

From: Rep. Brian Close, HD 65

To: Children, Families, Health, and Human Services Interim Committee

RE: HJ 26

Contents: Guardianships: What Should Be Done (5 pages)

Guardianship Matrix (1 page)

Criminal and Credit Background Checks for Guardians, from the American Bar Association Commission on Law and Aging (15 pages)

Note: Documents submitted by sponsor of HJ 26 to committee members; included documents are not presentation aids for Agenda Item 3.

# **GUARDIANSHIPS**

## **WHAT SHOULD BE DONE**

### **CURRENT DEFICIENCIES**

No training or education for lay guardians  
No disclosure of prior financial issues or convictions before appointment  
No standing or protection for third parties who suspect misconduct  
Reporting is perfunctory (and not seriously reviewed)  
Lack of follow through on meeting goal of bettering wards condition  
No financial controls  
Less intrusive means of assistance not prioritized in fact (Ex: POAs, Assisted Decision Making)  
Low Evidentiary standard: “satisfaction of the Court”

### **THE MOST IMPORTANT DEFICIENCIES RELATE TO GUARDIAN/CONSERVATOR MISCONDUCT FROM A LACK OF PROPER VETTING BEFORE APPOINTMENT AND MONITORING AFTER APPOINTMENT**

### **SOLUTIONS**

- Adopt the Uniform Guardian, Conservator & Other Protective Arrangements Act “UGCOPA”)
- Require lay guardians and conservators to have mandatory training
- Require “professional” Guardians (people who serve 3 or more unrelated clients) be nationally certified
- Require standardization of forms.
- Introduce centralized reporting and audits.

### **DETAILS**

#### **Uniform Guardian, Conservator & Other Protective Arrangements Act “UGCOPA”**

UGCOPA is the most recent edition of the Uniform Law Commission in this area. It has been adopted by three states, this year by Kansas.

The UGCOPA provides that a guardianship is a case of last resort. Montana adopted that basic principle in 2023. However, Montana did not adopt the statutory framework of the rest of the UGCOPA needed to make that commitment a reality. The UGCOPA provides additional safeguards to ensure that a guardianship will serve the interests of the ward and nobody else. Specifically:

Provides more procedural safeguards to the person whose competency is at issue

### **Stronger notice requirements**

Higher standard of proof before a guardianship is established: “clear and convincing evidence” rather than Montana’s “satisfaction of the Court”

Uniform act requires within 60 days of appointment that a guardian submit a plan as to how to improve the situation of the ward, putting teeth in the goal of achieving independence and providing a gauge for monitoring the ward’s progress

### **Provides a framework to vet and monitor a Guardian/Conservator to protect an incapacitated person from being exploited or abused by a Court appointed Guardian/Conservator**

Required disclosure of prior bankruptcy or convictions or financial irregularities before appointment [Section 117] [Some states require Mandatory background checks, see below]

Allows Third Party Standing to report to the Court suspected Guardian/Conservator misconduct [Section 127]

Allows a Third Party to refuse to act if that party believes the Guardian/Conservator is improperly exercising their authority or has actual knowledge of abuse by the Guardian/Conservator [Section 123]

Details of the UGCOPA as well as prior analysis vis-a-vis Montana are at:

<http://www.uniformlaws.org/committees/community-home?communitykey=2eba8654-8871-4905-ad38-aabbd573911c>

<http://archive.legmt.gov/committees/interim/past-interim-committees/2019-2020/2020cfhhs/sb-202-uniform-guardianship-law/#:~:text=The%20Senate%20Judiciary%20Committee%20tabled,bills%20in%20the%202021%20Legislature.>

### **Mandatory Training of Lay Guardians and Conservators**

A typical guardian or conservator is usually a family member with no legal training and average financial experience. They may not have handled money for another person before. They certainly are not familiar with basic fiduciary concepts.

Montana is one of the few jurisdictions that has ***no online training at all***. (The WINGS Committee was working on this, but then disbanded and their records are lost.) Almost every

state, from small to large, has online training resources. Most are voluntary. Some are interactive (Alaska). North Dakota, Minnesota, Washington and Oregon require that all lay guardians be required to take a mandatory test within one year of appointment and provides online resources for doing so.

