal scholars within Wyoming have claimed Wyoming's guardianship law is unconstitutional.⁴⁶

³⁸ Crowe, "Provisions for Guardians ad Litem."

³⁹ Wyo. Stat. § 3-1-205, "Rights of Proposed Ward"; Wyoming Rules of Civil Procedure Rule 17c.

⁴⁰ Dow, "State-Mandated Service Not Available."

⁴¹ Wyoming Legislature Mental Health and Vulnerable Adult Taskforce meeting 2023

⁴² King, "Wyoming Political Culture."

⁴³ Hatzenbuehler, "Stigma and Psychological Implications", 45-46.

⁴⁴ King, "Wyoming Political Culture".

⁴⁵ Lachapelle et al., "Quality of Life and Self-Determination"; NCD, "Alternative to Guardianship Promote Self-Determination"; Wright, "Well-Being of Respondents," 391-94.

⁴⁶ Benish, "WY Guardianship Law Behind", 392.

Further, guardianship law incontestably contradicts the strong individualistic culture of Wyoming. By allowing guardianship to exist in its current state, Wyoming is allowing significant government intervention to restrict individuals' rights, despite the availability of alternative measures that align more closely with the state's culture.

Guardianship Issue #7: Guardianship is Unnecessary

Beyond opposing Wyoming's values, guardianship may lower quality of life and impose unnecessary barriers to individuals' decision-making. When people are labeled incapable, they have worse life outcomes compared to people who are labeled capable.⁴⁷ People subject to guardianship have long felt passive, helpless, self-critical, and have less ability to function.⁴⁸ Further, people with guardians are more likely to take medication for behavior challenges than those without, are less likely to work in a paid job, and are less included in their own lives.⁴⁹

Alternatively, when people are assumed to be capable and have increased social support, quality of life indicators increased.⁵⁰ Things like increased self-assurance, employment, and positive social connections occur more often when supported decision-making and self-determination are respected.⁵¹ Further, this lowering of quality of life under guardianship is unnecessary—there are alternatives to guardianship that give people with IDD the support they need while protecting their right to make their own decisions.

The Possibilities of Interdependence and Supported Decision-Making

Discussing alternatives to guardianship must involve an understanding of interdependent methods of decision-making, which is common practice for all people.⁵² Decisions like selling a car, buying a house, signing a lease, having surgery, changing medications, or going to college or trade school are decisions that typically involve the input of others. The legal and social assumption that people make decisions independently is inherently incorrect. It also

⁴⁷ Lachapelle et al., "Quality of Life and Self-Determination"; Skaggs, "Labeling Theory"; NCD, "Alternative to Guardianship Promote Self-Determination," 101-102; Wright, "Well-Being of Respondents," 391-94.

⁴⁸ Uchino et al., "Social Support and Physiology," 490-95; Hatzenbuehler, "Stigma and Psychological Implications," 445-46.

⁴⁹ Shogren et al., "Self-Determination and Post-School Outcomes," 260-64; Lachapelle et al., "Quality of Life and Self-Determination."

⁵⁰ Skaggs, "Labeling Theory"; Uchino et al., "Social Support and Physiology," 490-95

⁵¹ Lachapelle et al., "Quality of Life and Self-Determination"; Shogren et al., "Self-Determination and Post-School Outcomes," 260-64.

⁵² NCD, "Alternative to Guardianship Promote Self-Determination," 129.

imposes unnecessary barriers in decision-making for people with developmental disabilities. These barriers do not exist for people without guardians and do not have to exist for people with developmental disabilities.

A best practice for interdependent decision-making is called supported decision-making (SDM). SDM allows individuals to retain their human rights with help from family, friends, and professionals they choose to help them understand, consider, and communicate decisions.⁵³ In its least complicated form, SDM allows people to informally consult others in decisions they make. However, some SDM support networks want legal assurance that they may be involved in their loved one's care and decisions. In these cases, there are many tools that help facilitate a more formal form of SDM. These tools can protect people from harm while also promoting their self-determination. The tools detailed in this paper are not exhaustive, but they are important to consider when thinking about less restrictive alternatives to guardianship.

Legal Tools for Supported Decision-Making: Alternatives to Guardianship

All these options are tools that may be used to formalize supported decision making while protecting the rights of people with disabilities. Importantly, these alternatives empower someone to choose their decision maker(s), which decisions can be made and allow for more choice and flexibility while providing legal protection. Most of these alternatives do not require a legal proceeding, meaning they save time and money – a win for the state of Wyoming and for families.

The broadest alternative to guardianship, called a durable power of attorney (DPOA), allows a person to choose someone else who can make choices for them when they are unable to (e.g., handling money or talking to doctors).⁵⁴ With certain powers granted (like medical and educational), the DPOA can cover many different areas of life.

In financial decisions, representative payees, living trusts, convenience accounts, and trusted contacts can allow others to help people manage their money. Representative payees can handle Social Security money,⁵⁵ living trusts provides someone the ability to look after important things (including money and property),⁵⁶ convenience accounts allow another

⁵³ NCD, "Alternative to Guardianship Promote Self-Determination," 129; ACLU, "Sample SDM Agreement."

