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Out of Sight, Out of Rights: The Human Toll of New York's Guardianship Crisis

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OUT OF SIGHT, OUT OF RIGHTS: THE HUMAN TOLL OF NEW YORK'S GUARDIANSHIP CRISIS

Quinn DeCicco[†] & Sarah Michelle Smith[‡]

ABSTRACT

New York's Article 81 guardianship system, intended as a last-resort protection for individuals unable to manage their personal or financial affairs, has become a default intervention that too often strips people of autonomy and dignity. Overburdened guardians, minimal training requirements, and inadequate judicial oversight leave incapacitated persons vulnerable to neglect, exploitation, and "civil death." This Comment uses Cody's Story to humanize the systemic failures and evaluates Resolution 561, recently adopted by the New York City Council, which calls

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for a statewide public guardianship system. While Resolution 561 represents a critical step toward reform, it lacks the structural safeguards necessary for meaningful change. Drawing on comparative models from other states and social work principles of harm reduction and person-centered practice, this Comment argues that New York must pair any new system with enforceable caseload caps, mandatory and ongoing training, robust oversight, equitable funding, and a statutory presumption favoring less restrictive alternatives. Without these reforms, the state will continue to fail the very individuals that guardianship is meant to protect.

INTRODUCTION	363
DEFINITIONS	364
CODY’S STORY	365
I. THE HISTORY AND CURRENT STRUCTURE OF ARTICLE 81	
GUARDIANSHIP	366
A. <i>The Legislative Background of Article 81 Guardianship</i>	
.....	366
B. <i>The Current Structure of Article 81 Guardianship ...</i>	367
II. FROM LAST RESORT TO DEFAULT: CIVIL RIGHTS REVOKED	
UNDER GUARDIANSHIP	369
A. <i>Guardianship as a Default: The Failure of Least</i>	
<i>Restrictive Intervention</i>	369
B. <i>Disparities in Guardianship: Who is Most Affected?</i>	371
C. <i>Systemic Failures Highlighted by Resolution 561 ...</i>	373
1. <i>Overburdened Guardians</i>	373
2. <i>Minimally Qualified Guardians</i>	375
3. <i>Lack of Oversight and Support</i>	377
III. RESOLUTION 561’S VISION OF A PUBLIC GUARDIANSHIP	
SYSTEM	378
A. <i>Laying the Groundwork for Reform</i>	378
B. <i>How a Statewide System Would Reform Guardianship</i>	
<i>in New York</i>	379
1. <i>Relieving Overburdened Guardians</i>	379
2. <i>Increased Qualification Standards for Guardians</i>	380
3. <i>Improving Judicial Oversight in Guardianship</i>	
Cases	382
C. <i>Public Guardianship Systems in Other States</i>	383
D. <i>Potential Counterarguments to a Public Guardianship</i>	
<i>System</i>	386
IV. SUPPORTING ACTIONS TO ENHANCE RESOLUTION 561	388
A. <i>Bridging the Gaps: Ensuring Comprehensive</i>	
<i>Guardianship Reform</i>	388

<i>B. Promoting Pathways to Personal Autonomy:</i>	
<i>Guardianship Alternatives</i>	389
CONCLUSION.....	392

INTRODUCTION

This Comment examines how New York’s guardianship system, established under Mental Hygiene Law Article 81, has drifted from its original purpose as a measure of last resort, frequently resulting in the unnecessary loss of individuals’ autonomy, dignity, and adequate judicial oversight. Using Cody’s Story as a point of entry, we illustrate the human cost of systemic neglect, inadequate training, and insufficient judicial supervision. While the New York City Council’s passage of Resolution 561 (“the Resolution”) marks a critical first step toward a statewide public guardianship system, lasting reform will require a holistic reimagining that utilizes a systems theory approach¹ and embeds harm reduction, cultural competency, and person-centered practice² into every stage of guardianship.

Part I outlines the legislative history and current structure of Article 81 guardianship, emphasizing its foundational “least restrictive form of

¹ See generally *General Systems Theory*, EBSCO, <https://www.ebsco.com/research-starters/history/general-systems-theory> [<https://perma.cc/U32L-52A9>] (last visited May 20, 2025) (explaining that systems theory refers to a series of interconnected elements, and incorporating this theory involves using a holistic model rather than focusing on individual components). Decision makers and legislators are recommended to approach improving the guardianship system utilizing systems theory, i.e. acknowledging that people do not exist in a vacuum and they are impacted by dozens of systems daily. Specifically, they should consider how an Article 81 designation legally and practically interacts with the welfare system, disability system, rehab/nursing home system, hospital system, etc. To help facilitate this, the guardianship system should be reimagined through a democratic governance model, incorporating social workers and case managers with experience working in the system, as well as families and individuals impacted by the system. See Gabrielle Conrad-Amlicke, *Understanding Micro, Mezzo and Macro Social Work Practice*, NAT’L ASSOC. OF SOC. WORKERS, <https://job-link.socialworkers.org/career-resources/navigate-social-work-9/understanding-micro-mezzo-and-macro-social-work-practice-30> [<https://perma.cc/NQ93-NSUD>] (last visited Apr. 2, 2025) (outlining how these ideas have developed across different social work frameworks such as micro practice and macro practice).

² See JEROLD D. BOZARTH & BARBARA TEMANER BRODLEY, *THE CORE VALUES OF THE PERSON-CENTERED APPROACH* (1986), <https://adpca.org/the-core-values-of-the-person-centered-approach/> [<https://perma.cc/RAA3-3H9B>]. Person-centered theory calls for practitioners (decision makers and, in this case, legislators) to look at the issue primarily from the impacted person’s perspective, in this case what is legally called the “IP,” and how the system design or improvements will help, hinder, and generally affect that person. Generally, person-centered theory places autonomy of the person impacted (in this case, the population being legislated around) at the forefront.

intervention”³ principle and the safeguards it was designed to provide. Part II examines how those safeguards have eroded in practice, making guardianship a default rather than a last resort, and details who is most affected—particularly marginalized elders, veterans, and the “unbefriended.”⁴ Part III analyzes the Resolution’s vision for a public guardianship system, drawing comparisons to other states and evaluating potential benefits, limitations, and counterarguments. Part IV proposes additional reforms and supporting actions necessary to ensure that any statewide system not only addresses current deficiencies but actively promotes autonomy, including investment in training, language access, and alternatives to guardianship. Finally, this Comment concludes with a call for a rebuilt system grounded in dignity, equity, and civil rights.

This Comment’s central argument is that New York’s guardianship crisis cannot be solved by administrative reshuffling or piecemeal reform. Without structural change such as enforced caseload caps, robust oversight, mandatory and ongoing training, equitable funding, and the presumption of less restrictive alternatives, any reform will fail to prevent the neglect, exploitation, and “civil death”⁵ too often experienced by those under guardianship today.

DEFINITIONS

The New York State Unified Court System defines guardianship broadly as when a court gives a person or organization the legal right to make decisions for another person who is unable to make all or some decisions for themselves.⁶ Specifically, Article 81.02 of the Mental Hygiene Law (“Article 81”) governs the standard for appointing a guardian to an Alleged Incapacitated Person (“AIP”), such that a court may appoint a guardian if it finds, by clear and convincing evidence, that (1) the appointment is necessary to provide for the person’s personal needs and (2) the person either consents to the appointment or is found to be incapacitated as defined by the statute.⁷

³ N.Y. MENTAL HYG. LAW § 81.03(d) (McKinney 2004).

⁴ Jake Pearson, *Bedbugs, Rats and No Heat: How One Woman Endured a Decade of Neglect in New York’s Guardianship System*, PROPUBLICA, (Mar. 7, 2024, 6 AM), <https://www.propublica.org/article/how-one-woman-endured-decade-neglect-new-york-guardianship> [<https://perma.cc/P3GF-XDRK>].

⁵ JIM BERCHTOLD, ADDRESSING BIAS IN THE GUARDIANSHIP PROCESS 1 (2024), <https://justiceinaging.org/wp-content/uploads/2024/02/Addressing-Bias-in-the-Guardianship-Process-Issue-Brief.pdf> [<https://perma.cc/S6TL-NFZW>] (quoting Fred Bayles, *Guardians of the Elderly: An Ailing System Part 1: Declared ‘Legally Dead’ by a Troubled System*, ASSOCIATED PRESS (Sept. 19, 1987)).

⁶ *Guardianship*, N.Y. STATE UNIFIED CT. SYS. (Feb. 13, 2024), <https://www.nycourts.gov/courthelp/guardianship/index.shtml> (on file with the CUNY Law Review).

⁷ N.Y. MENTAL HYG. LAW § 81.02 (McKinney 2025).

An AIP is an individual who someone is claiming cannot care for themselves and is need of a guardian; however, the claim is not yet proven.⁸ This is in distinction to an Incapacitated Person (“IP”), who is an individual who has been deemed legally incapacitated by the court because they have been found to be “unable to care for their own property and/or personal needs and likely to suffer harm because they cannot understand the consequences of their inability to do so.”⁹ For this Comment, “elder” persons shall be considered those who are sixty-five years of age or older. Lastly, throughout this Comment, individuals under guardianship are referred to as clients, participants, supervisees, IPs, and wards, depending on the context.¹⁰

CODY’S STORY¹¹

Cody,¹² an Airforce Veteran, was failed by his country. A quirky, soft-spoken man, he was always quick to crack a joke. By the time our journeys converged, he had outlived his family, old professors, friends, and love interests—though he was eager to share vivid stories if given the chance. Later in life, he connected with outpatient case management services, which provided him with additional food resources, socialization, and connections to mental health support through a care team. Living solely on military benefits and social security, he found an amenable landlord who accepted minimal rent. Quickly, his care team became something like a family to him, offering companionship and support. For holidays, his team looked forward to sharing a meal with him, ensuring he was surrounded by community.

