



Vermont Office of Public Guardian Annual Report for State Fiscal Year 2015

Developmental Disabilities Services Division
Department of Disabilities, Aging and Independent Living
Agency of Human Services
State of Vermont
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Purpose of the Office of Public Guardian (OPG)

The Office of Public Guardian (OPG) operates within the Vermont Developmental Disabilities Services Division in the Department of Disabilities, Aging and Independent Living (DAIL). Individuals receiving guardianship from OPG are considered to be in the custody of the Commissioner of DAIL and the assigned guardians act as designees of the Commissioner.

Public guardians are appointed by the Family Court (Title 18 Chapter 215) and Probate Court (Title 14 Chapter 111 § 3091) to assist individuals to make basic life decisions when the court finds that they are not able to make certain decisions independently, that alternatives to guardianship are insufficient, and there are no suitable and willing private guardians.

According to the policy and laws of the State of Vermont, guardianship shall be utilized only as necessary to promote the wellbeing of the individual and protect the individual from violations of his or her human and civil rights. It shall encourage maximum self-reliance and independence and only the least restrictive form of guardianship shall be ordered based on the individual's abilities and needs. Public guardianship is only intended to be utilized when the court is unable to appoint a suitable and willing private guardian and the individual lacks the financial resources to pay for a professional private guardian.

Under Vermont law, OPG is authorized to provide guardianship for:

- Adults (18 or older) with **developmental disabilities (DD)**, or
- Persons **60 years of age or older** (elders) with disabling cognitive impairment, and
- Who require **assistance with basic life decisions**, and
- For whom a suitable and willing **private guardian cannot be found**.

The statutes require that the guardians maintain close contact with persons under guardianship, regardless of where they reside in the state. This is necessary to be as knowledgeable as possible about the person's wishes and desires, monitor their safety and well-being, and advocate on their behalf. This requires regular personal contact due to the communication difficulties experienced by many individuals with cognitive impairments and the complexity of people's needs.

Guardianship Powers

Family Court orders of guardianship can include the following areas:

- **General supervision**- decisions about where someone lives, types of services and supports, school or work, sale or encumbrance of real property etc.
- **Contracts**- decisions about approving or withhold approval for formal agreements such as rental/lease arrangements, cell phones, car loans
- **Legal**- to obtain legal advice and to commence or defend against judicial actions
- **Medical and dental**- to seek, obtain, and give consent to initiate or discontinue medical and dental treatments

Probate Court orders of guardianship can include the above, plus the powers to:

- **Sell or Encumber Personal or Real Property** (as a separate power)
- **Exercise Supervision over Income and Resources**

It should also be noted that, although the court authorizes a guardian to exercise these powers and make decisions on behalf of people, guardians cannot force people under guardianship to comply with those decisions.

Philosophy and Principles of OPG

When making decisions on behalf of a person under guardianship we consider the following:

- What does the person **prefer**? (Substituted Judgement)
- Will this decision put the person at a **risk of harm** that is too high? (Best Interest)
- Will this decision **promote the person's independence and self-reliance**?
- Do we **need more information and opinions**?
- Is this decision **within the powers granted** by the court?
- Does this decision **promote and protect the civil and human rights** of the person?
- Does this decision **require court approval**?

Other Functions of the OPG

In addition to serving as guardian, the Office of Public Guardian:

- Serves as **representative payee**- receive and manage Social Security or Supplemental Security Income for over **368** individuals in SFY' 15, many of whom are under public guardianship, but also for other people who do not have a guardian as an alternative to guardianship.
- Provides **case management**- assisting individuals to gain access to services and monitoring those services and supports when this can provide a less restrictive alternative to guardianship.
- Provides **public education** on guardianship and alternatives to guardianship.

- **Recruits and assists private guardians** and assists in developing **individualized alternatives to guardianship.**
- Arranges **court-ordered evaluations** for both public and private guardianship proceedings (**220** in SFY '15).

OPG Staff

The Office of Public Guardian experienced a reduction in staffing due to Departmental budget constraints and staffing needs. This reduced the number of public guardians by one position so that OPG is now staffed by **27 full-time employees**, including:

- 23 Guardians with caseloads ranging from 25-40 individuals
- 1 Program Technician
- 1 Financial Specialist (representative payee) for 368 Individuals
- 1 Intake and Diversion Specialist with caseload
- 1 Unit Director with caseload

Many of the guardians have been on the job for decades with a combined total of over 400 years of experience. Staff are very dedicated to the individuals they serve and to the mission of OPG and DAIL. Many people under guardianship have had the same guardian for more than 20 years; and the guardian has been the most constant relationship in the person’s life. Guardians are available to respond to emergencies 24 hours per day, 7 days per week. The strength of the program is a result of the depth of experience of the guardians, the strong relationships that are formed with people under guardianship and with service providers, and an unparalleled commitment to advocacy for vulnerable adults.

