

Adult Guardianship in Indiana: What Case Managers, Caregivers & Advocates Need to Know

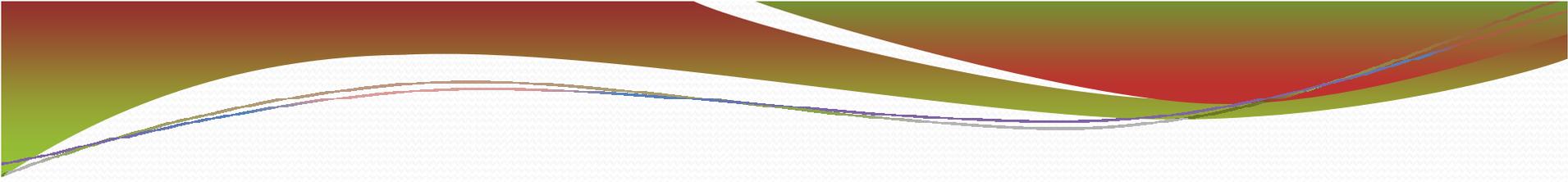
**IPMG Professional
Development Workshop**

July 18, 2014

Presenter

**Rebecca M. Pryor, MSM, NCG
Indiana Adult Guardianship
State Task Force
Creative Approaches LTD**

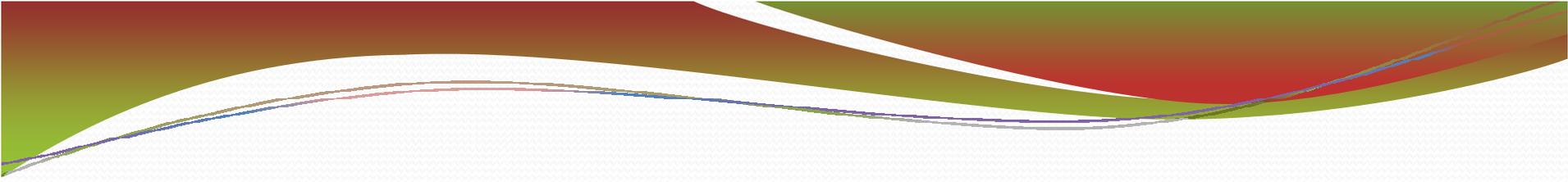




Less Restrictive Alternatives

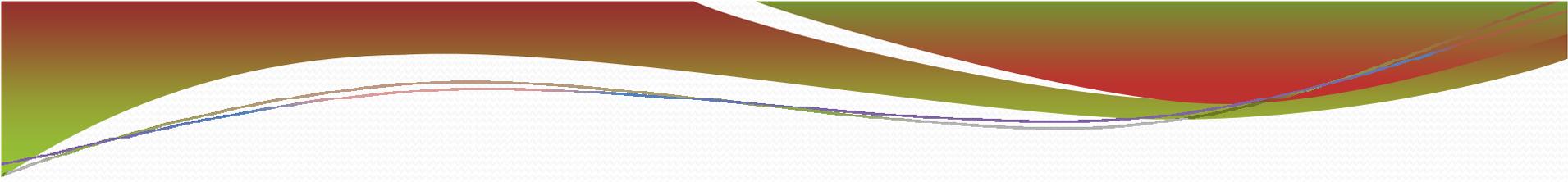
Before a guardianship is established, other less restrictive alternatives should be considered:

- ▶ Power of Attorney (POA) of person and/or finances
- ▶ Health Care Representative
- ▶ SSA Representative Payee
- ▶ SIN FSSA Authorized Representative
- ▶ Fiduciary management services e.g. AARP Money Managers Program, bank trust departments



Guardianship

- Originally grew out of 14th century English concept of *parens patriae*---the duty of the king, and later the state, to protect those unable to care for themselves.
- The court on behalf of the state, appoints a guardian to carry out the duty of protection, and the guardian is bound by high standards of care and accountability.
- In Indiana, *conservator* and *guardian* mean the same thing.