Sometime during the colder months, with COVID-lockdown restrictions still lingering, Cody’s landlord found him unresponsive on his apartment floor. While his condition was critical, and recovery was possible according to doctors, his condition was not severe enough for a hospital to retain him. This led to months of Cody bouncing between hospitals and nursing homes as his condition fluctuated. At times, Cody was essentially comatose, unable to feed, bathe, or speak for himself. He subsequently lost his apartment, living solely in rehabilitation centers.

⁸ *Guardianship of an Incapacitated Person (Article 81 Guardianship)*, N.Y. STATE UNIFIED CT. SYS. (Feb. 13, 2024), <https://nycourts.gov/courthelp/Guardianship/AIP.shtml> (on file with the CUNY Law Review).

⁹ N.Y. STATE UNIFIED CT. SYS., *supra* note 6.

¹⁰ Despite using the term incapacitated person to reflect the statutory language of an Article 81 guardianship, we recognize that not all individuals under guardianship are necessarily incapacitated, as determinations are sometimes flawed.

¹¹ As told by Sarah Michelle Smith, LMSW, part of Cody’s care team and his friend.

¹² Here called “Cody” to protect his identity.

Even with no living friends or family to serve as proxy decision-makers and Cody being unable to give verbal consent, Cody's care team was blocked from intervening. Because of complications related to the COVID lockdown, his location often became unknown to his care team, as transfers between facilities were made without any notification. Sometimes, he would have a moment of clarity, and ask to call his care team. When this happened, some headway could be made, just for progress to be lost the next time he was transferred.

Because of these circumstances, a state guardian was appointed to Cody through one of the rehabilitation nursing homes. The case management agency that housed his care team was not allowed to continue working with and advocating on behalf of Cody due to the state guardianship. Medicare insurance considers having both a guardianship and case management team duplicative services.

Cody's care management team continued to advocate for visitation and constant updates on his condition and location despite these bureaucratic limitations. The state guardian was never seen or heard from, other than to process payment from Cody's accounts to the rehabilitation nursing home where he was placed.

Cody died quietly and alone, never meeting with his state-appointed guardian months after they had been appointed. Before his death, there were attempts made by his care team to escalate his level of care to save his life, as his condition was causing visible skin lesions and rendering him unable to communicate.

Because his guardian was not zealously or competently advocating for Cody, he did not receive the care he needed during his life. This is one anecdotal example of many, capturing how New York's guardianship system is failing to provide adequate, or any, standard of care.

I. THE HISTORY AND CURRENT STRUCTURE OF ARTICLE 81 GUARDIANSHIP

A. *The Legislative Background of Article 81 Guardianship*

In New York, guardianship is a legal relationship established when a court "gives a person or organization the legal right to make decisions on behalf of another person who is unable to make decisions for themselves."¹³ Various persons may be unable to make decisions on their own behalf, such as minors, intellectually or developmentally disabled adults, or those who have otherwise been legally determined to be IPs.¹⁴ In any

¹³ N.Y. STATE UNIFIED CT. SYS., *supra* note 6.

¹⁴ *Id.*

case, guardianship may serve as a method for persons to navigate their decision-making and management of their personal and property needs.

Under New York State law, there are two types of guardianship. The first form of guardianship is filed under Article 17-A of the Surrogate's Court Procedures Act.¹⁵ A Surrogate Court judge may appoint someone to serve as an Article 17-A guardian in order to protect the interests of an intellectually or developmentally disabled person who is unable to make decisions for themselves.¹⁶ Importantly, Article 17-A guardianships are the most restrictive form of guardianships in New York, mimicking the decision-making power of a parent towards a child.¹⁷

The second form of guardianship in New York falls under Article 81 of the Mental Hygiene Law. In contrast with Article 17-A guardianships, Article 81 guardianships typically involve older individuals who have lost capacity in some way and require another person to manage affairs.¹⁸ Article 81 was established in 1993, stemming from a combination of Mental Hygiene Law Articles 77 and 78, which have since been repealed.¹⁹ Article 81 replaced Articles 77 and 78 with a method to seek guardianship of a person, guardianship of property, or guardianship of both person and property all under one statute.²⁰

The creation of Article 81 was significant in that it took a more holistic approach to guardianship, focusing on an individual's functions, abilities, and activities rather than merely focusing on one's medical diagnosis.²¹ Article 81 recognizes the "diverse and complex needs of people with incapacities, [and] allows for the crafting of an individualized guardianship order based on the incapacitated person's functional limitations."²²

B. *The Current Structure of Article 81 Guardianship*

While guardianship may help an IP make decisions regarding their health, finances, and overall well-being, it is well-established that "[e]ven

¹⁵ *Guardianship of an Intellectually or Developmentally Disabled Adult*, N.Y. STATE UNIFIED CT. SYS. (Mar. 8, 2022), <https://www.nycourts.gov/courthelp/guardianship/17A.shtml> (on file with the CUNY Law Review).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See N.Y. STATE UNIFIED CT. SYS., *supra* note 8.

¹⁹ Julie M. Solinski, *Guardianship Proceedings in New York: Proposals for Article 81 to Address Both the Lack of Funding and Resource Problems*, 17 PACE L. REV. 444, 446-50 (1997).

²⁰ *Id.*

²¹ N.Y. MENTAL HYG. LAW § 81.02(c) (McKinney 2025).

²² *History of the Mental Hygiene Legal Service*, N.Y. STATE UNIFIED CT. SYS., https://nycourts.gov/courts/ad2/pdf/mhlsart10/MHLS_history.pdf (on file with the CUNY Law Review) (last visited Oct. 30, 2024).

if all of the elements of incapacity are present, a guardian should be appointed only as a last resort, and should not be imposed if available resources or other alternatives will adequately protect the person.”²³ This last resort principle is in place because courts recognize that the legal remedy of guardianship deprives persons of significant power and control over their life.²⁴ Hence, guardians “shall be granted only those powers which are necessary to provide for personal needs and/or property management of the incapacitated.”²⁵ Ultimately, “[t]he cornerstone of Article 81 is the concept of appointing a guardian whose powers are tailored specifically to the particular needs of a person with respect to personal care, property management, or both.”²⁶ Therefore, guardianships require the guardian to exercise the highest degree of trust, loyalty, and fidelity in making decisions on behalf of the IP. To ensure this level of security, Article 81 outlines numerous safeguards to preserve the rights and dignity of every IP.

One such safeguard under Article 81 is the law’s requirements to determine if a person is legally incapacitated. A person is legally incapacitated under Article 81 if, based on clear and convincing evidence, “a person is likely to suffer harm because (1) the person is unable to provide for personal needs and/or property management; and (2) the person cannot adequately understand and appreciate the nature and consequences of such inability.”²⁷ Next, a judge determines if an AIP needs to have a guardian appointed.²⁸ Necessity is determined by the “sufficiency and reliability of available resources” to the AIP which may be available to satisfy the AIP’s personal needs and property management without the need for a guardian.²⁹ Available resources include home care providers, powers of attorney, health care proxies, and trusts.³⁰

An additional protection is the appointment of a non-interested court evaluator, who serves as the neutral eyes and ears of the court³¹ in the inspection of medical records, gathering of financial statements, speaking with medical providers, and interviewing of the AIP and related parties.³² Following their investigation, the court evaluator completes a Court

²³ *In re Maher*, 207 A.D.2d 133, 140 (2d Dep’t 1994) (citation omitted).

²⁴ See *Legislative Memo on Supported Decision-Making by People with Disabilities*, NYCLU (June 2, 2022), <https://www.nyclu.org/resources/policy/legislations/legislative-memo-supported-decision-making-people-disabilities> [<https://perma.cc/E4TD-77N9>].

²⁵ N.Y. MENTAL HYG. LAW § 81.02(a)(2) (McKinney 2025).

²⁶ *Id.* § 81.02, Law Revision Commission Comments.

²⁷ *Id.* § 81.02(b).

²⁸ N.Y. STATE UNIFIED CT. SYS., *supra* note 8.

²⁹ N.Y. MENTAL HYG. LAW § 81.02(a) (McKinney 2025).

³⁰ *Id.* § 81.03(e).

³¹ *Id.* § 81.02 (a)(2)(b).

³² *Id.* § 81.09.

Evaluator Report, which recommends to the judge whether the AIP should be appointed a guardian or not. Furthermore, the report may suggest who the appointed guardian ought to be.

The requirements and duties of the guardian, once appointed, provide additional safeguards.³³ Article 81 necessitates that the appointed guardian file a report annually, or file at any other time upon motion or order of the court.³⁴ The annual report must include the contact details of the guardian and IP, updates on changes to the physical and/or mental condition of the IP, and details about the IP's last medical examination.³⁵ Further, the annual report should include information on the living conditions, medical care, social needs, financial details, and activities of the IP.³⁶ While extensive, the guardian's annual reports provide evidence to the court that the IP's needs are being met and their assets are being managed appropriately.

The court also imposes rules, including the removal of guardians who are found to be insufficiently performing their duties towards the IP. Article 81 states that "the court appointing a guardian may remove such guardian when the guardian fails to comply with an order, is guilty of misconduct, or for any other cause which to the court shall appear just."³⁷ Thus, if a guardian is not acting in the way the court intended them to, they may be removed to preserve the interests and well-being of the IP.

These safeguards serve to encourage the protection of the IP's interests over the interests or grievances of the petitioner.³⁸

II. FROM LAST RESORT TO DEFAULT: CIVIL RIGHTS REVOKED UNDER GUARDIANSHIP

A. *Guardianship as a Default: The Failure of Least Restrictive Intervention*

In New York, guardianship is not the last resort it was intended to be; it is often the default response to incapacity, stripping vulnerable individuals of their civil rights and autonomy. As one of the most ethically fraught aspects of the elder care system, guardianship raises sensitive questions about personal liberty, medical responsibility, and kinship.³⁹

³³ *Id.* § 81.20.

