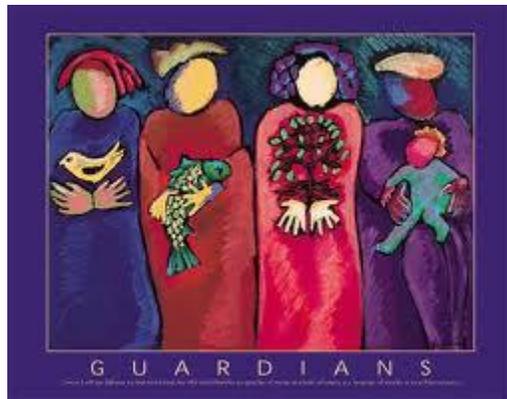


Vermont Office of Public Guardian Annual Report State Fiscal Year 2018



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Developmental Disabilities Services Division
Department of Disabilities, Aging and Independent Living
Agency of Human Services
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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 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 (older Vermonters) with disabling cognitive impairment, **and**
- Who require assistance with basic life decisions, **and**
- For whom a suitable and willing private guardian cannot be found.

Philosophy and Principles

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

- Is this decision within the powers granted by the court?
- Does this decision require court approval?

- 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?
- Does this decision promote and protect the civil and human rights of the person?
- Do we need more information and opinions?

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.

Other Functions

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

- Serves as **representative payee** receiving and managing Social Security or Supplemental Security Income for 344 individuals in State Fiscal Year 2018 (SFY 2018), many of whom are under public guardianship; one quarter of whom do not have a guardian and the rep payee service is an effective alternative to guardianship.
- Provides **case management/consultation** 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 (252 in SFY 2018).

Office of Public Guardian Staff

During SFY 2018, the Office of Public Guardian was staffed by 28 full-time employees, including:

- 24 Guardians with caseloads ranging from 21-42 individuals
- 1 Program Technician
- 1 Financial Specialist (representative payee) for 344 Individuals
- 1 Intake and Diversion Specialist with partial caseload
- 1 Director with partial caseload

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 a strong commitment to advocacy for vulnerable adults.

People Served

During State Fiscal Year 2018, the Office of Public Guardian served the following number of people (current and terminated):

Guardianship (DD/Family& Probate Court)	647
Guardianship (60+/Probate Court)	106
Guardianship (non-eligible)	2
Case management	6
Total Assigned to Guardian Caseloads	761
Rep Payee not in guardianship (Total served Rep Payee 348)	61
Unduplicated Total Served by OPG	822

New People Served in SFY 2018:

People with DD	33
Older Vermonters	29
Non-eligible	1
Case Management	1
Total New People Served in SFY 2018	64

People Terminated from Services in SFY 2018:

People with DD (Deceased 19, Powers Returned 18, Private 2)	39
Older Vermonters (Deceased 20, Powers Returned 2, Private 0)	22
Non-eligible (Private)	1
Case Management (Independent)	4
Total People Terminated from Services in SFY 2018	66

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 SFY 2018, 63 people were placed on Public Guardianship for the following reasons:

- 18 people transferred to public guardianship when their private guardians resigned, died or were removed by the court;
- 18 people were placed on public guardianship due to risk of harm, poor/dangerous decisions, self-neglect, need for support services, urgent need for medical care, and declining abilities and other issues associated with aging;
- 13 people were placed on public guardianship because they needed emergency medical care or needed to be discharged from the hospital and couldn't be placed without a guardian;
- 9 people 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 or behavioral issues;
- 5 people were placed on public guardianship as a result of an investigation of abuse, neglect or exploitation by Adult Protective Services.

Petitions which resulted in public guardianship in SFY 18: In descending order of frequency, public guardianship was successfully sought by the following petitioners:

- Developmental and Mental Health/TBI Agencies
- Hospitals or doctors
- Family members
- DCF
- Nursing homes/Residential care homes
- APS
- Direct orders from the court

