

SB 2029
House Human Services Committee
Testimony Presented by Scott Bernstein, NCG
Executive Director of Guardian and Protective Services
March 18, 2025

Chairman Ruby, members of the House Human Services Committee, I am Scott Bernstein, Executive Director of Guardian and Protective Services and a member of the Task Force on Guardianship Monitoring. I also serve on the board of the Guardianship Association of North Dakota.

First, I want to say **thank you to the committee for your support for Senator Dwyer's amended version of SB 2291**. SB 2291 contained very significant changes and amendments that provide safeguards for ALL guardians as we do our work. It is much appreciated.

I would also like to acknowledge family guardians in the room. I know several are watching online. Thank you for what you do each and every day to admirably serve vulnerable children and adults. A word to Family and friend guardians, who have stepped into a difficult spot, you remind us of what it means to lay down your life for a friend. Thank you!

Members of the committee, **This is a defining moment for guardianship in North Dakota.** Every professional guardian in North Dakota opposes the Judiciary's SB 2029 as it stands. However, **I stand in support of Senator Lee's proposed Amended Version of SB 2029. In fact, 100% of the professional guardians, and their support teams, who dedicate their days to guardianship, stand in support of Senator Lee's amended version of SB 2029.**

It is important to acknowledge that the **Judiciary and Guardians want the same things.**

1. We want to make sure vulnerable adults are treated with dignity.
2. To the greatest extent possible we want to involve the vulnerable person in all decision making.
3. We are both committed to the least restrictive option with the objective of maximizing self-reliance, dignity, and independence.
4. We must respect and responsibly and ethically manage money, property, anything that belongs to the vulnerable person.

These are non-negotiable. Any guardian that acts like these are only suggestions, and willfully violates these principles, should be removed from serving as a guardian. I know I speak for all guardians...we don't want violators ever serving. The court has the authority and should take appropriate action to remove them. Their name should be on a registry identifying them as a guardian disqualified from serving.

If we clearly value and want some of the same things, the question remains. Why do 100% of professional guardians believe the Court's Proposal Doesn't Work?

You've probably heard the adage "**Form Follows Function.**" It's a design principle that simply means the appearance of something should be based on its intended purpose. In this case, the intent of **the original bill reflects a Judicial approach to solving a real human services problem.** Everything from the architecture of a courtroom to the judicial procedures clearly exhibits a top-down model. The same is true in their version of SB 2029.

How does Senator Lee's Amended Version resolve this top down, them-us issue?

The Office of Guardianship and Conservatorship (OGC), standing as a division underneath HHS, can fulfill all the responsibilities the Court believes are important. However, to be thorough and successful in fulfilling their mission, the OGC must be aware that when rights are removed, someone is required to step in and protect the vulnerable individual. A guardian. Protecting the individual requires providing services that an indigent adult literally needs to survive with a degree of independence and dignity. That's what the Letters of Guardianship, signed by the Court, have ordered the guardian to do. **Those services are Human Services. Human Services that are actualized 24/7, 365 days a year.**

Guardianship, by its very nature, is a team endeavor. The form of the OGC must reflect the intended purpose. The form must follow the function.

In a nutshell, here's what the amended version of SB 2029 proposed by Senator Lee accomplishes:

- 1. Fulfills the primary reasons the SHALL STUDY was adopted in the last session by:**
 - A. Consolidating the primary providers of guardianship services under one department.
 - B. Reducing confusion and providing transparency legislators were requesting when determining the appropriations for all things guardianship.
- 2. Senator Lee's proposed amended version establishes mechanisms of accountability.** A review board can investigate complaints, require the production of documents and render a decision that could ultimately result in removing the license of a guardian. That decision would then be recorded in the court to ensure the guardian was not appointed as a guardian AND appropriate steps taken to find a successor guardian.
- 3. Senator Lee's proposed amended version includes guardians as participants on the review board.** The composition of the board is multi-disciplinary. It allows professionals to both protect the vulnerable and discipline a bad actor. This is hardly

extraordinary. The nursing board has nurses participating. The Disciplinary Board, handling attorney discipline, has attorneys participating. This is not a conflict of interest. It simply requires trust.