³⁴ *Id.* § 81.31.

³⁵ *Id.* § 81.31(b).

³⁶ *Id.*

³⁷ *Id.* § 81.35.

³⁸ *Id.* § 81.01.

³⁹ Michelle Chen, *Guardianship Often Fails Poor Seniors. Is There a Different Way?*, TRUTHOUT (Aug. 16, 2019), <https://truthout.org/articles/guardianship-often-fails-poor-seniors-is-there-a-different-way/> [<https://perma.cc/CVC7-WFV7>].

Though Article 81 emphasizes that guardianship should be the “least restrictive form of intervention which . . . permits [IPs] to exercise the independence and self-determination of which they are capable,”⁴⁰ the current guardianship framework creates a presumption of irreversible incapacity that often leads to unnecessary, permanent restrictions on personal freedoms, even for those capable of making informed decisions.

In theory, guardianship should be implemented only when all other less restrictive interventions have been exhausted. Yet, despite the principle of “last resort” intervention, the modern New York guardianship system—which supports the nonprofit industrial complex⁴¹—is often ignored in practice, stripping individuals of their fundamental civil rights. Scholars and experts describe this outcome as the “civil death” of the subjected person—an outcome that contradicts the ethical obligations of lawyers, social workers, and agencies responsible for protecting client self-determination.⁴²

Unlike most states, New York lacks a statewide public guardianship system, relying instead on a fragmented network of Adult Protective Services, community guardian programs, nonprofits, and attorneys to provide guardianship services.⁴³ According to the 2008 national public guardianship study, forty-four states have statutory provisions on public guardianship or guardianship of last resort.⁴⁴ Of these, twenty-seven states have “explicit schemes” that specifically establish public guardianship programs or offices, while 18 states have “implicit schemes” that address the role of guardians of last resort, with some states even having multiple

⁴⁰ N.Y. MENTAL HYG. LAW § 81.01 (McKinney 2025).

⁴¹ Because state mandated guardianships farm out their services through contracted private nonprofits, states take part in funding and cementing nonprofits within our society. Though necessary for providing services, nonprofits generally perpetuate scarcity mindset manipulation and allow for subpar levels of government support by shifting blame. See Claire Dunning, *The Origins of the Nonprofit Industrial Complex*, LPE PROJECT (May 29, 2023), <https://lpeproject.org/blog/the-origins-of-the-nonprofit-industrial-complex/> [<https://perma.cc/UK75-A7BJ>]; see also *Dismantling the Non-Profit Industrial Complex*, BOTH / AND, <https://both-and.org/dismantling-the-npic> [<https://perma.cc/BGX8-BU82>] (last visited May 20, 2025).

⁴² BERCHTOLD, *supra* note 5; see, e.g., *Model Rules of Professional Conduct: Preamble and Scope*, AM. BAR ASS’N, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/ [<https://perma.cc/7UP2-57FA>] (last visited May 20, 2025).

⁴³ See Kimberly George & Susan DeMaio, *Opinion: New York State’s Escalating Need for High-Quality Guardianship*, CITY LIMITS (Aug. 26, 2019), <https://citylimits.org/opinion-new-york-states-escalating-need-for-high-quality-guardianship/> [<https://perma.cc/VE9N-HXPP>].

⁴⁴ AM. BAR ASS’N COMM’N ON LAW AND AGING, STATE ADULT GUARDIANSHIP SUMMARY: DIRECTIONS OF REFORM 13 (2017) <https://ltcombudsman.org/uploads/files/issues/2017-legislative-summary.pdf> [<https://perma.cc/4XBG-4JXF>].

systems.⁴⁵ Despite this, New York does not have a statewide public guardian system and has not invested adequately in guardianship services to meet the current demand.⁴⁶ Without adequate state investment, judges frequently appoint private attorneys or community organizations to serve as guardians.⁴⁷ If no other guardian is available, local Commissioners of Social Services may be appointed.⁴⁸ This patchwork system disproportionately impacts low-income individuals who cannot afford private guardians, leaving them dependent on “a web of services from Adult Protective Services, community guardian programs, nonprofits, and attorneys.”⁴⁹

The Resolution seeks to address these structural pitfalls by reducing harm and improving the quality of life for those impacted by New York’s current guardianship framework. While efforts to enhance accountability in Article 81 cases have been made, meaningful reform remains necessary to ensure that guardianship truly adheres to its intended role as a last resort. The expertise of impacted individuals and direct service providers, in addition to impacted families and communities should be centered when designing a new New York guardianship system.

B. *Disparities in Guardianship: Who is Most Affected?*

In New York, the population most affected by the pitfalls of Article 81 guardianship includes the elderly. However, elderly persons, particularly those of color, LGBTQ+ older adults, and veterans, do not experience guardianship at an equitable rate: “[o]lder adults of color . . . and those with other marginalized identities face systemic discrimination that may increase their likelihood of guardianship, and biases embedded into the guardianship system exacerbate existing disparities.”⁵⁰

New York has experienced considerable growth in its older population, which reflects a broader trend across the United States.⁵¹ In 2019, for instance, “51% of persons age 65 and older lived in nine states,” including 3.3 million residents in New York alone.⁵² “Projections from the Census Bureau estimate that by 2040 approximately 22% of the

⁴⁵ *Id.*

⁴⁶ See *Guardianship Access New York (GANY)*, PROJECT GUARDIANSHIP, <https://project-guardianship.org/guardianship-access-new-york-gany> [https://perma.cc/H9G2-WEHN] (last visited Nov. 8, 2024).

⁴⁷ See *id.*

⁴⁸ N.Y. MENTAL HYG. LAW § 81.06(a)(6) (McKinney 2025).

⁴⁹ *Project Guardianship*, N.Y. HEALTH FOUND., <https://nyhealthfoundation.org/grantee/project-guardianship/> [https://perma.cc/ES32-KWG5] (last visited Aug. 30, 2025).

⁵⁰ BERCHTOLD, *supra* note 5, at 1-2.

⁵¹ ADMIN. FOR CMTY. LIVING, 2020 PROFILE OF OLDER AMERICANS 4 (2021), https://acl.gov/sites/default/files/aging%20and%20Disability%20In%20America/2020Profileolderamericans.final_.pdf [https://perma.cc/68AL-KN7M].

⁵² *Id.* at 8.

population will be over 65, outnumbering children under 18.”⁵³ These demographic shifts, combined with the increasing number of elderly individuals without adequate support systems, contribute to the rising need for guardianship services, particularly for those who are unbefriended or financially disadvantaged.⁵⁴

Historically, elderly persons experiencing dementia, disease, diminished physical capacity, isolation, and institutionalization are at a higher risk of being placed under guardianships.⁵⁵ Those without family or friends, often referred to as the “unbefriended,” face particular risks under Article 81.⁵⁶ These individuals, who also lack the financial resources to pay for a private guardian, often fall into the system of public or community guardianship which is typically provided by a nonprofit or government organization.⁵⁷ As elder law attorney Bernard Krooks notes, “[t]here’s a gaping hole in the system for folks who don’t have money, but who need help and don’t have anybody [who] can step in to pay their bills, make healthcare decisions and the like.”⁵⁸ This issue is especially prevalent in New York, where nearly 12% of the 3.3 million persons aged sixty-five and older live below the poverty line.⁵⁹

One way this disparity manifests is in hospital emergency rooms. When someone experiences a debilitating medical event that lands them in an emergency room, typically hospital staff will make good faith efforts to locate friends, family, or any acquaintance to assist with medical decisions for the patient. If no friends or family are reachable, the newly incapacitated individual quickly becomes a ward of the state, at the mercy of at or over-capacity organizations with insurmountable caseloads. Often, these unbefriended folks are our elders and unhoused.⁶⁰

Guardianship IPs based outside of hospitals and inpatient facilities like nursing homes are often “out of sight, out of mind,” leaving supervisees vulnerable.⁶¹ This is especially true for veterans like Cody, who face

⁵³ Leslie Reynolds, *Aging in New York State*, CORNELL UNIV. PROGRAM APPLIED DEMOGRAPHICS, https://pad.human.cornell.edu/TiDbit/TiDbit_22-01.html [<https://perma.cc/5G7Z-AJ5J>] (citation omitted) (last visited Aug. 2, 2025).

⁵⁴ *See id.*

⁵⁵ *Id.*

⁵⁶ Jake Pearson, *Lawmakers Ignored Warnings About New York's Broken Guardianship System for Decades. Here's How They Can Fix It.*, PROPUBLICA (Mar. 20, 2024, 5:00 AM), <https://www.propublica.org/article/how-new-york-guardianship-system-can-be-fixed> [<https://perma.cc/3AST-NQE9>].

⁵⁷ Chen, *supra* note 39.

⁵⁸ *Id.*

⁵⁹ ADMIN. FOR CMTY. LIVING, *supra* note 51, at 10.

⁶⁰ Based on personal observations of co-author, Sarah Michelle Smith, LMSW.

⁶¹ *See supra* Part I.

a greater likelihood of experiencing homelessness and isolation.⁶² Mental health injuries resulting from traumatic military experiences can further compound their vulnerability, making them more susceptible to guardianship.⁶³

C. Systemic Failures Highlighted by Resolution 561

Despite safeguards in place, Article 81 guardianships have not entirely functioned in the ways that they were designed to. The Resolution cites multiple ProPublica reports that highlight investigations and cases relating to flaws in New York's guardianship system and the National Criminal Justice Reference Service's findings which identify widespread guardianship abuse concerns nationwide.⁶⁴ With these sources, the Resolution identifies three major problem areas with the current Article 81 guardianship system: (1) overburdened guardians, (2) the minimal qualification process for guardians, and (3) lack of oversight of guardians once they are in place.

