



Public Guardianship Funding

*A Report in Accordance with the
General Appropriations Act
FY 2005 – 2006*

January 2006

Jeb Bush, Governor
Carole Green, Secretary

Introduction

Guardianship was created to ensure the protection and dignity of Florida's most vulnerable citizens. Although often confused with the Guardian Ad Litem program, guardianship is the process designed to protect and exercise the legal rights of individuals who lack capacity to make their own decisions and have not made plans to address this possibility.

A guardian may be an individual or corporation that is appointed by court order to manage some or all of the affairs of another. Prior to a guardianship being established, it must first be determined that a person lacks the capacity required to make decisions concerning their personal and/or financial matters and that no less restrictive alternative exists. Any adult may file, with the court, a petition to determine another person's incapacity. The court then appoints an examining committee consisting of three members. The court also appoints an attorney to represent the person alleged to be incapacitated. If the court finds the person to be incapable of exercising certain rights and no lesser restrictive alternative exists, the court will then appoint a guardian.

Public guardianship is for incapacitated persons who lack a willing and qualified family member or friend and who do not have adequate income or assets for the compensation of a private guardian. Public guardianship is for the most vulnerable; it is for those persons who are incapacitated and alone - it is a necessity. With the state's rapid growth and the growing number of retirees, more and more Floridians who may be indigent and have no family or friends will require the services of a public guardian.

Securing adequate funding for public guardianship has been increasingly challenging since the Article V, Revision 7 changes to the Florida Constitution and subsequent changes to Florida Statutes. Prior to July 2004, counties had the option of enacting a local ordinance that allowed for an add-on filing fee to civil court cases. This fee could not exceed \$15.00. With the shift of court funding to the state level, Chapter 2005-265, Laws of Florida, repealed this funding mechanism, for public guardianship. Since that time, permanent public guardianship funding has been a growing concern. Not only is there the need to ensure current public guardianship offices remain operational, but also the demand to expand levels of service to additional areas of Florida is becoming increasingly crucial. The Department of Elder Affairs' (DOEA) recent analysis of the need for public guardianship, *Public Guardianship: An Assessment of Need 2004* indicates that there are between 5,000-10,000 persons per year that need the services of a public guardian. This study only accounts for persons within the Department of Children & Families' Adult Protective Services program. This same study concluded that the average cost for a public guardian to serve a ward is \$2,363 per year. To meet the estimated need from adult protective services cases alone, it would take approximately \$24 million. It is important to note that, this figure does not include those countless persons that never enter the adult protective services program, i.e., those persons who may be physically secure in a nursing home or other type of facility, but are poor and do not have any family or friends to assist with decision making.

The General Appropriations Act (GAA) for fiscal year 2005 recognized public guardianship funding as an issue. The GAA directs DOEA to coordinate with local governments and the courts to explore options for public guardianship funding. This legislation also requires DOEA to submit this report to the Governor and the chairs of the Senate Ways and Means Committee and of the House Fiscal Council by January 31, 2006.

Local Governments

In an effort to comply with the requirement that DOEA consult with local governments to explore public guardianship funding, Secretary Carole Green sent requests to the Florida League of Cities¹ and the Florida Association of Counties (FAC). FAC met with DOEA and discussed the issue at length. FAC then took the issue to affiliate groups, the Florida Association of County Social Service Executives, the State Association of County Aging Executives as well as AARP Florida. FAC then reported back to DOEA the request that there be no additional unfunded mandates passed on to the counties.

Courts

In order to comply with the requirement of consulting with the courts, the Office of the State Court Administrator (OSCA) was contacted. The Office of the State Court Administrator expressed interest in working with DOEA on this project. OSCA has a history of working on guardianship issues. It was OSCA that oversaw the original three public guardianship pilot projects that began in the 1980s and continued until the creation of the Statewide Public Guardianship Office in 1999. In addition, OSCA was responsible for the administration of the Supreme Court Commission on Fairness Committee on Guardianship Monitoring.

A videoconference was scheduled and a list of interested judges was provided to DOEA. In order to facilitate interaction between DOEA and representatives of the court system, Secretary Green sent formal requests to each of the interested judges. The videoconference was conducted on November 20, 2005. Secretary Carole Green and Michelle Hollister, Executive Director of the Statewide Public Guardianship Office joined, State Court Administrator Lisa Goodner and OSCA personnel Debbie Howells and Brenda Johnson in the videoconference room of the Florida Supreme Court.

¹ This organization has not responded to DOEA's request or follow-up telephone calls.

Secretary Carole Green welcomed the participants, including:

2nd Judicial Circuit

Judge George Reynolds
Public Guardian, Karen Campbell, Esq.