That should be our goal for all new guardianships and conservatorships, with a three year phase in for existing guardians and conservators.

Some examples of training provided by other states:

<https://guardianship.ndcourts.gov/>

<https://courts.alaska.gov/shc/guardian-conservator/classes.htm>

<https://guardian-partners.org/education/>

<http://www.courts.wa.gov/guardianportal/index.cfm?fa=gua%20guardianportal.adultLayGuardianship>

[http://mng.courtllms.org/catalog/info/id:134,cms\\_featured\\_course:1](http://mng.courtllms.org/catalog/info/id:134,cms_featured_course:1)

## **Background Checks**

### **There are four approaches to background checks**

1. **None.** Example: Montana. This is the exception. Most states require some form of background checks (at least for professional guardians and conservators). A comprehensive review by the ABA (as of 2020) accompanies this memo.

2. **By affidavit.** The UGCOPA requires all guardians and conservators to provide an affidavit to the Court disclosing any prior bankruptcy or financial issues (including crimes) to the Court prior to appointment, so the Court can make a further inquiry as to fitness.

3. **Mandatory for professional guardians or conservators.** Anyone in a licensing state (Ex.: Alaska) or in a state that partners with the Center for Guardianship Certification on certifying professional guardians or conservators require a background check as part of the licensing or certification process.

4. **Mandatory for all guardians or conservators.** Some states, such as North Dakota, have required that all guardians or conservators receive background checks.

**Require “professional” Guardians (people who serve 3 or more unrelated clients) be nationally certified**

The **Center for Guardianship Certification** is a non-profit used by states for certification of guardians. According to the **Center for Guardianship Certification**, fifteen states require some form of certification and/or licensing of “professional” guardians. Typically, a “professional” guardian is defined as someone who has **three or more unrelated persons** as clients. Four states administer the certification program, the rest use the testing provided by the Center for Guardianship Certification. Neighboring states doing so include Oregon, Utah, Idaho and North Dakota.

The purpose of certifying someone acting in a professional capacity as a guardian or conservator is to ensure that someone serving multiple clients is aware of his or her duties as a fiduciary acting in the interest of a person of limited capacity. Hopefully, this will minimize costly but honest errors. It will not prevent actual malfeasance.

Details of this program by state are at:

<http://guardianshipcert.org/become-certified/state-specific-information/>

**The above is an interactive map with links to statutes and rules of all states that either license or certify guardians.**

### **Centralized Reporting and Auditing**

Minnesota, with a federal Department of Justice grant, took a pilot program from Hennepin County and expanded it statewide. This program requires that any guardian or conservator annual report be filed with a central registry through an online portal. All reports so filed go through a compliance check, where they are rated. Compliance personnel also reach out to guardians and conservators to fix any deficiencies. In rating reports, after corrections are incorporated, the lowest graded reports are referred to local district courts for appropriate court intervention.

In addition to compliance, all conservatorships are audited on a rolling three year basis. Auditors are trained in detecting fraud.

Such a system would standardize reporting across the state. Raise the level and quality of reporting, discourage acts of fraud, and detect actual fraud.

Currently the cost of this program in Minnesota is \$1.8 million dollars a year. Oregon adopted the same program, and it costs them \$800,000 per year. The administrators of the Minnesota and Oregon programs are available to consult for free. The source code for the online portal is free, as it was developed by grant. Additionally, based on our current number of 2554 open guardian/conservator cases, the Minnesota administrator has stated that Montana could handle that case load with 2 - 3 FTE.

Were this program placed in DPHHS, fraud auditors could also be assigned to other cases when guardian/conservator caseload is low.

Information and contacts for these programs are at:

<https://mncourts.gov/help-topics/conservatorship/audit-programs>

<http://www.courts.oregon.gov/programs/family/guardianship-conservatorship/pages/conservatorship-audit-program.aspx>

Minnesota Administrator: [Jamie.Majerus@courts.state.mn.us](mailto:Jamie.Majerus@courts.state.mn.us)

Oregon Administrator: [Christian.S.Hale@ojd.state.or.us](mailto:Christian.S.Hale@ojd.state.or.us)

## **CONCLUSIONS**

Almost every other state is doing more than Montana to ensure that guardians and conservators are serving the interests of their clients. We are not. There have already been embarrassing examples of malfeasance (discovered by federal prosecutors and not the local courts).

