

2008

Protecting Children

A Study of the Nature and Management of
Guardianship of Minor Cases in
Massachusetts Probate and Family Court

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Children's Law Center of Massachusetts
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**CHILDREN'S LAW CENTER
OF MASSACHUSETTS**

August 2008

This report is presented to the Chief Justice of the Probate and Family Court Department, Hon. Paula M. Carey and the Members of the Probate and Family Court Guardianship of Minor Study Committee: Hon. Susan Ricci, Hon. Anne Geoffrion, Beth Crawford, Mike King, Ilene Mitchell, Monica Murphy, Jodie Nolan, and Robin Stolk. The research was made possible by a Child Abuse and Neglect federal grant allocated to the Supreme Judicial Court through an application to the Department of Health and Human Services.

Acknowledgements

The Children’s Law Center of Massachusetts [CLCM] wishes to express its appreciation to Chief Justice Paula M. Carey for her ongoing support of this study of guardianship of minor cases in the Massachusetts Probate and Family Court. We gratefully acknowledge the time and support received from court personnel in Essex, Hampden, and Worcester Counties, especially Judge Susan Ricci, Judge Anne Geoffrion, and Judge Mary Ann Sahagian, and to Ilene Mitchell, Case Manager of the Administrative Office of Probate and Family Court. We are grateful to Boston College law student, Jason Langberg, and to students in the Child Development, Urban Policy, and Public Health Departments at Tufts University for participating in the research and writing of this report: Ellen Aiken, Ali Dallaire, Aimee Ellingwood, Ashley Everette, Alexis Marion, Siobhan O’Riordan, Julia Rosen, Nicole Smith, and Linda Tirella. Thanks to Elisabeth Pimental of the Children’s Law Center, who helped interview the Spanish speaking petitioners. Thanks also to the Massachusetts Department of Social Services Research Department, headed by Rosalind Walker, for providing aggregate DSS data for this study and to John Cross, Nan Elder, Jerome McManus and Victoria Rothbaum for their wise counsel.

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EXECUTIVE SUMMARY

In Massachusetts, the number of children in the legal custody of guardians has increased by 38% in the past ten years. Because of this striking trend, the Administrative Office of the Probate and Family Court asked the Children's Law Center to conduct a study of the nature and management of guardianship of minor cases.

The purpose of the study was to gather and analyze data about the families and children involved in guardianship of minor cases as well as provide information to the Court about case management practices. The study also addressed additional questions formulated by the Probate and Family Court Guardianship of Minors Study Committee (Committee) concerning outcomes for children after issuance of guardianship decrees and the involvement of DSS with the children and families subject to those decrees.

Three representative counties were chosen for inclusion in the study: Essex, Hampden, and Worcester. A total of 401 cases were randomly selected from the guardianship of minor cases filed in the counties, 99 cases from 1997 and 302 from 2006. Case characteristics and timeline data was collected, analyzed and compared across the ten year time span. Interviews also were conducted with court personnel and petitioners regarding case characteristics and court processes. In addition, DSS provided aggregate data regarding the number of study participants who were involved with DSS prior and subsequent to the filing of the guardianship petitions.

Of the many findings resulting from the study, the most noteworthy were as follows:

- 69% of the children in the study were also involved with the Department of Social Services;
- The most frequently cited reasons for requesting guardianship of a child was parental drug abuse and abandonment;
- Only 25% of petitions included parental assent to the change in custody from both parents;
- Less than 5% of parents and less than 25% of petitioners were represented by counsel during the proceedings;
- From 1997 to 2006, the percent of petitioners who listed school enrollment requirements as the reason for filing the petition increased from 11% to 18%;

- From 1997 to 2006, the mean number of days between the filing of a petition and the issuance of a temporary or permanent decree declined dramatically; and
- More than 50% of the phone numbers and addresses listed for petitioners in the court files were no longer accurate.

National studies conclude that children are safer and more secure when placed with relatives than in foster homes unknown to them. In fact, the majority of petitioners in the Probate and Family Court are family, but the high rate of inaccurate contact information in the court files and the large number of children who end up back in DSS care raises concerns about the stability and suitability of these placements.

As a result of the study, the principal investigators, with the support of the Committee, formulated recommendations to improve the management and oversight of guardianship of minor cases that they believe will lead to increased safety and permanency for children subject to guardianships in Probate and Family Court. Many of the recommendations can be promptly implemented through the Administrative Office of the Probate and Family Court. Others will require statutory or procedural changes in order to be implanted. Accordingly, we have proposed convening a task force to consider such changes.

The recommendations are as follows:

RECOMMENDATIONS

A. Standardize court forms and procedures throughout the state including:

1. Simplify language used in court forms to reflect a sixth grade literacy level;
2. Publish instructions in a variety of languages including, but not limited to, Spanish, Khmer, Vietnamese, Russian, Portuguese etc.;
3. Require petitioners to provide photo identification such as driver's license or passport at time of filing petition;
4. Require petitioners to provide child's birth certificate or similar identification prior to granting permanent guardianship;
5. Require CORI and DSS checks (with party's permission) on petitioner and all persons age 14 and older living in the household;
6. Require notarization of parental "assent" signatures;
7. Require petitioners to state facts on which to base a decree of guardianship;
8. Provide a packet of information to petitioners that includes:
 - information on waiver of expenses for publication at time of filing;
 - a "flowchart" for petitioners that describes the activities/steps, with locations within each courthouse, necessary to complete the filing process;

- a chart that provides information on how to qualify and obtain services a child may need such as child support, Mass Health, day care, mental health services and special education.
9. Develop a protocol with DSS to inform petitioners referred by DSS of the difference in services and support available for the child through a Probate and Family Court guardianship as opposed to a DSS custody and placement through foster care.
 10. At time of filing, provide petitioner with a summons (which would replace the citation) that provides a specific date, time and place of next hearing;
 11. Once an interpreter is requested, provide interpreter at all hearings without requiring a new request for each hearing;
 12. Implement a uniform system of filing petitions under the name of the child so that subsequent petitions for guardianship of that child are located in the same file; and
 13. Share information between Juvenile and Probate and Family Courts.
 14. Direct Department of Revenue to provide information on the child and parents prior to the hearing on the petition for guardianship.
 15. Develop protocol so that DOR sends any child support check to the guardian instead of the parent.

B. Establish a Task Force to consider the following statutory amendments:

1. Separation of guardianship of the person of the minor from guardianship of the estate;
2. Create a temporary guardianship that would not require an allegation of unfitness for parents in the military who must leave the state/country or for use by parents who must move out of state but leave the child in the state to complete the school year;
3. Approve a caregiver affidavit that provides authority for the non-parent caregiver to enroll a child in school and/or obtain health care services for the child without filing for guardianship in Probate and Family Court.
4. Create a statutory provision that requires court permission for the guardian to move out of state with the ward.

C. Establish a Task Force to consider whether to recommend the following:

1. Requiring a home study prior to granting permanent guardianship and consider whether it should be done by DSS, Probation Office, a GAL or other.
2. Requiring annual verification of child's physical location and educational status until child reaches age of majority.
3. Access/right to counsel for parents facing a finding of unfitness;
4. Access/right to counsel for petitioners seeking to adopt Child;
5. Access/right to counsel or GAL for the child.
6. Opportunity for child to appear in court during guardianship proceeding;
7. Subsidizing guardianships for children/petitioners referred to Probate and Family Court by DSS;

8. Implementing a Kinship Navigator Services pilot program to assist non-parental caretakers to navigate family and child-serving agencies that will potentially reduce the likelihood of further, more costly, foster care intervention;
9. Clarification as to the relationship, if any, between unfitness and assented petitions.
10. Creation of capacity within an agency such as the Probation Department or DSS, to supervise services needed by children, parents or guardians such as supervised visitation, substance abuse treatment, early intervention services, and day or after school care.

INTRODUCTION

The Probate and Family Court has jurisdiction over family matters such as divorce, custody, paternity, and guardianships of minors when parents are unable to care for their children. Relatives or other interested adults may petition the Court for guardianship as an alternative to placement of these children in foster care through the Department of Social Services (DSS). For each guardianship of minor (GM) petition, the Probate and Family Court must determine the grounds for the guardianship and the appropriateness of the guardian to care for the child.

In Massachusetts, the number of children in the legal custody of guardians has increased dramatically. In the past ten years, there has been a 38% increase in the number of cases filed. Because of this striking trend, the Administrative Office of the Probate and Family Court asked the Children's Law Center to conduct a study of the nature and management of guardianship of minor cases.

The purpose of the study was to gather and analyze data about the families and children involved in guardianship of minor cases as well as provide information to the Court about case management practices. The study also addressed additional questions formulated by the Probate and Family Court Guardianship of Minors Study Committee (Committee) concerning outcomes for children after issuance of guardianship decrees and the involvement of DSS with the children and families subject to the decrees.

As a result of the study, the principal investigators, with the support of the Committee, formulated recommendations to improve the management and oversight of guardianship of minor cases that they believe will lead to increased safety and permanency for children subject to guardianships in Probate and Family Court.

METHODOLOGY

This study began in June 2007 with a meeting between the principal investigators and the Committee. They selected three study sites, Essex, Hampden, and Worcester Counties, and identified the particular individuals to be interviewed or to participate in focus groups. From July 2007 through April 2008, the principal investigators collected quantitative and qualitative data for each county from a variety of sources including court observations, interviews with court personnel, focus groups with stakeholders, case file reviews, and interviews with petitioners. In May 2008, DSS provided aggregate data regarding the number of study participants who were involved with DSS prior and subsequent to the filing of the guardianship petitions.

Case Files

- The three counties selected for inclusion in the study are large urban centers that experienced substantial increases in guardianship of minor cases over the previous ten years.

The study cohort consisted of 401 cases: 99 cases from 1997; 302 cases from 2006. The case files were randomly selected from the guardianship of minor cases filed in each county during the subject years. Information from the court files was entered into a data entry form designed and tested for recorder reliability by the principal investigators. Data included: demographic information about the petitioner and the ward; whether there was parental assent; whether the parties had legal representation; the reasons for filing the petition; and the time lines associated with the granting of a temporary or permanent decree. Data collected and analyzed from each county may be found in Appendix A.

Data collected from the three counties was combined for each year, and the data sets were compared to determine changes in case characteristics and court processes over the ten-year time span.

Court Practice

- Focus group meetings in each of the three counties were conducted in the fall of 2007. Participants included judges, attorneys, registers, judicial case managers, assistant judicial case managers, family law facilitators, and other court personnel as well as representatives from the Department of Social Services, the Probation Department, and advocacy organizations. The purpose of the meeting was to introduce the study to key stakeholders and review a court process checklist prepared by the principal investigators after conducting court observations in each county. Focus group participants reviewed the checklist that detailed the particular steps a petitioner must complete in order to obtain a probate guardianship in each county. Each focus group also discussed current case characteristics, case processes, and child outcomes as compared to those from ten years earlier.

A second round of focus groups was conducted in the spring of 2008. At each meeting, analysis of the county data was presented and recommendations for change in the court processes were discussed.

A general court process checklist is available in Appendix C.

Petitioner Interviews

- Letters were sent to the 401 petitioners, introducing the study and stating that they would be contacted by telephone to elicit their feedback about the GM process. Approximately 25% of the letters were returned undeliverable. Follow-up phone calls were attempted to the 401 petitioners using the phone number listed on the court forms. More than 50% of the phone numbers were disconnected. Ultimately, follow-up phone interviews were conducted with 113 petitioners, including 19 who filed their cases in 1997 and 94 who filed in 2006. In some cases, information provided by petitioners during the interviews completed gaps found in the court file, such as the reason for filing the petition or the location of the parents.

Guardianship of Minor Probate and Family Court Cases

	<u>1997</u>	<u>2006</u>
Cases filed in MA	3,477	4,747
Files reviewed	99	302
Interviews conducted	19	94

FINDINGS

1. During the ten year time span, GM petitions increased by 36% whereas Care and Protection filings increased by 14%

From 1997 to 2006, the number of guardianship petitions filed in Probate and Family Court increased by 36% in contrast to a 14% increase of care and protection petitions filed in the Juvenile, Probate and Family and District Courts.¹ Both actions remove custody from parents, often for similar reasons. While the care and protection petition asks that the child be placed in the custody of the Department of Social Services (DSS), the GM petition requests custody to be given to a petitioner, usually a grandparent or other relative. Children placed in the custody of the DSS can be placed in foster homes which can include the homes of relatives.