The State of Adult Guardianship in Indiana

Dr. Michael Jenuwine, J.D., Ph.D., NCG
University of Notre Dame Law School

2011

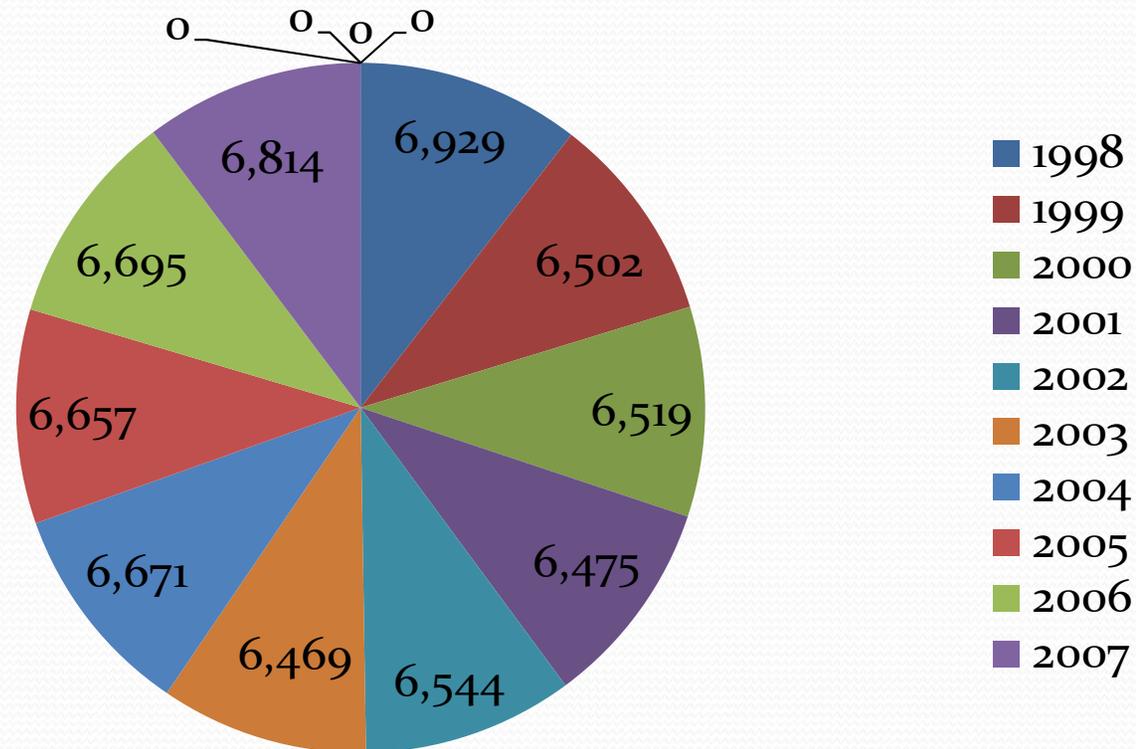


Indiana Trends

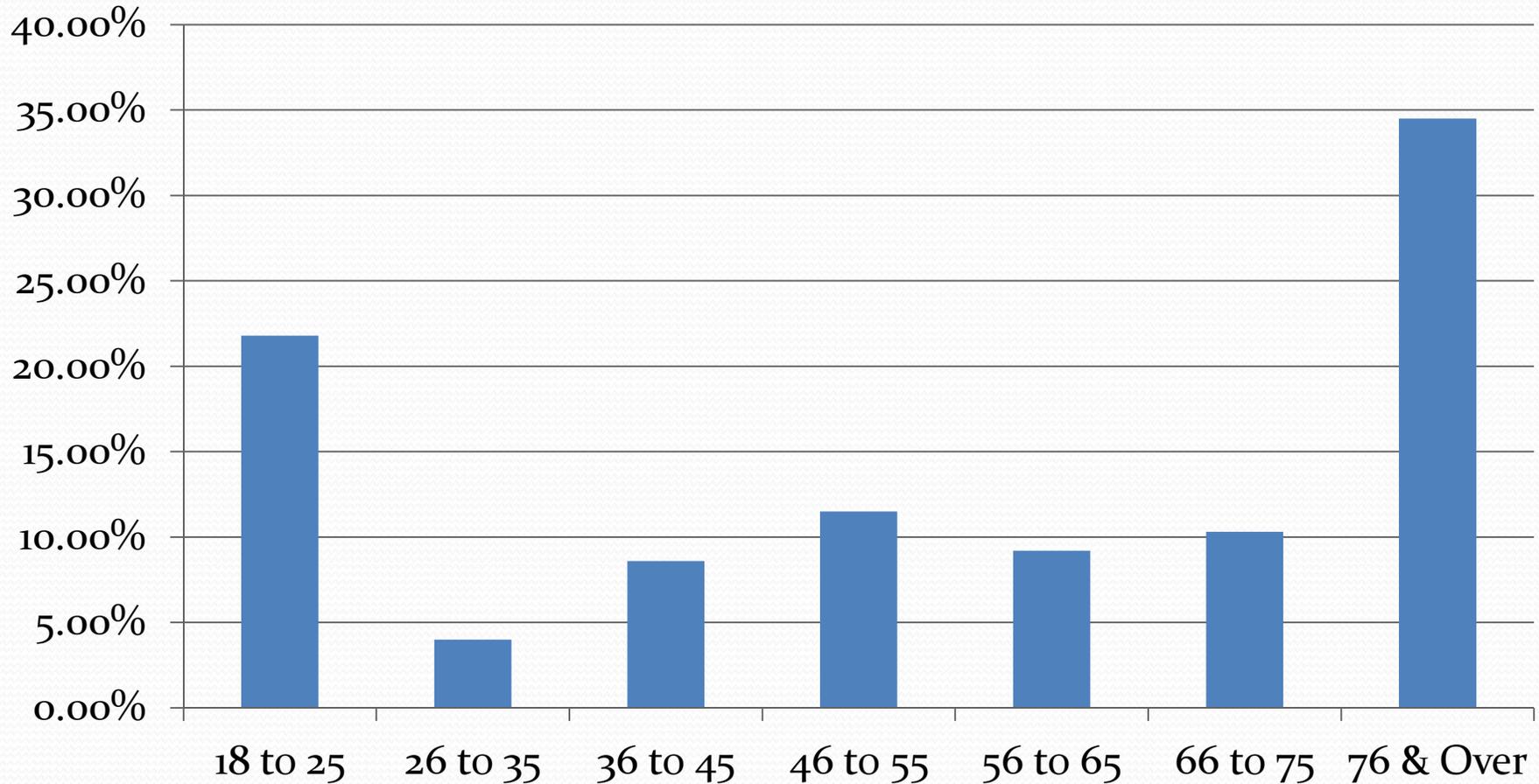
- The 65+ population in Indiana is expected to increase 200% by 2040 = 1.5 million
- Hoosiers age 85+ are expected to increase by 400% by 2030 = 400,000
- Seniors are expected to out number children under the age of 15 in Indiana by 2035
- The 60+ population with intellectual/developmental disabilities is expected to increase 300% by 2030
- 25% of family caregivers of persons with intellectual / developmental disabilities are age 60+
- Indiana adult guardianship filings are expected to increase by 300% - 500% by 2030 = 18,000 – 30,000 cases per year

IN Data: What Do We Know?

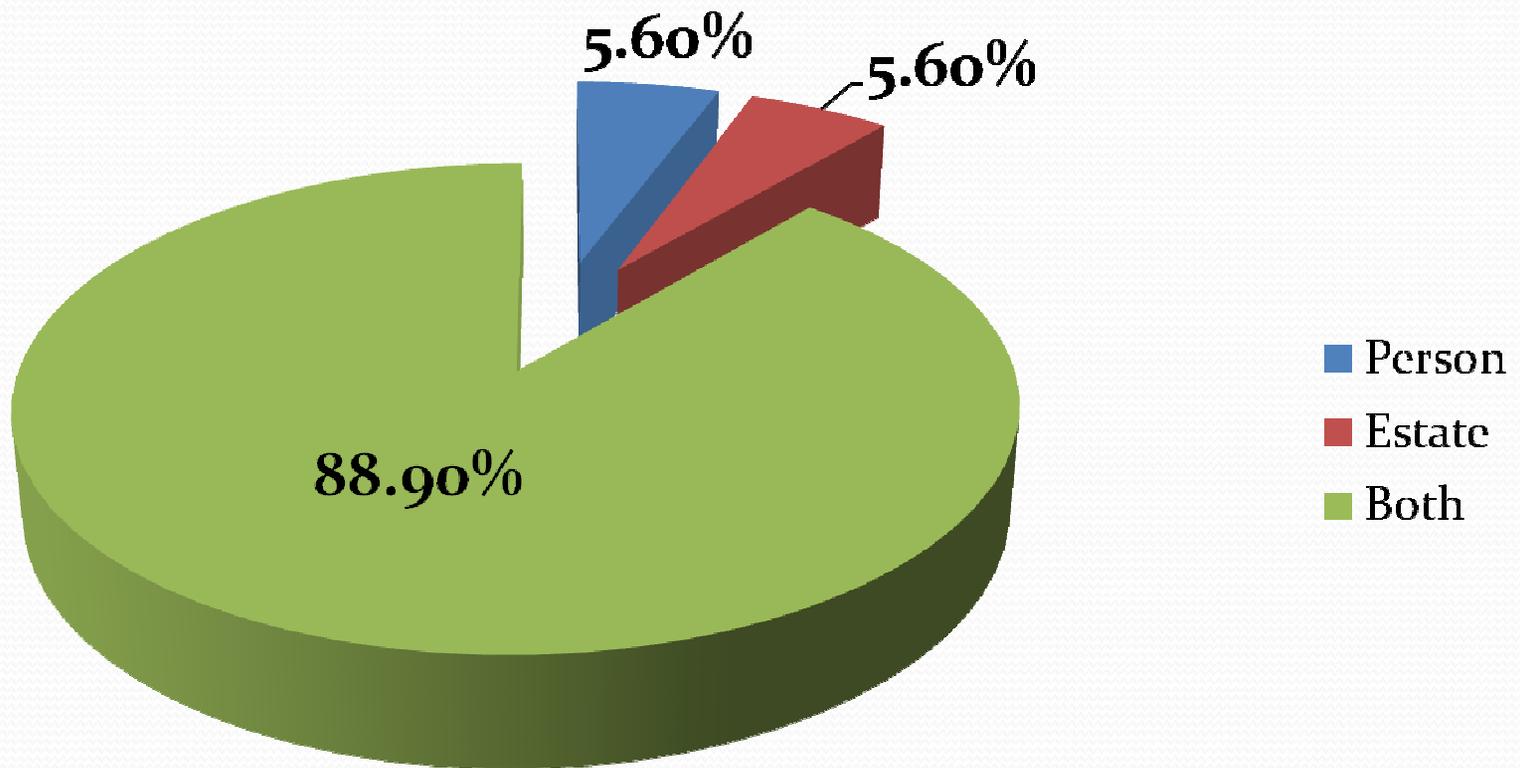
Guardianship Cases Filed Annually



Age Distribution of Adult Wards



Guardian of What?