People Served by the OPG

During State Fiscal Year 2015, the Office of Public Guardian served the following number of people (current and terminated) *Note: this count no longer includes “pending” as with prior reports but does include some previously uncounted individuals:

• Guardianship (DD/Family& Probate Court)	650
• Guardianship (60+/Probate Court)	97
• Case management	4
TOTAL ASSIGNED to GUARDIAN CASELOADS	751

- **Rep Payee not in guardianship** **66**
(Total served Rep Payee 368)
- **Unduplicated Total Served by OPG** **817**

New People Served in SFY 15:

People with DD	26
Elders	24
Case Management	1
Total	51

People Terminated from OPG Services in SFY 15:

People with DD	33 (Deceased 18, Independent 11, Private 4)
Elders	20 (Deceased 18, Private 1, Other 1)
Case Management	3 (Independent 2, Private 1)
Total	56

Reasons for Public Guardianship

The over-arching reason why people who need guardianship come into public guardianship is the **lack of suitable and willing family or friends** to assume this responsibility. Within that context, there are numerous variables associated with each referral that may be instructive to consider.

In general people with developmental disabilities were placed on Public Guardianship in SFY '15 when they:

- **Aged out of custody from the Department for Children and Families (DCF).** This happens when a young adult turns age 18 and is no longer eligible for DCF custody. Often, people who are placed on public guardianship from DCF custody come with backgrounds of severe abuse, neglect, exploitation, and serious emotional/behavioral issues; (12 new individuals from DCF in SFY '15)
- Transferred to public guardians when their **private guardians resigned, died or were removed by the court;**
- **Were referred for other reasons** such as risk of harm, poor/dangerous decisions, self-neglect, need for support services, urgent need for medical care, legal/criminal problems, and issues associated with aging.

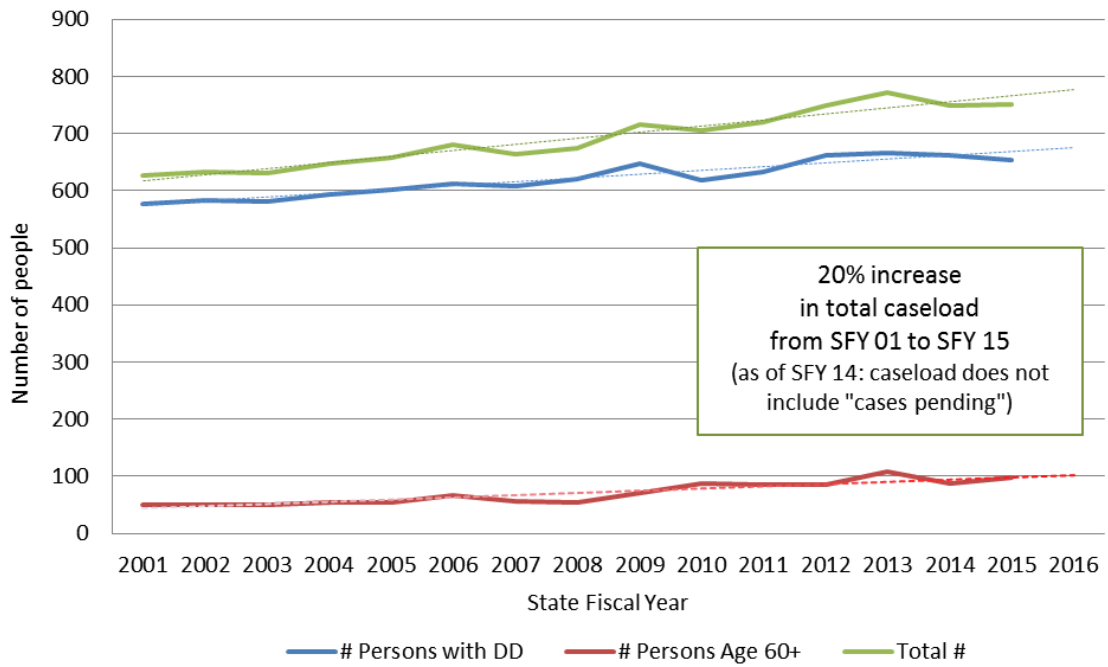
For elders, the reasons for public guardianship in SFY '15 included:

- **Medical emergencies** requiring consent;
- **Placement emergencies** (hospital or jail unable to find placement);
- **Other issues with living arrangements and/or financial difficulties;**
- **Vulnerable adults** who experienced or were at risk of some form of **abuse, neglect, exploitation** by family members, caregivers or others; (9 new individuals from APS) and/or
- **Private guardian resigned, died or was removed by the court.**

