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*Testimony before the Assembly Committee on Judiciary
Senator André Jacque
January 30, 2020*

Chairman Ott and Committee Members,

Thank you for holding this hearing on Assembly Bill 786, relating to guardian training requirements.

Many family members and volunteers who become a guardian do not fully understand what a guardians' role, responsibilities, and administrative duties are under Wisconsin law prior to being appointed. Frequently guardians feel overwhelmed, unprepared, isolated, and unsupported.

Wisconsin's Guardianship Support Center (GSC) hears from guardians across the state who are struggling and looking for assistance. Annually, they field approximately 1,800 phone calls and e-mail requests and conduct about 35 in-person trainings across the state. People in every Wisconsin county are contacting the GSC for help.

Twenty-one states require training for all guardians. Wisconsin does not have training requirements or a formalized training program for family or volunteer guardians. Unfortunately, lack of training can result in guardians making decisions that are contrary to the spirit of Wisconsin's limited guardianship system, and in some cases making decisions for their ward that go beyond what the courts have authorized.

Assembly Bill 786 would ensure that individuals petitioning for guardianship have basic training about the roles and responsibilities of guardians under state statute and best practice strategies to ensure the wishes and preferences of the ward are understood and honored in the decision-making process before they are appointed.

The bill provides funding to develop free online training for current and prospective guardians that can be accessed at any time. The bill includes funding to increase the capacity to provide technical assistance, in-person training, and support to prospective guardians, guardians, and families.

Assembly Bill 786 is supported by the Survival Coalition, Wisconsin Aging Advocacy Network (WAAN), Greater Wisconsin Agency on Aging Resources (GWAAR), Board for People with Developmental Disabilities (BPDD), Disability Rights Wisconsin (DRW) and The Arc Wisconsin.

Thank you for your consideration of Assembly Bill 786.



SHANNON ZIMMERMAN

STATE REPRESENTATIVE • 30th ASSEMBLY DISTRICT

Chairman Ott and Committee Members,

Thank you for taking the time today to hear testimony on this important bill. I would be remiss if I didn't first thank my constituents, George Zaske and Peg Scott. Thank you both not only for caring deeply about our community, but taking the time to explain to me the need for this bill.

Guardianship is a serious step where an individual's right to make their own life decisions is (either partially or fully) taken away and given to someone else through our court system. When this happens with adults, the decision is often permanent, and reversal is very difficult.

It's a humbling amount of responsibility to be someone else's guardian. However, in my talks with my constituents, and the Board for People with Developmental Disabilities (BPDD), I learned how often people become guardians for family members without fully understanding the law or resources available. As an unfortunate result, they become overwhelmed and feel isolated.

Assembly Bill 786 (AB 786) addresses this problem. The bill establishes and funds the creation of mandatory training requirements for all guardians, listing out seven different topics to be included in a free online training module, such as the limits of guardian decision making, rights of the ward, future planning, and resources and support available to guardians. Guardians of the estate must complete training on their particular duties, the limits of their decision making authority, and sign a sworn and notarized statement to the court they have completed their training. The Department of Health Services will award a grant to develop and administer this program.

The funding in AB 786 would also support the Guardianship Support Center, which fielded 1800 calls from people confused about the law in 2019. This again shows how vital it is to make this important information accessible for families and guardians.

BPDD assured me this training would not be overly onerous. We are not trying to erect barriers to guardians, but provide them the resources to succeed. Based on BPDD's own training experience, along with the 21 other states which mandate guardian training, we can expect 5 to 20 minutes per topic.

Regarding mandating training I want to stress again how serious guardianship is. It is a very serious decisions, one that isn't made easily or quickly, when a court takes away a person's civil liberties and places them under the authority of another person. Guardianship decisions are made when necessary for the best interest of the person involved, but it is a significant responsibility, one that I don't think is unreasonable to require a few hours of learning by the guardian.

Ultimately this bill is for two groups of people, guardians and the people they care for. AB 786 not only empowers guardians with the knowledge and resources to feel less isolated, but protects some of our most vulnerable citizens by ensuring the success of the people caring for them. Thank you.



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Governor Tony Evers
Secretary Emilie Amundson

Secretary's Office

TO: Chair Ott and Members of the Assembly Committee on Judiciary

FROM: Jonelle Brom, Chief, Out-of-Home Care Section
Therese Durkin, Chief Legal Counsel

DATE: January 30, 2020

SUBJECT: 2019 Assembly Bill 786

Thank you for the opportunity to provide testimony on Assembly Bill (AB) 786. The Department of Children and Families (DCF) is testifying for information. The Department of Children and Families is committed to the goal that **all** Wisconsin children and youth are safe and loved members of thriving families and communities.