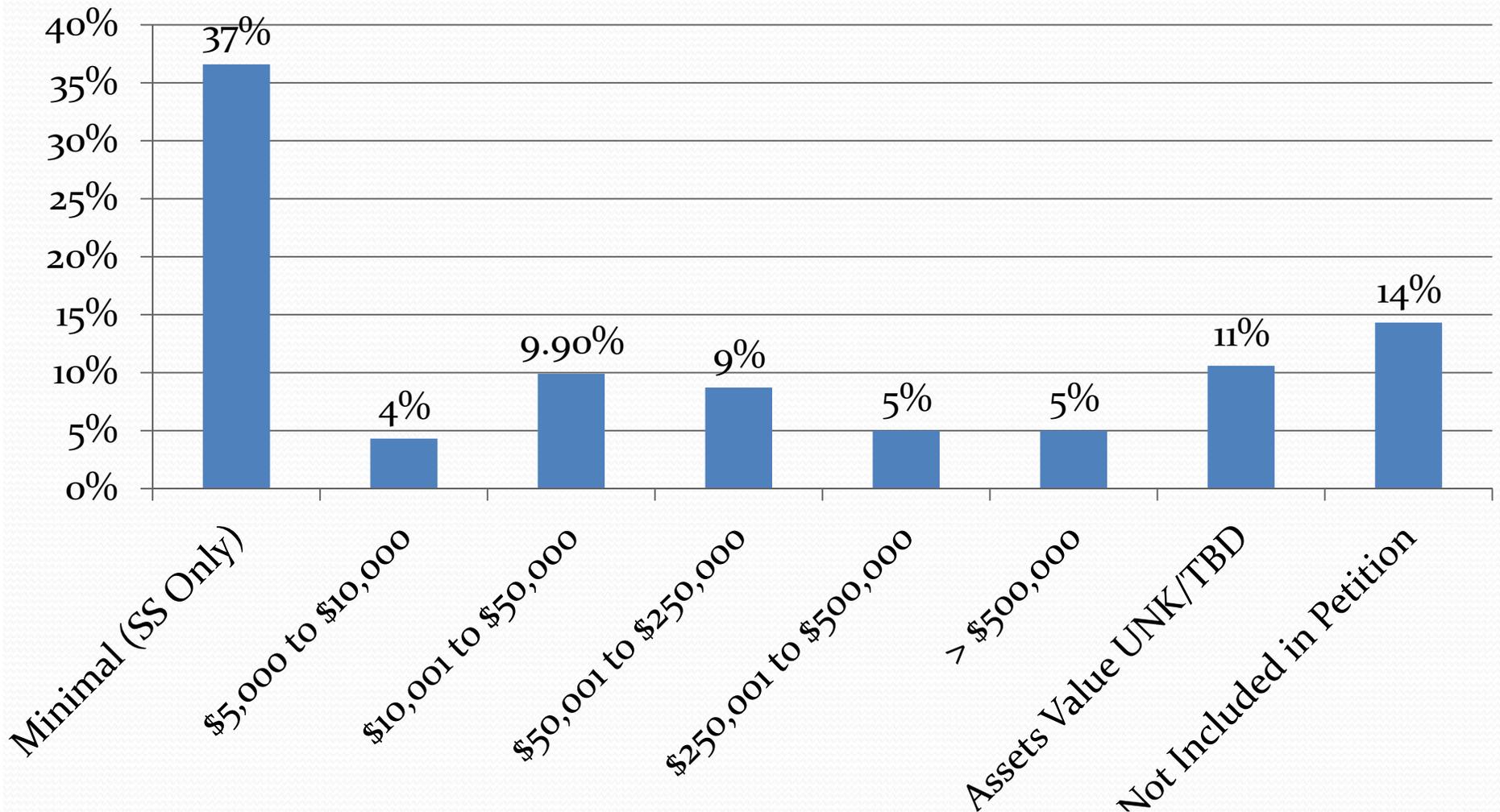




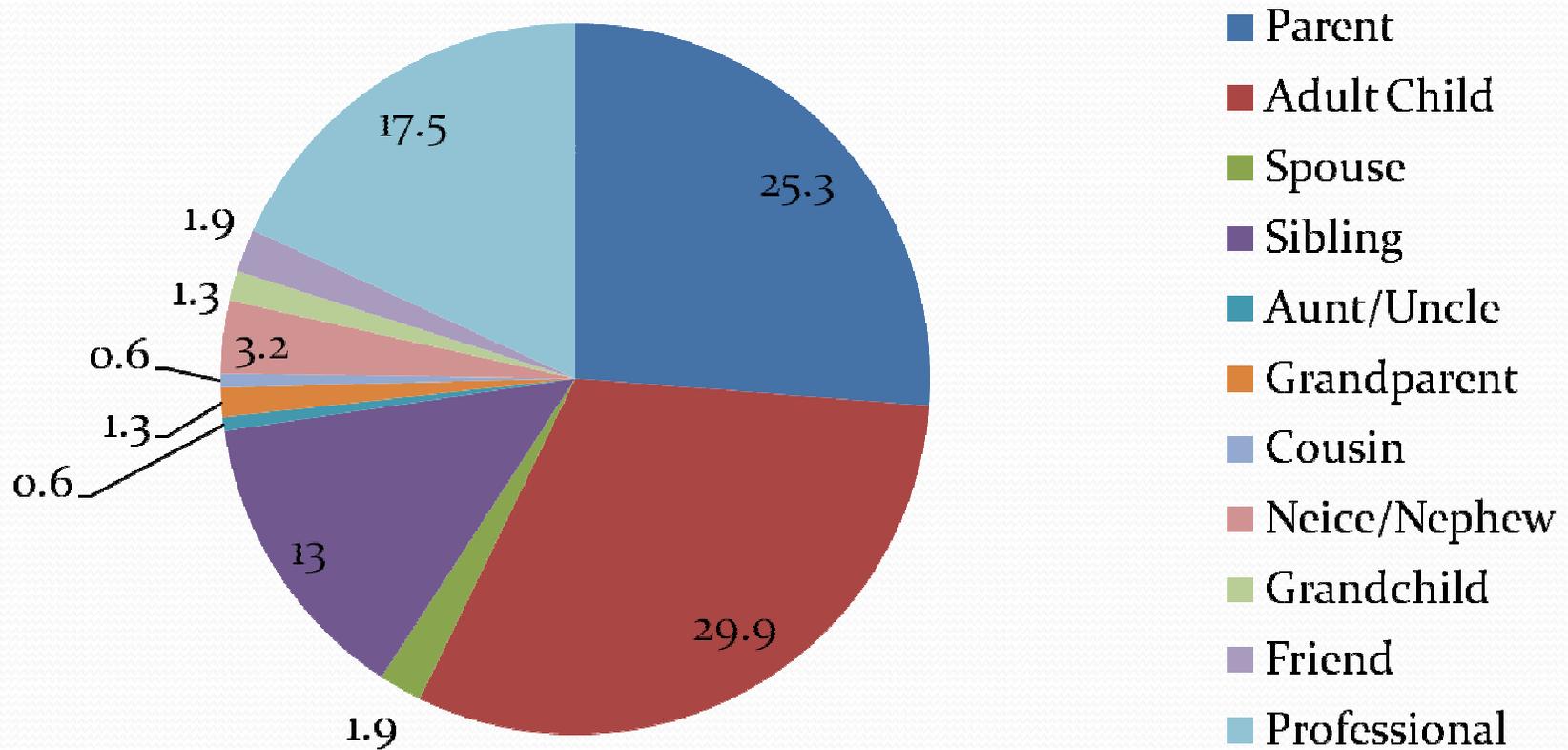
Types of Incapacities Alleged in Guardianships:

- Dementia 38%
- Physical Illness 17%
- Developmental Disability 12%
- TBI/Coma 8%
- Mental Illness 8%
- Undue Influence 4%

Guardianship Asset Value

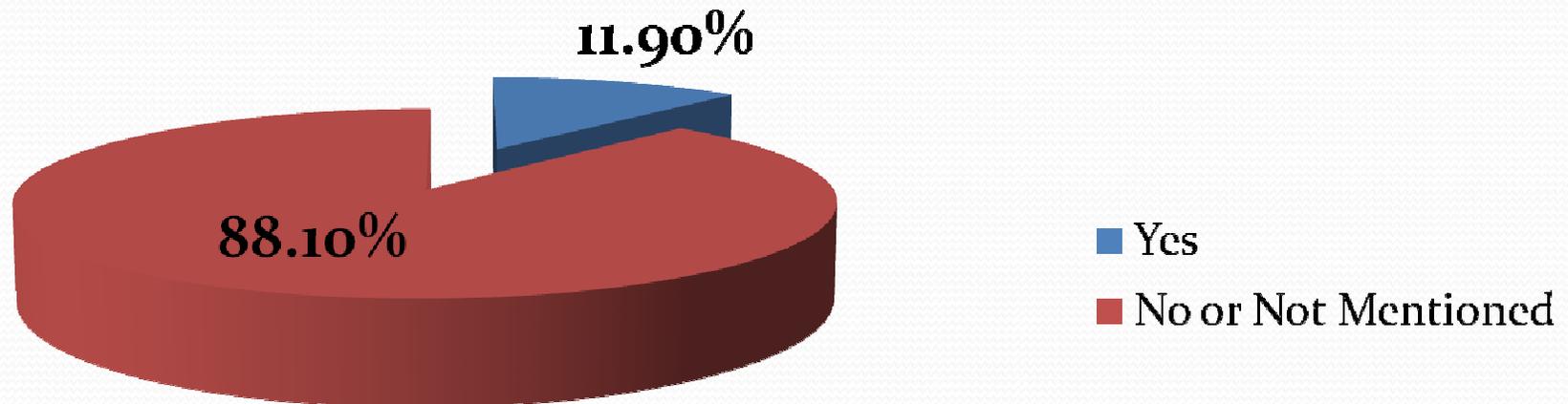


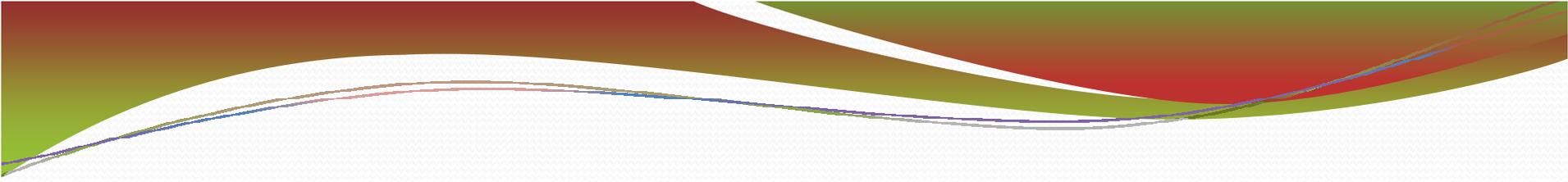
Relationship of Petitioner to Ward



Guardian Reimbursement

Guardian Seeking Payment?





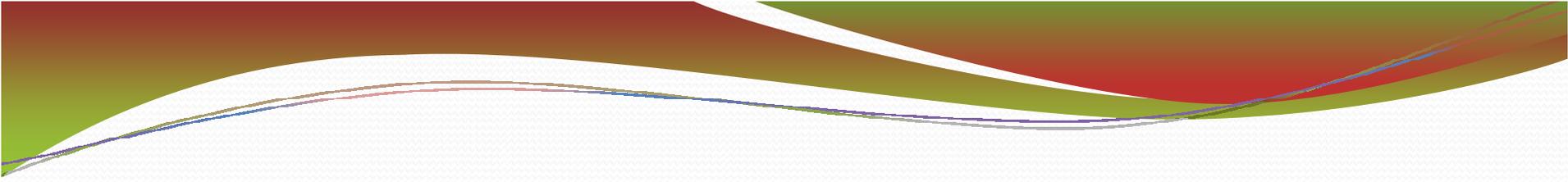
Anecdotal Findings

- Notice is often lacking
- “Regular” guardianships granted without hearing
- Inventory/Accounting ignored
- Bond not mentioned/not required
- Guardian Vacant for long periods (die)
- Open cases with no filings for years & years
- Rare for limitations to be imposed
- No use of ADR

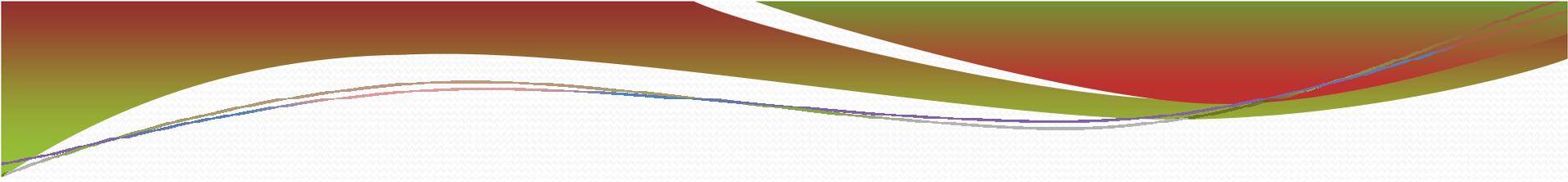


Positive Trends in Indiana Guardianship

- Increase in the number of Indiana National Certified Guardians (NCG)
- Establishment of quality volunteer advocate guardianship services and training programs (Lake, LaPorte, St. Joseph, Tippecanoe, Marion, Wayne, Lawrence, Vanderburgh counties)
- Creation of Indiana Adult Guardianship State Task Force
- First statewide study on status of guardianship cases in Indiana courts conducted by Notre Dame Professor Jenuwine
- Guardianship Issues Being Studied by ISBA Elder Law Section and Probate Section, Judicial Conference Probate Committee, Indiana Legislative Probate Review Commission
- Indiana's adoption of Uniform Adult Guardianship & Protective Proceedings Jurisdiction Act ("UAGPPJA"): IC 29-3.5-2
- 2013 Indiana General Assembly established and funded:
 - Indiana Supreme Court Adult Guardianship Office
 - Volunteer Advocates for Seniors & Incapacitated Adults Programs
 - Indiana Adult Guardianship Registry