¹ Annual Reports on the State of the Massachusetts Court System, 1997-2006.

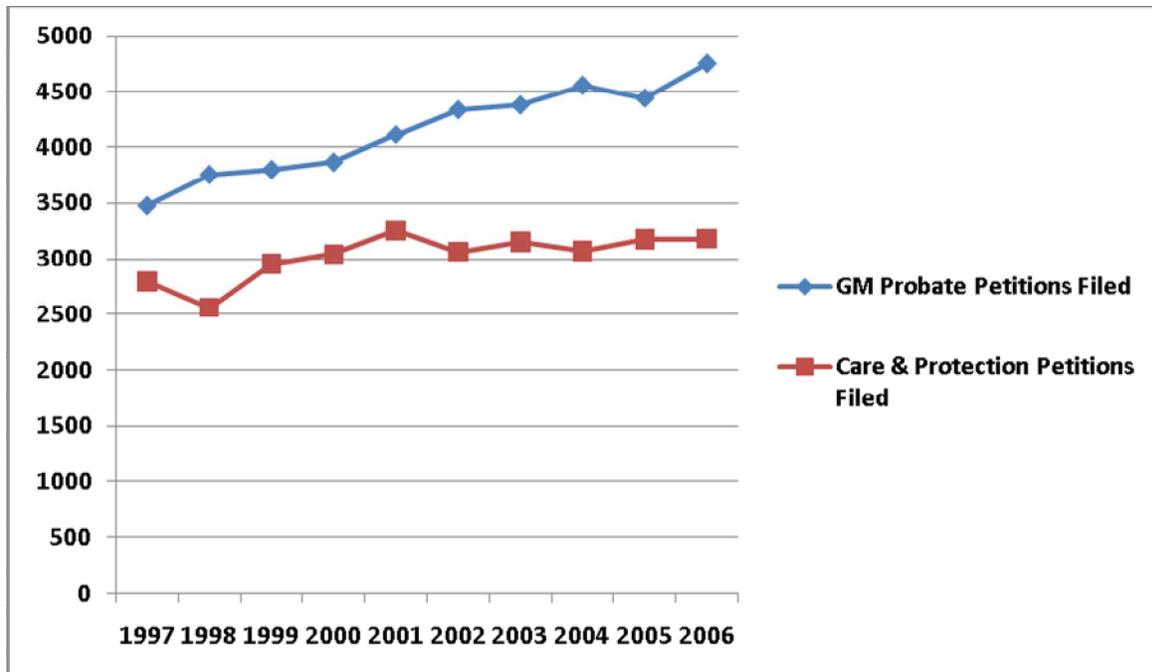


Figure 1: Comparison of Guardianship of Minor petitions and Care and Protection petitions filed

2. Many of the children, parents, and petitioners involved in the GM study also were involved with the Department of Social Services

The research team provided the Department of Social Services [hereinafter DSS] with identifying information for each child, parent, and petitioner included in the GM study.² The DSS was asked to determine whether the child, parent, or petitioner in each case in the study was involved with the DSS prior to or subsequent to the filing of the GM petition.

The DSS cautioned that it could only provide aggregate data because their case files are confidential. In addition, the information on the 1997 cohort from the GM study would be less complete than data on the 2006 sample since the DSS statewide information system came into use in 1998. Also, prior to 2000, child abuse reports that were screened out and not investigated were expunged from the database after one year. Consequently, the 2006 cohort includes screened-out intakes whereas the 1997 cohort is limited to intakes screened-in for investigation.³ See Appendix B for the DSS Aggregate Data.

² Identifying information was obtained from the Probate and Family Court files which are not confidential.

³ According to the DSS annual report, in 2006 DSS screened in 63% of all child abuse reports and supported 57% of the screened-in reports after DSS investigation.

Children

Of the 401 children in this study, 276 (69%) were found to be in the DSS database. Of these 217 (54%) were involved **prior** to the filing of the guardianship petition in the Probate and Family Court. 189 of the 276 children were the subject of “supported” reports of abuse and neglect under chapter 119, §§ 51A and 51B⁴ and 46 children had been placed in the custody of the DSS.

Of the 401 children in this study, 129 (32%) were found to be in the DSS database **after** the filing of the guardianship petition in the Probate and Family Court. 76 of the 129 children were the subject of “supported” reports of abuse and neglect and 51 children had been placed in the custody of the DSS.

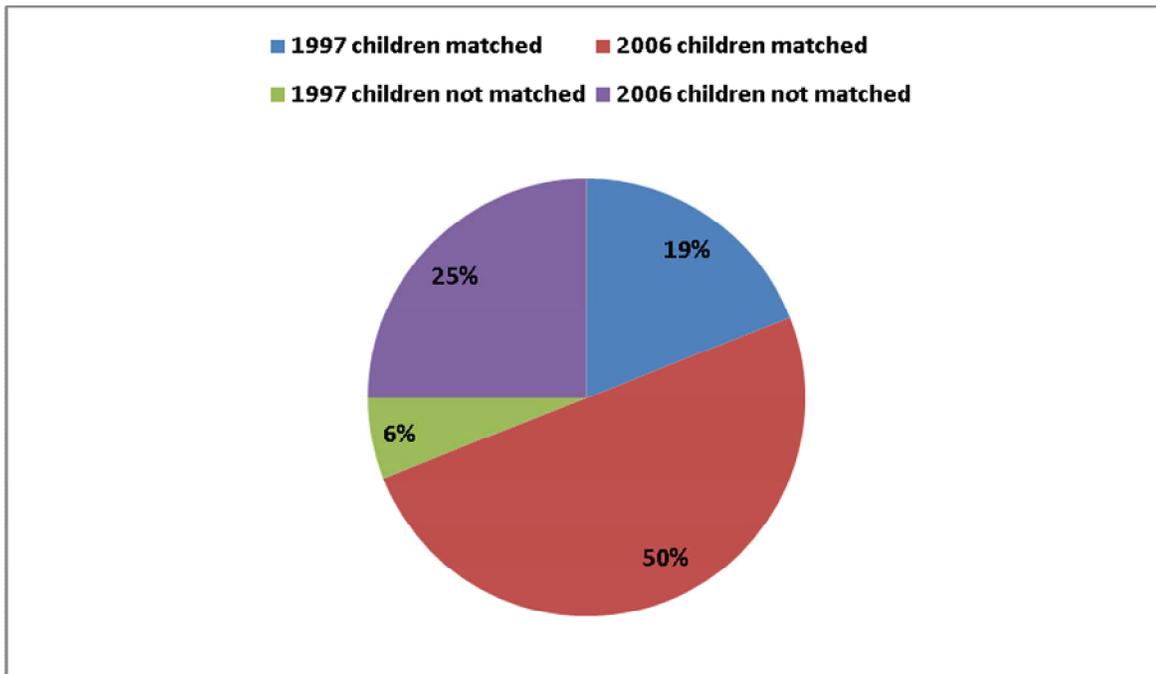


Figure 2: Children in study involved with DSS

⁴ G.L. c. 119 §51A defines child abuse and neglect and who is mandated to make child abuse reports. To “support” a report under §51B means that following an in-home investigation, the DSS has reasonable cause to believe that an incident of abuse or neglect by a caretaker did occur as recorded in its 51B written investigation report.

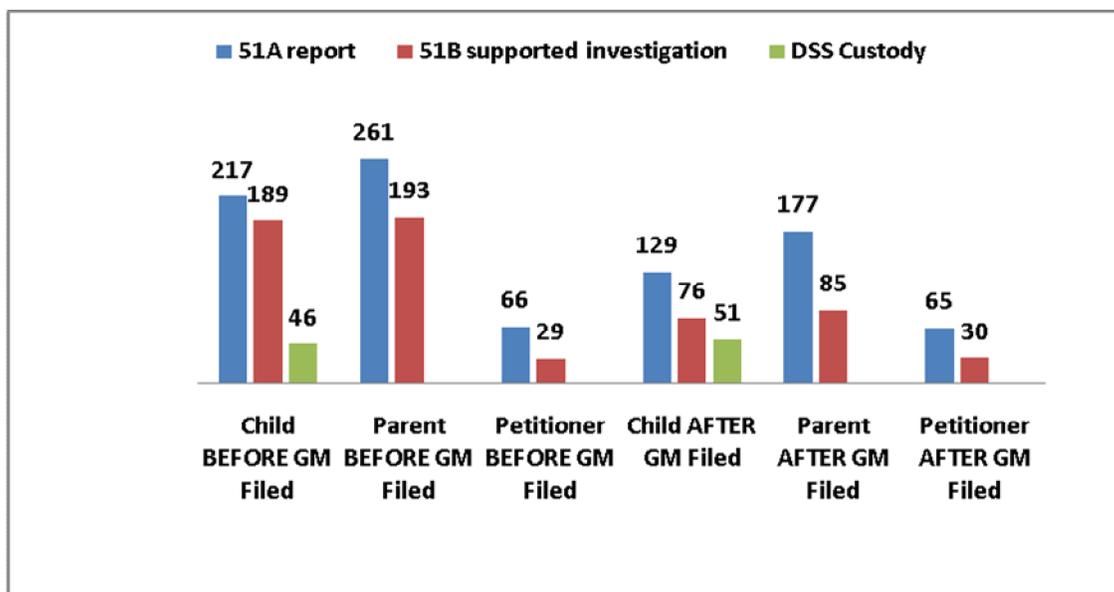


Figure 3: Time and type of DSS contact

Parents

Prior to the filing of the GM petition, 261 parents were found to be in the DSS database and, after investigation, 193 were reported as caretakers who were abusive or neglectful of their children. After the filing of the GM petition, 177 parents were found to be in the DSS database and, after investigation, 85 were reported as caretakers who were abusive or neglectful of their children.

Petitioners

Prior to the filing of the GM petition, 29 petitioners were found to be caretakers who were abusive or neglectful of their children. After the filing of the GM petition, 65 petitioners were found to be in the DSS data base and 30 petitioners were, after investigation, reported as caretakers who were abusive or neglectful of their children.⁵

3. In each year, infants comprise the largest age group subject to GM petitions

In each court file, the birth date of the child was recorded so we were able to calculate the age of the child at the time the petition was filed.⁶

⁵ This may be underreported given the DSS data collection system in place prior to 1998.

⁶ Because the race, gender, and socio-economic status of the child, as well as the biological family or potential guardian, were not recorded in the court file, it was impossible to compare these factors.

If GM petitions were equally distributed across the age range from birth to seventeen, each year would comprise approximately 5.5% of the total filings. Yet this study found that petitions were not equally distributed by age. The largest number of petitions filed in 1997 and in 2006 involved infants.⁷ The 2006 data, however, reveals a large increase in the number of GM petitions filed for children entering elementary or high school.