AB 786 establishes mandatory initial training requirements for guardians appointed under Chapter 54. Chapter 54 currently applies to both adult guardianships and certain types of minor guardianships. DCF and county child welfare agencies utilize temporary and permanent Chapter 54 guardianships under certain circumstances for children in the child welfare and youth justice systems, including in time-sensitive matters or emergency situations. The training requirements in AB 786 would impact the current process and use of minor guardianships on child welfare and youth justice cases since it proposes prospective guardians must receive training prior to a hearing for permanent guardian, and also in temporary guardianship hearings since there AB 786 also proposes training for every guardian of the person.

Currently, a bill is under consideration by the legislature, AB 47, that removes the statutory provisions for appointment of minor guardianships from Chapter 54 and places them in Chapter 48. AB 47 is the product of thorough analysis and deliberation by the Joint Legislative Council's Study Committee on Minor Guardianships. As DCF testified at the recent January 22 hearing on AB 47, the Department supports this bill. If and when both AB 47 and AB 786 are enacted into law, it will be clear that the new mandatory training requirements for Chapter 54 guardians do not apply to minor guardianships, since minor guardianships will no longer be included in Chapter 54. In this scenario, the Department's concerns noted above become moot. However, the Department's concerns are relevant if AB 47 is not enacted into law, but AB 786 is enacted. To address this possible scenario, the Department

recommends that the legislature consider amending AB 786 to explicitly exclude minor guardianships from the mandatory guardian training requirements specified in the bill.

The Department would like to recognize that the legislators and advocates who worked on this bill intended to address adult guardianships and not minor guardianships and there have been initial discussions about an exemption of minor guardianship from AB 786. We look forward to continued discussion and collaboration with legislators and advocates.

We also want to bring to the Committee's attention to another child welfare-related situation that will be impacted even if the minor guardianship bill, AB 47, and this guardian training bill, AB 786, are both approved by the legislature and enacted into law. Currently, the same individuals who serve as guardians of children in out-of-home care with significant disabilities often continue as their guardians when these youth become adults, if the court determines they are in need of an adult guardian. Due to their years of experience as guardians or as the child's foster parents or subsidized guardian under s. 48.977 Wis. Stats, these guardians are already knowledgeable about many of the training topics specified in AB 786. The Department suggests that the Committee consider amending AB 786 to designate an abbreviated version of the guardianship training that can be completed by a prospective adult guardian who has already served as a guardian for the same individual as a child.

Thank you for the opportunity to present information on AB 786 and for your interest in ensuring that vulnerable individuals receive appropriate protections. We are pleased to respond to any questions.



WISCONSIN BOARD FOR PEOPLE
WITH DEVELOPMENTAL DISABILITIES

January 30, 2020

Representative Ott
Chair, Assembly Committee on Judiciary
Wisconsin State Capitol, Rm 317N
Madison, WI 53708

Dear Representative Ott and Committee members:

The Wisconsin Board for People with Developmental Disabilities (BPDD) supports AB 786, which will provide free online training to family and volunteer guardians about the role, responsibilities, and other important features of Wisconsin's guardianship law before they are appointed.

Nationally, there is growing interest among advocates and attorneys practicing in elder and special needs law to improve adult guardianship practices especially in light of new options that provide less restrictive alternatives to guardianship, the civil rights advancements of individuals with disabilities that have occurred over the past several decades, and concern over how and to what degree guardianships are imposed and rights are restored,¹ and recognition of the profound consequences appointment of a guardian may have for an individual². Guardian training is consistently identified and included as a policy recommendation.

Guardian training is critically needed to provide standardized information and a continually available reference to help ensure both the letter and spirit of Wisconsin's law are followed. Given the gravity that a judicial declaration of legal incompetency has for the individual, and the seriousness of the responsibility a guardian assumes, providing free training is a worthwhile investment to support the volunteers and family members willing to serve their ward³.

Family and volunteer guardians are not the only people who benefit from standardized, plain language training. Accurate information about guardianship and alternatives to guardianship benefits teachers, medical staff, aging and disability resource centers, direct service providers, attorneys who have expertise in different areas of Wisconsin law, and other professionals who may interact with guardians or their wards. Many legal professionals, service providers, and advocacy groups have observed interactions or decisions made by

¹ *Turning Rights into Reality: How guardianship and alternatives impact the autonomy of people with Intellectual and Developmental Disabilities*. June 2019 (https://ncd.gov/sites/default/files/NCD_Turning-Rights-into-Reality_508_0.pdf) *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination for People with Disabilities*. National Council on Disability. March 2018.