Adult Guardianship

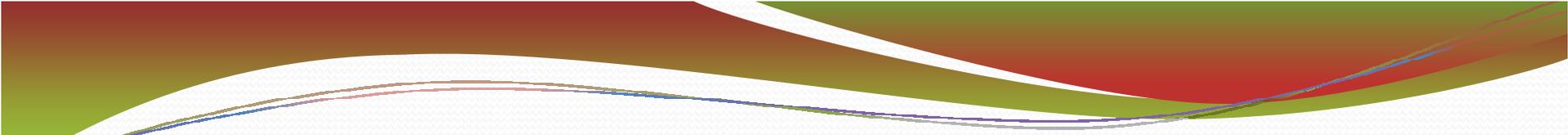


What is Adult Guardianship

A legal proceeding in which a Court determines that an adult is fully or partially incapable of:

- ▶ managing his/her personal or health care decision-making, and/or
- ▶ managing his/her property or finances,

And appoints a willing and suitable person or entity to be responsible to assist the individual with personal/health care decision-making and/or to manage that individual's finances and assets.



IC 29-3-1-7.5 Incapacitated Person

"Incapacitated person" means an individual who:

(1) cannot be located upon reasonable inquiry;

(2) is unable:

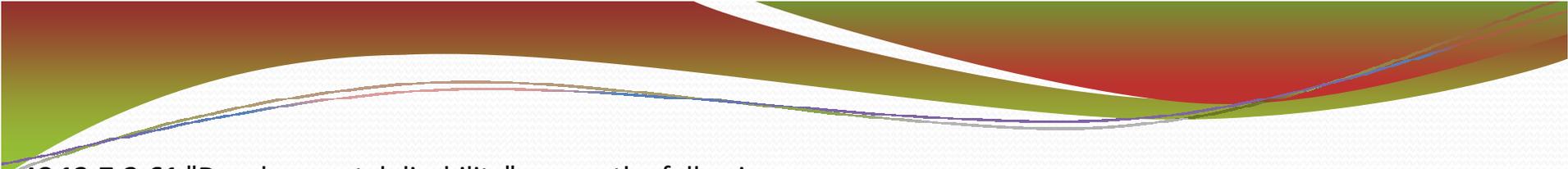
(A) to manage in whole or in part the individual's property;

(B) to provide self-care; or

(C) both;

because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

(3) has a developmental disability (as defined in IC 12-7-2-61)



IC 12-7-2-61 "Developmental disability" means the following:

(1) Except as provided in subdivision (2), before July 1, 1993, the term means a disability of an individual that:

(A) is attributable to:

(i) mental retardation, cerebral palsy, epilepsy, or autism;

(ii) any other condition found to be closely related to mental retardation, because this condition results in similar impairment of general intellectual functioning or adaptive behavior or requires similar treatment and services; or

(iii) dyslexia resulting from a disability described in this subdivision;

(B) originates before the person is eighteen (18) years of age;

(C) has continued or is expected to continue indefinitely; and

(D) constitutes a substantial disability to the individual's ability to function normally in society.

(2) For purposes of IC 12-10-7 and IC 12-28-1 before July 1, 1993, and for purposes of IC 12 after June 30, 1993, the term means a severe, chronic disability of an individual that:

(A) is attributable to a mental or physical impairment, or a combination of mental and physical impairments (other than a sole diagnosis of mental illness);

(B) is manifested before the individual is twenty-two (22) years of age;

(C) is likely to continue indefinitely;

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; and

(E) results in substantial limitations in at least three (3) of the following:

(i) Self-care.

(ii) Receptive and expressive language.

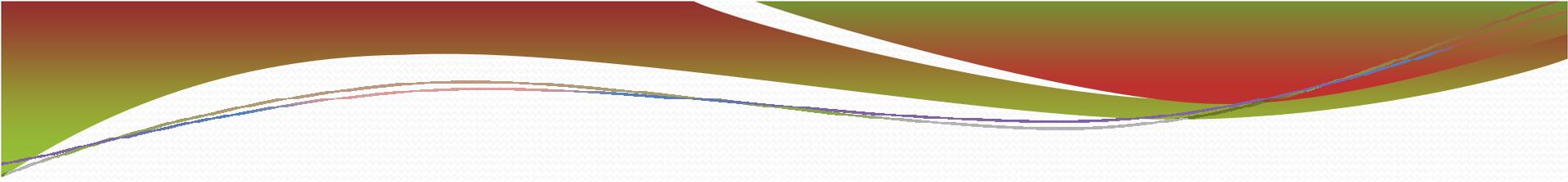
(iii) Learning.

(iv) Mobility.

(v) Self-direction.

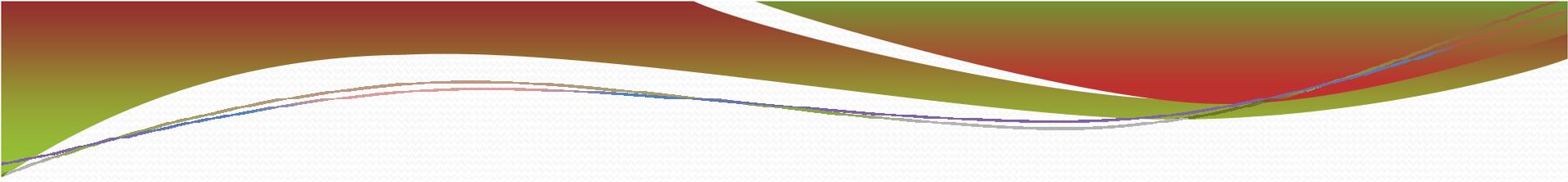
(vi) Capacity for independent living.

(vii) Economic self-sufficiency.