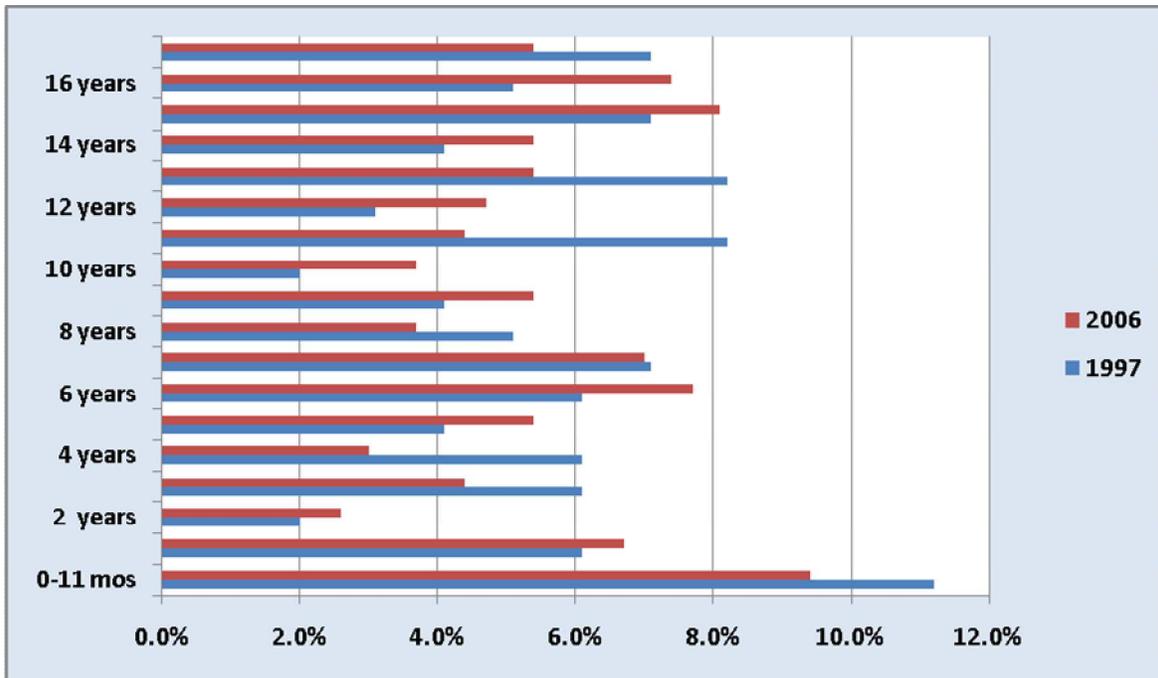


Figure 4: Child's age at time of filing GM petition

4. The majority of petitioners are grandparents

The majority of petitioners in both 1997 and 2006 were grandparents (53% in each year). Relatives were the next largest group, with other adults accounting for just over 10% of GM petitions filed in 1997 and less than 10% in 2006.

⁷ Infant is the age group more likely than any other to be maltreated according to data from the National Child Abuse and Neglect System as reported in Wulczyn, F., Barth, R.P., Yuan, Y.Y., Harden, B.J., Landsverk, J. (2005). *Beyond Common Sense*. Aldine Transaction. New Brunswick at 59, 171-172.

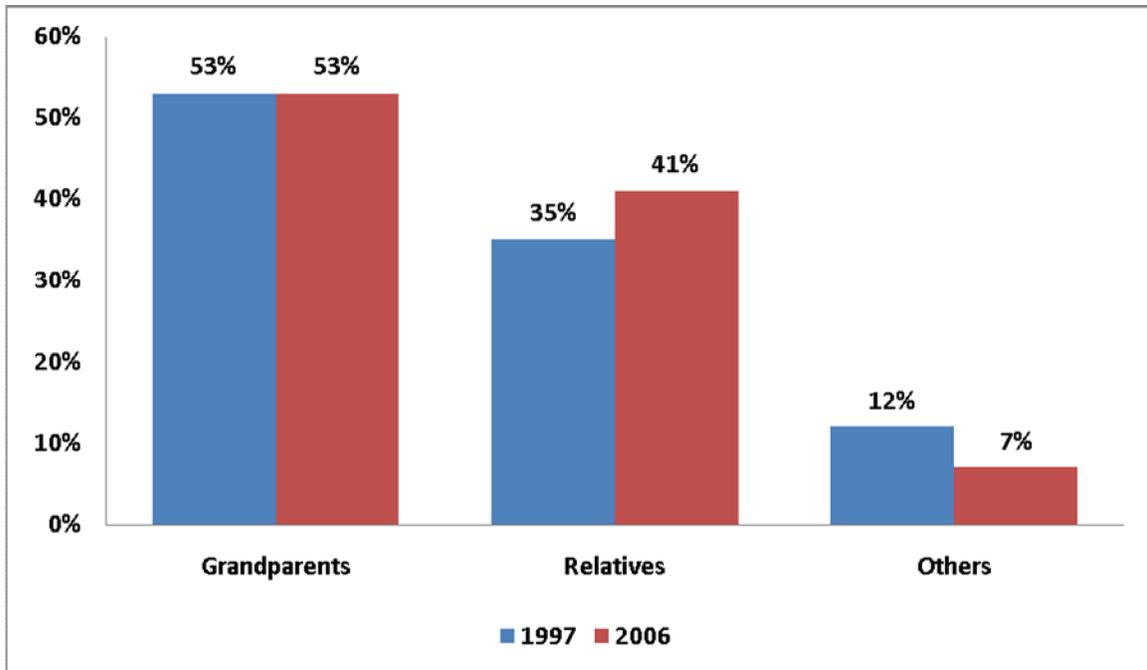


Figure 5: Petitioner's relationship to child

5. Representation by counsel is uncommon

The percentage of parties who were represented by legal counsel in GM cases was modest at best, and decreased overall from 1997 to 2006. Strikingly, the combined percentage of mothers and fathers who were represented by counsel was less than the percentage of petitioners who had counsel. Neither parents nor children have a right to appointed counsel in guardianship of minor cases in the Probate and Family Court. In contrast, in the Juvenile Court, indigent parents and children have the right to appointed counsel when allegations of abuse or neglect are raised that could result in a change in custody to the Department of Social Services.

The Probate and Family Court appointed guardians ad litem to represent the children in 5% of the 1997 cases and in 2% of the 2006 cases.

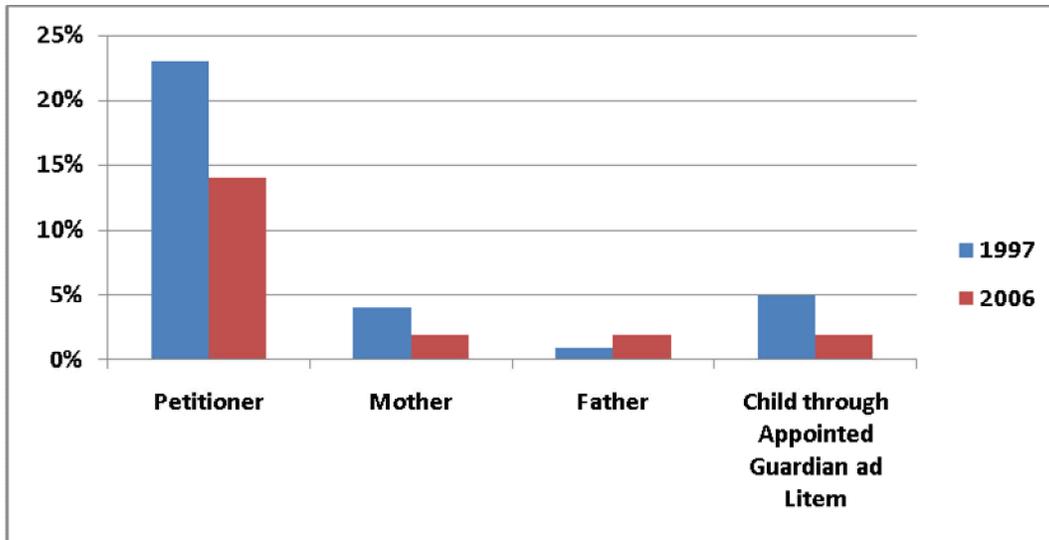


Figure 6: Represented by counsel or appointed guardian ad litem

6. Parental assent to guardianship is sporadic

In 1997, neither parent assented in 48% of the cases, one parent assented in 30% of the cases and both parents assented in 22% of the cases. In 2006, neither parent assented in 33% of the cases, one parent assented in 43% of the cases and both parents assented in 25% of the cases. This general lack of parental assent may reflect factors such as the inability to locate the parent(s) or a parent choosing not to participate.

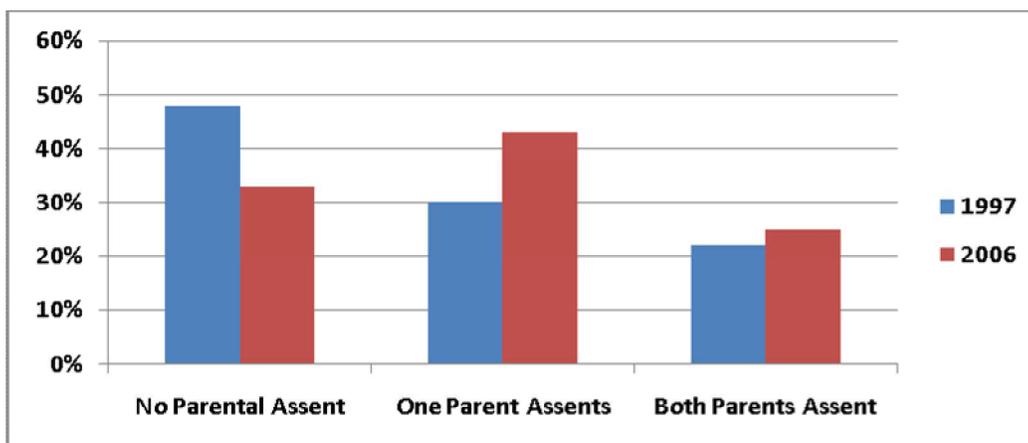


Figure 7: Assent of parents

7. The location of many parents is unknown

In most instances, court files contain one or more parental addresses, some given at time of filing, some recorded later during subsequent court action. Court file information was updated during the phone interviews with the 113 interviewees. Even after the telephone interviews, the identity of approximately 10% of the fathers remained unknown. The chart below illustrates the latest information regarding the location of the mother and father in the 401 cases studied. As indicated, the location of many parents is unknown.

Living parents who do not assent must be served notice of the hearing. It is more difficult to serve fathers than mothers because 38% have unknown addresses, compared to only 12% of mothers. The location category labeled “other” includes shelters, drug rehabilitation programs, and mental health facilities.

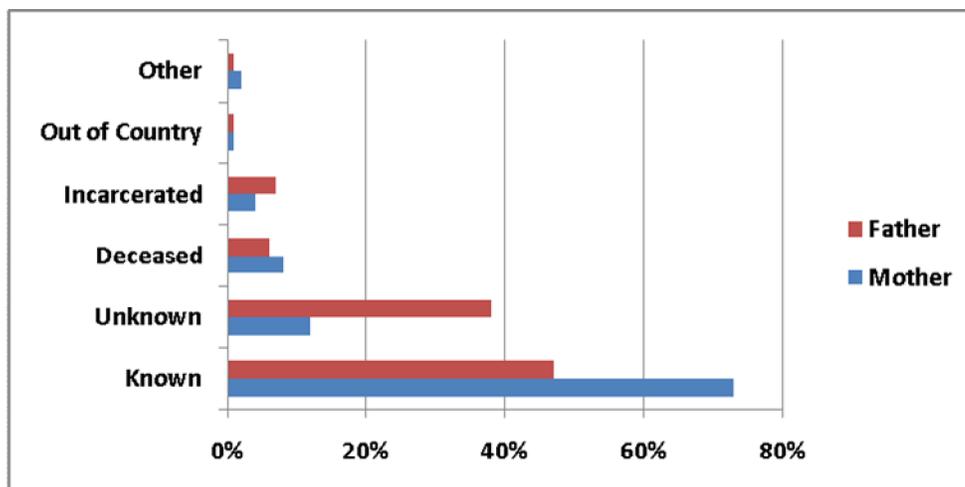


Figure 8: Location of parents

8. In 2006, permanent decrees declined while the number of petitions filed that did not result in any decree increased

In 2006, petitioners were more likely to obtain a temporary decree or no decree as compared to petitioners in 1997. According to focus group participants, the increased number of filed petitions that resulted in no decrees may be due to school enrollment practices. Some school systems require a GM docket number before enrolling a child who lives in the community with

someone other than a parent. Once the petition is filed to satisfy the school system, the petitioner does not return for further proceedings.