⁵⁴ Lyttle, "DPOA," 3-4.

⁵⁵ SSA, "Guide for Rep. Payees."

⁵⁶ FreeWill, "Legal Will Online."

person to access personal bank accounts.⁵⁷ In addition, trusted contacts can be listed for bank accounts to allow the bank to talk to if they think someone is being scammed.⁵⁸

In healthcare decisions, HIPAA releases of information, waivers of confidentiality, and advance directives can allow support systems to be involved in medical care.⁵⁹ For example, a HIPAA release of information and waiver of confidentiality are forms at doctor's offices that allows doctors to share patient information with others. Advance directives allow people to write down their wishes about the medical care they want in case they cannot tell doctors. It is a way to ensure that health care choices are discussed, known, and followed by support systems.⁶⁰

In educational decisions, a FERPA release of information and waiver of confidentiality form lets someone choose who looks at their school records like grades, bills, transcripts, health records (K-12), and discipline files.⁶¹ This grants someone access to information to help someone else make educational decisions.

Recommendations for Change

Wyomingites have important roles to play in preventing unnecessary guardianship. Below are several recommendations for addressing guardianship concerns including changing the language of the law, ensuring informed consent, requiring stronger evidentiary standards, providing guardians ad litem, and providing more transparency and accountability. Many of these changes have been successfully implemented in other states, proving their efficacy and relative achievability.

Recommendation #1: Language of the Law

Several sections of the law need updated language, particularly around the words: "ward," "mental deficiency," and "incompetence." We recommend the following changes throughout Wyo. Stat. § 3:

1. Change "ward" to "person with a guardian" and "proposed ward" to "respondent."

These changes empower and respect people living under guardianship and honor individuals' identity first and legal status second. The term "respondent" also implies that there

⁵⁷ Irving, "Convenience Accounts and POA."

⁵⁸ O'Shea, "Trusted Contact."

⁵⁹ Wyoming Dept. Of Health, "Auth. To Release Medical Records."

⁶⁰ Mayo Clinic, "Advance Directives, Living Wills Guide."

⁶¹ U.S. Dept. Of Education, "Education Record."

should be a legal response from the person subject to guardianship processes, which is currently not standard practice in Wyoming.

2. Remove the “mentally incompetent person” definition of incompetence from the law.

The distinction only serves to further restrict the rights of people with “mental illness, mental deficiency, or intellectual disability.” Voting and owning property are among those restrictions.⁶² These three groups of people are already included in the definition of “incompetence,” so the addition of the “mental incompetence” definition serves only to explicitly discriminate against people.

3. Change “incompetent person” to “individual adjudicated in need of a guardian.”

Parents who are guardians of their adult children have reported being devastated to say their child is incompetent.⁶³ People who are labeled as incompetent also often feel passive, helpless, self-critical, and have less ability to function.⁶⁴ The term and its consequences have a severely negative impact, necessitating its change.

Recommendation #2: Provisions Specifying Alternatives to Guardianship

Wyo. Stat. § 3 needs a provision that requires alternatives to guardianship be attempted before plenary guardianship. Data may indicate that Wyomingites are not aware of and/or do not have access to alternatives to guardianship.⁶⁵ This concern is partially addressed by explicitly including it in the law. It also gives legal authority to the “least restrictive and most appropriate guardianship” required by Wyo. Stat. § 3-1-205(v). This change could limit the excessive use of plenary guardianship and promote autonomy self-determination for Wyoming citizens.

Alternatives to plenary guardianship could include the three other types of guardianship (limited, emergency, or standby) allowed by law and other supports such as visiting nurses, homemakers, home health aides, adult day care and multipurpose senior citizen centers; powers of attorney, representative and protective payees; and board and care residential care facilities.

⁶² Wyo. Stat. § 22-1-102(a)(xxvi), “Elections Qualifications”; Wyo. Stat. § 3-1-202(a), “Powers of Ward”; Wyo. Stat. § 3-1-203, “Title to Ward’s Property”.

⁶³ Millar, “Disconnect: Self-Determination and Guardianship,” 125.

⁶⁴ Lachapelle et al., “Quality of Life and Self-Determination”; Skaggs, “Labeling Theory”; NCD, “Alternative to Guardianship Promote Self-Determination,” 101-102; Wright, “Well-Being of Respondents,” 391-94.

⁶⁵ HSRI & NADDDDS, “Guardianship,” 32-33.

Recommendation #3: Stronger Evidentiary Standards

The evidentiary standard for guardianship proceedings needs to change from “preponderance of the evidence” to “clear and convincing.” This change would mean that a court must find someone unable to care for themselves and their property substantially more likely than not (“clear and convincing”) as compared to more likely than not (“preponderance”). This prevents judicial overreach by requiring more evidence that plenary guardianship is the most appropriate solution. Remember that Wyoming is the only state with this low of an evidentiary standard in these cases that remove and severely restrict human rights.⁶⁶ Preponderance of the evidence does not adequately protect the rights of any Wyomingite, especially those with disabilities. In addition, this low burden of evidence provides a legitimate legal avenue that exacerbates the inequality experienced by people with disabilities.