1. Overburdened Guardians

While disparities in guardianship affect vulnerable populations, the structural issues within the system further complicate efforts for reform. One of the most pressing problems is the overwhelming caseloads taken on by guardians. Many guardians working for social service agencies or nonprofit organizations are forced to manage excessive caseloads, often exceeding the recommended 1:20 guardian-to-ward ratio.⁶⁵ In one alarming instance, New York Guardianship Services, a primary organization that serves as guardian for New Yorkers, was reported to have an IP-to-staff ratio of around 83:1.⁶⁶ Consequently, one worker who was responsible for dozens of IPs every day reportedly quit after six months because she was unable to keep up with the needs of the company's clients.⁶⁷

Undoubtedly, overburdening guardians results in reduced visits to clients, inadequate understanding of IPs' unique needs, diminished oversight of their personal, financial, and medical decisions, and a constant

⁶² Leo Shane III, *Vets More Likely Than Civilians to Own Home, Experience Homelessness*, MILITARY TIMES (Oct. 12, 2023), <https://www.militarytimes.com/veterans/2023/10/12/vets-more-likely-than-civilians-to-own-home-experience-homelessness/> [https://perma.cc/GBK2-C7MZ].

⁶³ *Id.*

⁶⁴ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6860204&GUID=061C0C06-A06F-4E55-8CE5-AC39F18B7A16> (on file with the CUNY Law Review).

⁶⁵ *Id.* at 2.

⁶⁶ Pearson, *supra* note 56.

⁶⁷ *Id.*

struggle to keep up with court-required filings and reports. With high caseloads, guardians are unable to provide the level of care, attention, and oversight necessary for the vulnerable individuals under their care.

Nearly 28,600 people in New York are under guardianship, and 60% of them reside in New York City.⁶⁸ Yet, the state's guardianship infrastructure remains underfunded and overwhelmed, with an inadequate number of qualified professionals to meet the demand.⁶⁹ High caseloads result in subpar care, leading to poor client outcomes and contributing to moral injury among guardian caseworkers, who suffer "when their workload is such that they deliver care of a standard that falls well below what they would usually consider to be good enough."⁷⁰ This strain causes high turnover rates, low morale, reduced standards and quality of care, and poor working conditions for guardians. The lack of adequate funding exacerbates these challenges, as it limits the ability to recruit and retain enough qualified guardians and support staff to adequately serve the volume of vulnerable individuals.

Additionally, with the vast majority of IPs experiencing financial strain and lacking their own attorneys, judges are forced to rely on pro bono lawyers or assign cases to nonprofits, which are often left to deduct fees directly from their IPs' accounts.⁷¹ The limited public funding allocated to programs that promote human welfare forces county social service departments in New York to stretch their resources, hindering their capacity to provide sufficient support. As a result, county social service departments and agencies are overburdened and understaffed, severely limiting their ability to protect and properly care for the individuals under their guardianship.⁷²

Research from the Vera Institute's The Guardianship Project ("TGP") highlights the systemic failures of guardianship systems across the country. TGP reports that "[s]urveys of judges and other court personnel, along with professional guardians, indicate that many courts are overstretched; there is little monitoring of cases, and judges often lack expertise for handling complex cases of seniors with serious health and

⁶⁸ Jake Pearson, *New York Trusted This Company to Care for the Sick and Elderly. Instead, It Left People Confused and Alone.*, PROPUBLICA (Mar. 12, 2024, 6 AM), <https://www.propublica.org/article/new-york-guardianship-services-care-sick-elderly-confused-alone> [https://perma.cc/7DHM-TJ5F].

⁶⁹ Jake Pearson, "A Real Overhaul Is Long Overdue": *Lawmaker Calls on State Leaders to Reform New York's Beleaguered Guardianship System*, PROPUBLICA, (Sept. 18, 2024, 5 A.M.), <https://www.propublica.org/article/new-york-city-guardianship-oversight-reform-hochul> [https://perma.cc/A4ZX-5QKX].

⁷⁰ See Victoria Williamson et al., *Moral Injury: The Effect on Mental Health and Implications for Treatment*, 8 LANCET PSYCHIATRY 453, 453-55 (2021).

⁷¹ Pearson, *supra* note 56.

⁷² See *id.*

economic issues.”⁷³ These concerns are particularly relevant in New York, where the lack of a structured statewide public guardian system exacerbates existing oversight and resource deficiencies. The network of providers who step in when family members or private-pay guardians are unavailable is already stretched to capacity, leaving thousands without the necessary support.⁷⁴

2. Minimally Qualified Guardians

Another issue exposed in the Resolution is the minimum qualification process for individuals in New York to become guardians.⁷⁵ Article 81 states that every IP is entitled to a guardian whom the court finds to be “sufficiently capable of performing the duties and exercising the powers of a guardian necessary to protect the incapacitated person.”⁷⁶ Yet, while many states require extensive certification for individuals before they may become guardians,⁷⁷ New York does not.⁷⁸

Individuals hoping to become guardians are simply required to watch a series of training videos online, distributed by the Guardian Assistance Network, and sign an affirmation of viewing.⁷⁹ This program certifies an individual to “meet the Article 81 statutory training requirements for lay guardians and offers practical advice to assist lay guardians in carrying out their guardianship responsibilities.”⁸⁰

⁷³ Chen, *supra* note 39.

⁷⁴ PROJECT GUARDIANSHIP, *supra* note 46.

⁷⁵ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

⁷⁶ N.Y. MENTAL HYG. LAW § 81.39(a) (McKinney 2025).

⁷⁷ *State Specific Information*, CTR. FOR GUARDIANSHIP CERTIFICATION, <https://guardianshipcert.org/become-certified/state-specific-information/> [https://perma.cc/TF4Y-FDCV] (last visited May 20, 2025).

⁷⁸ N.Y. MENTAL HYG. LAW § 81.39(b) (McKinney 2025).

⁷⁹ *Online Training Video*, N.Y. STATE UNIFIED CT. SYS., <https://ww2.nycourts.gov/ip/gan/training.shtml> (on file with the CUNY Law Review) (last visited May 20, 2025).

⁸⁰ *Id.*

The screenshot below outlines the five steps necessary to complete the video training program to become an Article 81 guardian.⁸¹

ON-LINE ARTICLE 81 LAY GUARDIAN TRAINING PROGRAM

This program is certified to meet the Article 81 statutory training requirements for lay guardians and offers practical advice to assist lay guardians in carrying out their guardianship responsibilities.

INSTRUCTIONS FOR VIEWING ONLINE VIDEO

1. The video is in three parts. You may view each part separately. You must view all three parts to complete the training requirement.
2. During each part of the video you will hear a code. There is a different code consisting of a word and numbers for each part. Write down each code as you hear it.
3. Fill in the three codes that you hear during the video and all other required information on the [Guardian's Affirmation of Viewing](#).
4. Print and complete the Affirmation. Don't forget to sign and date the Affirmation!
5. Send the filled-out affirmation, preferably by scanning and e-mailing it, or by "fax" or USPS mail as indicated below. Please choose only one mode of delivery, duplicates are not necessary.

Though the program meets the statutory training requirements of a guardian under Article 81, these requirements are not thorough enough to adequately prepare guardians to serve. One problem with the training program is that the videos are not extensive enough to discuss the intricate and unique issues that guardians come across. The videos are separated into three sections, totaling approximately two hours.⁸² Part One introduces the basic role of a lay guardian and outlines their fundamental responsibilities. This section includes a simple explanation of the scope of a guardian, which is determined and granted by a court order. Part Two of the program focuses on the more specific tasks and duties of the guardian. This includes managing the IP's financial and personal needs, while maintaining legal compliance and practices beneficial to the IP. Finally, Part Three discusses the obligations of the guardian to make initial and annual reports, required by the court. The video emphasizes the importance of record keeping and communication with the court to ensure the guardians are fulfilling their legal obligations.

Following the viewing of the videos, a prospective guardian must sign and send their filled-out affirmation to the Guardian Assistance Network.⁸³ The affirmation is merely one page and simply asks for information such as the guardian's name and address, the name of the IP, and the three codes stated during the training videos.⁸⁴

This bare-bones training program raises issues of preparedness and adequateness of approved guardians. While Article 81 outlines some qualifications for guardians, it lacks provisions for continued or ongoing

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

training to ensure that guardians are adequately informed.⁸⁵ Although the New York Court system provides other materials, such as a 130-page “Guide to Guardianship,”⁸⁶ the initial qualifications and training are insufficient. This deficiency in both initial qualification and ongoing training often leads to increased mistakes or overlooked critical issues. A balance of accessibility, practicality, and capacity building must be struck.

3. Lack of Oversight and Support

Finally, the Resolution highlights the challenges faced in the overburdened New York guardianship system, particularly concerning case delays and lack of oversight by judges and court examiners. In New York City alone, “there are [only] approximately one dozen judges assigned to oversee more than 17,411 people in guardianships.”⁸⁷ Additionally, there are only “157 examiners responsible for reviewing the reports of 17,411 New York City wards.”⁸⁸ This creates a lack of accountability and makes providing adequate internal support to service providers impossible. Because the system is overburned, a severe backlog is created, which allows cases to linger for years without adequate judicial review or supervision. Lack of scrutiny and long delays in these cases can result in neglect and exploitation of New York’s most vulnerable people.⁸⁹

As reported in a *ProPublica* article, one woman endured years of neglect under a court-appointed guardian, living in a bedbug-infested apartment without heat.⁹⁰ These conditions went unaddressed by her legally appointed guardian and unquestioned by the examiner assigned to her case.⁹¹ Such stories are not isolated but symptomatic of a larger breakdown in the guardianship system.