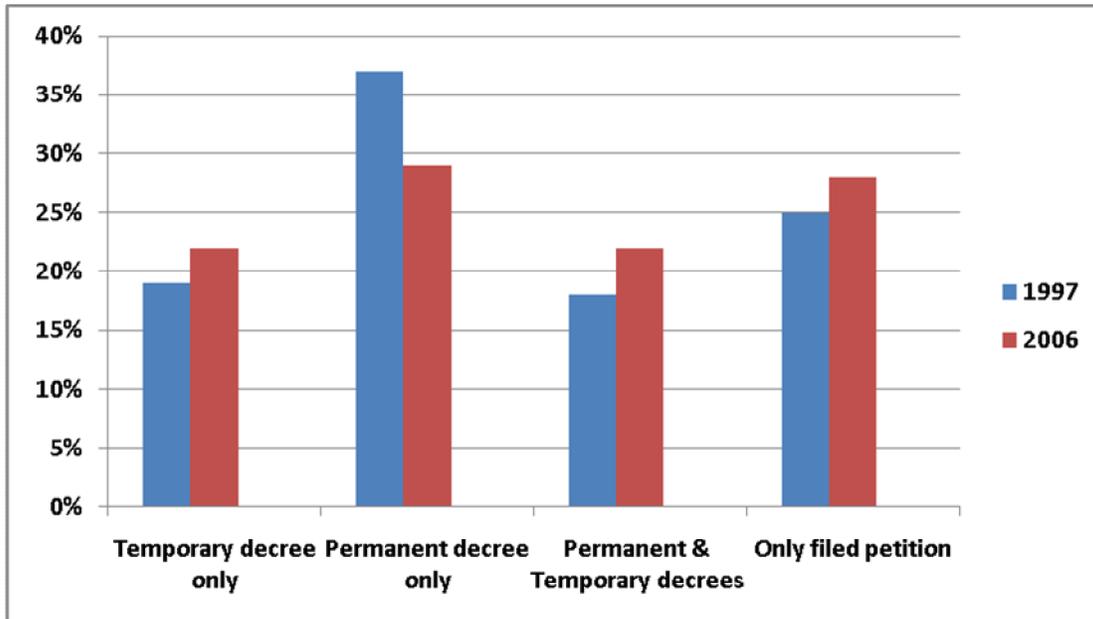


Figure 9: Court action after filing

9. From 1997 to 2006, the number of days between the filing of the petitions and the issuance of the decrees declined

From 1997 to 2006, the mean number of days between the filing of a petition and awarding a temporary decree decreased from 15 days to 7 days. The mean number of days between the filing of a petition and obtaining a permanent decree decreased from 140 to 99 days. The mean number of days between the filing of a temporary decree and obtaining a permanent decree decreased from 214 days to 145 days. While this trend was gratifying to focus group participants, they expressed the belief that the court process time frames could be reduced further.

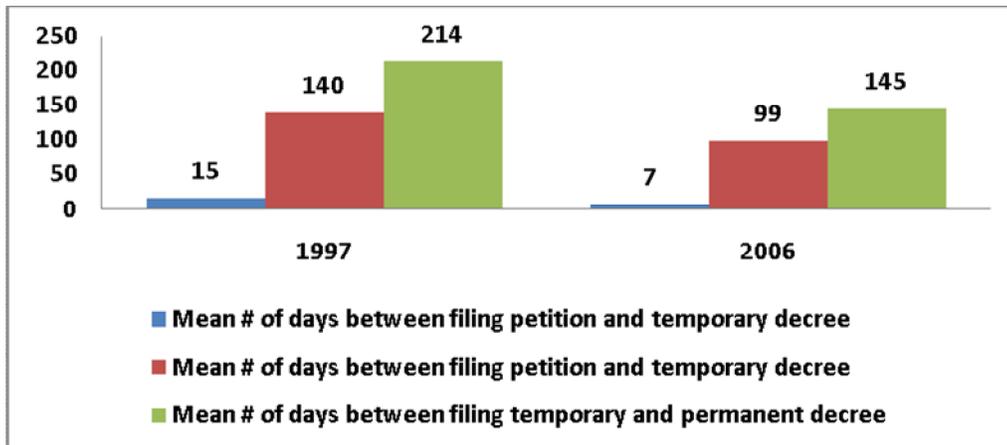


Figure 10: Mean time frames

10. The reasons cited in support of a GM petition often parallel allegations made in Care and Protection proceedings in the Juvenile Court

The petition for permanent guardianship does not require a written statement of facts in support of the request. However, some motions filed by petitioners requesting temporary guardianships state the reasons for the petitions. The most detailed statements of fact were found in the required affidavits accompanying an ex-parte request for guardianship.

To ascertain the reasons for filing beyond the information provided in court files, the research team asked the 113 interviewees why they filed the petitions. This information was added to the data set. Where the court documents lacked reasons for filing and where the petitioner could not be located for a follow-up interview, no reason could be determined and the cases were not used to calculate the percentages cited below. Conversely, in many cases petitioners cited more than one reason for filing the petition.

The reasons for filing GM petitions in Probate and Family Court are presented in two charts below. The first chart includes reasons such as parental drug abuse, mental instability, incarceration, domestic violence, homelessness, or abandonment, all of which are often grounds for Care and Protection proceedings in the Juvenile Court. In both 1997 and 2006, the

most prevalent reasons for requesting guardianship of a child was parental drug abuse (31%) and abandonment (23% and 25% respectively).

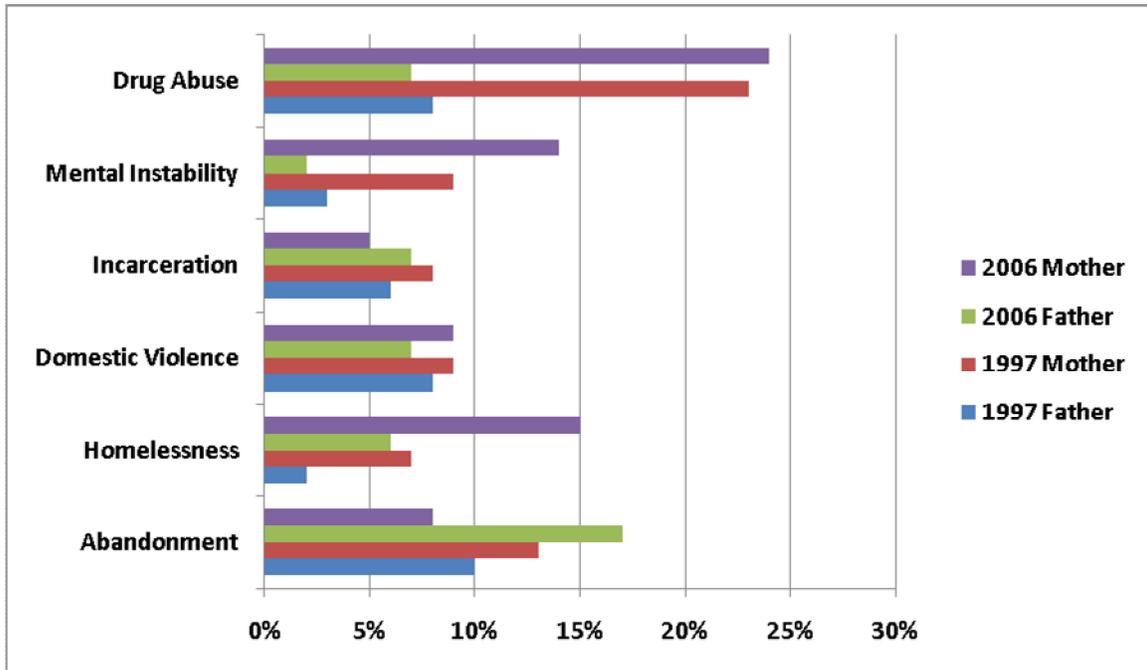


Figure 11: Reasons for petition I

11. From 1997 to 2006, there was an increase in the number of GM petitions that cited school enrollment and access to health care as the bases for the request

From 1997 to 2006, the percent of petitioners who cited school enrollment as the basis for the guardianship increased from 11% to 18%. The percent of petitioners citing lack of access to health care also increased from 5% to 9% during the same time period. The number of deceased parents also increased, but the incidence of petitions filed to obtain insurance benefits remained stable.⁸

⁸ Cases regarding estate issues only, involving the death of a parent or insurance benefits for the child, but not involving guardianship of the child, were excluded from this study.

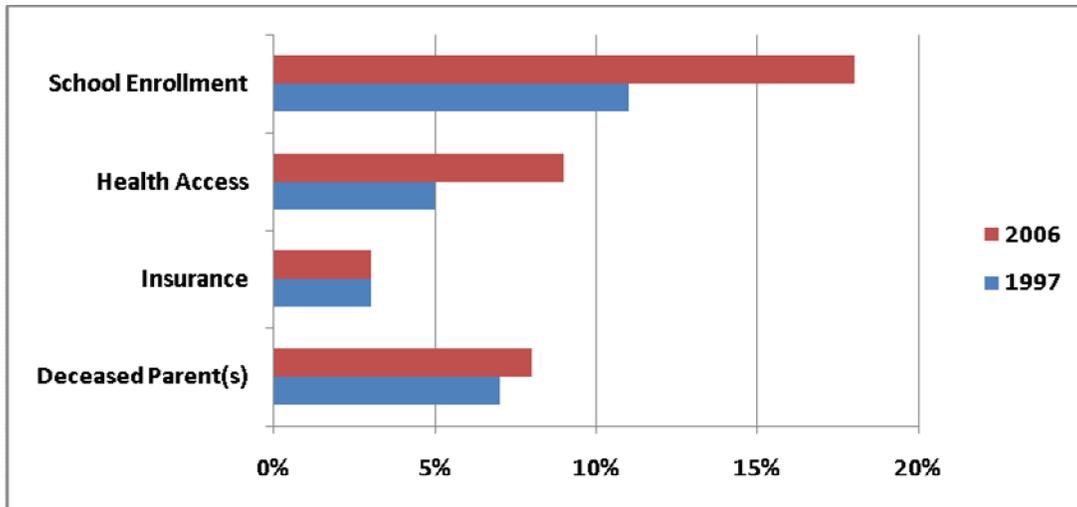


Figure 12: Reasons for petition II

12. Case files and interviews revealed that over 50% of the children in this study were also involved with the DSS

When a petitioner files for guardianship, most counties include a form that asks whether the child is involved with the DSS. If there is a positive response to this question, the Probation Department contacts the DSS before making recommendations to the Probate and Family Court regarding the suitability of the petitioner as a guardian for the child.

Information from court records and interviews with the 113 petitioners indicated that just over 50% of the children in this study were involved with the DSS when the GM petition was filed. Focus group participants consistently reported that many petitioners stated that the DSS sent them to Probate and Family Court to seek guardianship.

The practice of DSS referral to Probate and Family Court was noted in the Massachusetts Court Improvement Reassessment report to the Massachusetts Supreme Judicial Court which stated that, the “DSS itself frequently refers potential guardians (usually family members) to Probate and Family Court to prevent the agency from having to file a C & P [Care and Protection] case in Juvenile Court.”⁹ As discussed above, DSS aggregate data provided for this GM study, indicate that 69% of the children were involved with the DSS, but this higher figure includes DSS involvement at the time of and after the filing of the GM petition.

⁹ Gout, D., Monahan, K., Richards, T., St. Onge, A. (Feb. 2006). Massachusetts Court Improvement Program Reassessment prepared by Muskie School of Public Service, Portland ME at pp.43-44.

13. Interviews revealed that parental substance abuse and mental illness were prevalent in the majority of cases that also cited DSS involvement

Petitioners indicated in 75 of the 113 interviews (66%) that DSS was involved with the children. The chart below indicates that in more than half of the DSS involved cases, there was a history of parental drug abuse, mental illness, or both. In contrast, 75% of the cases that reported no DSS involvement had no reported history of parental substance abuse or mental instability. This comparison of DSS-involved and non DSS-involved cases suggests that cases referred to Probate and Family Court by DSS may involve more serious parental issues that may increase the child's need for services to ensure long-term healthy development.

