

**SB 2029**  
**Senate Judiciary Committee**  
**Testimony Presented by Scott Bernstein, NCG**  
**Executive Director of Guardian and Protective Services**  
**January 13, 2025**

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

The work of the Taskforce, under the leadership of Judge Feland, has been commendable. Believe me, that word doesn't begin to capture the moral compass and commitment of the members. Everyone has been focused on assuring our most vulnerable citizens are guarded, afforded the greatest degree of autonomy based on their capacity and never, never exploited.

Guardian and Protective Services have been ethically and sacrificially serving vulnerable adults since 1996. Not just as Professional Guardians but as the Court Appointed Public Administrator for eight counties. We have consistently governed our practice according to Rule 59. I stand on the shoulders of my predecessors who have consistently beat the drum of accountability and living out our commitment with the highest ethical standards. GaPS was an active participant in the Winsor Schmidt Report completed in 2012. We have never shied away from accountability.

As you read through this bill, I would encourage you to put yourself in the place of a guardian. After all, this entire bill is focused on The Guardian. Ethical guardians are unwavering in their commitment to accountability. When it has been shown that a guardian is acting in their own personal interest and not the best interest of the protected person, they should be removed. End of story.

However, the Office of Guardianship and Conservatorship is a complex mechanism to achieve accountability. Read the bill and you will see it houses a review board and an investigation council. It will license, establish a registry, grant permits, seek private and federal funding, and accept private funds. Authorize payment, establish regulations, rules and policies, possibly assess fees, draft appropriations, establish caseloads. Engage in administrative, legal and disciplinary proceedings pertaining to a guardian. The OGC is protected by immunity while a guardian can be sued for the actions of a protected person. The OGC can administer oaths, issue subpoenas for production of documents and appearances of witnesses. It can order depositions. It establishes the Attorney General to act as legal counsel. Given the extent of the legal implications, a guardian or conservator better have an attorney because failure to obey an order is a class A misdemeanor and the list goes on.

Do we need accountability mechanisms? Yes. Is the idea of pooling appropriations for the various facets of guardianship under a clearly defined entity a good step to take? Yes. However, in North Dakota history, there has been nothing enacted by this legislature that will more dramatically change the landscape of guardianship than SB 2029...and that isn't hyperbole.

This bill clearly outlines all the structural elements of the OGC. It has all the goods but there is a baseline disadvantage to the family guardian and the professional provider. I believe the most obvious disadvantage will be in the willingness of family guardians to step into the role of a guardian and the staying power of professional guardians. Keep in mind that guardianship, whether recognized legally or operating informally, has been taking place in North Dakota for decades. Clearly, it hasn't always been done ethically and with the best of intent.

This is why we are here. There are big consequences to not doing something. But it must be said out loud! There will be unintended consequences by passing SB 2029. The bill is the structure. The structure will be covered with rules. Rules will proliferate. Not all bad, but pages of them will be coming – on top of what already exists. More expenses will be incurred.

When looking at this bill you could infer that the 55 professional guardians that are either Certified through the National Guardianship Association and Center for Guardianship Certification or another entity of equal rigor, operate outside the realm of accountability. Nothing could be further from the truth. Certified guardians, much like CPAs, have accountability and ethics top of mind. At the end of this testimony, I have a short list of accountability mechanisms that already exist that the OGC will have minimal or no authority to influence. You can scan through them later. **(See *Accountability for Professional Guardians*).**

**FUNDING: Unfortunately, this bill is not only a bill to establish the OGC it is an appropriations bill to operate guardianship funded through PASS. I hate to get into these weeds but it's in the bill and could create confusion.**

SB 2029 focuses on the framework of the OGC **BUT NOT THE FUNDING of the OGC**. The \$2.2 million for the OGC is in Judiciary. The dollars you see listed in **Section 6: Appropriation...** is simply the consolidation of all the dollars that appear in the budgets of other departments related to guardianship. **PLEASE NOTE: The amounts listed in this bill are not the amounts delineated in other appropriations presently under consideration.** In other words, the various departments of government holding the money still have the money and have drafted their own appropriations.

For example, PASS funding, that provides guardianship for people below the poverty line, falls in the OMB budget. This year it is on the docket in HB 1015 Section 1. As you can see from the Governor's Budget we are going backwards from the base level of funding.

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and Wages	\$23,510,218	\$ 6,042,622	\$29,552,840
Operating Expenses	18,217,793	10,624,081	28,841,874
Contingency Fund	750,000	(22,500)	727,500
Capital Assets	308,355	7,023,649	7,332,004
Guardianship Grants	7,100,000	(213,000)	6,887,000
Community Service Grants	350,000	(35,000)	315,000
Prairie Public Broadcasting	1,200,000	(36,000)	1,164,000
Deferred Maintenance	0	40,000,000	40,000,000
State Student Internship	0	500,000	500,000

It is listed as Guardianship Grants. Note the amount. \$7.1 was appropriated last session. What we were requesting in the last biennium was \$8.1 million, at a minimum.

The appropriation in the last session was established to cover 596 clients at a daily reimbursement rate of \$20 a day. To date, we have not received \$20 a day. Sadly, you are at a

disadvantage because you have none of the foundational history on which this appropriation is built. I would be more than willing to meet with any of you to walk you through funding details.

On page 9, line 30 of SB 2029: Public guardian and conservator fees- indigent, you see \$8,638,020. As providers, we had minimal input in determining this dollar amount. I find this disconcerting and I hope would not be a foretaste of how the OGC would operate in the future.