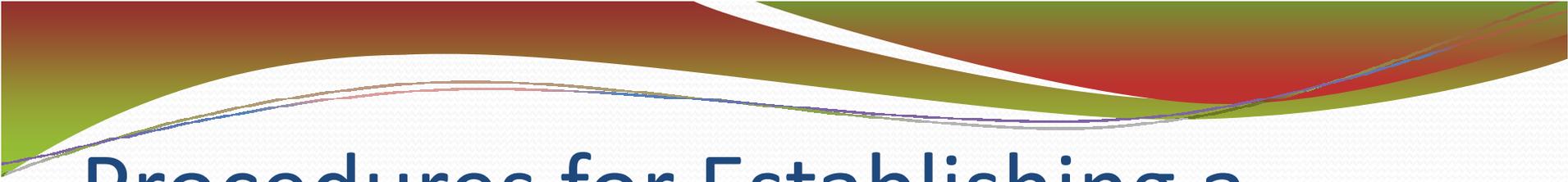
Types of Guardianship

- Temporary Guardianship is one that by statute lasts for 90 days
- Emergency Guardianship is based upon showing of immediate or irreparable harm or injury
- Limited Guardianship which grants certain limited and enumerated powers to the guardian
- Plenary Guardianship grants unlimited powers over person and/or estate
- Guardianship over person
- Guardianship over estate (*Conservator*)



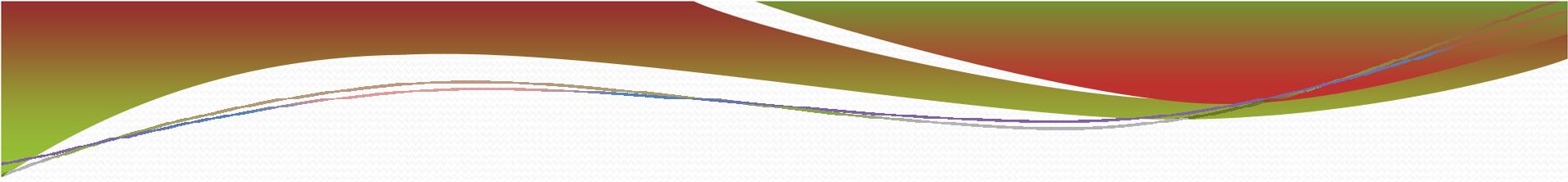
Who Can Be a Guardian?

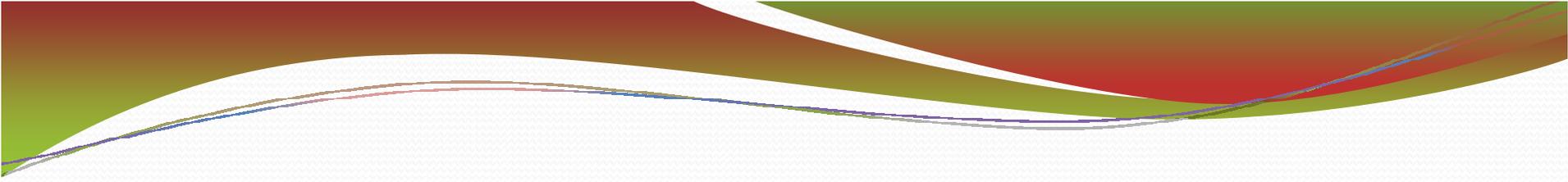
- Almost any capable adult can serve as guardian.
- A corporation or government agency can be a guardian.
- A non-resident person or corporation can serve as guardian if it is in the best interest of the person under guardianship.
- Statutory order of “persons” who may be appointed:
IC 29-3-5-5.



Procedures for Establishing a Guardianship

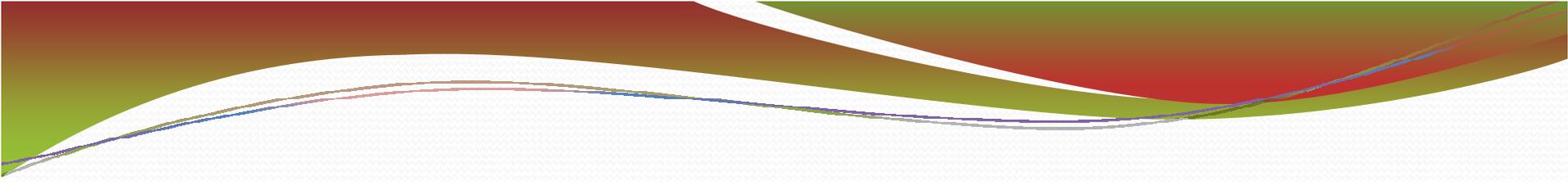
- Statutory authority: IC 29-3, et. seq.
- Any interested person may file a petition for appointment of a guardian.
- Upon filing of petition, both a notice of rights and of hearing on the petition must be issued to the following persons:

- 
- The alleged incapacitated person
 - Their spouse and adult children
 - The attorney in fact under any POA
 - Any person already serving as guardian
 - Person who has care and custody of the person
 - In some cases, parents or other blood relative



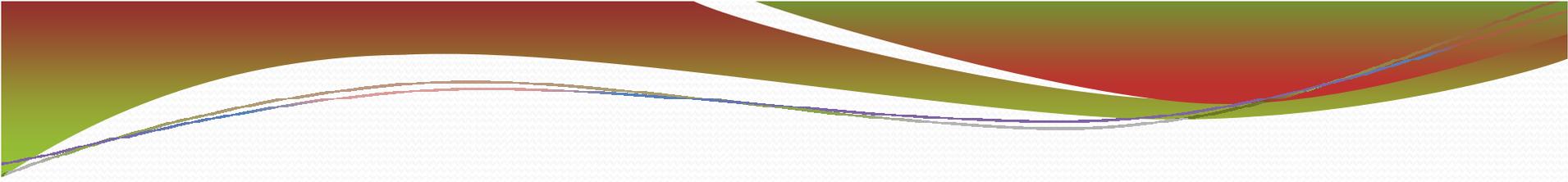
Notice Requirements

- Notice must state that the proceeding may substantially affect the person's rights.
- Notice should also explain the person's rights, including right to attend hearing and be represented by an attorney or a court-appointed GAL.
- Notice should be in conformity with statutory requirements.



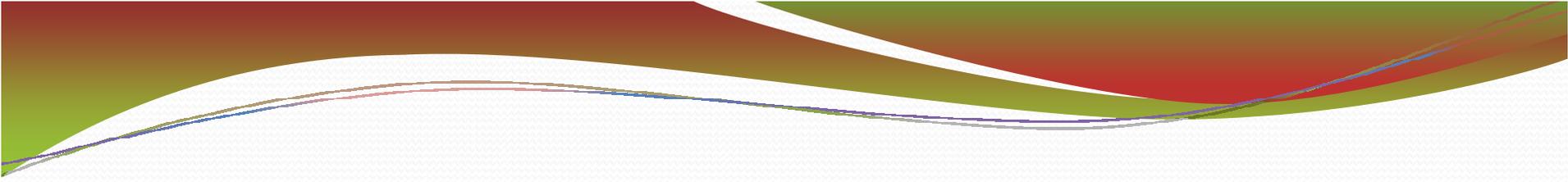
Hearing on Guardianship Petition

- Alleged incapacitated person must be present unless determined that their health and safety would be at risk.
- Knowing or voluntary consent to guardianship or waiver of notice negates requirement to be present (an absurdity in the law?)
- Hearing provides opportunity for parties to present evidence, cross examine witnesses and argue as to why guardianship should/should not be established.