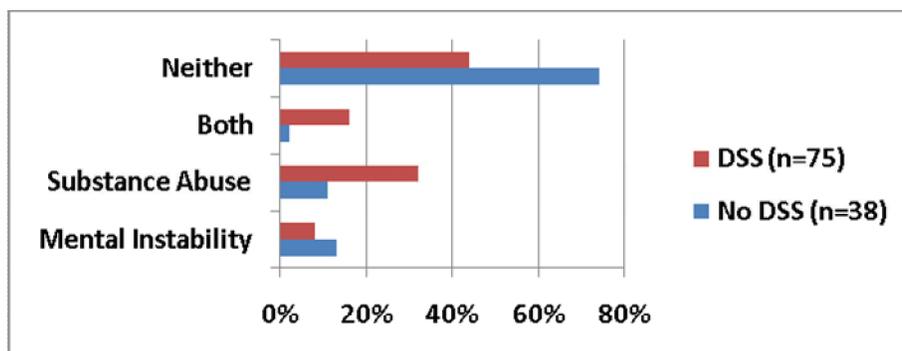


Figure 13: Parental substance abuse and mental stability in interviewed cases with and without DSS involvement

14. Interview data reveals relatively stable placement histories for the child subject to the GM petitions compared to children placed in DSS custody

Interviewees from the 1997 cohort reported that the average number of places the child lived subsequent to the filing of the GM petition was 2.1; for 2006 interviewees, the average number of places cited was 1.4. Among the 1997 interviewees, more than one placement included children who left the home for college or for independent living.

Although the number of placements is relatively low, the potential negative impact of instability must be considered. The relatively low number of placements actually may reflect the stability of the 113 interviewees. As previously mentioned, most petitioners could not be located for

follow-up interviews. Yet, even among the 113 interviewees, 7% of wards lived in three or more homes after the issuance of the GM petition. Accordingly, the numbers discussed above most likely underestimate the lack of stability for children in this study.

For the children in DSS custody **prior** to the filing date of the GM petition, the average number of placements while in DSS custody was 1.8. For children taken into DSS custody **after** the probate guardianship petition was filed, the average number of placements while in DSS custody increased to 5.1 for the 1997 cohort and to 2.8 for the 2006 cohort. Note again that significantly more time has elapsed in which placements could accrue for the 1997 cohort than for cases filed in 2006.¹⁰ The number of places the children lived who were involved in the interviews in the study is shown below for comparison.

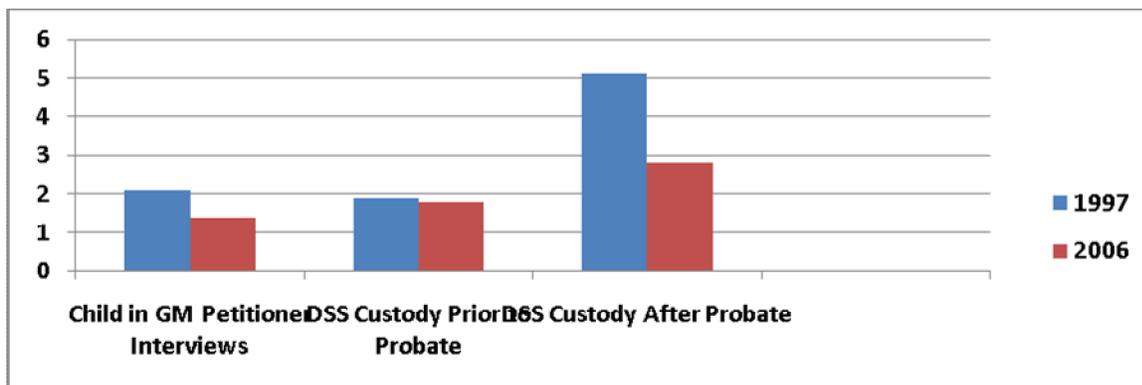


Figure 14: Number of placements

15. Interviews reveal that children who were not DSS involved were more likely to remain with their guardians

Petitioners reported that 63% of children who were not DSS involved were still living with their guardians as compared to 52% of DSS involved children. Children with DSS involvement were more likely to return to their biological parents (38% versus 24% for children who lacked DSS involvement).

¹⁰ Not every child in DSS custody was placed. This is the average number of placements for the children who were placed.

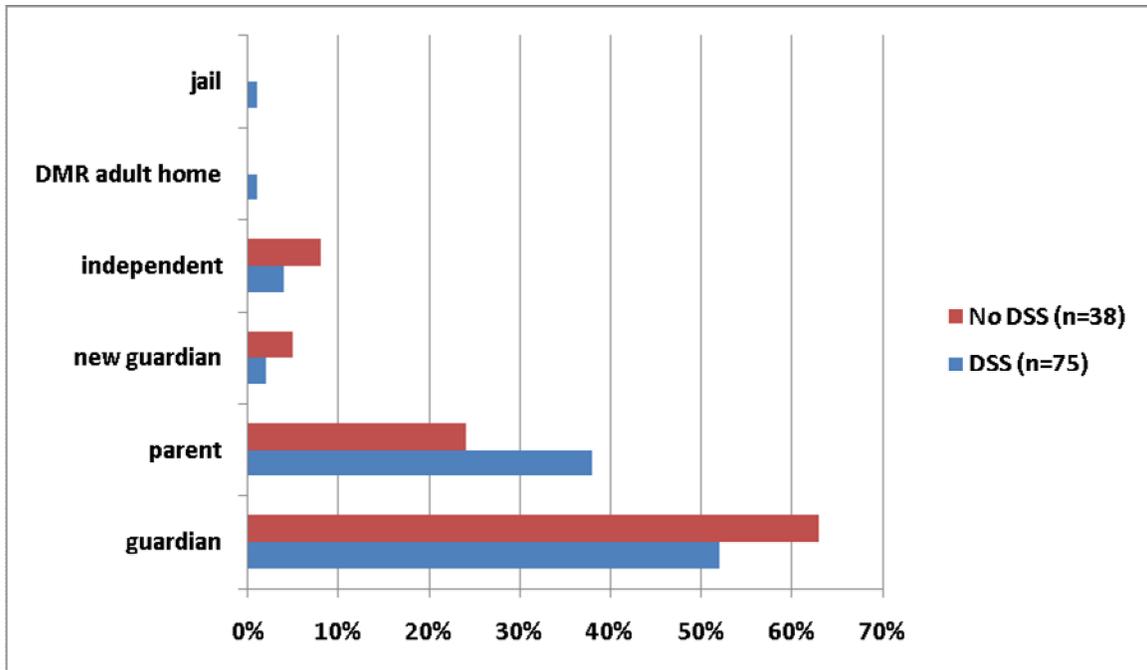


Figure 15: Current placement of children in petitioner interviews with and without DSS involvement

DISCUSSION AND RECOMMENDATIONS

1. Improve Outcomes for Children

As indicated by the study findings, many of the children and adults who are involved in the guardianship of minor proceedings have prior or subsequent involvement with the Department of Social Services. Yet the Probate and Family Court is not always aware of prior agency involvement and currently has no means to obtain information about the well-being or status of children after the issuance of the decrees.

In addition, petitioners often arrive in the Probate and Family Court seeking guardianship of a minor with the best of intentions only to discover after the issuance of the decree that the child requires services beyond their means. Parental substance abuse, mental illness, abandonment, domestic violence, homelessness and incarceration can take a toll on children. Of the forty interviewees who reported parental substance abuse as a reason for the petition, almost half indicated that the children needed additional services that exceeded their financial means. There also is an increased likelihood that parents who abused substances at the time of the filing of the GM petition were also abusing substances earlier. This raises the possibility of prenatal exposure to drugs and alcohol, with its

associated long-term negative effects on child development.¹¹ Early intervention programs, specialized child care, and access to services and support in the school system are critical for this population of high-risk infants and preschoolers. Yet many petitioners who were interviewed reported being surprised services the children had been receiving through DSS were terminated as soon as they obtained temporary guardianship in Probate and Family Court.

a. Provide information on supports and services for guardians and children

For petitioners referred to Probate and Family Court by DSS social workers, obtaining services for these vulnerable children outside the DSS system is challenging. Once the children are no longer involved with DSS, they may not qualify for fully paid child care slots, or other crucial state-supported services. DSS policy prefers placing children entering foster care with relatives, yet not one interviewee indicated that DSS had explained this preference to them.¹² Petitioners sent to Probate and Family Court by DSS social workers should have their options for support and services fully outlined before deciding which path to pursue to gain custody of a child.¹³ These findings suggest that the Probate and Family Court and the DSS should work together to develop a protocol that would facilitate timely communication, service delivery, and support for this at risk population.

In general, petitioners would have benefited from information about child-related services in their geographic area. Several states have introduced a new program called the Kinship Navigator Network. The goal of the program is to provide information and support, thereby reducing the likelihood of failed guardianships. Kinship navigator programs address the challenges that relative caregivers face when confronted with confusing child welfare and custody laws and ensure that agencies are aware of the specific needs of these families.¹⁴

In addition, several petitioners interviewed indicated a strong interest in adopting the children in their care, yet were unsure how to proceed with their limited funds. A national study revealed that almost half of all infants entering foster care are adopted.¹⁵ Had the infant been

¹¹ National Research Institute of Medicine (2000). *From Neurons to Neighborhoods*. Washington, DC: National Academy Press.

¹² See Appendix E for monthly support through DSS compared to monthly welfare benefits.

¹³ Connecticut has created a pilot project and hired a social worker to assist families seeking probate guardianship through a program provided at Probate Courts in order to avoid the huge costs of placing the children in foster care and to make sure the children receive the services and supports they need. See Poitras, C. (August 2, 2006) "State's Child Probate Courts Are Praised" in The Hartford Courant State and Regional News section.

¹⁴ Kinship Care Navigator Programs: an overview of existing programs and a look to the future (n.d.) from ABA Center on Child and the Law website: <http://www.abanet.org/child/navigator-program.pdf>.

¹⁵ Wulczyn et al *supra* note 7 at 171.

placed with the guardian through foster care instead of through Probate and Family Court guardianship, there would be an attorney to complete the adoption and a monthly adoption subsidy equal to monthly foster care payments that the new adoptive parent would receive until the child turned 18. None of the petitioners interviewed had adopted children in their care despite a keen desire to do so.

Recommendations¹⁶:

- *Provide information to petitioners on how to qualify and obtain services a child may need such as day care, mental health services and special education.*
- *Provide information from DSS on the difference in services and support available for infants and children through a Probate and Family Court guardianship as opposed to DSS custody and placement with petitioner in foster care.*

Convene a task force to consider whether to recommend:

- *Implementing a Kinship Navigator Service pilot program to assist non-parental caretakers to navigate family and child-serving agencies that will potentially reduce the likelihood of further, more costly, foster care intervention.*
- *Access/right to counsel for petitioners seeking to adopt the child*

b. Conduct home studies

Recent national studies conclude that children are safer and more secure when placed with relatives than in foster homes unknown to them.¹⁷ In fact, the majority of petitioners in the Probate and Family Court are family members, but the high rate of inaccurate contact information in the court files and the large number of children who end up back in DSS care raises concerns about the stability and suitability of these placements. Some courts in other states routinely require home studies prior to granting permanent decrees. For example, in Los

¹⁶ Many of the recommendations listed in this discussion section can be promptly implemented through the Administrative Office of the Probate and Family Court. Others will require statutory or procedural changes in order to be implemented. Accordingly, we have proposed convening a task force to consider such changes.

¹⁷ Testa, Mark (October 2004). Family Ties: Supporting Permanence for Children in Safe and Stable Foster Care with Relatives and Other Caregivers.

Angeles a court investigator completes the home study if the petitioner is a relative, but the Department of Children and Family Services completes the home study for non-related petitioners. In Connecticut home studies are completed by Department of Children and Families social workers.¹⁸

Implementing effective and efficient home studies for guardianships in Probate and Family Court will require careful planning, additional resources and training.¹⁹ Whether home studies, provision of services, and monitoring of children should be the responsibility of the DSS, Probation Office, a GAL or some other party, needs to be determined by a task force of key stakeholders.

c. Subsidize guardianships

A national study found that even though most grandparents caring for grandchildren are more likely to live in poverty, most do not receive the welfare benefits to which they are entitled.²⁰ The financial burden of caring for the child was an issue raised by many interviewees. In general, petitioners interviewed depended on welfare benefits, disability benefits, their own retirement benefits or current earnings to support the children. In one county studied, the subject of child support was routinely addressed, whether or not the petitioner raised the issue.²¹ In other counties, child support was not addressed since such matters are typically handled by the Department of Revenue (DOR) administratively.²²

The 2003 Connecticut Probate Court's study recommended that the state, "[s]trive for parity in services and finances for guardians who apply through Probate Court and through Juvenile Court."²³ Several states and the District of Columbia have introduced Preventive Subsidized

¹⁸ A 2003 Connecticut study of guardianships called attention to the problem courts experienced in receiving the mandatory home studies in a timely fashion and, to a lesser degree, indicated problems with the quality of the reports. See Casey Family Services (August 2003). *A Study of the State of Connecticut's Probate Courts and the Management of Children's Matters Involving Custody and Guardianship* at pp. 3, 14-15. Gout, et al. *supra* note 9 at p. 2 of Executive Summary.