(https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf). *Research and Recommendations on Restoration of Rights in Adult Guardianship*. American Bar Association. 2017.

(https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration%20report.authcheckdam.pdf)

² *What Do NCI Data Reveal About the Guardianship Status of People With IDD?* (April 2019) (https://www.nationalcoreindicators.org/upload/core-indicators/NCI_GuardianshipBrief_April2019_Final.pdf)

³ Basic data on guardianships in Wisconsin is limited. There is no statewide data collection on guardianships, each county courthouse keeps its own records. From an August 2015 analysis of data reported to Wisconsin's Consolidated Court Automation Programs (CCAP), there are almost 34,000 people under guardianship in Wisconsin³, and more than \$690,000,000 in assets under the supervision of a guardian³. Wisconsin State Court data does track the number of guardianship petitions filed each year³, almost 6000 guardianship petitions were filed in 2016 alone; the median age at disposition was 40. The low average ages of the wards indicate that many people placed under guardianship are not older adults.

guardians and are unsure whether the guardian is overstepping the authority that has been assigned to them by the courts. These professionals are equally unfamiliar with what the roles and responsibilities of the guardian are (and are not). Standardized training helps everyone better recognize guardians who are supporting their wards appropriately or identify situations that warrant further questions.

For many people with disabilities⁴, the court appointed guardian is often also a family member, frequently a parent. Most family members who become a guardian of a person or estate under Wis. Stats. Ch 54 do not fully understand the what the guardian's role, responsibilities, and administrative duties are under Wisconsin law. Many families of children with disabilities are instructed to petition for guardianship by teachers, doctors, and other non-legal professionals. Parents routinely tell us that guardianship is presented as the only option and is portrayed as administrative process rather than a decision that has permanent legal ramifications for both the individual and families. Frequently, family guardians feel overwhelmed, unprepared, isolated, and unsupported.

Common misperceptions about guardianship that BPDD routinely hears about from people with I/DD, families, and service providers include:

- Assumption that guardianship gives the guardian power over all decisions connected to the ward, leading to the guardian overstepping the authority granted to them by the courts.
- Belief that a guardianship empowers the guardian to restrict their ward's activities or prevent "bad" choices
- Lack of understanding of long-term implications and consequences of guardianship, especially as it related to family future planning⁵.
- Misperception by family guardians that the role of a guardian/ward is not distinct and different than role of parent/child.
- Acting in contradiction to the spirit of Wisconsin's limited guardianship system⁶.
- Misperception on the part of health care, other professionals, and service agencies that the guardian makes all decisions (many are unaware that limited guardianships are an option).
- Assumptions by health care, professionals, and service agencies that facilitate and empower guardians to exceed their authority. Many are unaware that they can ask to see the letter of guardianship to confirm who the guardian is and what decision-making authority has been granted.
- Uncertainty from service providers about what recourse is available when a guardian is overstepping their authority, abusing their position, or clearly not exercising their authority in a way that places the

⁴ People with Intellectual and Developmental Disabilities (I/DD), people with physical disabilities, primary diagnosis of mental health, and older adults are populations disproportionately affected by guardianship. Frequently, guardianships are imposed upon people with I/DD individuals at a young age (as early as 17 years, 9 months) and are rarely revisited. Many people spend many decades—their entire lifespan—under guardianship.

⁵ This includes 1) families not understanding that the Courts decide who will succeed the current guardian, 2) especially in families where the ward is a person with a disability and the guardianship may remain unchanged for decades, examining changes in family dynamics that change the support network for the individual 3) determining when a family guardian is no longer capable of performing as guardian, etc.

⁶ Under Wisconsin's limited guardianship system, the ward retains certain rights, and the guardian of the person is required to 1) place the least possible restriction on the ward's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the ward into his or her community. 2) make diligent efforts to identify and honor the ward's preferences with respect to place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. 3) takes into account the ward's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity of the ward to develop decision-making skills, and the need of the ward for wider experience.

least possible restriction on their ward, maximizes community integration, and honors the ward's preferences.

The challenge of aging guardians is becoming an emerging issue. As the population ages, people with disabilities live longer, and families have become smaller and more geographically dispersed, it becomes more likely that someone will assume a guardian role unexpectedly or without preparation. Many families have not done future planning or find their plans have not sufficiently evolved over years (or decades) to reflect their current circumstances. Basic Guardian training that is always available can help families plan, and help prospective guardians who find themselves stepping into a new role sooner than anticipated.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities⁷.