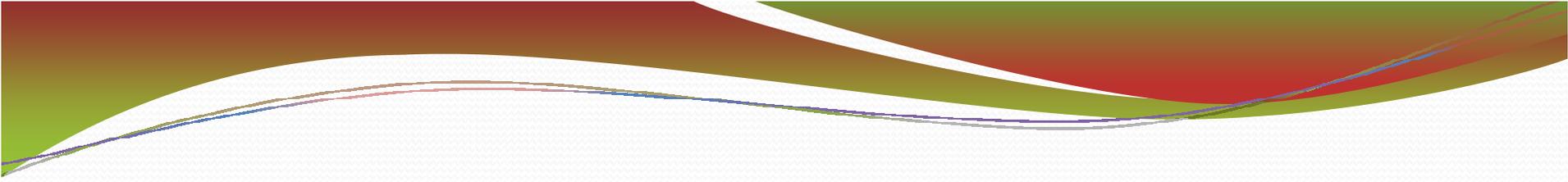
Evidence at Hearing

- Physician's Report or statement of capacity or incapacity is critical evidence to determine whether a guardianship should or should not be established.
- Evidence presented must not only determine need for guardianship but who the guardian(s) should be.
- Statute lists order of priority of persons court may consider for appointment as guardian.
- Guardian must be able to prove capacity to carry out duties, i.e. age, criminal record, experience as guardian, current knowledge of incapacitated person's abilities and situation.

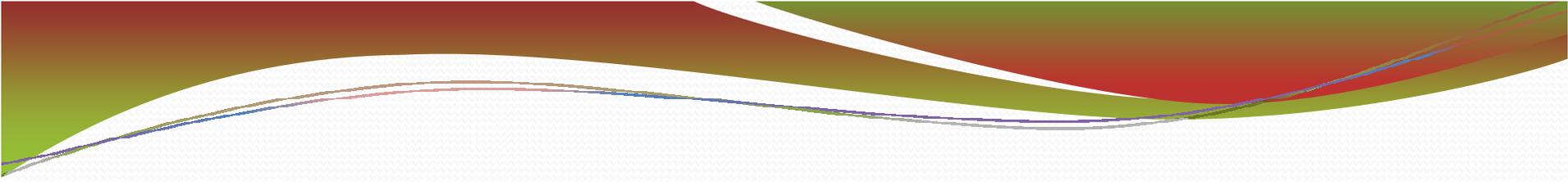


Guardian's Duties

- Once appointed a guardian has certain statutory and court required duties depending on the type of guardianship established
- Inventories, accountings by the guardian of the estate and status reports by the guardian of person are required by statute
- Upon death of incapacitated person, guardian must take action to close the guardianship of the estate case , including a final accounting



Indiana Adult Guardianship State Task Force



Mission

To improve the quality and provision of adult guardianship services in Indiana.

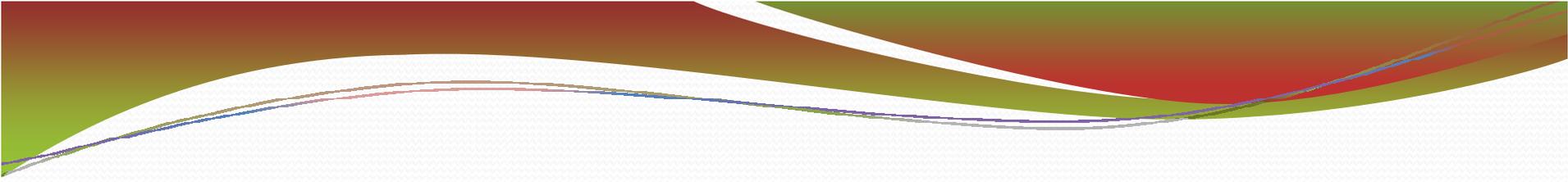
Chairman

Jim Leich
Leading Age Indiana



Task Force Membership

- More than 65 members
- Six State Agencies – Aging, Health, Disability, Mental Health, Protection and Advocacy, Corrections
- Public and private sector organizations and associations – AARP, Indiana Bar Association, Alzheimer’s Association, Indiana Judges Association, Indiana Guardianship Association
- Service Providers
- Hospitals
- Judges and attorneys
- Volunteer guardian programs
- Professional, volunteer and family guardians
- Advocates and other professionals and volunteers with an interest in adult guardianship.

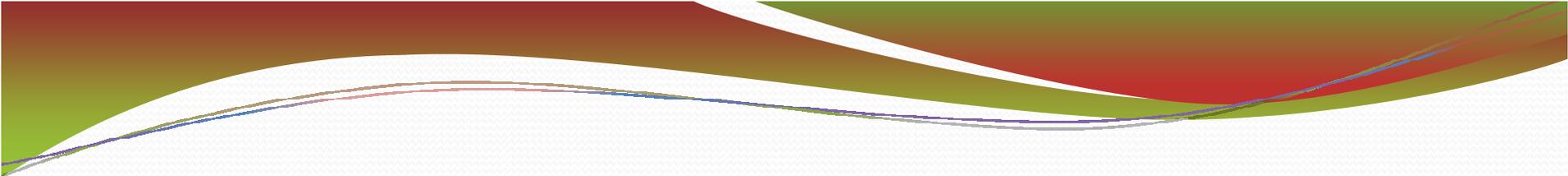


Task Force Time Line

2003 The Sisters of St. Francis – Saint Margaret Mercy Hospital in Hammond/Dyer, Indiana started the Volunteer Advocates for Seniors model volunteer advocate program in partnership with the Lake Superior Court

2004 Volunteer Advocate for Seniors Program legislation passed by General Assembly

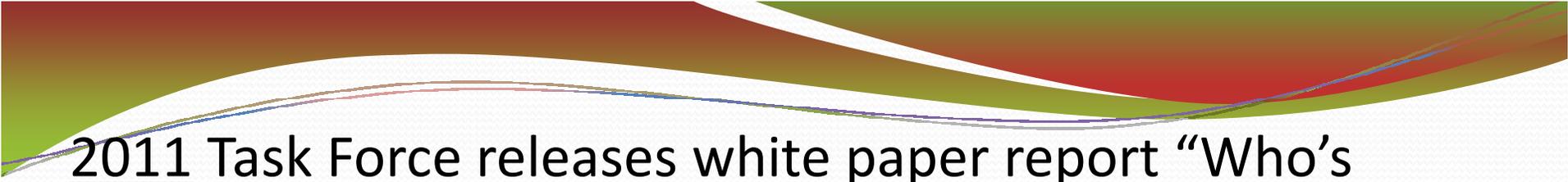
2006 Volunteer Advocates for Seniors & Incapacitated Adults passed by Indiana General Assembly



2008 Indiana Adult Guardianship Services Project (IAGS Project) and Indiana Adult Guardianship State Task Force (Task Force) were created by The Arc of Indiana with funding from the Indiana FSSA Division of Disability & Rehabilitation Services

2009 Funding for the IAGS Project and Task Force was eliminated in the budget reductions by the Governor. (Both continued without funding.)