¹⁹ The GAL standards recently developed in Probate and Family Court could serve as a model.

²⁰ Geen, Rob. 2003. *Kinship Care: Making the Most of a Valuable Source*. Washington DC: Urban Institute Press.

²¹ For a discussion by a Probate Court judge in Maine on the issue of child support, see Nadeau, Robert. M.A. *Maine's Probate Courts: The Other Family Law*. 18 Me B.J. 32 (2003).

²² Almost 25% of the parents in this study abandoned their children. The petitioner did not know the address of some of the mothers and even more of the fathers. DOR may have information that would help Probate and Family Court identify the parent whose name is unknown as well as provide a current address so that the parent could receive notice of pending court action. Cooperation with DOR could lead to increasing the number of child support payments made to petitioners.

²³ Casey Family Services (August 2003). *A Study of the State of Connecticut's Probate Courts and the Management of Children's Matters Involving Custody and Guardianship*. at 4.

Guardianships to give families the financial support needed to avoid foster care placement. Often using federal Temporary Assistance to Needy Families (TANF) funds, subsidized guardianships provide more than the minimal support available from public welfare benefits and sometimes are on par with the much larger foster care payments.²⁴

In 2004, the Worcester Telegram and Gazette published an article supporting a federal proposal for subsidized guardianships. The article estimated that 54,000 children, or nearly 3.4% of all children in Massachusetts, live in kinship care arrangements. The federal proposal would modify Title IV-E which is used for federal foster care funds, to allow kinship caregivers with probate guardianship to receive the same benefits as foster parents.

Recommendations:

- *Develop a protocol with DSS that ensures petitioners referred by DSS are informed of the difference between services and support available for the child through a Probate and Family Court guardianship as compared to placement in foster care through DSS custody.*
- *Provide information in a packet that includes how to qualify for and obtain child support, transitional assistance (welfare) and MassHealth.*
- *Direct Department of Revenue to provide information on the child and parents prior to the hearing on the petition for guardianship.*
- *Develop a protocol with DOR so that child support orders will result in checks going to the guardian instead of another parent.*

Convene a task force of key stakeholders to consider whether to recommend:

- *requiring a home study prior to granting permanent guardianships and, if required, designating the responsible party to complete the task.*
- *implementing a program of Preventive Subsidized Guardianships for children referred to Probate and Family Court by DSS that will provide more monthly support than transitional assistance provides.*

²⁴ See "Preventive" Subsidized Guardianship Programs: An Emerging Option for Permanent Kinship Care (Dec.2006). Cornerstone Consulting Group. Inc. Houston TX.

2. Standardize Court Practices

a. Standardize forms and filing procedures

The principal investigators observed court personnel and petitioners processing guardianship of minor matters from filing until final hearing. Sometimes the process was completed in one day without delay. Typically, however, the process required multiple court appearances. In most cases, when parents assented to the guardianship, hearings were held promptly and guardianships granted. When motions for temporary guardianship were filed, most counties had a one day process that resulted in a temporary order with notice given to the parents to appear at a review hearing if they opposed the order.

In most cases petitioners, appearing without counsel, required assistance from probate and judicial case managers, court clerks, and attorneys-of-the-day to complete forms and prepare for court hearings. Although the court processes for the GM petitions varied among the three counties, all three required filing many of the same forms. Some petitioners found the forms, which were written in “legalese” and often used antiquated terminology, difficult to understand and complete without assistance. In most counties, petitioners were required to complete approximately ten separate forms.²⁵ Petitioners whose primary language was not English were at a greater disadvantage when completing these forms. These petitioners also had delays in court hearings because interpreters were not always available. In one county, the file was marked with a red circle to remind court personnel to provide an interpreter for each hearing. In other counties, petitioners had to file a motion for an interpreter before each hearing.

Unfortunately, the physical layout of older courthouses also added to some petitioners’ frustration with the GM process. One county had a particularly confusing sequence of steps for the petitioner to fulfill at different rooms on different floors. Having children in tow made the process that much more onerous.

Counties varied in their response to the presence of children during GM proceedings. In some counties, children were sometimes permitted; in others, their presence was prohibited. Several interviewees indicated that teenagers were particularly interested in being present, and

²⁵ All petitioners were required to complete forms as if they were filing for guardianship of the estate when in fact, most of the children had no property at all; the petitioners just wanted a guardianship of the person. Forms containing words about being a “fiduciary” or requiring a “bond” were confusing for these petitioners. The court may take valuable court time to waive the bond. Court time and petitioner time could be saved by separating these types of guardianships so that forms required for the estate do not need to be completed for guardianship of the person only.

possibly being heard, during the GM proceeding. They wondered why the youths 14 and older were required to assent to the petition, but were not allowed in court.

Simplifying the language used in court forms, publishing forms in a variety of languages, and devising a “flowchart” for petitioners that describes the sequence of required steps to complete the filing process (including locations within each courthouse), would assist petitioners and reduce the amount of support and guidance required from court personnel.

Organization of court files also varied in the different counties. In some counties, siblings would share the same court file unless they had different mothers or fathers; then each child had a separate file. In one county, a new court record was opened whenever an adult filed for guardianship of a particular child. In another county, petitions were filed under the name of the child and all subsequent petitions concerning that child were located in the same file. This method reduced confusion at the hearings and ensured that relevant information from competing or subsequent petitions was available to the court.

Recommendations:

- *Simplify language used in court forms to reflect a sixth grade literacy level.*
- *Publish instructions in a variety of languages including, but not limited to Spanish, Khmer, Vietnamese, Russian, Portuguese, etc.*
- *Provide a packet of information to petitioners that includes a “flow chart” for petitioners that describes the activities/steps, with locations within each courthouse, necessary to complete the filing and hearing process.*
- *Once an interpreter is requested, provide an interpreter at subsequent hearings without requiring a new request for each hearing.*
- *Implement a uniform system of filing petitions under the name of the child so that subsequent petitions for guardianship of that child are located in the same file.*

Convene a task force to consider whether to recommend:

- *Opportunity for child to appear in court during guardianship proceeding*
- *Access/right to counsel or GAL for child subject to losing parental custody*
- *Separation of guardianship of the person of the minor from guardianship of the estate*

b. Standardize identity verification procedures

The three counties differed in basic procedures concerning the verification of child and petitioner identities and background checks. One county requires petitioners to provide photo identification such as a driver's license at the time of filing the petition and the child's birth certificate which may also provide the names of the parents for court records.

In one county, a probation officer meets with the petitioner prior to doing a criminal offender record information (CORI) check and writing a recommendation for the court hearing. In other counties probation does not interview the petitioner but does do a CORI check using the name and social security number provided by the petitioner at the time of filing the petition. If the petitioner indicates that the child is involved with DSS and gives permission for a DSS inquiry, probation also calls DSS to check on the child abuse or neglect history of the child or others in the home before writing recommendations for the court hearings.

Most of the petitioners in this study could not be located through the addresses and phone numbers provided in the probate court forms, raising concerns about the accuracy of the provided information and the current whereabouts of the child.

Recommendations:

- *Require petitioners to provide photo identification such as driver's license or passport at time of filing petition.*
- *Require petitioners to provide child's birth certificate or similar identification prior to granting permanent guardianship.*
- *Require a CORI and DSS child abuse report on petitioner and all persons age 14 or older living in the household of the proposed guardian.*
- *Develop protocol for sharing of information between Juvenile and Probate and Family Court*
- *Require annual verification of child's physical location and educational status until child reaches age of majority*

Convene a task force to consider whether to recommend:

- A statutory provision that requires court permission for the guardian to move out of state with the child

c. Require notarized parents' signatures

Parents may indicate their agreement to the guardianship petition by signing the petition form. A child age 14 or older may nominate a guardian, but the child's signature *must* be notarized; the parent's assent is *not* notarized. Focus group participants expressed concern that these signatures easily could be forged and parents could lose custody of their children without being aware of the hearing. Requiring a notarized parent signature would reduce the likelihood of fraudulent signatures and would ensure that parents were indeed aware of the purpose of the petition.

Recommendation:

- Require parental assent signatures to be notarized.

d. Simplify the notice process

Petitioners must give notice of a hearing to each parent who does not assent to the Petition for guardianship. Currently in the Probate and Family Court, the notice requirement is satisfied through the issuance of citations. Interviewees reported that this was the most confusing part of the court process. Instead of receiving an exact date for the court hearing, petitioners were given a citation to serve on the parents that gives a date by which a parent or interested party may object to the petition. The process was so confusing that some petitioners returned to court multiple times over a period of months for the citation to be reissued before completing service on the parents and having a hearing.

If a parent's address is unknown, notice must be published. Publication of notice entails a fee, but petitioners can receive a waiver of this fee if they qualify and fill out the correct form. Unfortunately, this form and information about the fee waiver are not contained in the packet of information court clerks routinely distribute to each petitioner. In fact, most petitioners were not given information about waiver of publication costs unless they knew to ask. For some petitioners, the cost of publication was well beyond their limited budgets. One interviewee recalled delaying her hearing until she could save enough from her food money to cover the cost of publication.

Each petitioner should receive a brief description as to when publication may be necessary, where they can go to get notice published, and how to apply for the fee waiver.

Recommendations:

- *At time of filing, provide petitioner with a summons (which would replace the citation) that provides a specific date, time and place of next hearing.*
- *In packet of information given to petitioner at filing, provide information on waiver of expenses for publication.*

e. Clarify findings of unfitness

Frequently, individuals involved in guardianship cases do not understand the implications of the judicial change in custody. By statute and case law, a change in custody is premised on parental unfitness. In some cases, parents assenting to the guardianship were not unfit, but temporarily unavailable because of illness or deployment to the military. Focus group participants reported that parents who assent to the guardianship for unavailability reasons were bewildered when they returned to court months later to resume custody of their child only to find they must now go to court for another hearing where their unfitness is an issue.²⁶ Focus group participants discussed the possibility of creating a temporary guardianship that would not require a finding of unfitness for parents in the military or for those who temporarily left their child in Massachusetts to complete the school year while they pursued employment elsewhere.

Recommendation:

- *Require petitioners to state facts on which to determine the need for a guardianship.*

Convene a task force to consider whether to recommend:

- *Creation of a temporary guardianship that would not require an allegation of unfitness for parents in the military who must leave the state/country or for use by parents who must move out of state but leave the child in the state to complete the school year*
- *Clarification as to the relationship, if any, between unfitness and assented petitions*
- *Access/right to counsel for parents facing a finding of unfitness*

²⁶ See Uniform Probate Code (last amended or revised in 2006) Article V Sec. 5-204(b). Judicial appointment of guardian: Conditions for appointment: parents consent; all parental rights have been terminated or the parents are unwilling or unable to exercise their parental rights.

f. Provide alternative procedures to reduce the filing of unnecessary GM petitions

The data and focus group participants documented a substantial increase in GM petitions based on school requirements for enrollment and for healthcare access. Caregiver affidavits provide authority to a non-parent caregiver to enroll a child in school and/or obtain healthcare services for the child without filing for guardianship in Probate and Family Court. Many states have successfully implemented such a program, thereby reducing the filing of unnecessary guardianship petitions.²⁷

Ohio recently completed a study of the caregiver affidavit and concluded that it provides a safe and convenient way for grandparents caring for children to ensure school enrollment and access to health care.²⁸

In an effort to quickly reduce the number of GM petitions filed that never go to hearing, focus group participants have been providing information and training to school personnel on the federal McKinney Vento Act (42 U.S.C. §11434a), which requires that children living away from their parents in a temporary home be immediately enrolled in school. Educating school personnel about the federal law also should help to reduce the current practice of requiring the filing for guardianship as a condition of school enrollment.²⁹

Convene a task force to consider whether to recommend:

- *A caregiver affidavit that provides authority for the non-parent caregiver to enroll a child in school and/or obtain health care services for the child without filing for guardianship in Probate and Family Court*

CONCLUSION

Standardizing, simplifying and modifying statutes, policies and practice that govern guardianship of minor cases throughout the Commonwealth will require careful planning, additional resources and possible training of court personnel. Nonetheless, we believe undertaking this task will result in improved management and oversight of guardianship of minor cases as well as increase the safety and permanency for the children involved.