Recommendation #4: Changes to Wyo. Stat. 3-2-102 to Prevent Loopholes

People who petition for guardianship, whether voluntary or involuntary, should be notified. Currently, only those who have petitioned for involuntary guardianship are notified—but there is a loophole. Wyo. Stat. § 3-2-102(ii), provision (ii) states that a respondent is required to be notified except “(ii) When for good cause the court determines that no notice is necessary if the proposed ward is under the age of eighteen (18) years.”

If that line (ii) is struck from the law, there will be more accountability in the law. It is common for a proposed guardian to petition before the respondent turns 18 years old. This provision makes plenary guardianship easier on families, but often at the cost of someone’s legal right to due process.

The distinction between “involuntary” and “voluntary” petitions in Wyo. Stat. § 3 creates an improper legal mechanism that allows a respondent to be denied notification of their guardianship petition. With voluntary petitions, notice of the petition filing is not required.⁶⁷ The term “voluntary” does not carry its usual meaning in this context. Both proposed guardians and respondents may voluntarily petition for guardianship, but it may be a result of misinformation about what guardianship is and does.⁶⁸

Evidence shows that when the full scope of plenary guardianship was defined for parents, they were surprised to learn that plenary guardianship completely removes the individual rights of their adult children by defining them as “mentally incompetent.” It is evident that the concept of “voluntary” needs to be carefully considered against informed consent in this context. Removing the distinction between voluntary and involuntary

⁶⁶ Benish, “WY Guardianship Law Behind,” 392.

⁶⁷ Wyo. Stat. § 3-2-102, “Notice When Required.”

⁶⁸ Millar, “Disconnect: SelfDetermination and Guardianship,” 125.

petitions in Wyo. Stat. § 3 achieves legal equality. The same due process would be afforded to all citizens and their families undergoing a guardianship proceeding – regardless of their understanding of guardianship.

Recommendation #5: Enhancing the Effectiveness of Guardianship Law

A success of Wyoming guardianship law is the requirement that a person proposed to live under guardianship has a right to legal representation and/or a guardian ad litem.⁶⁹ However, that right is not often provided in Wyoming.⁷⁰ One rationale to be advanced is guardian ad litem offices in Wyoming are inadequately staffed and funded, which contributes to their limited usefulness.⁷¹ By supporting, fiscally and otherwise, guardians ad litem or court visitors, courts would be able to better assess people’s understanding of guardianship, as well as educate and advocate for less restrictive alternatives to guardianship.

Another achievement of Wyo. Stat. § 3 is that guardians are required to file a report with the court about the care and activities of the person living under guardianship every six months.⁷² Further, the law requires that the "court shall maintain a calendar for the filing of guardianship reports"⁷³ and that the "court shall enter an order for the guardian to show cause why the guardian should not be held in contempt"⁷⁴ if the guardian does not file a timely report. These provisions suffer from a lack of enforcement, much like guardian ad litem requirements. We recommend that the Wyoming Judicial Branch follow these requirements of the law to actualize these legal rights protections.

Recommendation #6: Transparency and Accountability

Our final recommendation is for there to be more transparency and accountability in the guardianship process. For example, the Wyoming Judicial Branch does not record usable data on guardianship in their case management system. At a minimum, we recommend the Wyoming Judicial Branch collect and be able to publicly report the number of petitions for and awards of plenary, limited, emergency, and standby guardianships in the state. This will enable all individuals and organizations involved in guardianship to better understand and address the issue, fostering a more rights-informed citizenry and a clearer comprehension of how guardianship manifests in Wyoming.

⁶⁹ Wyo. Stat. § 3-1-205, “Rights of Proposed Ward”; Wyoming Rules of Civil Procedure Rule 17(c).

⁷⁰ Dow, “State-Mandated Service Not Available.”

⁷¹ Wyoming Legislature Mental Health and Vulnerable Adult Taskforce meeting, 2023.

⁷² Wyo. Stat. § 3-2-109, “Guardian’s Report.”

⁷³ Wyo. Stat. § 3-2-109(b), “Guardian’s Report, Calendar.”

⁷⁴ Wyo. Stat. § 3-2-109(c), “Guardian’s Report, Contempt.”

Conclusion

Guardianship, especially in its most extreme form—plenary guardianship—is often seen as a protective measure, yet it functions more as a tool of oppression. In Wyoming, plenary guardianship is overused to an alarming degree, stripping away basic human rights that our constitution so fiercely protects. The restrictions placed on individuals under plenary guardianship are as severe as those of incarceration or involuntary commitment, yet the legal safeguards protecting these rights are alarmingly weak.

Ironically, Wyoming—a state that champions individual freedom and self-determination—has allowed the most restrictive decision-making option to become the default. This should raise concern for every citizen, whether able-bodied, disabled, or anywhere in between. Nearly anyone can be affected. The current guardianship system stands in direct conflict with the democratic ideals Wyoming prides itself on—values that must be upheld by all its citizens for all its citizens. Our declaration of “Guardianship as Wyoming’s Most Pressing Human Rights Concern” was not made lightly. It is a call to action, a reminder that the freedoms we cherish must be fiercely protected.

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