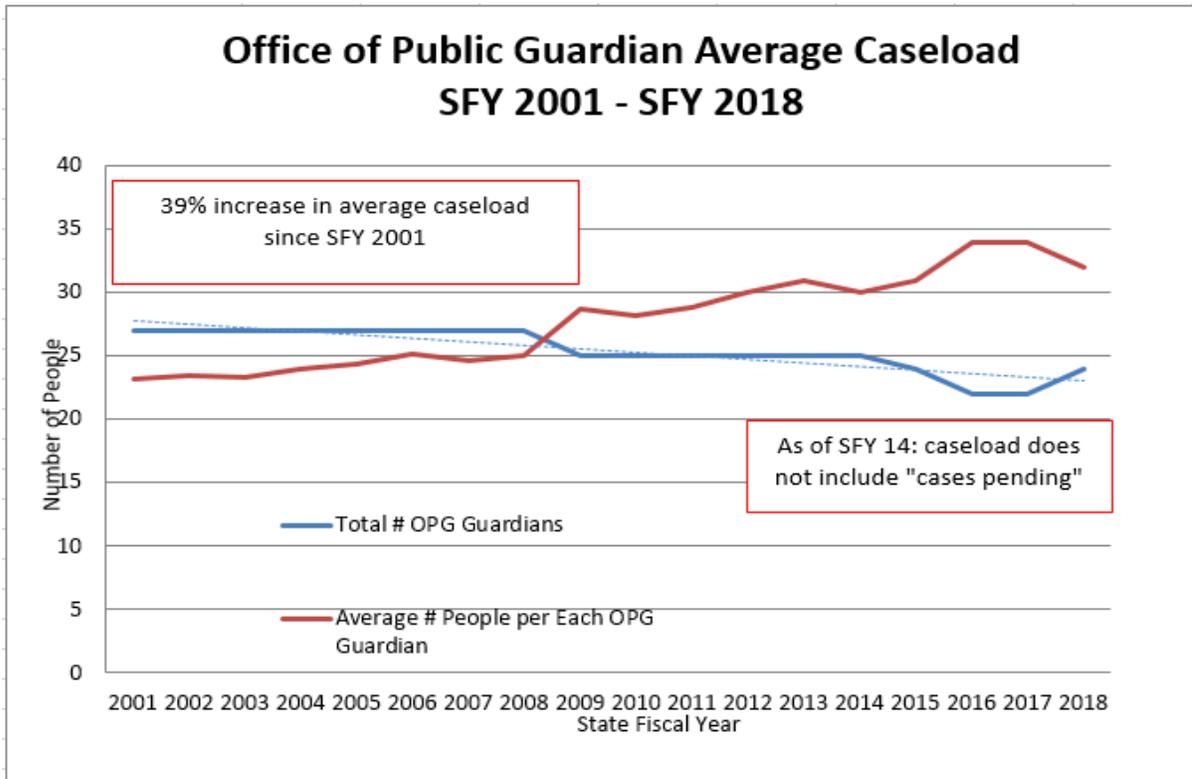
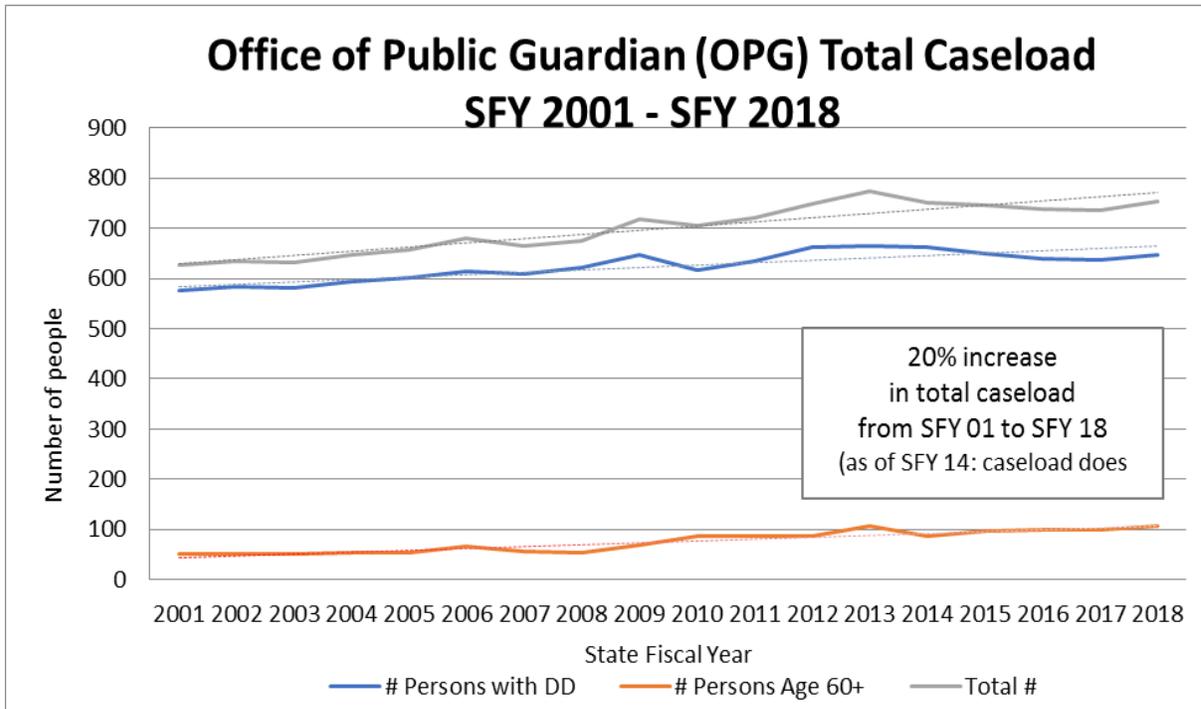
Challenges