In another case, a guardian illegally spent more than half of her IP’s life savings on care provided by her own private business.⁹² Over the years that she served as a guardian, she transferred between \$80,000 and \$100,000 annually from her IP’s accounts to her own private healthcare

⁸⁵ N.Y. MENTAL HYG. LAW § 81.39 (McKinney 2025).

⁸⁶ SIA ARNASON ET AL., GUIDE TO GUARDIANSHIP (4th ed. 2011), <https://ww2.nycourts.gov/sites/default/files/document/files/2017-11/ENGLISH.pdf> (on file with the CUNY Law Review).

⁸⁷ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

⁸⁸ Pearson, *supra* note 4.

⁸⁹ *See id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Jake Pearson, *This Guardian Enriched Herself Using the Finances of Vulnerable People in Her Care. Judges Let It Happen*, PROPUBLICA (Aug. 8, 2024, 5:00 AM), <https://www.propublica.org/article/new-york-guardian-yvonne-murphy-beacon-eldercare-judges> [<https://perma.cc/7F7T-HH5W>].

business.⁹³ Additionally, she collected tens of thousands of dollars from her IP in guardianship fees.⁹⁴ It was not until the court examiner issued a complaint after reviewing her work that this exploitative behavior stopped. This is yet another case where an IP being exploited by an unscrupulous guardian could have been prevented by adequate judicial oversight.

The lack of oversight in the guardianship system stems largely from overburdened courts and the insufficient capacity of judges and court examiners to effectively manage the numerous cases they are assigned to. While courts mainly focus on financial oversight of IPs, annual assessments of guardians' care can take years to complete and often focus more on paperwork than on the well-being of the IPs themselves.⁹⁵ This issue has been exacerbated by a shortage of court staff and judges, which further inhibits the ability to conduct timely and thorough assessments.

III. RESOLUTION 561'S VISION OF A PUBLIC GUARDIANSHIP SYSTEM

A. *Laying the Groundwork for Reform*

With the dangers of the current system in mind, New York City Councilmembers have passed the Resolution, co-sponsored by Crystal Hudson, Mercedes Narcisse, Rita C. Joseph, and Tiffany Cabán, which aims to create a statewide guardianship system to reform the current system under Article 81 of the Mental Hygiene Law.⁹⁶ The overarching goal is to bridge gaps and inequities in the existing protective measures to better protect vulnerable New Yorkers.⁹⁷ The Resolution calls for the New York State Legislature to introduce and pass, and for the Governor to sign, legislation establishing a "statewide public guardianship system to . . . safeguard vulnerable New Yorkers living under guardianship arrangements."⁹⁸

Although the Resolution calls for the creation of a public guardianship system, it does not clearly outline how such a system would function. The Resolution suggests the need for a statewide system but lacks specifics on how this system would be implemented, structured, funded, resourced, and managed. Without these key details, many questions about the practical implementation of a public guardianship system are left

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Pearson, *supra* note 69.

⁹⁶ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

⁹⁷ *Id.*

⁹⁸ *Id.*

unanswered. However, the Resolution does highlight significant gaps that a well-designed public guardianship framework could address.

B. How a Statewide System Would Reform Guardianship in New York

A statewide guardianship system, also known as a public guardianship system, is a cohesive network of organizations that ensures equal access to dignified, supportive, tailored guardianship for people who have limitations or diminishing capacity.⁹⁹ The goal of a statewide system is to address inequities and deficits and safeguard vulnerable individuals in need of protective arrangements.¹⁰⁰

1. Relieving Overburdened Guardians

As noted above, the Resolution seeks to address the overburdened guardianship system in New York, where excessive caseloads have left private guardians and nonprofit organizations overwhelmed and overworked. The current system's reliance on overloaded guardians, often with minimal support, leads to compromised care and oversight for those living under guardianship.

The Resolution proposes the creation of a statewide public guardianship system that would put pressure on legislators and the governor of New York to allocate state funding to support an increased number of guardians.¹⁰¹ With increased state funding, judges would not have to rely as heavily on nonprofits or on attorneys to take on pro bono cases as guardians.¹⁰² The Resolution also includes a plan developed by Guardianship Access New York ("GANY"), a coalition of nonprofit providers including the Center for Elder Law and Justice, Empower, Assist, & Care ("EAC") Network, Guardianship Corp., Lifespan, and Project Guardianship, and the Hon. Arthur M. Diamond, JSC.¹⁰³ The plan calls for \$15 million of annual investment in nonprofit guardianship services.¹⁰⁴ This funding would support vetted groups serving 1,500 New Yorkers each year and ensuring access to ethical, reliable, and effective guardianships.¹⁰⁵

The Resolution also highlights the importance of considering "an existing proposal for a Statewide Initiative of Nonprofit Guardians (SING),

⁹⁹ See *Project Guardianship*, N.Y. HEALTH FOUND., <https://nyhealthfoundation.org/grantee/project-guardianship/> [https://perma.cc/5D48-5VWK] (last visited Apr. 3, 2025).

¹⁰⁰ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

¹⁰¹ Pearson, *supra* note 69.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

which would build the capacity of high-quality nonprofit guardians to meet the demand for services in their local communities.”¹⁰⁶ Furthermore, “as proposed by [GANY] . . . SING would build the capacity of nonprofit organizations to develop high-quality guardianship programs in areas where such services are needed but do not currently exist.”¹⁰⁷

While the Resolution emphasizes the importance of a statewide guardianship system, it does not directly provide solutions for managing the current system’s overburdened nature or lack of protections for those living under such mandates. It advocates for the allocation of state resources and the establishment of a public guardianship system to ease the burden on existing guardians by increasing the number of available guardians. However, simply creating more guardians does not address the deeper systemic and operational issues within the current framework, such as insufficient oversight, inconsistent care, or logistical inefficiencies. While the creation of a public guardianship system can help reduce some of the pressures on existing guardians, it does not necessarily resolve the root causes of the system’s overburdened nature without additional, more specific reforms or improvements to the existing system’s structure and management. Legislators and nonprofit leaders are urged to spend time creatively solution mapping with front line leaders and impacted individuals to address unique local execution factors.

2. Increased Qualification Standards for Guardians

As discussed above, the qualifications for guardians under Article 81 are minimal, and practical training consists only of short videos.¹⁰⁸ These requirements stand in contrast with those of other states that have implemented more rigorous training and qualification requirements. For example, ten states “require professional guardians to be certified by the Center for Guardianship Certification,” while others “require guardians to be licensed by state agencies, in the same way as . . . other skilled professions.”¹⁰⁹ Advocates and lawmakers have suggested that guardians undergo regular training, along with scheduled face-to-face check-ins with the individuals in their caseloads, to better identify and prevent incidents of abuse and neglect.¹¹⁰

The Center for Guardianship Certification (“CGC”) offers the National Certified Guardian (“NCG”) credential, which is designed to ensure that guardians have the necessary knowledge and training to provide

¹⁰⁶ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

¹⁰⁷ *Id.*

¹⁰⁸ N.Y. STATE UNIFIED CT. SYS., *supra* note 79.

¹⁰⁹ Pearson, *supra* note 56.

¹¹⁰ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

competent guardianship services.¹¹¹ To become an NCG, “[a]pplicants are required to submit an application in which they must attest to meeting the minimum eligibility requirements noted, submit proof of education as well as CEUs [Continuing Education Units] required, based upon the education level of the applicant, and submit to a background check.”¹¹² Applicants must pay a fee and receive a passing score on the competency exam based on core topics that measure their knowledge of professional standards.¹¹³ The CGC offers a review course for those seeking certification, consisting of four one-hour modules taught by “Approved Educators” from NGA which provide an in-depth review of the NGA National Study Guide.¹¹⁴ Yet, the course does not cover state-specific exam components.¹¹⁵

There are four categories of certification requirements for guardians across the United States. The first category, applicable in states including Texas, Florida, Arizona, and Washington, requires guardians to complete state-administered registration, certification, or licensing programs. The second category, implemented in ten states including Pennsylvania, Illinois, Nevada, and Oregon, mandates CGC certification.

The third category, unique to California, gives individuals the choice of either CGC or state certification. California’s public guardianship system, which is administered at the county level, allows for this dual certification option.¹¹⁶ The state’s certification process includes passing an examination, completing 30 hours of approved education courses (including one hour in cultural competency), and earning 15 hours of continuing education annually, with two hours required in ethics, cultural competency, or both every year.¹¹⁷

The fourth category, applicable in most states including New York, has no mandated requirements, leaving CGC certification completely voluntary.¹¹⁸

¹¹¹ *About Us*, CTR. FOR GUARDIANSHIP CERTIFICATION, <https://guardianshipcert.org/about-us/> [<https://perma.cc/DCL9-TUGT>] (last visited Apr. 3, 2025).

¹¹² *Id.*

¹¹³ *FAQs*, CTR. FOR GUARDIANSHIP CERTIFICATION, <https://guardianshipcert.org/faqs/> [<https://perma.cc/C7GK-KY9Y>] (last visited Apr. 3, 2025).

¹¹⁴ *Exam Information*, CTR. FOR GUARDIANSHIP CERTIFICATION, <https://guardianshipcert.org/exam-information/> [<https://perma.cc/ARY8-QWDU>] (last visited Apr. 3, 2025).

¹¹⁵ *Id.*

¹¹⁶ *Public Guardian*, L.A. CNTY. DEP’T OF MENTAL HEALTH, <https://dmh.lacounty.gov/our-services/public-guardian/> [<https://perma.cc/ELG2-G9SZ>] (last visited May 20, 2025); CTR. FOR GUARDIANSHIP CERTIFICATION, *supra* note 77.

¹¹⁷ DEP’T OF CONSUMER AFFAIRS PRO. FIDUCIARIES BUREAU, <https://www.fiduciary.ca.gov/> [<https://perma.cc/UCD3-HV7V>] (last visited May 20, 2025).