Last biennium we indicated that \$8.1 was the baseline funding necessary to maintain a case load of 596 and increase the number of clients served at \$20 a day. As mentioned, we have yet to be reimbursed \$20 a day. The need for guardianship continues to grow and will only increase. Due to inflation and the need to increase the case load, we need \$22 a day with a total appropriation of \$9.1 million. That is \$461,980 more than what is being requested in SB 2029.

I need to be assured that any funds allocated to provide reimbursement for guardianship services and establishment of guardianships are held separately from the operational costs of the OGC. For example, PASS funding should never be used to offset OGC deficits should that ever occur.

I'm putting you on notice. We will be back every year asking for more money. Yet, I can statistically assure you, the Government and Private Provider partnership is still the best return on your investment. Hands down. Yes, Guardianship is a legal issue. But at its core it is a human services issue. Trust me, the OGC will not be awakened at 2:30 AM to make a life altering decision. There is and will continue to be an increasing demand for guardianship. The aging population with cognitive decline, the rise of mental illness, the fractured family and the harsh reality of addictions that impact the brain project an almost alarming future need for guardians.

Last year in a senate floor session Senator Dever put it so well: The devolution of our culture only means the needs in Human Services will increase and so will the dollars spent.

Finally, I am guardedly optimistic that the OGC is a possible solution. For too long there has been a hodgepodge approach that is increasingly difficult to manage and clearly define. However, I would recommend a carefully phased in approach with a focus on training for excellence.

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

***(See Challenges Facing The OGC)***

## **A Short List of Existing Forms of Accountability For Professional Guardians**

- Complete an annual report on every person under guardianship that is submitted to the Court for review.
- There are five year reviews that must also be completed with hearings.
- Monitored by the Court Monitor.
- Required to submit requests for any possible change in the scope of the guardianship to the Court.
- Required to submit to the Court any requests for the sale or transfer of property of a person under guardianship.
- No co-mingling of funds. A person under guardianship has their account balanced monthly.
- Wellness reports are completed and submitted.
- Requests for PASS reimbursement is done monthly and processed by the ND Association of Counties office.
- We are on a weekly call with Social Security and are audited by Social Security and this audit will be beyond the jurisdiction of the OGC.
- We file claims with Medicare and face similar scrutiny to that of the SSA. This is well beyond the jurisdiction of the OGC.
- Medicaid, managed by ND, requires us to fill out various forms and verifications. This is beyond the jurisdiction of the OGC.
- We complete taxes for clients and are subject to the scrutiny of the IRS.
- GaPS manages the ND Pooled Trust and Third-Party Pooled Trust. This is beyond the scope of the OGC. It is established with strong fire walls between GaPS and the managing bank and transactions require multiple eyes on the transaction and prior approval.
- Guardians are subject to reports made to Adult Protective Services regarding a person under guardianship.
- We report to and inform 'interested persons' regarding the welfare of the person under guardianship.
- We comply with HIPAA and medical providers recommendations for each person under guardianship.
- Case managers that are license social workers are held accountable to the ethical standards established by the Board of Social Work and must fulfill the required CEUs to maintain licensure. Individuals working with individuals with intellectual disabilities are accountable to Protection and Advocacy.
- Guardians are members of the National Guardianship Association and certified by the Center for Guardianship Certification. This requires testing and ongoing CEU hours every year. \*A license issued by the State of North Dakota by the OGC will have no reciprocity with any other state. Some guardians are credentialed through an organization specializing in DD Certification.

### **A VERY short list of the Challenges Facing The OGC**

- The shortage of professional guardians in ND. There are fewer than 55. And the numbers are shrinking. Guardianship Association of North Dakota has only 63 members.
- The growing number of family guardians that are seeking to step out of guardianship.
- The increasing exploitation of vulnerable adults by family members and the lack of prosecutorial interest in pursuing the cases. GaPS has uncovered a few million dollars' worth of family exploitation in our 50 years. All have been reported only two were minimally prosecuted.
- The best guess is there could be as many as 4,000 'family' guardians (fulfilling the role informally). Will the OGC put out a welcome mat to these people? Can they streamline a process and de-jargon documents?
- There is a consistent disregard on the part of Banks, Medical Providers, hospitals and law enforcement to honor the Letters of Guardianship for which the guardian will be held accountable. How does the OGC hold other entities accountable for complying with Letters of Guardianship?
- The SB 2029 speaks of licensing, contracting and possible determination of caseloads. There is no clearly defined weighting of cases. An entire system will need to be developed before 'contracting' can begin. Not all cases and clients are created equal. A Grandma needing a guardian is significantly different than a homeless, felon drug addict...their actions could open the door to a third-party lawsuit against the guardian.
- You will hear support for this bill based on extended hospital stays by individuals that could be safely discharged if they had a guardian. As a result, the State is paying large amounts in hospital bills. The problem is obvious, but the OGC is not a guardian, it can't be a guardian nor is it empowered to start a State Office of Guardianship where it hires guardians. To resolve this issue the OGC will have to work to find ways to make guardianship attractive to professionals and doable by family members.
- The accountability of the OGC may require the guardian hire an attorney to represent them. Guardians do not have funds to hire an attorney. On the other hand, the proposed staff of the OGC does have an attorney. As previously noted, much of the OGC is biased against guardians and in favor of legal methods of resolution. This will present a challenge in attracting and retaining guardians. It would be advantageous if the tone of the OGC and bias was toward an emphasis on instructing guardians, assisting them overcome challenges and arbitration rather than legal action.
- The overlapping relationship between the various departments that initiate and provide the services that are necessary to wrap a protected person in services.
- Rules are developed based on structure. The structure of the OGC is comprehensive and legal in nature. It foreseeably will struggle to focus on education rather than 'ruling' guardians.

