

# U.S. SENATOR BOB CASEY



CHAIRMAN Special Committee on Aging

## The Guardianship Bill of Rights Act

### Why do we need the Guardianship Bill for Rights Act?

While guardianship is intended to be protective for older adults and people with disabilities, it can also lead to the loss of rights, fraud, exploitation, and abuse. Within the past two months there have been numerous reports in the news media about guardianship abuses including in [Miami, Florida](#), [Boston, Massachusetts](#), [Clark County, Nevada](#), and the [tri-state area](#) around New York City. A devastating report of guardianship abuse in the October 2017 [New Yorker](#) detailed cases in multiple states where guardians took advantage of those under their charge. How widespread such abuses are around the country is difficult to determine because of the sparse data collected on guardianship arrangements. The most recent study, a 2016 GAO report, is now 7 years old. The conclusion of that report was that “the extent of elder abuse by guardians is unknown due to limited data on the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian.”

When an individual loses the capacity to make informed decisions regarding their personal and financial interests, a guardian can serve as an important ally. However, the reports of abuse and fraud have led national organizations such as the American Bar Association, the American Civil Liberties Union, and the National Council on Disability to call for increased transparency, better data collection, and protection of the rights of people being considered for guardianships or living under guardianship arrangements. A common concern voiced by these organization is that guardianship is used as the first course of action when a person needs support with financial, health, or other life decisions, instead of as a measure of last resort. Civil rights, aging, and disability advocates have been calling for national reform of guardianship. The Guardianship Bill of Rights is a means to protect the civil rights of those living under guardianship arrangements and to promote less restrictive arrangements to support people needing assistance with their daily and life decisions.

### What will the Guardianship Bill of Rights Act do?

Across the country there is little consistency regarding the rights of people being considered for or living under a guardianship arrangement. The Guardianship Bill of Rights Act would create the Guardianship and Other Protective Arrangements and Supported Decision Making Council, a national council charged with promoting less restrictive arrangements for people living under or being considered for guardianships. It would also be charged with creating recommended practices for assisting someone out of a guardianship, averting placement in a guardianship, and methods for modifying a guardianship. Currently, health care and education professionals make referrals suggesting guardianship for youth with disabilities, or social service professionals recommend guardianships for older adults. The Council would examine and make suggestions on how to interrupt this “guardianship pipeline.” Finally, the Council would be responsible for collecting data on the guardianship practices at both the national and state level.

The bill would also provide funding for state to have a protection and advocacy agency focused on the rights of people being considered for and living under a guardianship. This network of state agencies would be built upon the existing network of protection and advocacy agencies authorized by the Developmental Disabilities Act of 2000.

# **Guardianship Bill of Rights Act Section by Section Summary**

## ***Sections 1 and 2 – Title, Findings, and Purpose***

- Describes threats to the civil rights of people with disabilities and older adults living under guardianships and states the right for such individuals to live with the least restrictive protective arrangement to address their needs.

## ***Section 3 – Definitions***

- Defines the terms in the bill, including a federal definition for “protective arrangement” and “supported decisionmaking arrangement.”

## ***Section 4 – Guardianship and Other Protective Arrangements and Supported Decisionmaking Council***

- Creates a Council to address protecting the rights of people living under guardianships or being considered for guardianships.
- The Council would be composed of significant representation of disabled and older people, state government officials responsible for oversight of guardianships, attorneys with guardianship experience, professionals with experience with alternatives to guardianship arrangements, and persons with guardianship experience in addition to others.
- The Council would be charged with promoting alternatives to guardianship, identifying recommended practices for transitioning from a guardianship to a less restrictive arrangement, averting the use of guardianships, interrupting processes that promote guardianships, and recommending processes for collecting guardianship information at the national and state levels.

## ***Section 5 – Ensuring the Civil Rights of Individuals in Guardianships, Conservatorships, and Other Protective Arrangements***

- Directs the Attorney General, with significant input from stakeholders to create standards for protecting the civil rights of people living under guardianships, including protecting their rights to make decisions about their marital status, health and medical decisions, financial decisions, religious activities, residency, education, relationships, travel, and other basic rights afforded residents of the United States.

## ***Section 6 – Guidelines and Standards for Guardianships, Conservatorships, and Other Alternative Arrangements***

- Directs the Secretary of Health and Human Services to
  - establish standards for establishing, reviewing, modifying, and discontinuing guardianships and other protective arrangements;
  - establish standards for establishing supported decisionmaking and other alternative arrangements; and
  - create minimum standards for diversion from guardianship when supportive decisionmaking and other alternative arrangements are not sufficient.

## ***Section 7 – Protection and Advocacy Program for Oversight of Protective Arrangements***

- Amends the Developmental Disability and Bill of Rights Act of 2000 to expand the responsibilities of Protection and Advocacy Agencies to monitor and oversee state and local guardianship and other protective arrangement practices. Prevents jurisdictions from developing or implementing potentially discriminatory crisis standards of care policies when resources are constrained during a disaster. This extension of the Protection and Advocacy agencies is authorized at \$50 million annually.