OPG faces several challenges, but there are 3 core issues causing pressure on the program- caseload numbers, severity of need, and a growing number of individuals who disregard and reject assistance of the guardian.

Caseload Numbers

A significant challenge facing OPG is the increasing number of people under our guardianship as compared to the number of guardianship positions that remain. The charts below illustrate the change in caseload numbers over time. From 2001 to 2018, total caseload increased 20%, from 626 people served in 2001 to 761 people served in 2018. At the same time due to a decrease in full time equivalent guardians from 27 in 2001 to 24 in 2018, the average caseload per guardian has increased 39%, from 23 in 2001 to 32 in 2018.

The Vermont guardianship statutes require that 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. As the average caseload per guardian increases to 1.5 - 2 times the nationally recommended limit of 20 individuals, the guardians' ability to meet the requirements and expectations become greatly diminished. At minimum, this over-extension may unduly tax the guardians and dilute the quality of service provided by OPG; at worst, it may place the individuals, guardians, and ultimately the Department of Disabilities, Aging and Independent Living at risk if important factors are overlooked due to the shortage of time to spend on each individual under guardianship.



Severity/Complexity of Need

Another 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 *older Vermonters 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 remain at the emergency room, hospital or even jail for lack of an alternative for an extended period of time. In fact, some older Vermonters who present with seriously challenging behaviors and/or reputations, are refused admission to every nursing home in the state of Vermont and are placed in out of state facilities who will accept them. The guardian must then travel out of state to maintain contact and must contend with the complications of registering VT guardianships in another state or complying with the regulations of other states.
- Many nursing homes refuse to admit people without advance directives or guarantee of payment 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. Despite concerted efforts to improve the process, the transition from DCF custody and services into adult guardianship and services is rarely smooth, and young adults often turn 18 without their benefits, services and guardianship in place.
- 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 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.
- Providing guardianship to women who have children presents multiple issues and challenges.

Active Resistance and Rejection of Assistance

Individuals who *actively resist supports* from a guardian and have the capacity to make other choices which may not be in their best interest require a tremendous amount of time and effort from a guardian but benefit very little from guardianship. These individuals do make and follow their own choices and decisions, such as leaving or refusing needed services, moving, being homeless, driving without a license, abusing substances, refusing medical treatment, and committing crimes. Sometimes people under guardianship go for long periods of time evading contact with the guardian. The evolution of social media has also complicated guardianship. Even if a vulnerable person is “hooking up” with people online and then meeting them in person for sex or other activities that may not be safe or desired by the person, or making illegal threats, or posting pornographic images of themselves on social media, it is often not feasible or legal to restrict that person's access unless there is a court order restricting them. Other team members often expect the guardian to authorize a restriction which is not court ordered and/or cannot be enforced.

Accomplishments in SFY 2018

- Continued work on revision of the OPG Regulations.
- Continued work on 2 pilot projects on Supported Decision Making and assisted in the creation of the Supported Decision-Making handouts.
- Continued effort to re-design and improve the guardianship evaluation process.
- Continued work on assessment of decision-making skills and compilation of training materials so that people can learn the necessary skills to become their own guardian.

- Implemented an improved mechanism for reimbursing the Designated Agencies for completing guardianship evaluations.
- Provided trainings to a variety of stakeholders regarding guardianship and its alternatives.

Goals for SFY 2019

- Complete Revision of Guardianship Evaluation Guidelines
- Provide training to Guardianship Evaluators
- Work collaboratively with stakeholders towards Supported Decision Making through a variety of Pilot Projects and individual efforts
- Continue to develop additional strategies for helping people learn skills required to be their “own guardian”
- Increase our assistance and training to private guardians
- Develop more online resources
- Update OPG Manual
- Increase safety and security practices and procedures for guardians
- Complete process of revising Regulations



