

**A Brief Report on Guardianship Decisions:  
The Use of Juries and  
Medical Evaluations and Documentation**

Prepared for the Kentucky Council on Developmental Disabilities

Martin School of Public Policy and Administration  
University of Kentucky  
Developmental Disabilities Team

Edward T. Jennings, Jr., Director

Perry Papka  
Jeremy Hall  
Kristen Hoffman

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## **Juries and Guardianship/Mental Health Law Executive Summary**

The literature found regarding the application of the civil jury to guardianship and mental health cases is limited, but is generally explored in the broad discussion of civil law and civil justice reform. The discussion of reform in the civil jury system is politically charged and largely deals with the issue of whether lay juries are competent and qualified to hear complex cases. There have been complex cases in which federal courts have denied jury trial on two grounds: “first, that a trial of such a case to an uncomprehending jury would constitute a denial of due process; and second that such cases are inherently beyond the understanding of a jury, so that trying them to a jury would constitute an inadequate remedy at law.”<sup>1</sup> That said, the right to a trial by jury in matters of civil law is enshrined in the 7<sup>th</sup> Amendment to the U.S. Constitution. Additionally, most state constitutions and/or statutes afford the right to trial by jury. In the case of Kentucky, section 7 of the state constitution makes this right explicit as follows:

*The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.*

Kentucky also has statutory guarantees as this right is applied to issues of mental health and guardianship. In section 202A.076 of the KY Revised Statutes (KRS) regarding the conduct of hearings for civil commitment of a mentally ill person, the following is stated:

The respondent shall be afforded an opportunity to testify, to present, and cross-examine witnesses against him. The manner of proceeding and rules of evidence shall be the same as those in any criminal proceeding including the burden of proof beyond a reasonable doubt. Proceedings shall be heard by a judge unless a party requests a jury trial.

In section 387.570(1) of the KRS regarding the determination of incapacity in a guardianship hearing, the following is stated:

...for the purpose of determining the disability of the respondent, the respondent shall have a jury trial and shall have the right to present evidence and to confront and cross-examine witnesses.

In a survey of all 50 states and the District of Columbia, approximately 50% of the states have provisions for a jury if the respondent in guardianship cases requests it. Kentucky has the only statute that mandates a jury ruling in the determination of incapacity in guardianship cases. As well, Kentucky is unique in the explicit responsibilities it enumerates for juries in KRS 387.580 as follows:

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<sup>1</sup> King, Douglas. “Complex Civil Litigation and the Seventh Amendment Right to a Jury Trial.” University of Chicago Law Review. Volume 51, 1984. (581-582).

- (a) Inquire into the nature and extent of the general intellectual functioning of the respondent;
- (b) Inquire into the respondent's capacity to make informed decisions concerning his personal and financial resources;
- (c) Determine whether the respondent is disabled, partially disabled or has no disability in relation to the management of his financial resources;
- (d) Determine whether the respondent is disabled, partially disabled or has no disability in relation to the management of his personal affairs.

In summary, across the nation the right to a jury trial in civil matters remains a hot-button issue of legal reform, but most legal scholars regard it as an indispensable part of our system of jurisprudence. Kentucky has shown itself unique among the states in its requirement that a jury rule on the issue of a person's incapacity, although the jury's decision-making ends there and the court rules on the particulars of a guardianship's structure and responsibilities.

**Court Jurisdiction for Guardianship Cases  
In the American States**

<b>Court Type</b>	<b>%</b>	<b>Number</b>
Probate	31.4%	16
District	19.6%	10
Superior	13.7%	7
Multiple Jurisdiction	9.8%	5
Circuit	7.8%	4
County	5.9%	3
Other	3.9%	2
Chancery	3.9%	2
Any Court with Jurisdiction	3.9%	2

**Right to a Jury Trial in Guardianship  
Cases in the American States**

<b>Jury Right</b>	<b>%</b>	<b>Number</b>
Upon Demand	54.9%	28
Not Stated	21.6%	11
Entitled	9.8%	5
Other	7.8%	4
Not Entitled	3.9%	2
Mandatory	2.0%	1

## **Guardianship Medical Evaluations & Documentation- Brief Overview**

In regards to determining the incapacity of an individual in guardianship cases, all states have provisions in their statutes (codes/laws) for professional evaluations of the respondent. Few states more completely address the major questions in determining incapacity than Kentucky in KRS 387.540 (see attached).

### Major Questions in Determining Incapacity:

- Are standards sufficient to avoid unnecessary guardianships?
- How does court assess whether an individual meets standards?
- What tests are used to assess competency?
- Is there sufficient distinction of criteria for different capacities?
- Are there sufficient statutory qualifications for the professional(s) who assess capacity?

*(from Appendix 3 of Illinois Guardianship Reform Project)*

After a review of all 50 states statutes & codes regarding this issue, Kentucky's mandated "interdisciplinary evaluation report" seems the most stringent and detailed of any professional evaluation provision. The majority of states use some variation of one of the following:

- Standard 3.3.9 of National Probate Court Standards- Determination of Incapacity
  - a) The imposition of guardianship by the probate court should be based on competent evidence of the incapacity of the respondent.
  - b) The court may require evidence from professionals or experts whose training and expertise may assist in the assessment of the physical and mental condition of the respondent.
  - c) No determination of incapacity should be required in voluntary guardianship cases.

*(from Natl. Probate Court Standards of the Commission on Natl. Probate Court Standards & Advisory Committee on Interstate Guardianships [1993])*

- Section 5-306 & Section 306 of the Uniform Probate Code & Uniform Guardianship and Protective Proceedings Act, respectively. Judicial Appointment of Guardian: Professional Evaluation.

-At or before a hearing under this part, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report must contain:

- 1) A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations.

- 2) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills.
- 3) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan.
- 4) The date of any assessment or examination upon which the report is based.

*(from Amendments to the Uniform Probate Code, July 1998 & The Uniform Guardianship and Protective Proceedings Act, 1998 of the Natl. Conference of Commissioners on Uniform State Laws)*

These latter sections have been endorsed by the American Bar Association and adopted, as of 2003, by the following states: Alabama, Colorado, Hawaii, Minnesota, and Montana.

Additionally, Wingspan- The 2<sup>nd</sup> National Guardianship Conference Recommendations of 2001, states the following in their recommended amendments for the determination of incapacity:

I(2)- Functional and multi-disciplinary assessment be used in determining diminished capacity.