5th Judicial Circuit*

Judge Patricia Thomas
Court Administrator David Trammel

6th Judicial Circuit*

General Magistrate Keela Samis
General Magistrate Cindy McCormick

10th Judicial Circuit**

Chief Judge Ronald Herring
Trial Court Administrator Nick Sudzina

11th Judicial Circuit

Judge Maria Korvick
Ande Madsen, Esq.

13th Judicial Circuit

Court Administrator Mike Bridenback
General Magistrate Sean Cadigan
Elder Justice Center Director, Marcia Larkin

15th Judicial Circuit

Judge Karen Martin
Judge Jeffrey Colbath

17th Judicial Circuit

Alexandra Reiman, Probate Attorney

20th Judicial Circuit

Chief Judge Hugh Hayes
Trial Court Administrator L. Caron Jeffreys
Public Guardian, Patrick Weber, Esq.

* The public guardian does not serve the entire circuit

** There is no public guardian serving this circuit

The court participants were asked a series of questions relating to the benefits of having a public guardian, the difficulty in finding guardians and public guardianship funding options. Attendees indicated they have seen a direct benefit to having a public guardianship program to serve this vulnerable population. In addition, many circuits that currently have a public guardian addressed the need for additional funding to alleviate waiting lists and adequately meet the demands of their communities. A participant from a circuit that does not have access to a public guardian indicated that, with the sizeable number of cases and lack of funding, they have to plead with attorneys that practice in guardianship law or probate law to handle the cases pro bono.

In response to the inquiry relating to finding guardians for particular populations, the participants indicated it is most difficult to find a guardian for anyone, regardless of diagnosis, if they are indigent. Further, the attendees added that they find it challenging to find guardians for persons with brain injuries, mental illness and the developmentally disabled. The reasons cited included that these persons tend to be younger and would require the services of a guardian for much longer than, for example, an elder with dementia. In addition, persons with mental illness tend to move around a lot without informing their guardian. The attendees stressed that constant relocating creates added challenges for the guardians as well as the courts.

The participants also addressed the various funding possibilities for public guardianship. The options discussed included state funding, county funding, add-on filing fees to traffic and misdemeanor fines and assessments on health care facilities. An attendee expressing

support for the concept of health care facilities providing funds, commented that not only would this option assist facilities in ensuring they are not cited for failure to have a surrogate decision maker in place, but more importantly this option would help ensure seniors' dignity is not adversely affected. Another attendee, addressing the matching grant program, raised the concern that six years may not be a significant amount of time to shift the entire cost to the county. In addition, the attendees raised new suggestions for funding. One participant recommended establishing a council similar to Palm Beach's children services council. Another participant recommended an add-on fee to the cost of driver's licenses. Many echoed support of this recommendation.

Summary of Funding Options (in alphabetical order)

Driver's License Fees

It was recommended to request legislation providing for an additional fee added to existing driver's license fees. According to the Florida Department of Highway Safety Motor Vehicles *Driver License Facts and Figures*² the number of total issuances for 2005-2006 is estimated to be 6,097,623. This number consists of original licenses, duplicate licenses, replacement licenses, renewals, and identification cards. An additional \$5.00 added to these fees may result in \$30,488,115.

Current Florida Driver's License Fees³

First Florida License (except commercial)	\$20.00
Class E Renewal	\$15.00
Restricted Class E (learner's)	\$20.00
Duplicate License	\$10.00
Stolen (police report filed)	No Fee
Replacement (you must turn in incorrect one)	\$10.00
Commercial (CDL)	\$50.00
Endorsements	\$ 5.00
Written Examination Re-Test Fee	\$5.00
Skill/Driving Examination Re-Test Fee	\$10.00
Late Fee	\$ 1.00
Driver Licenses Services at Tax Collector office Service Fee	\$ 5.25

² www.hsmv.state.fl.us/reports/facts_dl.html

³ <http://www.hsmv.state.fl.us/ddl/geninfo.html#6>

Felonies, Misdemeanors, and Criminal Traffic Offenses

Section 88 of Chapter 2004-265, Laws of Florida created Section 939.185, F.S., which allows a county commission to adopt an ordinance for an additional court cost not to exceed \$65. This cost may be imposed when a person pleads guilty or nolo contendere to, or is found guilty of, any felony, misdemeanor, or criminal traffic offense under the laws of this state. Any fees collected under this section must be allocated as follows:

- 25 percent for innovations to supplement state funding elements of the state court system;
- 25 percent for legal aid services;
- 25 percent for law libraries; and
- 25 percent for teen court, juvenile assessment centers, and other juvenile programs.

It has been suggested that Section 939.185(1)(a) 4, F.S., be amended to read, “Twenty-five percent of the amount collected shall be used as determined by the board of county commissioners to support public guardianship programs, teen court programs, juvenile assessment centers, and other juvenile alternative programs.”