²⁷ See Appendix D for sample Caregiver Affidavit from California.

²⁸ Center for Health communities, Wright State University in Collaboration with the Ohio Evaluation of the Grandparent Caretaker Law (Substitute House Bill 130) Final Report, June 30, 2007 at p. 6.

²⁹ For a discussion of McKinney-Vento requirements, see: National Children's Law Network. 2005. *In School, The Right School, Finish School: A Guide to Improving Educational Opportunities for Court-Involved Youth*. Philadelphia, PA. at pp. 14-15.

APPENDIX

A. Guardianship of Minor Study Data

Key: *Essex County: BLACK Hampden County: BLUE Worcester County: RED Total: GREEN*

I. Total Sample

a. Court files reviewed

County	N	2006	1997
Essex	129	96	33
Hampden	107	79	28
Worcester	165	127	38
Total sample	401	302 (75%)	99 (25%)

b. Interviews conducted

County	N	Filed in 2006	Filed in 1997
Essex	48	34	14
Hampden	29	28	1
Worcester	36	32	4
Total Sample	113	94	19

II. Demographic characteristics

a. Ward age categories

Year	0 to 2	greater than 2 to 5	greater than 5 to 11	greater than 11 to 17	greater than 17
2006	21%	9%	27%	38%	5%
	15%	13%	29%	35%	8%
	18%	20%	27%	42%	4%
Total 2006	17%	11%	28%	39%	5%
1997	19%	19%	38%	19%	6%
	11%	11%	14%	57%	7%
	21%	16%	16%	32%	0%
Total 1997	17%	15%	29%	35%	4%

b. Petitioner's relationship to child

Year	% Grandparents	% Relatives	% Others
2006	57%	40%	3%
	53%	42%	5%
	49%	41%	10%
Total 2006	53%	41%	7%
1997	62%	28%	9%
	37%	41%	22%
	55%	37%	8%
Total 1997	53%	35%	12%

III. Court Process

a. Cases where father is listed as “unknown”

Year	Father Listed as Unknown
2006	8%
	7%
	7%
Total 2006	9%
1997	9%
	5%
	11%
Total 1997	12%

b. Assent of parents

Year	% No Parental Assents	% One Parent assents	% Both parents assents
2006	25%	46%	29%
	27%	52%	22%
	42%	35%	23%
Total 2006	33%	43%	25%
1997	46%	21%	33%
	54%	32%	14%
	45%	37%	18%
Total 1997	48%	30%	22%

c. Contested cases

Year	% Yes	%No
2006	5%	95%
	4%	96%
	10%	90%
Total 2006	7%	94%
1997	6%	94%
	0%	100%
	0%	100%
Total 1997	2%	98%

d. Guardian ad Litem appointed

Year	GAL Appointed
2006	3%
	1%
	2%
Total 2006	2%
1997	6%
	4%
	5%
Total 1997	5%

e. Represented by counsel

Year	Petitioner	Mother	Father
2006	16%	2%	1%
	16%	4%	1%
	11%	2%	2%
Total 2006	14%	2%	2%
1997	30%	6%	0%
	21%	4%	0%
	11%	3%	3%
Total 1997	23%	4%	1%

f. Reasons for petition

Reason	2006	Total 2006	1997	Total 1997
Drug abuse Mother	27%	24%	21%	23%
	35%		29%	
	14%		21%	
Drug abuse Father	12%	7%	3%	8%
	5%		11%	
	5%		11%	
Mental instability Mother	18%	14%	12%	9%
	22%		11%	
	6%		5%	
Mental Instability Father	2%	2%	0%	3%
	4%		4%	
	2%		5%	

Mother Deceased	6% 8% 11%	9%	6% 14% 5%	8%
Father Deceased	10% 6% 6%	7%	0% 14% 5%	6%
Mother Incarcerated	7% 8% 2%	5%	12% 7% 5%	8%
Father Incarcerated	12% 4% 6%	7%	12% 4% 3%	6%
Domestic Violence—Mother	9% 10% 7%	9%	9% 11% 8%	9%
Domestic Violence—Father	4% 13% 5%	7%	6% 7% 11%	8%
Homelessness Mother	21% 14% 11%	15%	6% 4% 11%	7%
Homelessness Father	12% 4% 3%	6%	3% 0% 3%	2%
Abandonment Mother	10%	8%	9%	13%

	9%		21%	
	6%		11%	
Abandonment Father	22%	17%	6%	10%
	22%		7%	
	10%		16%	
School Enrollment	17%	18%	6%	11%
	25%		25%	
	14%		8%	
Health Access	9%	9%	0%	5%
	13%		7%	
	7%		8%	
Insurance	4%	3%	6%	3%
	4%		4%	
	2%		0%	

g. Permanent decree issued

Year	%Yes	%No
2006	56%	44%
	57%	43%
	46%	54%
Total 2006	50%	50%
1997	64%	36%
	75%	25%
	53%	47%
Total 1997	55%	45%

h. Court action after filing

	1997	2006
Temporary Decree Only	19%	22%
Permanent Decree Only	37%	29%
Permanent and Temporary Decrees	18%	22%
Only Filed Petition	25%	28%

i. Mean time frames

	2006	Total 2006	1997	Total 1997
Mean # of days between filing petition and temporary decree	.8 days (59 cases temporary) 10 days (47 cases temporary) 16 days (26 cases temporary)	7 days	8.6 days (11 cases temporary) 36 days (10 cases temporary) 6 days (16 cases temporary)	15 days
Mean # days between filing petition and permanent decree	98 days (55 cases permanent) 117 days (39 cases permanent) 89 days (60 cases permanent)	99 days	107 (21 cases permanent) 124 days (14 cases permanent) 187 days (20 cases permanent)	140 days
Mean # days between filing temporary and permanent decree	155 days (30 cases got temporary and permanent) 137 days (27 cases) 138 days (14 cases)	145 days	187 days (6 cases) 81 days 300 days (8 cases)	214 days

j. Petitions filed to terminate permanent guardianship

	2006	Total 2006	1997	Total 1997
Number Permanent Guardianships	54	151	21	55
	39		14	
	58		20	
% Petitions filed to terminate guardianship	4%	8%	14%	29%
	8%		43%	
	12%		30%	

IV. History of DSS involvement

	% 2006	Total 2006	%1997	Total 1997
History of DSS involvement	48%	51%	64%	51%
	58%		46%	
	43%		68%	

V. Petitioner phone interview data

	Essex	Hampden	Worcester	Total
Court cases reviewed	107	165	129	401
Petitioners interviewed	29	36	48	113
Petitioners with no working phone	48	74	61	183
DSS involvement	18	18	27	63
Court experience good	13	17	30	60
Court experience needed improvement	6	10	10	26
Lost DSS services	7	3	9	19
Need more services	11	11	21	43
Immigration issues	2	1	3	6
Wanted to adopt	4	3	3	10

B. Aggregate DSS Data for Guardianship of Minor in Probate and Family Court Study

The Court provided the names of 401 children who were the subject of a guardianship petition in either 1997 or 2006; 99 children from 1997 and 302 from 2006. Staff at the Department of Social Services (DSS) were able to match 76 (76%) from the 1997 cohort and 200 (66%) from the 2006 cohort to children in the DSS data base. In all 276 (69%) of the 401 children were matched. DSS has a statewide case information system that came into use in early 1998. Data from the Department's legacy information system was converted and is also available. However, the data prior to 1998 is less complete than the subsequent case information.

Demographic information for the matched children:

Child's Gender	1997		2006		Total	
Female	37	49%	102	51%	139	50%
Male	32	42%	92	46%	124	45%
(blank)	7	9%	6	3%	13	5%
Total	76		200		276	

Child's Race/Ethnicity	1997		2006		Total
Hispanic/Latino	15	20%	63	32%	78
Black*	14	18%	16	8%	30
White*	27	36%	73	37%	100
American Indian/Alaskan Native*			1	1%	1
Asian			1	1%	1
Multi-Racial*			7	4%	7
Unknown	20	26%	39	20%	59
Total	76		200		276

*Does not include individuals who also self-identify as Hispanic/Latino

Child Involvement Prior to the Filing of the Petition

For matched children, was there a 51A prior to the petition date?	1997		2006		Total
No	36	47%	23	12%	59
Yes	40	53%	177	88%	217
Total	76		200		276

NB: Prior to 11/2000, screened-out intakes were expunged after 1 year. Consequently, the data from 1997 and 2006 are not entirely comparable as the 2006 cohort includes screened-out intakes whereas the 1997 cohort is limited to intakes screened-in for investigation.

For matched children, was there a supported 51B prior to the petition date?	1997		2006		Total
No	38	50%	49	25%	87
Yes	38	50%	151	75%	189
Total	76		200		276

For the purpose of these data, “prior involvement” is defined as having a supported investigation, custody, placement or an in-home service

For matched children with prior involvement were in home services provided prior to the petition date?	1997	2006		Total
No	*	149	97%	149
Yes		5	3%	5
Total		154		154

*No data are available.

For matched children with prior involvement was the child ever taken into DSS custody prior to the petition date?	1997		2006		Total
No	28	65%	123	80%	151
Yes	15	35%	31	20%	46
Total	43		154		197

For matched children in DSS custody prior to the petition date what was the average number of months in custody?	1997	2006	Total
Average	36.9	17.1	23.5

For matched children in DSS custody prior to the petition date what was the average number of placements?	1997	2006	Total
Average	1.9 (13)	1.8 (24)	1.8

NB: Not every child in DSS custody was placed in out-of-home care. These are the average number of pre-guardianship placements for the children that were placed.

Of the children involved with the Department prior to the filing of the petition one had both a TPR and a prior adoption. A second had a TPR. A third had an adoption but no TPR in the data base.

Child Involvement After the Filing of the Petition

Care should be taken in comparing the 1997 and 2006 cohorts for post guardianship events as there has been significantly more time for 51As to be filed, investigations supported and/or services provided since the 1997 guardianships were granted.

For matched children, was there a 51A after the petition date?	1997	2006	Total
No	36 47%	111 56%	147
Yes	40 53%	89 44%	129
Total	76	200	276

For matched children, was there a supported 51B after the petition date?	1997	2006	Total
No	45 59%	155 78%	200
Yes	31 41%	45 22%	76
Total	76	200	276

For the purpose of these data, “post involvement” is defined as having a supported investigation, custody, placement or an in-home service

For matched children with post involvement were in home services provided after the petition date?	1997	2006	Total
No	35 81%	51 86%	69
Yes	8 19%	8 14%	7
Total	43	59	102

Again, please note that a child may have received Family Based Services from a service referral listed under another family member.

For matched children with post involvement was the child taken into DSS custody after the petition date?	1997	2006	Total
No	17 40%	34 58%	51
Yes	26 60%	25 42%	51
Total	43	59	102

For matched children in DSS custody after the petition date what was the average number of months in custody?	1997	2006	Total
Average	34.6	13.9	23.7

For matched children in DSS custody after the petition date what was the average number of placements?	1997	2006	Total
Average	5.1 (23)	2.8 (23)	3.9

NB: Not every child in DSS custody was placed. These are the average number of placements for the children who were placed.

Of the children involved with the Department after the filing of the petition 8 ultimately had a TPR. Of those, 2 were eventually adopted.