¹¹⁸ CTR. FOR GUARDIANSHIP CERTIFICATION, *supra* note 77.

As in the state systems discussed above, it is likely that a statewide public guardianship system in New York would likely include some version of a mandatory training and certification program to address the current minimum qualification standards (though there is no definite plan outlined in the Resolution to address this).¹¹⁹ While it is unknown whether New York would adopt a state-specific certification (like California), a standardized CGC requirement, or no certification requirement at all, mandating a more extensive training program would significantly benefit individuals under guardianship. Additional requirements would ensure that guardians are not only properly trained but also well-equipped to handle the complex, unique challenges they face in their roles. Recognizing that licensing often involves standardized testing that creates and perpetuates inequitable barriers, decision makers should consider a continuing education model outside of traditional licensure testing practices.¹²⁰

3. Improving Judicial Oversight in Guardianship Cases

The National Center for State Courts (“NCSC”) has underscored the critical importance of effective guardianship monitoring and is leading efforts to help courts improve case management.¹²¹ Such initiatives include a “Well-Being Protocol” and an “Accounting Protocol,” which serve as checklists and guiding documents to assess the status and needs of individuals under guardianship.¹²² Accompanying these are “Well-Being Red Flags” and “Accounting Red Flags” documents, which help identify warning signs such as regained capacity, safety concerns, guardian noncompliance, and financial mismanagement.¹²³ Together, these tools, along with judicial training modules, support courts in ensuring compliance and determining whether guardianships remain necessary.¹²⁴ The U.S. Department of Justice notes that “[s]tate law varies as to whether the court has specific procedures it must follow to monitor guardianships.”¹²⁵ Accordingly, they suggest that courts should have procedures for

¹¹⁹ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

¹²⁰ See, e.g., Farrah Mina, *Results in Social Worker Exams Reveal Stark Racial Disparities*, IMPRINT (Sept. 20, 2022, 3:30 AM), <https://imprintnews.org/top-stories/results-in-social-worker-exams-reveal-racial-disparities> [<https://perma.cc/TVD8-CKCU>].

¹²¹ See *Adopting a Guardianship Review Protocol*, NAT’L CTR. FOR STATE CTS., <https://www.ncsc.org/article/adopting-guardianship-review-protocol> [<https://perma.cc/RD9S-85XF>] (last visited Aug. 28, 2025).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See *id.*

¹²⁵ *Guardianship: Key Concepts and Resources*, U.S. DEP’T OF JUST., <https://www.justice.gov/elderjustice/guardianship-key-concepts-and-resources> [<https://perma.cc/Y6GA-HJ4Y>] (Sept. 30, 2024).

monitoring guardians' reports and determining whether such reports indicate compliance with their duties.¹²⁶

The current extensive caseloads of judges and court examiners often result in delayed reviews and interventions in guardianship cases. Implementing a cohesive, statewide system could enhance regular monitoring of guardians, including consistent check-ins with IPs and comprehensive reporting on their medical and financial statuses. This approach aims to ensure accountability and improve the quality of care provided to vulnerable populations under guardianship.

An increased number of court clerks handling guardianship cases would help address the pressing need for greater court oversight.¹²⁷ Advocates and lawmakers have stressed the need to “implement a system of oversight to help eliminate increased workforce [sic] of court clerks and examiners and, at the same time, reducing caseload capacities to manageable levels.”¹²⁸ Additionally,

[i]n October 2022, a National Judicial Task Force to Examine State Court’s Response to Mental Illness recommended pay raises for examiners to counteract drastic budget cuts that had reduced the number of court clerks and examiners needed to “recruit an adequate bench,” which would allow for a full complement of staff to ensure that annual examinations and assessments of guardians take place in a timely manner.¹²⁹

Court clerks are vital in the guardianship oversight process, as they review examiners' reports before they reach judges for final approval. Following significant budget cuts in 2011, over 400 court workers, including clerks, were laid off in New York.¹³⁰ Restoring funding through the Resolution would help reinstate court personnel positions and improve overall efficiency and oversight. Further, the approach to developing a procedural design for additional oversight and accountability mechanisms should involve direct service providers and their insights.

C. *Public Guardianship Systems in Other States*

To envision the potential impact of a state public guardianship system in New York, it is essential to examine how similar systems function and succeed in other states.

¹²⁶ *Id.*

¹²⁷ Pearson, *supra* note 56.

¹²⁸ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

¹²⁹ *Id.*

¹³⁰ Pearson, *supra* note 56; see Thomas Kaplan, *Chief Judge Says Deal Will Require Hundreds of Layoffs in Court System*, N.Y. TIMES (Mar. 28, 2011), <https://www.nytimes.com/2011/03/29/nyregion/29cuts.html> (on file with the CUNY Law Review).

As mentioned above, California is one state that has a public guardianship system. Established in 1945 by statute, “The Public Guardian” (“PG”) operates under the authority of the Probate Code and the Superior Court in counties throughout California.¹³¹ The PG is responsible for conducting official investigations into conservatorship matters and serving as the legally appointed conservator for individuals whom the court has determined to be incapable of caring for themselves.¹³² According to the Santa Clara County Public Guardian, the PG’s role involves investigating referrals, managing finances, and securing appropriate medical care, housing, case management, and money management services.¹³³

A Civil Grand Jury investigation into the Sonoma County PG from 2009-10 concluded that the “staff of the Public Guardian presents as highly knowledgeable and qualified for the tasks of providing conservatorship as defined in the Probate Code.”¹³⁴ However, the report noted that, despite these strengths, the PG system has “spawned legitimate complaint,” including malfeasance allegations prompting the investigation¹³⁵ Additionally, complaints suggest that the system struggles with the “ponderousness of deliberation and protracted time it takes to address even routine requests.”¹³⁶ Hence, while California’s PG system serves as an important model for public guardianship, these ongoing challenges highlight the need for structural improvements, including increased funding, streamlined court processes, and stronger oversight mechanisms to ensure that conservatorships are handled efficiently and equitably.

In contrast, Florida’s guardianship system has taken a more proactive approach to oversight and accountability, implementing measures to ensure quality care for individuals who require guardianship services. State funding supports fifteen local Offices of Public Guardianship that serve as guardians under the Florida Department of Elder Affairs, specifically through the Office of Public and Professional Guardians (“OPPG”).¹³⁷

¹³¹ *Public Administrator, Guardian, Conservator*, CNTY. OF SANTA CLARA SOC. SERV. AGENCY, <https://ssa.santaclaracounty.gov/protective-services/public-administrator-guardian-conservator> (on file with the CUNY Law Review) (last visited May 20, 2025). *See generally* L.A. CNTY. DEP’T OF MENTAL HEALTH, *supra* note 116 (stating that the legislative intent is coordination with existing programs).

¹³² CNTY. OF SANTA CLARA SOC. SERV. AGENCY, *supra* note 131.

¹³³ *Id.*

¹³⁴ 2009-2010 SONOMA CNTY. CIV. GRAND JURY, FINAL REPORT 31 (2010), <https://sonoma.courts.ca.gov/system/files/grand-jury/gj-2009-2010-finalreport.pdf> [<https://perma.cc/6SXM-UM9C>].

¹³⁵ *Id.* at 30.

¹³⁶ *Id.* at 31.

¹³⁷ *Office of Public & Professional Guardians (OPPG)*, ELDER AFFS. FLA. (Mar. 21, 2025), <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> [<https://perma.cc/GDE5-5TBK>].

The OPPG is responsible for appointing public guardians to oversee individuals who lack the financial resources for a private guardian and do not have friends or family to serve in that role.¹³⁸

A key feature of Florida's system is its mandated professional staff-to-ward ratio, which limits professional guardians to a maximum caseload of forty IPs (1:40 ratio).¹³⁹ This requirement helps prevent excessive caseloads that could compromise the quality of guardianship services. By maintaining this limit, Florida ensures that professional guardians can provide individualized attention and better advocacy for the individuals under their care. The rule specifies that “[t]he guardian shall limit the caseload to a size that allows [the] guardian to accurately and adequately support and protect the person, including a minimum of one visit per month with each person and regular contact with all service providers.”¹⁴⁰

Additionally, caseload size must be determined based on an “objective evaluation of the activities expected, the time that may be involved in each case, other demands made on the guardian, and ancillary support available to the guardian.”¹⁴¹ In contrast, states without such limits often see professional guardians managing far greater numbers of IPs, raising concerns about neglect, lack of oversight, and inadequate decision-making.

Beyond guardianship appointments, the OPPG also oversees the registration and education of professional guardians to reinforce accountability.¹⁴² In 2022, the Florida Legislature mandated the creation of a statewide database of guardianship information to enhance oversight and maintain a profile on each open guardianship case in the state.¹⁴³ This central repository improves monitoring efforts and ensures that the over 550 appointed guardians meet ethical and professional standards.¹⁴⁴ With these structural safeguards in place, Florida has developed a more regulated and accountable public guardianship system compared to many other states.

Washington State has a similar guardianship system to Florida, with each state's guardianship program overseen by a central regulatory office.

¹³⁸ *Id.*

¹³⁹ FLA. STAT. § 744.2103(7) (2024).

¹⁴⁰ NAT'L GUARDIANSHIP ASS'N, STANDARDS OF PRACTICE 26 (5th ed. 2022), <https://www.guardianship.org/wp-content/uploads/NGA-Standards-2022.pdf> (on file with the CUNY Law Review).

¹⁴¹ *Id.*

¹⁴² ELDER AFFS. FLA., *supra* note 137.

¹⁴³ OFF. OF PROGRAM POL'Y ANALYSIS AND GOV'T ACCOUNTABILITY, FLORIDA PROFESSIONAL GUARDIANSHIP INFORMATION 2024 13 (2024), <https://oppaga.fl.gov/Documents/Reports/24-07.pdf> [<https://perma.cc/ZV89-S5NU>].