This proposed change would allow counties to provide a revenue stream for their local public guardian offices if they so choose. In addition, these dollars could constitute local matching dollars under the Governor’s Joining Forces for Public Guardianship Matching Grant Program, which was approved in Chapter 2004-260, Laws of Florida but was not funded. It should be noted, according to the Department of Financial Services⁴, fiscal year 2005, third quarter report, the counties have had to supplement the revenue generated from this additional fee with \$7,587,301 of county funds to maintain the operations of the programs currently encompassed in this section of the statutes.

Filing Fees

Prior to Article V revisions, Section 28.241 of the Florida Statutes authorized a county to impose by local ordinance a fee of up to \$15 for each civil action filed for the establishment, maintenance or supplementation of a public guardian, law library or legal aid program. After Article V, Section 28.241, Florida Statutes, was amended to remove this language and in its place add that no additional fees or costs could be added except as authorized within or by general law. Since the removal of this language, law libraries and legal aid programs have acquired new statutory mechanisms to replace their loss in fees; public guardianship has not. It has been recommended that an add-on filing fee for public guardianship be reinstated.

⁴ Statewide Summary of s.939.185 / Assessment of Additional Court Costs FY 2005, 3rd Quarter.

Health Care Facilities Fund

A few different ideas have been suggested related to health care facilities. One idea was brought to DOEA from one of the county hospital districts. The district indicated their hospitals are encountering an increasing number of persons that can be medically discharged from the hospital but because they lack the necessary mental capacity and there is no guardian in place, the hospital is unable to discharge. This particular district has entered into a contract with a professional guardian to assist with these discharges but is concerned over the potential conflicts of interest as well as the increasing dollar amounts the professional guardian is requesting. It was suggested that a central fund be created for the hospital to contribute dollars that could then be disbursed to the public guardians by the Statewide Public Guardianship Office. In discussing this option with interested persons, it was further recommended that the proposal be expanded to health care facilities, as many facilities, particularly intermediate care facilities for the developmentally disabled, are receiving citations for not having a guardian in place for residents in need. For the year 2005, 30 intermediate care facilities out of a total of 105 were cited for not ensuring guardians were in place.⁵ It is unknown at this time what funds, if any, would be generated by this option.

Matching Grant Program

In 2004, Governor Bush recommended the Joining Forces Matching Grant Program. This matching grant program would provide startup funding to encourage communities to develop and administer locally funded and supported public guardianship programs to address the needs of poor and incapacitated persons. Matching funds would decrease by various percentages each year so that after six years the programs should be completely funded by sources other than the state. Public guardians have expressed concerns related to the matching grant program. The primary concern is: if a county is not able to fund 100 percent of a public guardian in year one, they may not be able to fund 100 percent by year six. When you add this to the fact that when a guardian is appointed on a case, their appointment does not terminate because they have lost their funding, the public guardians could face a situation where they must serve clients but do not have any funding.

Pooled Special Needs Trust

It should be noted that at the time of compiling this report, the direct support organization of the Statewide Public Guardianship Office was in discussions with a pooled special needs trust organization. The direct support organization anticipates entering into a contract that would establish such a trust for the benefit of public guardianship. At this time, although there are no projections on potential revenue, the trust is not expected to raise significant funds in the near future.

Traffic Infractions and Misdemeanors

Legislation from the 2005 session has been re-filed for the 2006 legislative session in the form of Senate Bill 380 and House Bill 457. This legislation would authorize section 318.18, F.S., which imposes a \$15 surcharge on non-criminal traffic infractions and criminal violations to fund a county's public guardianship program. The surcharge must

⁵ Agency for Health Care Administration, Bureau of Long Term Care Services

be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. A county that already has an ordinance providing for a \$15 surcharge for state court facilitates may be prohibited from enacting an ordinance to fund a public guardian without proper legislative authority as included in the bills filed. This legislation also creates Section 938.065, Florida Statutes, which imposes an \$18 surcharge to all misdemeanors. Of the monies collected, \$15 of the \$18 would be used to fund public guardianship programs and the clerk of courts as a service fee would collect the remaining \$3. (See Senate Bill 380 /House Bill 457.)

Conclusion

Public guardianship is the provision of services to the sick, needy and disabled that are also poor and alone. Public guardianship provides surrogate decision making for those Floridians that are most in need, the incapacitated, indigent, and those without family or friends to assist them. Article V severely diminished the funding of this vital program. The Department of Elder Affairs, in accordance with the proviso language set forth in the FY 2005-2006 GAA, explored many possibilities for public guardianship funding. It is hoped this report will provide the Florida Legislature guidance in determining the best way to ensure Florida's most vulnerable are treated with dignity and have access to the services of a public guardian.