4. **Senator Lee's proposed amended version requires a professional guardian to be licensed if they intend to provide services.** This protects guardians adhering to the rules and affords the court the ability to recommend removing a guardian's license. I already alluded to this. The court would have an accessible registry that clearly indicates the guardians that carry the Office of Guardianship and Conservatorship seal of approval.
5. **Senator Lee's proposed amended version provides the court with a one stop contact where a concern about a guardian or request for an audit can be made.** However, it also provides BOTH the court and the guardian a place to report exploitation and fraud they uncover. The OGC can then provide this information to entities like the BCI or the Attorney General for further investigation. This has become a pressing issue with an aging population where elder exploitation is now projected to be \$28.3 billion a year in the US.
6. **Senator Lee's proposed amended version consolidates the budget** and accurately reflects the funding that is necessary to fund the various functions outlined for the office and the operational costs of the office. You have a template showing the funding breakdown by category and the amount that needs to be appropriated to provide for all the existing services.
7. **Senator Lee's proposed amended version prioritizes the need for training.** To hold guardians to a standard of excellence, while working to attract people who know nothing about guardianship, requires training. The best way to accomplish both is to effectively train for results. As you are aware, there is a dire shortage of guardians. The OGC should focus on consistent, strategic training. States like Alaska and Pennsylvania, to name only two, are using similar OGCs and available grant funding to attract people to the guardianship profession. They do this by bolstering innovation focused on training guardians, and those involved with guardianship. The training isn't limited to guardians but includes Judiciary, Attorneys, and law enforcement. I know the Alzheimer's Association, already receiving funding from the State, would be an enthusiastic partner in training.

We have to get this right.

The Court needs Guardians. Guardians need the Court. I know each of our motives are honorable and that we are fellow travelers on a quest to better understand and solve a common set of challenges. We have a common goal: To provide the best outcomes for

vulnerable North Dakotans. That means **the structure of the OGC must align with its intended purpose.**

The courts will always serve as the appointer and final arbiter, as they should. But the guardians are the ones serving—and protecting—people that have a life debilitating mental illness, addictions, limited cognition due to disease or poor choices. Many, for the rest of their lives.

The Court's version of SB 2029 was causing many guardians to have second thoughts about their future in the profession. Losing even one guardian is not an option in our already dire guardianship crisis. As I indicated, there are only 55 Professional Guardians in North Dakota. Look at the ages of the presenters here today. Well, at least look at my age. We must attract younger people willing to enter the profession.

Good news: Fifty-five professional guardians stand in full support of Senator Lee's amended version of SB 2029. **The amended version is a 'crisis averted version.'** Those we serve may not fully grasp the impact of Senator Lee's Amended version. However, when the guardian is supported, equipped, mentored, funded, and held accountable, the outcome for the ward will undoubtedly be much better.

The demand for guardianship will only rise. As Senator Dever rightly stated last session, "The devolution of our culture only means the needs in Human Services will increase—and so will the dollars spent."

I am optimistic that Senator Lee's amended SB 2029 is a long-overdue step in the right direction. For too long, guardianship has been a fragmented system, difficult to manage and define. This amendment provides a clear path forward, addressing the concerns of the legislature, the courts, guardians, and, most importantly, the individuals we serve.

I urge a Do Pass on the Amended Version of SB 2029 as proposed by Senator Lee.

Thank you for listening and I am happy to answer any questions.

One Minute Summary

The testimony presented by Scott Bernstein, Executive Director of Guardian and Protective Services, before the House Human Services Committee on March 18, 2025, addresses the amended version of SB 2029 proposed by Senator Lee.

Scott Bernstein expresses gratitude for the committee's support for Senator Dwyer's amended version of SB 2291, which provides significant safeguards for all guardians. He acknowledges the efforts of family guardians and emphasizes the importance of treating vulnerable adults with dignity, involving them in decision-making, and ethically managing their assets.

Scott Bernstein supports Senator Lee's amended version of SB 2029, which consolidates guardianship services under HHS. The OGC, Office of Guardianship and Conservatorship, establishes accountability mechanisms, requires professional guardians to be licensed and determines ethical standards and training.

He highlights the need for a human-centered approach to guardianship, contrasting it with the judicial model. The amended version includes guardians as participants on the review board, ensuring a multidisciplinary approach to protect the vulnerable and discipline bad actors.

Scott Bernstein emphasizes the importance of training for guardians, judiciary, attorneys, and law enforcement to attract people to the guardianship profession and improve outcomes for vulnerable adults.

He urges support for the amended version of SB 2029, expressing optimism about its positive impact on the guardianship system and the individuals served.