¹⁴⁴ *See* ELDER AFFS. FLA., *supra* note 137.

Washington's Office of Public Guardianship ("OPG"), established by Substitute Senate Bill 5320 in 2007 within the Administrative Office of the Courts, oversees the training and support of professional guardians and serves adults who have no other resources or family support.¹⁴⁵ A 2008-2011 study conducted by the Washington State Institute for Public Policy reported that one in five public guardianship clients showed improvements in self-sufficiency.¹⁴⁶ Additionally, Washington provides an accessible online database for transparent access to guardianship status, guardian credentials, agency affiliations, and contact information.¹⁴⁷

Ultimately, California, Florida, and Washington highlight the potential benefits of implementing a public guardianship system in New York. By adopting California's focus on highly qualified guardians, Florida's extensive regulatory measures, and Washington's success in fostering client self-sufficiency, and creatively imagining community informed humanistic implementations, New York can build a more accountable and supportive system to better serve the needs of individuals living under guardianship.

D. *Potential Counterarguments to a Public Guardianship System*

Potential counterarguments to passing the Resolution highlight concerns regarding funding, effectiveness, and sustainability.

Those opposing the passage of the Resolution may point to the financial burden of implementing a statewide guardianship system, as strict budgetary processes are likely to surface with the creation of any new public program.¹⁴⁸ Specifically, while the Resolution advocated for a \$15 million annual investment to support vetted groups that would serve 1,500 New Yorkers each year, critics may question whether this amount is sufficient to meet the demand for guardianship services.¹⁴⁹ Accordingly, as noted in the Resolution, "[t]he Legislature should [also] consider an existing proposal for a Statewide Initiative of Nonprofit Guardians (SING), which would build the capacity of high-quality nonprofit guardians to

¹⁴⁵ MASON BURLEY, PUBLIC GUARDIANSHIP IN WASHINGTON STATE COSTS AND BENEFITS 1 (2011), https://www.wsipp.wa.gov/ReportFile/1097/Wsipp_Public-Guardianship-in-Washington-State-Costs-and-Benefits_Full-Report.pdf [<https://perma.cc/3DHR-H88T>].

¹⁴⁶ *Id.*

¹⁴⁷ See *Washington State Guardian Portal*, WASH. STATE ADMIN. OFF. OF THE CTS., <https://www.courts.wa.gov/guardianship/> [<https://perma.cc/5VRU-VWH6>] (last visited May 20, 2025).

¹⁴⁸ Kristina Zucchi, *How Government Budgetary Decisions Impact the Public Sector*, INVESTOPEdia (Oct. 12, 2023), <https://www.investopedia.com/articles/personal-finance/022315/how-government-budgetary-decisions-impact-public-sector.asp> [<https://perma.cc/GEU4-AREN>].

¹⁴⁹ Pearson, *supra* note 69.

meet the demand for services in their local communities,” but funding alone may not solve the issue of systemic inefficiencies, considering the complexity and scope of its issues.¹⁵⁰

Though these are valid points of contention, GANY has suggested that investment in a public system would result in “significant Medicaid costs savings statewide as guardians would work to prevent unnecessary institutionalization.”¹⁵¹ Further, investing in public guardianship services would “stimulate the economy in that effective guardians would work to secure the comprehensive benefits individuals would be entitled to that would drive their local economies, and potentially result in savings to the state through the realization of untapped federal disability, SSI and other benefits.”¹⁵²

Additionally, those opposing the passage of the Resolution may have concerns regarding the sustainability of a public statewide guardianship system, given the sheer scale of the initiative. Especially in New York, a densely populated state serving tens of thousands of individuals under guardianship each year, there is concern that even if a public guardianship system is successful in the short term, the state may not be able to continue managing such an expansive guardianship system over time.¹⁵³ The burden of maintaining an organized, public, statewide guardianship program may become increasingly difficult if resources are not adequately allocated. Hence, the long-term success of the system will depend on the ability to find a sustainable model for funding, adequate training, and oversight of guardianship programs.¹⁵⁴

However, if these changes were to be made successfully, agencies could “fully staff their programs, improving outcomes for our most vulnerable communities through homelessness/eviction prevention, mental health care and other needed support. Courts would no longer have to struggle to meet their statutorily mandated duty to appoint guardians when the legal threshold has been met.”¹⁵⁵ In turn, a public system has the potential to foster a more comprehensive support structure, addressing

¹⁵⁰ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

¹⁵¹ PROJECT GUARDIANSHIP, *supra* note 46.

¹⁵² *Id.*

¹⁵³ See Jake Pearson, *States Across the Country Are Reforming Guardianship. New York Is Not One of Them.*, PROPUBLICA (April 30, 2024, 5:00 AM), <https://www.propublica.org/article/new-york-guardianship-reform-pennsylvania-illinois> [<https://perma.cc/FF2D-GSR3>].

¹⁵⁴ See Erica Wood, *Report on Guardianship and Decision Supports in New York*, AM. BAR ASS’N (Oct. 1, 2019), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-41/volume-41-issue-1/new-nursing-home-arbitration-clause--what-it-means-for-families/ (on file with the CUNY Law Review).

¹⁵⁵ PROJECT GUARDIANSHIP, *supra* note 46.

both the immediate needs of IPs and the long-term sustainability of a more equitable system.

IV. SUPPORTING ACTIONS TO ENHANCE RESOLUTION 561

A. *Bridging the Gaps: Ensuring Comprehensive Guardianship Reform*

The overarching goal of the Resolution is to protect vulnerable New Yorkers under Article 81 guardianship. It seeks to address current deficits and inequities in the guardianship system through reforms, as well as the provision of necessary infrastructure and funding.¹⁵⁶ The Resolution calls for improved oversight of guardianships, reduced caseloads of guardians, more rigorous training for guardians, and better resources for nonprofit guardianship providers.¹⁵⁷ The Resolution suggests creating a system of nonprofit organizations—including GANY and the Statewide Initiative of Nonprofit Guardians (“SING”)—to achieve these goals.¹⁵⁸

However, to truly reform New York’s guardianship system, it is crucial that lawmakers fill the gaps in and move beyond the Resolution, taking bold action and meaningful attention to implementation to address the systemic inequities, the under-resourced infrastructure, and the lack of meaningful oversight that perpetuate the abuse of power over the most vulnerable in our society.

One critical gap in the Resolution’s proposal is the lack of cultural awareness, particularly in the training requirements for prospective guardians under Article 81. The training videos required for one to become a guardian in New York are currently only offered in English.¹⁵⁹ This creates a gap for those who are required to complete the video training required to serve as a guardian, but are unable to do so because of language barriers. Though the manuals and other resources provided by the Guardian Assistance network are available in both English and Spanish, they are inaccessible to those who speak any other language. The Resolution does not address this issue, which leaves a massive gap in availability to certify non-English or Spanish-speaking guardians.

Furthermore, the Resolution does not promote the creation or funding of educational programs that help individuals better handle their role as guardians. The Family Guardian Support Project, for example, is a valuable program of the Center for Elder Law and Justice, along with support

¹⁵⁶ New York, N.Y., City Council Resolution No. 561 (Feb. 27, 2025).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ See N.Y. STATE UNIFIED CT. SYS., *supra* note 79.

from the Ralph C. Wilson, Jr. Foundation, and Foundation 214.¹⁶⁰ Foundation 214 is a family-funded foundation serving Veterans of the U.S. Military, children, and the elderly in healthcare and education within the eight counties of Western New York.¹⁶¹ A goal of the Family Guardian Support Project is to help recently appointed guardians navigate their roles by providing technical assistance and training to family members, friends, or other lay guardians.¹⁶² For example, the program provides helpful assistance in filling out and turning in court-mandated reports—a major duty of guardians—to maintain accountability in guardianship agreements.¹⁶³ The project also gives guardians the tools and support services they need to make informed choices for their IPs. Among the resources are references to community organizations, legal assistance, and educational workshops.¹⁶⁴ If the Resolution does not acknowledge and support comparable initiatives, guardians might still find it difficult to carry out their responsibilities, which would eventually have an impact on the welfare of the people they are tasked with protecting.

B. Promoting Pathways to Personal Autonomy: Guardianship Alternatives

While considering the potential effects and gaps in guardianship reform, it is critical to keep in mind the less burdensome alternatives to guardianship that should be placed at the forefront of guardianship proceedings to promote personal autonomy.¹⁶⁵ Alison Herschel, director of Michigan Elder Justice Initiative, stated that, while guardianship is necessary for some individuals, “there are far too many guardianships and far too many cases that should have been resolved by utilizing less restrictive alternatives.”¹⁶⁶

Advance directives are one such alternative. Advance directives are legal documents that outline a person’s preferences and instructions for their care, and only go into effect once the person cannot communicate

¹⁶⁰ Christopher Phillips, *Adult Guardianship Basics*, CTR. FOR ELDER L. & JUST., <https://www.elderjusticenry.org/blog/adult-guardianship-basics-how-to> [https://perma.cc/HNP3-6CVL] (last visited May 20, 2025).

¹⁶¹ *Id.*; *Our Mission*, FOUNDATION 214, <https://www.foundation214.org/mission/> [https://perma.cc/3PHV-VQ8F] (last visited Aug. 2, 2025).

¹⁶² Phillips, *supra* note 160.

¹⁶³ *See id.*

¹⁶⁴ E-mail from the Family Guardian Support Project to Quinn DeCicco (Oct. 31, 2024) (on file with authors).

¹⁶⁵ *See* N.Y. MENTAL HYG. LAW § 81.16(b) (McKinney 2025) (“Without appointing a guardian, [the court] may authorize, direct, or ratify any transaction or series of transactions necessary to achieve any security, service, or care arrangement meeting the foreseeable needs of the incapacitated person . . .”).