As late adopters of reforms, we have the benefit of being able to adopt the best practices already pioneered by our sister states.

The reforms outlined can be implemented over 3 - 4 years at a modest cost.

I have discussed an earlier version of this memo with the Lt. Governor and DPHHS (APS) she and supports, in principle, studying these items without committing the executive branch to any particular solutions. She also stated that DPHHS is prepared to assist the committee in its efforts.

On a personal note, as the author of HJ26 I have compiled a lot of information on this topic in the last year. This memo is just the highlights. I am available to the Committee and staff to assist in providing additional material or researching any topic relating to this area.

	A	B	C	D	E	F	G	H	I	J
1	<b>GUARDIANSHIP MATRIX</b>									
2										
3										
4			UGCOPA	Mandatory	Background Checks		State Cert. &	State		
5	Pop. Rank	STATE		Training	Mandatory	COG	Licensing	Audit	NOTES	Links
6	587,618	WY								<a href="https://www.wyocourts.gov/legal-help-by-topic/guardianship-adult/">https://www.wyocourts.gov/legal-help-by-topic/guardianship-adult/</a>
7	648,493	VT			X	X				<a href="https://www.vermontjudiciary.org/probate/adult-guardianships">https://www.vermontjudiciary.org/probate/adult-guardianships</a>
8	740,133	AK		X	X	X	X		UGCOPA Introduced	<a href="https://courts.alaska.gov/shc/guardian-conservator/index.htm">https://courts.alaska.gov/shc/guardian-conservator/index.htm</a>
9	796,568	ND		X	X	X				<a href="https://www.ndcourts.gov/legal-self-help/adult-guardianship">https://www.ndcourts.gov/legal-self-help/adult-guardianship</a>
10	924,669	SD			X					<a href="https://ujs.sd.gov/self-help/civil-law-help/guardianship/">https://ujs.sd.gov/self-help/civil-law-help/guardianship/</a>
11	1,051,917	DE								<a href="https://courts.delaware.gov/family/guardianship/">https://courts.delaware.gov/family/guardianship/</a>
12	1,112,308	RI			X*				Court must find no crim bck	<a href="https://law.justia.com/codes/rhode-island/title-33/chapter-33-15/section-33-15-6/">https://law.justia.com/codes/rhode-island/title-33/chapter-33-15/section-33-15-6/</a>
13	1,137,233	MT								<a href="https://courts.mt.gov/forms/guardianship">https://courts.mt.gov/forms/guardianship</a>
14	1,405,012	ME	X		X*					<a href="https://www.maine.gov/dhhs/oads/get-support/aps/guardianship">https://www.maine.gov/dhhs/oads/get-support/aps/guardianship</a>
15	1,409,032	NH			X	X			voluntary 3rd partry training available	<a href="https://www.courts.nh.gov/our-courts/circuit-court/probate-division/guardianship">https://www.courts.nh.gov/our-courts/circuit-court/probate-division/guardianship</a>
16	1,446,146	HI								<a href="https://www.courts.state.hi.us/docs/1FP/ProSeIncap.pdf">https://www.courts.state.hi.us/docs/1FP/ProSeIncap.pdf</a>
17	1,769,979	WV		X	X*				Must disclose convictions	<a href="https://www.wvdhhr.org/bcf/policy/social_services/Guardianship/Guardian%20and%20Conservator%20Handbook.pdf">https://www.wvdhhr.org/bcf/policy/social_services/Guardianship/Guardian%20and%20Conservator%20Handbook.pdf</a>
18	2,001,619	ID		X	X	X			UGCOPA Introduced	<a href="https://isc.idaho.gov/guardianship/guardianship-conservatorship">https://isc.idaho.gov/guardianship/guardianship-conservatorship</a>
19	2,005,465	NE			X					<a href="https://nebraskajudicial.gov/administration/public/guardianship-and-conservatorship-information">https://nebraskajudicial.gov/administration/public/guardianship-and-conservatorship-information</a>
20	2,130,256	NM		X	X*	X		X+	Centralized Guardian Reporting+	<a href="https://adultguardianship.nmcourts.gov/">https://adultguardianship.nmcourts.gov/</a>
21	2,943,045	MS			X*					<a href="https://www.courts.ms.gov/aoc/courtinterpreter/Translated%20Forms/How%20to%20Request%20a%20Guardianship.pdf">https://www.courts.ms.gov/aoc/courtinterpreter/Translated%20Forms/How%20to%20Request%20a%20Guardianship.pdf</a>
22	2,970,606	KS	X	X	X*				UGCOPA Recently Enacted	<a href="https://ksrevisor.gov/statutes/chapters/ch59/059_030_0069.html">https://ksrevisor.gov/statutes/chapters/ch59/059_030_0069.html</a>
23										
24									* Court Initiated background checks or other type of voluntary disclosure	
25										
26									+Three States have centralized auditing of Conservator reports and centralized filing: Minnesota, New Mexico & Oregon	
27									Minnesota: State Court Administration (both)	
28									New Mexico: Courts Admin (Guardians) State Auditor: Consefvators	
29									Oregon: Dept. of Justice (Both)	
30	FROM REP. BRIAN CLOSE TO CFHHS – SUBMITTED FOR SEPT. 23, 2025 MEETING									
31										
32										