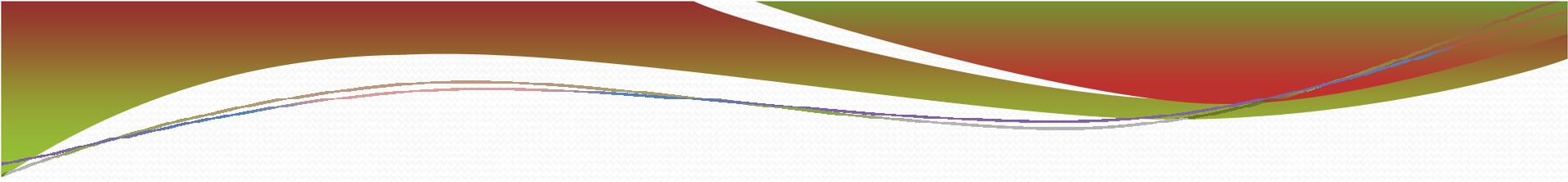
2010 The Task Force, in partnership with the Indiana State Bar Association, supported passage of the Uniform Adult Guardianship and Protective Proceeding Jurisdiction Act by the Indiana General Assembly.



2011 Task Force releases white paper report “Who’s Overseeing the Overseers? A Report on the State of Adult Guardianship in Indiana” with the results of a 3-year legal research project by Notre Dame Legal Aid Clinic and Six Recommendations for Action.

2013 The Task Force, in partnership with the Indiana Supreme Court and the Division of State Court Administration, supports the passage of budget funding for: (1) the volunteer advocate guardianship programs; (2) the creation of the Adult Guardianship Office; (3) the creation of the Indiana Adult Guardianship Registry.

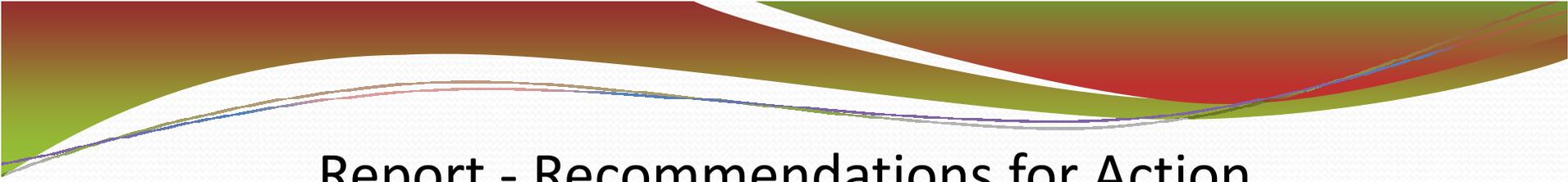
2014 Task Force recognized as one of six special projects of the National Guardianship Network – WINGS Initiative



“Who’s Overseeing the Overseers? A Report on the State of Adult Guardianship in Indiana”

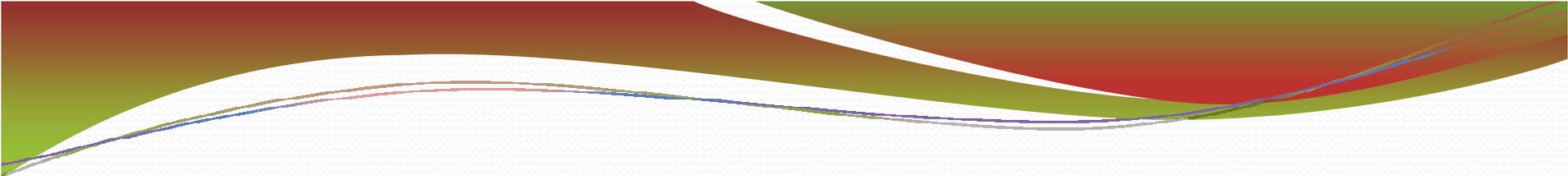
Indiana Adult Guardianship State Task Force

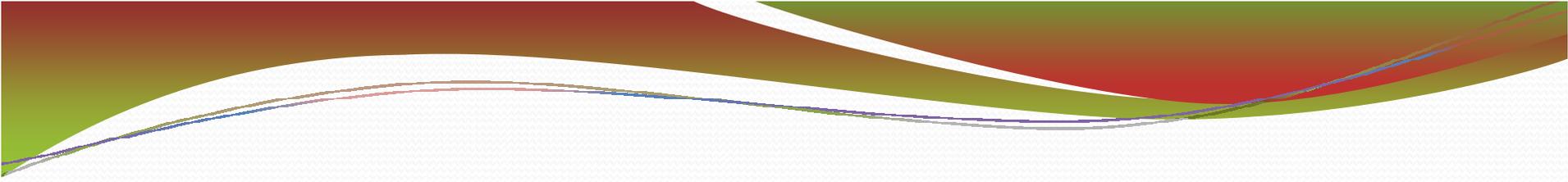
2011



Report - Recommendations for Action

- The Indiana Probate Code Study Commission should undertake a comprehensive review and revision of the adult guardianship statutes under I.C. 29 and I.C.12
- A state supported and funded Office of Adult Guardianship should be established as a department of the Indiana Supreme Court --- Division of State Court Administration
- A state supported and funded system of community-based volunteer guardian services should be created to serve the need for statewide guardianship services for incapacitated adults without the means or support of suitable family

- 
- A state supported and funded mandatory system of guardian education, certification, and registry should be created for all attorney, professional, and non-family guardians appointed by the courts
 - A state supported and funded adult guardianship registry should be created to collect data and issue reports on all adult guardianship cases and guardians appointed by the courts



Guardianship Resources

- **INTERNATIONAL RESOURCES:**

- --International Guardianship Network:

- <http://www.international-guardianship.com/>

- **NATIONAL RESOURCES:**

- --NATIONAL GUARDIANSHIP ASSOCIATION (NGA):

- <http://www.guardianship.org/>

- --CENTER FOR GUARDIANSHIP CERTIFICATION (CGC):

- <http://www.guardianshipcert.org/>

- --National Academy of Elder Law Attorneys (NAELA):

- <http://www.naela.org/Default.aspx?>

- **INDIANA RESOURCES:**

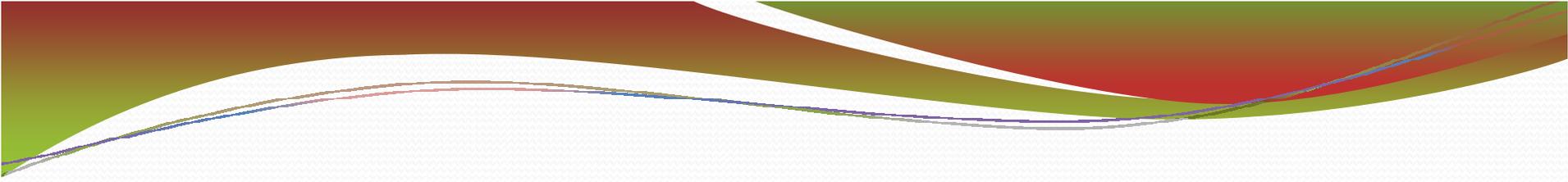
- --Indiana Chapter, National Academy of Elder Law Attorneys (Indiana NAELA):

- <http://www.innaela.com/>

- --Indiana State Guardianship Association (ISGA): <http://indianaguardian.org/>

- --Indiana Adult Guardianship State Task Force:

- iagsproject@yahoo.com



Questions

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Thank you!