Demographic information for matched parents:

Parent Gender	1997	2006	Total
Female	63	183	246
Male	32	115	147
(blank)	6	13	20
Total	101	311	412

Parents' Race/Ethnicity	1997	2006
Hispanic/Latino	13	71
American Indian/Alaskan Native		2
Black*	22	32
Multi-Racial		2
White*	45	124
Unknown	21	80
	101	311

*Does not include individuals who also self-identify as Hispanic/Latino

Parent Involvement Prior to the Filing of the Petition

Was there a 51A involving a matched parent prior to the petition date?	1997	2006	Total
No	*	50	50
Yes		261	261
Total		311	311

*Data are not available

Was there a supported 51B involving a matched parent prior to the petition date?	1997	2006	Total
No	100	119	219
Yes	1	192	193
Total	101	311	412

NB: The data are not comparable. Prior to 1998 the alleged perpetrator of an allegation of abuse or neglect was not always identified in the legacy data base.

Were in home services provided to a matched parent prior to the petition date?	1997	2006	Total
No	*	276	276
Yes		35	35
Total		311	311

*Data are not available

Parent Involvement After the Filing of the Petition

Was there a 51A involving a matched parent after the petition date?	1997	2006	Total
No	57	178	235
Yes	44	133	177
Total	101	311	412

Was there a supported 51B involving a matched parent after the petition date?	1997	2006	Total
No	70	257	327
Yes	31	54	85
Total	101	311	412

For matched parents were in home services provided after the petition date?	1997	2006	Total
No	95	300	395
Yes	6	11	17
Total	101	311	412

Demographics of Matched Petitioners

Petitioner Gender	1997	2006	Total
Female	22	86	108
Male	6	14	20
(blank)	4	6	10
Total	32	106	138

Petitioner Race/Ethnicity	1997	2006
Hispanic/Latino	5	30
Asian		1
Black	5	13
White*	15	30
Unknown	7	32
Total	32	106

*Does not include individuals who also self-identify as Hispanic/Latino

Petitioner Involvement Prior to the Filing of the Petition

Was there a 51A involving a matched petitioner prior to the petition date?	1997	2006	Total
No	*	40	40
Yes		66	66

Total	*	106	106
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*Data are not available.

Was there a supported 51B involving a matched petitioner prior to the petition date?	1997	2006	Total
No	31	78	109
Yes	1	28	29
Total	32	106	138

NB: The data are not comparable. Prior to 1998 the alleged perpetrator of an allegation of abuse or neglect was not always identified in the legacy data base.

Were in home services provided to a matched petitioner prior to the petition date?	1997	2006	Total
No	*	102	102
Yes		4	4
Total		106	106

*Data are not available.

Petitioner Involvement After the Filing Date

Was there a 51A involving a matched petitioner after the petition date?	1997	2006	Total
No	15	58	73
Yes	17	48	65
Total	32	106	138

Was there a supported 51B involving a matched petitioner after the petition date?	1997	2006	Total
No	20	88	108

Yes	12	18	30
Total	32	106	138

Were in home services provided to matched petitioners after the petition date?	1997	2006	Total
No	28	102	130
Yes	4	4	8
Total	32	106	138

C. Court Process Checklist

Steps used for obtaining a guardianship of minor decree in the three counties studied

- 1. Petitioner (P.) comes to courthouse to probate counter and clerk provides packet of guardianship of minor (GM) papers to complete.**
- 2. P. cannot use computer in courthouse to complete forms and define legal terms because the computer does not work.**
- 3. Child must reside in county (in one county child had to have lived there for 6 months) in order to file petition.**
- 4. P. may hire an attorney to complete the forms, but almost all are pro se.**
- 5. The forms in packet include:**
 - a. CJ-P 11 (10/96) Guardianship of Minor With – Without- Sureties**
 - b. Affidavit of Petitioner/Plaintiff for Custody of Minor Children (re DSS involvement (and in 1 county name and phone of DSS social worker)**
 - c. Affidavit for Temporary Guardianship of A Minor**
 - d. CJ –D400 (06/02) Motion for _____(blank) (only in 2 counties)**
 - e. Affidavit Disclosing Care or Custody Proceeding (state form)**
 - f. CJ-P 26 (1/89) Bond of _____ (fiduciary)**
 - g. CJ-P 148 (1/89) Military Affidavit re Estate of _____ (only 1 county)**
 - h. CJ-P150 (11/01) Information and Rights of Interested Parties (pertains to duties of Fiduciary) (only in 1 county)**
 - i. AC 118 Trial Court motion form with Affidavit of Notice of Motion (1 county)**
 - j. Public Assistance affidavit (1 county)**

- k. Probation office form with name and social security number of Petitioner (and date of birth of Petitioner and all in home age 14+ in 2 counties)
6. If P. does not speak English, clerk who speaks Spanish can help, but may be located elsewhere in courthouse in one county. Several other languages available in one county from court staff.
7. P. completes documents and goes to different line at probate counter to file in one county, a different room in courthouse on different floor in another county to file documents.
8. The assistant judicial case manager or family law facilitator or clerk (depending on county) reviews papers and if incomplete, family law facilitator or attorney of the day (if available) will assist P. if P. qualifies for legal assistance. In one county petitioner is sent to different location for attorney of the day to determine whether qualifies for assistance and then gives it.
9. P. returns to assistant judicial case manager or clerk to complete filing and in one county must show child's birth certificate.
10. In one county P. is given citation and not given date of hearing until return to courthouse with proof of service on parent; in another county the citation is mailed after the temporary hearing, and in the third county the date of permanent guardianship hearing is given by family law facilitator to P. at time of filing.
11. P. completes the CORI check form from Probation Department in 2 counties, but meets personally with probation officer in one county before hearing. Probation also contacts DSS if P. indicated involved and gave permission. Probation officer only meets with P. in one county in resignation or contested cases. In every county Probation must review CORI before each hearing.
12. If both parents (and child if 14+ years old) have assented, case can be scheduled for permanent guardianship hearing immediately in one county, only if an emergency in other counties, but within seven days.

13. If P. requests immediate temporary ex-parte hearing by completing affidavit for temporary guardianship included in packet (G.L. c.201 Sec. 14), asst. judicial case manager reviews facts to determine whether emergency exists and immediate temporary needed that day.
14. Asst. judicial case manager schedules hearing that day if appropriate and sends copies of file to Probation for CORI check and contact with DSS if indicated. In one county P. meets with probation officer personally.
15. If court determines that an immediate appointment of temporary guardianship is necessary, it may waive notice requirements and provide notice to interested parties that they may move to vacate the order or request that the court take other appropriate action.
16. If emergency temporary guardianship is approved, judge may set up a review date with petitioner required to notify interested parties so they may move to vacate the order or request other appropriate court action.
17. P. must file a sworn affidavit of notice stating that notice has been given within 3 business days following the date of the allowance.
18. If interested parties subsequently move to vacate, the court hears such a request as a de novo matter, as expeditiously as possible.
19. If temporary not an emergency needed that day, asst. judicial case manager instructs P. to give notice of the hearing on the temporary guardianship to the parents at date set at registry at least 72 hours in advance of hearing.
20. P. files a sworn affidavit of notice with the court at or before the time set for the hearing reciting fact of delivery or mailing including to last known address if person is of parts unknown.
21. Before hearing probation officer reviews completed intake form, and, if indicated, contacts DSS for information on case and may do home study if ordered.

22. If ordered by court, DSS will provide unredacted records and appear as a witness.
23. Probation does not contact Department of Revenue (DOR) unless child support case is already open in that county's records. In one county, if P. files for Department of Transitional Assistance (DTA) benefits, DTA notifies DOR which then notifies Probate Court to order child support paid to probate guardian.
24. Probation officer does a CORI check for Massachusetts on P, completes form with CORI info and recommendation and sends to court. In 2 counties, CORI check includes people in home age 14+ who P. has identified.
25. If P. requests, a court interpreter is provided at all court hearings, but in two counties, P. must ask for translator before each hearing.
26. If P. requests temporary guardianship for school enrollment, medical, or non-critical emergency, in one county P. drafts 2 motions, one for temporary guardianship with affidavit (form included in packet) and a motion for short order of notice which is heard in 3 days at 2 pm after notice to parents is served by sheriff.
27. No temporary appointment of a guardian will be allowed unless a permanent petition has been filed and is being prosecuted.
28. At hearing, court may grant temporary guardianship and will set review hearing within 90 days of petition being filed.
29. Sometimes judge sets review hearing within 10 days and orders notice to be given to parties.
30. Judge may or may not mark case for review.
31. If judge will not approve ex-parte emergency temporary guardianship, P. is sent back to registry to reschedule temporary guardianship hearing with notice to interested parties.

32. Temporary guardianship order either expires after 90 days, P. moves for permanent guardianship and appears for permanent hearing within 90 days, or P appears and asks court for extension of temporary until notice can be given.
33. P. must appear for review hearing held within 90 days.
34. On day of review hearing and any other hearing, Probation runs CORI check on P. again and contacts DSS if indicated and submits recommendation to court.
35. At the review hearing judge checks to see whether notice is complete and no objections have been entered.
36. If P. gets to court before the 90 days, a temporary order may extend the temporary guardianship, but only until 120 days from the date of filing.
37. Cases where guardianship is granted never close because there may be a resignation or removal, usually motioned by parent who didn't realize guardianship was permanent when they signed assent.
38. Adoption is never an issue in guardianship of minor cases. If guardian wishes to adopt, guardian must hire own attorney to complete process.
39. If another P. later files for guardianship of same child, a new case file is opened in one county, but in another county, the petition is added to the existing file for that child. In one county if P. is not granted guardianship and files again, another file is opened.
40. If P. does not return to court for temporary hearing or for permanent hearing, case will be closed. In one county, clerk contacts P. by phone to warn them of closing. In another county, a letter is sent to P.

D. Caregiver Affidavit Sample

Caregiver's Authorization Affidavit (*sample*)

Use of this affidavit is authorized by Part 1.5 (commencing with section 6550) of Division 11 of the California Family Code.

Instructions: Completion of items 1 - 4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. Completion of items 5 - 8 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives in my home and I am 18 years of age or older.

- 1. Name of minor: _____ .
- 2. Minor's birth date: _____ .
- 3. My name (adult giving authorization): _____ .
- 4. My home address: _____

-
- 5. () I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back page of this form for a definition of "qualified relative").
 - 6. Check one or both (for example, if one parent was advised and the other cannot be located):
() I have advised the parent (s) or other person (s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.
() I am unable to contact the parent (s) or other person (s) having legal custody of the minor at this time, to notify them of my intended authorization.
 - 7. My date of birth: _____ .
 - 8. My California's drivers license or identification card number: _____ .

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____ Signed: _____

Notices on back of this page.

Notices:

- 1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.
- 2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
- 3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:

TO CAREGIVERS:

- 1. "Qualified relative," for purposes of item 5, means a spouse, parent, stepparent, brother, sister,

stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.

2. The law may require you, if you are not a relative or a currently licensed foster parent, to obtain a foster home license in order to care for a minor. If you have any questions please contact your local Department of Social Services.

3. If the minor stops living with you, you are required to notify any school, health care provider, or health care service plan to which you have given this affidavit.

4. If you do not have the information requested in item 8 (California driver's license or I.D.), provide another form of identification such as your social security number or Medi-Cal number.

TO SCHOOL OFFICIALS:

1. Section 48204 of the Education Code provides that this affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver.

2. The school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

TO HEALTH CARE PROVIDERS AND HEALTH SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or action, for such reliance if the applicable portions of the form are completed.

2. This affidavit does not confer dependency for health care coverage purposes.

This form has been prepared by Legal Services For Children, Inc., (415) 863-3762 ^{7/94}

E. Monthly Support Through DSS Compared to Monthly Welfare Benefits Outside DSS

DSS (Foster Care, Guardianship, Adoption)			Outside DSS	
Age of Child	Daily Subsidy (per child)	Monthly Subsidy (per child)	Number of Children (additional children get decreasing increment)	TAFDC Subsidy (monthly)
0-5 years	\$14.92	\$448	1	\$428
6-12 years	\$15.47	\$464	2	\$531
13+ years	\$17.16	\$515	3	\$633