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
UGCOPPA		<p>§ 117 Before accepting appointment as a guardian or conservator, a person shall disclose to the court whether the person:</p> <p>(1) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or</p> <p>(2) been convicted of:</p> <p>(A) a felony;</p> <p>(B) a crime involving dishonesty, neglect, violence, or use of physical force; or</p> <p>(C) other crime relevant to the functions the individual would assume as guardian or conservator.</p>		
Alaska		<p>§§ 08.26.020 &amp; 08.26.030 Department shall issue an individual private professional guardian/conservator license if ... criminal history record shows has not been convicted of a crime within 10 years of the application that would affect ability to provide services competently and safely</p> <p>§ 08.26.070(a) Department shall request Dept. Public Safety to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record information check; perform a state criminal history record information check</p>		
Arkansas	<p>§ 28-65-203(a) Convicted or unpardoned felon</p>			

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As of August 2020

<b>State</b>	<b>Who is not Eligible to be Appointed</b>	<b>Criminal Background</b>	<b>Credit Check</b>	<b>Notes</b>
<b>Arizona</b>		<p>§ 14-5106 In petition, under oath, must disclose, whether proposed appointee has been convicted of a felony in any jurisdiction and, if so, the nature of the offense, the name and address of the sentencing court, the case number, the date of conviction, the terms of the sentence, the name and telephone number of any current probation or parole officer and the reasons why the conviction should not disqualify the proposed appointee.</p> <p>§ 14-5657(B) As condition of licensing, fiduciary must submit to full set of fingerprints to obtain state and federal criminal records check</p> <p>§ 14-5304(E) Court may require each person who seeks appointment as a guardian to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. The court shall submit the person's completed fingerprint card to the dep't of public safety. The person shall bear the cost Does not apply to a fiduciary who is licensed or an employee of a financial institution.</p>		

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<b>California</b>	Busi. & Prof. § 6536 Convicted of crime substantially related to the qualifications, function or duties of the professional fiduciary	Busi. & Prof. § 6533.5 To obtain a license as professional fiduciary shall submit fingerprints to obtain criminal offender record of state and federal arrests and convictions. DOJ prepares report of fitness		Judicial discretion re criminal history and nature of crime, nature of petition, case dynamics, whether can be bonded, ties to conservatee, alternative to conservator
<b>Colorado</b>	§ 15-14-310(4) Owner/operator where receiving long term care	§ 15-14-110(1) Statement with acceptance of office as to whether been convicted of, pled nolo contendere to, or received deferred sentence for a felony or misdemeanor; whether temporary or permanent civil protection or restraining order in any state; whether civil judgment entered; relieved of any court-appointed responsibilities  § 15-14-1102(2) Attach name-based criminal history record check through CO Bureau of Investigation  § 15-14-11(4) Does not apply to public administrator; bank, trust company or other financial institution; state or county agency; parent residing with his or her child; and any other person or entity for whom the court, for good cause shown, determines requirements not apply	§ 15-14-110(2) Attach credit report	