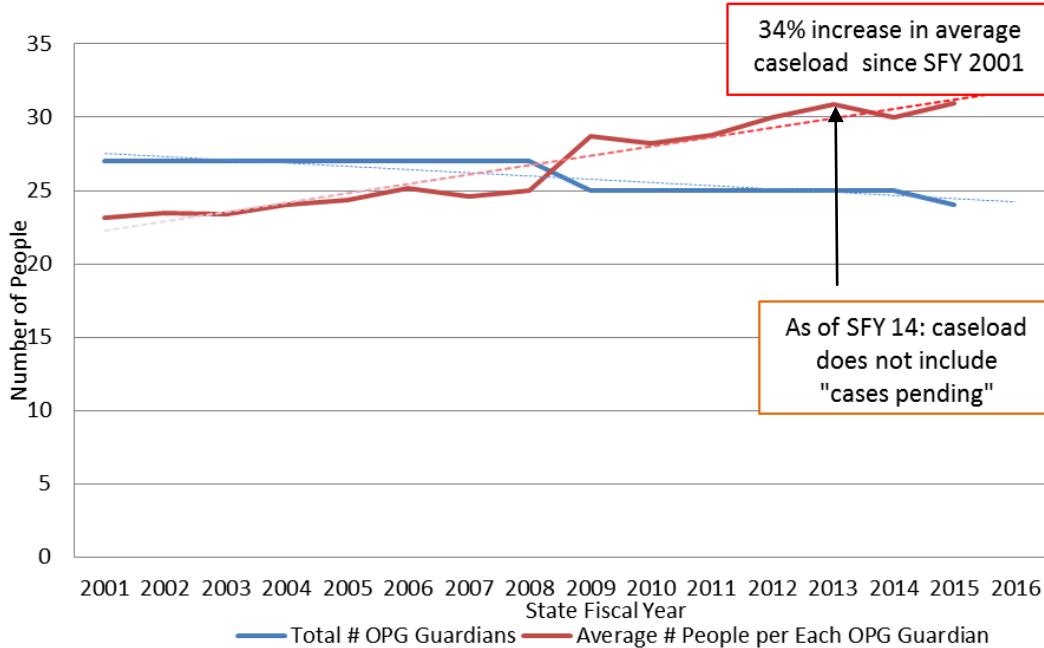
Challenges:

Caseload Pressures-The main challenge facing OPG is the ever increasing number of people under our guardianship. The charts below illustrate the change in caseload numbers over time. From 2001 to 2015, total caseload increased 20%, from 626 people served in 2001 to 751 people served in 2015. At the same time due to a decrease in full time equivalent guardians from 27 in 2001 to 24 in 2015, the average caseload per guardian has increased 34%, from 23 in 2001 to 31 in 2015.

Office of Public Guardian (OPG) Total Caseload SFY 2001 - SFY 2015



Office of Public Guardian Average Caseload SFY 2001 - SFY 2015



Severity of need-The other main challenge for OPG is the increasing level of complexity that individuals coming into guardianship present. This includes the following issues:

- Obtaining and maintaining residential supports for some *elders with mental health issues or challenging behaviors* whose needs are not being met at home, in a residential care home, or in a nursing home. Some of these individuals remained at the emergency room, hospital or jail for lack of an alternative for an extended period of time. Additionally, many nursing homes refuse to admit people without advance directives and as a result guardianship is sought to secure admission.
- Young adults leaving *DCF custody* who have experienced years of *family dysfunction, abuse and neglect* and then *multiple placements*. Some come directly to OPG from in state and out of state institutions, psychiatric hospitals, or jail.
- Emergency guardianship for people referred by *Adult Protective Services* who have experienced *abuse, neglect or exploitation*. Often these individuals wish to remain living with or supported by the perpetrators and the guardian must balance risk of harm with the person's wishes.
- Individuals with *dual-diagnoses* (a developmental disability and serious mental health or substance abuse disorder).
- Individuals who display *dangerous criminal behavior*.
- Individuals who *actively resist supports* from a guardian and have the *capacity to make other choices which may not be in their best interest*
- Individuals placed in public guardianship that *are not statutorily eligible* for public guardianship and are also not eligible for home and community based services. The guardian is responsible for the individual's well-being and community safety, yet there are limited support services available.

Accomplishments in 2015

1. Completed revision of Critical Health Care Decision Policy, which is renamed End of Life Care Decision Making Guidelines.
2. Began work on revision of OPG Regulations.
3. Instituted new record keeping procedures to track APS investigations concerning people under public guardianship.
4. Re-established or maintained regular meetings with service providers.
5. Provided several trainings to various stakeholders.

Goals for 2016

- Work collaboratively with stakeholders towards Supported Decision Making
- Increase our assistance and training to private guardians
- Develop additional strategies for helping people learn skills required to be “own guardian”
- Develop more online resources
- Update OPG Handbook
- Increase OPG Quality Assurance and Consumer/Stakeholder Satisfaction
- Increase safety and security practices and procedures for guardians
- Complete process of revising Regulations