Our role is to seek continuous improvement across all systems—education, transportation, health care, employment, etc.—that touch the lives of people with disabilities. Our work requires us to have a long-term vision of public policy that not only sees current systems as they are, but how these systems could be made better for current and future generations of people with disabilities.

Thank you for your consideration,



Beth Swedeen, Executive Director
Wisconsin Board for People with Developmental Disabilities

⁷ More about BPDD https://wi-bpdd.org/wp-content/uploads/2018/08/Legislative_Overview_BPDD.pdf.



P.O. Box 7222, Madison, Wisconsin 53707

January 30, 2020

Representative Ott
Chair, Assembly Committee on Judiciary
Wisconsin State Capitol, Rm 317N
Madison, WI 53708

Dear Representative Ott and Committee members:

Survival Coalition supports AB 786 which will establish basic training on core topics potential guardians need to be familiar with and increase support for guardians.

Many Survival members work with populations of people who may have a guardian. Our collective experience clearly demonstrates the need not only for more understanding of the training topics outlined in the bill, but for additional technical support for guardians after they are appointed.

Standardized training means guardians, providers, and individuals will all have the same information and can support each other more successfully. There will be a consistent resource to refer to if there is a question on how to support the individual to be most independent.

This bill also recognizes that once a guardian is appointed there is a continued need for technical assistance and support. As people under guardianship learn and develop new skills or experience changing health or other conditions, there may be a need for guardians to adjust how they are supporting their wards or guardians may be faced with decisions that they did not anticipate when they were first appointed.

Survival Coalition is comprised of more than 30 statewide disability organizations, and has members with expertise in disability law, research and best practices, and providing direct services for people with disabilities.

Survival Co-Chairs:

Beth Swedeon, beth.swedeon@wisconsin.gov; (608) 266-1166;
Kristin M. Kerschensteiner, kitk@drwi.org; (608) 267-0214;
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Date: January 30, 2020

To: Chair Ott, Vice-Chair Horlacher, and Members of the Assembly Committee on Judiciary

From: Janet L. Zander, Advocacy & Public Policy Coordinator

Re: **Support for AB 786** – relating to: guardian training requirements and making an appropriation

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. We provide lead aging agencies in our service area with training, technical assistance, and advocacy to ensure the availability and quality of programs and services to meet the changing needs of older people in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin.

Thank you for this opportunity to share testimony on AB 786. In addition to providing training and technical assistance to county and tribal aging units/aging and disability resource centers (ADRCs) regarding Older Americans Act and other aging service programs, GWAAR also operates a number of other programs including the Wisconsin Guardianship Support Center (GSC) - <https://gwaar.org/guardianship-resources>. The GSC serves as a statewide resource for information and assistance on issues related to adult guardianship, protective placement, advance directives, and supported decision-making. Through a toll-free helpline or by e-mail, the GSC received nearly 1,800 contacts (2018) from guardians or persons under guardianship (24%), concerned family members or friends (25%), and a variety of professionals (16%). Common questions received by the GSC relate to alternatives to guardianship, resources for prospective guardians, questions about guardian duties and ward rights, concerns about guardians exceeding their role and legal authority, and inquiries about how to maintain financial records and file annual accountings. Though contacts to the one full-time attorney serving the GSC came from people in 89% of Wisconsin counties, we know there are many more people across the state who would avail themselves of the resources available if they knew about them.

Adult guardianship is a serious intervention that transfers fundamental rights away from a person (the ward) to a court appointed guardian. A guardian of the person is responsible for decision-making related to major life decisions such as where to live, medical care, service options, and other choices related to meeting daily wants and needs. A guardian of the estate manages a ward's property and financial affairs. As of 2015, over \$500 million was overseen/managed by guardians (family, volunteer and corporate) in Wisconsin (WINGS, 2015). Guardians are responsible for making decisions in such a way as to place the least restrictions on the ward's

personal liberty and exercise of his/her constitutional and statutory rights, promote the highest level of integration into the community, and honor the ward's individual wishes and preferences (Wis. Stats. Ch. 54.20 & 54.25). Depending on the circumstances, a court may name one person both guardian of the person and guardian of the estate, or name one person the guardian of the person and another the guardian of the estate. Though guardians (who are often family members, close friends, or community volunteers) are responsible for carrying out these roles and responsibilities in accordance with the Wisconsin Guardianship statutes, there is little support currently available for prospective guardians. **To ensure guardians are fully aware of their role and responsibilities and to improve the well-being of people under guardianship, AB 786 proposes training *before* someone becomes a guardian.**

Presently, the Department of Health Services (DHS) requires Corporate Guardians – a private nonprofit corporation or an unincorporated association appointed by a court to serve as guardian of the person, or of the estate, or both, of an individual who is found by a court to be in need of a guardian - DHS 85.03(2) – to complete continuing education requirements - 85.10(2).