¹⁶⁶ Chen, *supra* note 39.

their own wishes.¹⁶⁷ Advance directives allow a person to plan for many healthcare-related and financial incidents while they are still capable, giving them peace of mind knowing that their affairs are in order, while also providing them with a sense of independence and dignity.¹⁶⁸ Two common advance directives are healthcare proxies and power of attorney.

A healthcare proxy (“HCP”) offers a flexible and less intrusive alternative to guardianship. An HCP is “a legal document that allows a trusted individual (called a ‘health care agent’) to make medical decisions for an individual (called the ‘principal’).”¹⁶⁹ The process of establishing an HCP is simpler and faster than guardianship, such that to appoint an HCP, the principal simply needs to complete the necessary paperwork and have the Advance Health Care Directive¹⁷⁰ signed in front of two witnesses who are not related or beneficiaries of the principal’s estate.¹⁷¹ The principal retains autonomy as the proxy only activates when a medical professional determines that a principal cannot make medical decisions.¹⁷² However, the HCP has its limitations. For instance, HCPs only apply to medical decisions, not financial or personal matters, and require the principal to have capacity at the time it is created.¹⁷³ Further, while it offers greater autonomy, the HCP may still be subject to disputes among family members or others if they disagree with the healthcare agent’s decisions. Despite these downsides, the HCP is often a better option than guardianship, as it provides a more focused, less restrictive approach to decision-making while preserving the principal’s dignity and independence.

In contrast, a power of attorney (“POA”) is a legal document that grants a trusted individual (an “agent”) the authority to manage the property and finances of an individual (the “principal”).¹⁷⁴ To execute the POA, the principal must have the capacity to understand the document’s provisions.¹⁷⁵ The primary advantage of a POA is its flexibility, allowing the principal to tailor the agent’s authority to their needs, whether for

¹⁶⁷ *Advance Care Planning: Advance Directives for Health Care*, NAT’L INST. ON AGING, <https://www.nia.nih.gov/health/advance-care-planning/advance-care-planning-advance-directives-health-care> [<https://perma.cc/9VGB-JCBV>] (last visited May 20, 2025).

¹⁶⁸ See BURKE & CASSERLY P.C., *ADVANCE DIRECTIVES AND GUARDIANSHIP 1* (2018), https://www.burkecasserly.com/static/2024/08/advance_directives_guardianship.pdf [<https://perma.cc/T9DD-QY4A>].

¹⁶⁹ Phillips, *supra* note 160.

¹⁷⁰ See NAT’L INST. ON AGING, *supra* note 167.

¹⁷¹ *Health Care Proxy*, N.Y. STATE DEP’T OF HEALTH, <https://www.health.ny.gov/publications/1430.pdf> (on file with the CUNY Law Review) (last visited Aug. 2, 2025).

¹⁷² Phillips, *supra* note 160.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

managing finances, property, or making legal decisions.¹⁷⁶ Like a Healthcare Proxy, the POA is often quicker and less costly to implement than a guardianship, avoiding the need for court involvement and the associated time and expenses.¹⁷⁷ Yet, the POA also has some downsides. It requires the principal to have the capacity to execute the document, so individuals who are already incapacitated cannot create one.¹⁷⁸ Additionally, the POA can only address financial and property matters; it does not grant authority over health care or personal decisions, unless specified in the POA document.¹⁷⁹ Despite these limitations, the POA remains a valuable and less restrictive option compared to guardianship, providing a streamlined process for managing financial matters.

Supported decision-making is another meaningful, “well recognized practice by which people with intellectual and developmental disabilities . . . are able to make their own decisions with the support of trusted persons in their lives and retain all their legal and civil rights.”¹⁸⁰ This method allows persons to maintain dignity by making their own decisions with the support from trusted advisors, such as friends, family members, and professionals.¹⁸¹ Furthermore, a Representative Payee offers an alternative to guardianship by allowing a trustworthy individual to manage Social Security benefits on behalf of someone who cannot do so themselves.¹⁸² Established by the Social Security Administration, the Representative Payment Program ensures the proper management of Social Security or Supplemental Security Income payments for beneficiaries unable to handle their own finances.¹⁸³

Ultimately, alternatives to guardianship offer individuals mechanisms to maintain their autonomy and dignity without the need for a court-appointed guardian. These alternatives allow individuals, even those without close personal connections, to proactively manage their personal, property, and financial affairs. By utilizing these options, individuals can

¹⁷⁶ See *Navigating Legal Waters: Understanding the Differences Between a New York Power of Attorney and a Conservatorship*, DAVIDOW, DAVIDOW, SIEGEL & STERN, LLP (Oct. 31, 2023), <https://davidowlaw.com/navigating-legal-waters-understanding-the-differences-between-a-new-york-power-of-attorney-and-a-conservatorship/> [https://perma.cc/H79S-6VWM].

¹⁷⁷ See *id.*

¹⁷⁸ Phillips, *supra* note 160.

¹⁷⁹ *Id.*

¹⁸⁰ *What is Supported Decision-Making?*, SUPPORTED DECISION-MAKING N.Y., <https://sdmny.org/about-supported-decision-making/what-is-supported-decision-making/> [https://perma.cc/SCT5-JCWQ] (last visited May 20, 2025).

¹⁸¹ See Phillips, *supra* note 160.

¹⁸² See *Representative Payee*, SOC. SEC. ADMIN., <https://www.ssa.gov/payee/> [https://perma.cc/5H3L-L7F9] (last visited May 20, 2025).

¹⁸³ See *id.*

retain control over their decision-making and ensure their well-being without having to resort to restrictive guardianship arrangements. However, the limited use of these alternatives may be attributed to factors such as lack of awareness, the requirement for the individual to have capacity when creating these documents, and concerns over potential abuse or disputes without formal oversight. While the benefits are clear, these barriers make guardianship a more frequently employed path despite the availability of alternatives.

CONCLUSION

New York's Article 81 guardianship system, as it stands currently, is not equipped to care for and protect vulnerable, incapacitated individuals. The primary failures of the system stem from overburdened guardians, minimal training and qualification requirements, and insufficient judicial oversight.¹⁸⁴ While the Resolution provides a crucial step toward reform, it is only a starting point. Indeed, a continuing effort to address these systemic flaws is necessary. Ensuring meaningful and lasting reform will require a state-wide guardianship system that truly safeguards the dignity and liberty of all incapacitated individuals.

New York's current Article 81 guardianship framework is no longer defensible. It systematically fails the incapacitated individuals it claims to protect, allowing neglect, financial exploitation, and civil death to proceed unchecked. The Resolution is a vital first step, but without bold, structural reform, its promise will go unrealized. A just and effective statewide guardianship system must be built on five non-negotiable pillars: (1) a robust, state-funded infrastructure that ensures adequate staffing and equitable geographic coverage; (2) mandatory, ongoing training and certification for all guardians, including cultural competency and trauma-informed practice; (3) a statewide oversight and enforcement body with the authority to audit guardians, investigate abuse, and impose meaningful sanctions; (4) reduced caseload mandates with enforceable guardian-to-client ratios not to exceed 1:20, mirroring best practices in states like Florida; and (5) presumptive prioritization of less restrictive alternatives such as supported decision-making, advance directives, and representative payees embedded into every phase of the guardianship process.

Until alternative solutions to guardianship in New York are better developed and promoted, harm reduction initiatives such as the Resolution should be sought and executed. However, as New York City's experience with other programs demonstrates, the implementation of

¹⁸⁴ See Pearson, *supra* note 69.

legislation is just as critical as the legislation itself.¹⁸⁵ The successful implementation of guardianship reform will directly impact the well-being of those living under guardianship, and experts in the field must be involved in every stage of the process. Those tasked with crafting the legislation can add another layer of protection for their constituents by including a provision within the legislation that ensures experts in the field are helping mold the guardianship system in New York. By incorporating expert guidance into the execution of the Resolution, New York can take important steps toward a guardianship system that not only minimizes harm but also ensures that those who are most vulnerable receive the care and protection they deserve. This will require leadership, ongoing commitment, and vigilance, but it is essential to ensure the protection of our most vulnerable New Yorkers.

Implementation must be informed by those with lived experience: directly impacted individuals, direct care caseworkers, and legal advocates who understand the practical, cultural, and ethical complexities of guardianship. New York must avoid the pitfalls of bureaucratic reform without vision. The success of this system will not lie in merely expanding what exists, it will depend on redesigning guardianship around dignity, equity, and person-centered care. This is not charity. It is a matter of civil rights. If we are serious about protecting our most vulnerable neighbors, then the guardianship system must be rebuilt, from the ground up, to honor their lives, not quietly erase them.

Cody's story should never have ended as it did—with Cody isolated, unheard, and unseen by the very system charged with protecting him. His final months were defined not by the care and advocacy he deserved, but by the absence of both. That absence is not an anomaly; it is the predictable outcome of a guardianship system stretched beyond its limits, and operating without adequate oversight, training, or accountability.

If New York implements the reforms outlined in this Comment, such as caseload limits, meaningful oversight, robust training, and a commitment to less restrictive alternatives, fewer people will be left to fade quietly into the margins. A just guardianship system must ensure that the next Cody lives their final days surrounded by dignity, compassion, and agency, rather than bureaucracy and neglect. His life, and the lives of thousands like him, demand nothing less.

¹⁸⁵ See, e.g., Gregory H. Mecher, *Cannabis Licensees Struggle to Access Kathy Hochul's Loans*, CITY (June 18, 2024, 6:09 P.M.), <https://www.thecity.nyc/2024/06/18/cannabis-licensees-kathy-hochul-loans/> [<https://perma.cc/5U6X-DF66>].