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<b>District of Columbia</b>	§ 21-2043(a-1)(1) Provides substantial services; creditor of the incapacitated individual; or employed by any person or entity that provides services.	§ 21-2043(d-1)(1) Court shall not appoint a guardian until the person has submitted signed and sworn statement whether has been convicted of, has pleaded nolo contendere to, is on probation before judgment or placement of a case upon a stet docket for, or has been found not guilty by reason of insanity of lifetime registration offense; registration offense, any offense set forth in Chapters 8, 8A, 9A, 10, 11, 14, 15, and 32 of Title 22, or its equivalent in any other state or territory, dangerous crime, or crime of violence. Shall submit results of a criminal-history check from the Metropolitan Police Department and FBI. Emergency guardians, health-care guardians, and provisional guardians are exempt. § 21-2043(d-2)(1) Presumed not to be in best interest of individual subject to guardianship to appoint a guardian who has been convicted of listed offenses.		
<b>Florida</b>	§ 744.309(3) Convicted of a felony, or from any incapacity or illness, is incapable of discharging the duties of a guardian, or is otherwise unsuitable to perform the duties of a guardian	§ 744.3135(1) Court shall require a guardian and all employees of a professional guardian who have a fiduciary responsibility to a ward, to submit, at their own expense, to undergo level 2 background screening. Court must consider the results of any investigation before appointing a guardian.  § 744.3135(2) Nonprofessional undergoes state and national criminal history record check using fingerprints. Results filed by clerk.	§ 744.3135(5a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, an investigation of his or her credit history before and at least once every 2 years after the date of the guardian's registration with the Statewide Public Guardianship Office.	§ 744.3135 (7) Requirements not apply to a professional guardian, or to the employees of a professional guardian, that is a trust company, state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or national banking association or federal savings and loan association.

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<b>Georgia</b>	§ 29-4-2(b) Is a minor, a ward, or a protected person; have a conflict of interest; or owner, operator, or employee of a long-term care or other caregiving institution or facility at which the adult is receiving care, unless related to the adult by blood, marriage, or adoption.	§ 29-10-3(a)(2) Public guardian must submit to a criminal background check with satisfactory results as prescribed by the Division of Aging Services of the Department of Human Resources; submit to an investigation of the individual's credit history as prescribed by Aging Services, Dep't Human Resources	§ 29-10-3(a)(3) Public guardian must submit to an investigation of the individual's credit history as prescribed by Aging Services, Dep't of Human Resources	
<b>Idaho</b>	§ 15-5-311(4) No convicted felon, or person whose residence is the incapacitated person's proposed residence or will be frequented by the incapacitated person and is frequented by a convicted felon, shall be appointed as a guardian of an incapacitated person unless the court finds by clear and convincing evidence that such appointment is in the best interests of the incapacitated person.	§ 15-5-311(5) Proposed guardian must submit to and paid for criminal history and background check; If ordered by the court, any individual who resides in the incapacitated person's proposed residence has submitted, at the proposed guardian's expense, to a criminal history and background check conducted. The findings of criminal history and background checks are made available to the visitor and guardian ad litem.	§ 15-5-311(5) The proposed guardian provides report of his or her civil judgments and bankruptcies to the visitor, the guardian ad litem and all others entitled to notice.	