Wisconsin does not, however, have any training requirements or formalized training program for family or volunteer guardians. Most family guardians are every day, upstanding people trying to do the right thing to help a family member. Volunteer guardians are community members who reach out to help a fellow community member who does not have family or close friends to serve in this role. Family and volunteer guardians are often caught off guard by the complexities of the guardianship system and their associated responsibilities. When problems arise, they are often the result of not knowing or misunderstanding the rules and not malicious intent. AB 786 proposes training for potential guardians on topics specific to the guardian of the person and guardian of the estate statutes. We believe training people before they are appointed as a guardian will help ensure all decision-making options have been explored, those agreeing to be appointed as a guardian will do so after making a better informed decision, and appointed guardians will better understand how to carry out their roles and responsibilities while respecting their ward's rights and the limitations of their own power. Additionally, this training will ensure going forward that guardians will be informed about where to go for information and resources should there be a need.

Appropriations included in this bill will be used to develop the training materials (both online and paper copy), implement the training, expand outreach and increase capacity to provide needed information and support services.

We appreciate the interest in and efforts of policy makers to address growing concerns related to the impact of guardianships on older adults and people with disabilities. We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

Thank you for your consideration of these comments supporting AB 786.

Contact: Janet Zander, Advocacy & Public Policy Coordinator
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(715) 677-6723 or (608) 228-7253 (cell)



January 30, 2020

To: Chair Ott and Members of the Assembly Committee on Judiciary

From: Katie Brietzman, BSW, Community Support and Outreach Specialist for NewBridge Madison, (608) 512-0000 Ext. 1002, KatieB@newbridgemadison.org

Re: Support for Assembly Bill 786

Thank you for the opportunity to express my strong support for Assembly 786, which would require guardians to complete training to ensure that they fully understand the responsibilities of this significant role. I work for NewBridge Madison, which is one of 12 senior focal points providing services to Dane County older adults.

I have been the coordinator for NewBridge's volunteer guardianship program, which currently serves 65 individuals who are age 50 and older with the help of nearly 65 volunteers. Our program has existed since 2001 and was created because we recognized that there was a real need for trained and supported volunteer guardians in our community. The primary goal of our volunteer guardianship program is to connect dedicated community members to older adults that need help making important decisions about their health, finances and life.

For example, a guardian must determine where an individual should live. One of our volunteer guardians was assigned to an individual who had been hospitalized after being found by police wandering outside in the middle of winter. She was confused and could not indicate where she was going or where she lived. The hospital referred her to our guardianship program because there was no one else to make decisions for her. The volunteer guardian, who had gone through our training program was able to understand her duties and responsibilities and make the best decision for this individual. The guardian was able to have this individual placed in an assisted living setting that is secured and well-suited to meet her needs. Because of the volunteer's ability to know the individual's rights and make sound decisions, this person is now safe and well cared for.

In addition to this individual's personal and physical needs, the guardian of estate had to make decisions about what to do with her property. Because she had a home, the guardian of estate was tasked with arranging for the home to be cleaned out, to put the home on the market to sell and to take those proceeds and pay for the assisted living where the individual now lives. Again, because of the training and their understanding

of what their duties, responsibilities and authority is based on the state statutes, the guardian of estate was able to ensure that this vulnerable adult is able to live life with dignity and respect while her assets are well managed to meet her daily needs.

In our volunteer guardianship program, we try to maintain a one-to-one ratio so that volunteers only work with one person, allowing them to develop a relationship with the person they are the guardian for. Our volunteers step up to fill this important role because they want to give back to the community and to impact someone's life in a positive way. The people we're serving are the most vulnerable adults in our community and they are usually low-income.

Our program provides extensive training and ongoing support to the community members who graciously volunteer their time to serve as guardians. This includes quarterly meetings with various speakers, one-on-one consultations with volunteer guardians and quarterly newsletters.

The value of our volunteer guardianship program is that it provides the needed--and sometimes complicated training-- to understand the role of being a guardian. Often, I have heard about situations where untrained guardians do not understand their statutory duties, responsibilities or authority. This can lead to some very unfortunate decisions that can have a negative impact on the individual that guardian serves.

Please support AB 786 so that all of the vulnerable adults living in our community who are in need of guardianship can be served by guardians that are well-trained and knowledgeable of their decision-making responsibilities.

Please do not hesitate to contact me with any questions you may have.