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<b>Illinois</b>	755/5/11a-5(5) Convicted of a felony, unless the court finds appointment to be in the disabled person's best interests; as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a minor or an elderly or disabled person, including a felony sexual offense.	Public Guardians must be CGC certified which requires background check		
<b>Iowa</b>		§ 633.564 Court must request criminal records check, check of child abuse, dependent adult abuse, sexual offender registries for all proposed guardians and conservators.		
<b>Kentucky</b>		§ 387.025(4) Verified application for appointment must state whether ever been convicted of a crime		
<b>Louisiana</b>	Art. 4561(B)(2) Except for good cause shown, convicted felon; person in debt to adult; adverse party in pending law suit			

## **Criminal and Credit Background Checks for Guardians**

As of August 2020

<b>State</b>	<b>Who is not Eligible to be Appointed</b>	<b>Criminal Background</b>	<b>Credit Check</b>	<b>Notes</b>
<b>Minnesota</b>	§ 524.5-309(c) Individual or agency providing residence, custodial, medical, employment training, other care or services	§ 524.5-118(1) Background study once every 2 years; criminal history data from Bureau of Criminal Apprehension,; from National Criminal Records Repository if not been resident of MN for 10 years or info from BCA indicates a multistate offender or multistate offender status undetermined; state licensing agency if ever been licensed as professional in related field; perpetrators of substantiated maltreatment of vulnerable adult or minor. Professional guardian must pay fees; if in forma pauperis by county; if estate, by estate; or court may order fee paid by G, by C or by court; not apply to state agency or county; parent or guardian of person with developmental disability if raised in family home; background study must be done on all employees responsible for exercising guardian powers and duties; may make appointment pending results of study		
<b>Mississippi</b>		§ 93-20-117 Anyone considered for guardian or conservator must disclose to the court whether debtor in bankruptcy, convicted of a felony, crime involving dishonest, neglect, violence, or use of physical force.		
<b>Missouri</b>		§ 43.548.1 Courts and department of social services may require fingerprinting of guardians and conservators for the purpose of positive identification and criminal history to determine ability and fitness to serve.		

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Nebraska	§§ 30-2627; 30-2639 Agency, owner providing residential care	§ 30-2602.02 A person, except for a financial institution nominated for appointment as a guardian or conservator shall obtain a national criminal history record check and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court. No report or national criminal history record check required for an emergency temporary guardianship or conservatorship. Court may waive for good cause.		
Nevada	§ 159.059 Incompetent; minor; convicted of felony unless court determines conviction not disqualify; suspended for misconduct or disbarred from law, accounting, other provision involving money, investment, securities, real property; nonresident without registered agent and not petitioner; judicially determined by clear and convincing evidence to have committed abuse, neglect, exploitation of child, spouse, parent, adult, unless court finds best interest	§ 159.0595(3) Private professional guardian shall, at his or her own cost and expense, undergo a background investigation which requires the submission of complete set of fingerprints to the Central Repository for Nevada Records of Criminal History and to the FBI; present to court upon request. Each natural person who acts in any capacity within a private professional guardian company must submit such fingerprints not less than once every five years.	§ 159.044(t) Petition must state whether proposed guardian has filed for or received protection in bankruptcy court.	§159.1852 After appointment, a guardian must immediately inform the court of: convictions of a gross misdemeanor or felony; a bankruptcy filing; suspension, revocation or cancelling of a driver's license for nonpayment of child support; a disbarment from the practice of law, accounting, or other profession requiring a license and involving financial management; or a judgment for misappropriation of funds. The court may remove the guardian and appoint a successor unless the court finds it is in the person's best interest to allow the guardian to continue serving.

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<b>New Hampshire</b>	§ 464-A:10(III) An institution or agency providing care and custody of the incapacitated person, unless no one else can be found to serve	§ 464-A:4(v) Court shall review the proposed guardian's record of criminal convictions maintained by the New Hampshire division of state police. Court may, in its discretion, request a search of the abuse and neglect registry maintained by the dep't of health and human services. Court Rule 16 requires professional guardians to undergo criminal background check without fingerprints		
<b>New Jersey</b>	§ 52:27G-34(3)(a) Has criminal conviction or found to be civilly liable for any matter involving moral turpitude, abuse, neglect, fraud, misappropriation, misrepresentation, theft, conversion; lacks financial responsibility; committed abuse, neglect or exploitation; engages in persistent or repeated violations of court order or any impropriety involving dishonesty, fraud, deceit, misrepresentation	§ 52:27G-33(2)(d)(4) Professional guardian satisfactory criminal history record background, child abuse registry, domestic violence central registry; not subject to outstanding arrest warrants	§ 52:27G-33(2)(d)(4) Professional guardian submit credit check to OPGEA from one national credit reporting agency issued within 1 month of application	
<b>New Mexico</b>		§ 45-5-303(A)(4) Petition shall state G qualification, including whether convicted of felony		
<b>New York</b>		§ 81.19(g)(1) Allows but not requires court to obtain and consider, and court evaluator to review, proposed guardian's criminal history, sex offender registry, statewide central register of child abuse, statewide registry of orders of protection. Upon considering the information, court may appoint, refuse to appoint or revoke the appointment		

## **Criminal and Credit Background Checks for Guardians**

As of August 2020

<b>State</b>	<b>Who is not Eligible to be Appointed</b>	<b>Criminal Background</b>	<b>Credit Check</b>	<b>Notes</b>
<b>North Dakota</b>		N.D. Sup. Ct. Admin. R. 59(B)(2) Requires professional and non-professional guardians to provide criminal history record check report to the appointing court before the hearing on the petition to appoint a guardian. (C) provide to the appointing court before the hearing on the petition to appoint the guardian an affidavit stating whether the proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child and shall provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency		
<b>Ohio</b>		§ 2111.03(A) Petition must state whether applicant ever been charged with or convicted of any crime involving theft, physical violence, sexual, alcohol or substance abuse.  Ohio Sup. R. 66.05(A). Requires criminal background check for all guardians, including family guardians. For an attorney, court may accept a Supreme Court certificate of good standing.		No instruction to court on what if proposed guardian has criminal record. Some courts are fingerprinting
<b>Oklahoma</b>	§ 3-104(A) Owner operator employee of facility where residing	§ 3-101(c) Court may receive investigation and report on background and home of prospective G. When required, include petitioner and each adult member of household to establish no record of criminal conviction, protective order, pending criminal charge. Include OK Bureau of Investigation name-based check.	§ 3-101(c) Petitioner disclose case name and status of any civil or criminal matter in state or federal court, including bankruptcy involving petitioner or any adult household member	

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<b>Oregon</b>	§ 125.205 Incapacitated, financially incapable, minor, health care provider	§ 125.210(1) Person nominated must inform court of circumstances before appointed or provide in petition if convicted of crime, filed for bankruptcy, had required professional license revoked or cancelled. After appointment must immediately inform the court. Court may decline to appoint or may remove if fails to comply.  § 125.240 Professional fiduciary must have criminal background check paid for by fiduciary		Courts require credit check on periodic basis along with updated criminal background check for professional fiduciaries
<b>Rhode Island</b>	§ 33-15-6(a) Agency, public or private, or representative of, that financially benefits from providing housing, medical, social services	§ 33-15-6(b) Shall find that individual or agency has no criminal background which bears on suitability to serve as guardian, has capacity to manage the financial resources involved; has ability to meet unique needs of adult; has ability to meet requirements of law		
<b>South Dakota</b>	§ 29A-5-110 Felon unless court finds appointment in best interest considering nature, date of offense and rehabilitation, employee of public agency, entity, or facility providing substantial services or financial assistance; creditor	§ 29A-5-110 A person, except for a financial institution or its officers, directors, employees, or agents, or a trust company, who has been nominated for appointment as a guardian or conservator, shall obtain an Interstate Identification Index criminal history record check and a record check of South Dakota state court civil judgments for abuse, neglect, or exploitation of an elder or adult with a disability. Nominee files the results of these record checks with the court at least ten days prior to hearing. Judge may not sign appointment until record check results filed and reviewed by the judge. Not apply to temporary appointments. Court may waive the record check for good cause.		

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
Tennessee		<p>§ 34-3-104(3)</p> <p>Requires petition to include a statement of any felony or misdemeanor convictions of petitioner and proposed guardian/conservator</p>		
Texas	<p>§ 1104.351</p> <p>Minor or other incapacitated person; or because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the ward's person or estate.</p> <p>§ 1104.353(a-b)</p> <p>Conduct is notoriously bad; convicted of any sexual offense, aggravated assault; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; terroristic threat; or continuous violence against the family of the ward or incapacitated person.</p> <p>§ 1104.358</p> <p>Found to have committed family violence who is subject to a protective order</p>	<p>§ 698</p> <p>County clerk obtains criminal history record information maintained by Dep't of Public Safety or FBI for private professional guardian; employee who has personal contact, exercise control or any duties over estate; volunteer in guardianship program; proposed guardian; including family member. May submit own information 10 days before hearing; Guardianship Certification Board conducts criminal history check before issuing or renewing certificate Court use information to determine whether to appoint, remove, or continue appointment; GCB use to determine whether to certify.</p> <p>Judicial Branch Certification Commission conducts criminal background check for persons (other than attorneys and private professional guardians for whom the Commission already conducts a check) seeking to become a guardian.</p>		

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<b>Vermont</b>	<p>14 § 3072(a)(2) Operates care facility where resides or receiving care</p> <p>14 § 3072(a)(2) Served as guardian ad litem in same proceeding</p>	<p>14 § 3067(d) Proposed guardian provide information and consent for complete background checks with available state registries, including adult abuse, child abuse, crime information center, sex offender. Court shall consider information received in determining if suitable. May waive reports, may remove based on information in report later received. If lived in VT less than 5 years or nonresident may order background from other state agencies where lives or has lived in past 5 years.</p>		
<b>Washington</b>	<p>§ 11.88.020 Under 18; of unsound mind; convicted of felony or misdemeanor involving moral turpitude; court finds unsuitable</p>	<p>Certified Professional Guardianship Board Regulation 101 Every person or agency desiring to be certified as a CPG must undergo a criminal history check. 103.3.4 To become certified guardian must provide a fingerprint card that has been processed at a local police department.</p>	<p>Certified Professional Guardianship Board Reg. 103.3.8 To become certified the applicant must provide a personal credit report. 103.3.9 If an individual has declared bankruptcy in the seven (7) years prior to his or her application, the applicant must provide copies of the following documents: bankruptcy petition, discharge order, and a copy of the bankruptcy case docket.</p>	
<b>West Virginia</b>	<p>§ 44A-1-8(a) Individual employed by or affiliated with any public agency, entity or facility providing substantial services or financial assistance; creditor</p>	<p>§ 44A-1-8(c) Any person being considered shall provide information if convicted of any crime, other than traffic offenses, court or mental hygiene commissioner may order a background check conducted by state police or county sheriff. Shall consider in determining fitness to be appointed</p>		

### **Criminal and Credit Background Checks for Guardians**

As of August 2020

<b>State</b>	<b>Who is not Eligible to be Appointed</b>	<b>Criminal Background</b>	<b>Credit Check</b>	<b>Notes</b>
<b>Wisconsin</b>		§ 54.15(8) Sworn and notarized statement 76 hours before hearing if charged with or convicted of crime;	§ 54.15(8) Sworn and notarized statement 76 hours before hearing if filed for and received bankruptcy protection, had professional license revoked.	

## Criminal and Credit Background Checks for Guardians

As of August 2020

State	Who is not Eligible to be Appointed	Criminal Background	Credit Check	Notes
<b>Center for Guardianship Certification</b>	<p>Rules and Regulations II.A.5-9</p> <p>5. An applicant must not have been convicted of, or pled guilty or no contest to, a felony. The only two exceptions to this requirement will be court or state agency documentation of one of the following: a) expungement of the felony conviction; or b) that a court or state agency, with knowledge of the felony, has determined that the applicant or re-certificant is eligible to serve as a guardian under state law.</p> <p>6. submit to a criminal background check.</p> <p>7. agree to comply with the NGA Ethical Principles and the NGA Standards of Practice.</p> <p>8. not have been civilly liable or criminally convicted in an action that involved fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, exploitation, abuse or conversion, turpitude, theft, exploitation, abuse or conversion.</p> <p>9. not have been relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, misrepresentation, material omission, misappropriation, theft, exploitation, abuse or conversion</p>	<p>Rules and Regulations II.A.6</p> <p>Submit to a criminal background check</p>		