

State of North Dakota

DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT
P.O. BOX 1013
BISMARCK, NORTH DAKOTA 58502

CYNTHIA M. FELAND
JUDGE

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May 9, 2025

Honorable Jon J. Jensen
Chief Justice
North Dakota Supreme Court
Judicial Wing, 1st Floor
600 E. Boulevard Ave.
Bismarck, ND 58505-0530

RE: Guardianship Monitoring Task Force – Final Report

Dear Chief Justice Jensen:

During the 2023 legislative session, Chapter 27-27 of the North Dakota Century Code was enacted and required the Supreme Court to establish the Guardianship Monitoring Task Force ("Task Force"). Under Section 27-27-01 of the North Dakota Century Code, the Task Force was charged with addressing guardianship accountability, furthering protections of individuals under guardianship and recommending regulations necessary to enhance the guardianship monitoring program to investigate suspected guardian mismanagement or illegal behavior. To accomplish these duties, Senate Bill 2029 was proposed and sought the implementation of a four-phased approach to create three independent entities that would all be under the supervision of the Supreme Court. Although the final version of SB 2029 transitions key responsibilities originally proposed to be under the Judicial Branch to an independent state agency, the foundational work for continued improvement has been laid. Having concluded its work, the Task Force respectfully submits its Final Report with recommendations for the Court's consideration.

If you have any questions or would like to discuss in further detail, please give me a call. Thank you for the opportunity to serve on this Task Force.

Sincerely,



Cynthia M. Feland
District Judge
Chair, Guardianship Monitoring Task Force
CMF/cf

GUARDIANSHIP MONITORING TASK FORCE

FINAL REPORT

May 7, 2025

TO THE NORTH DAKOTA SUPREME COURT:

Purpose: Senate Bill 2345, enacted by the 68th General Assembly, created Chapter 27-27 of the North Dakota Century Code requiring the Supreme Court to establish the Guardianship Monitoring Task Force ("Task Force"). Under Section 27-27-01 of the North Dakota Century Code, the Task Force was charged with addressing guardianship accountability, furthering protections of individuals under guardianship and recommending regulations necessary to enhance the guardianship monitoring program to investigate suspected guardian mismanagement or illegal behavior. The Task Force was further directed to make its recommendations to the Supreme Court, which was statutorily authorized to implement them through rulemaking.

Members: The Task Force is chaired by Judge Cynthia Feland, and is comprised of 13 other voting members. The Task Force had five former members, totaling 19 individuals with diverse expertise. The 19 individuals who served on the Task Force can be found on Appendix A, on page four of this Report.

Background: The Task Force held its inaugural meeting on November 27, 2023, and convened nine additional times to fulfill its mission. Minutes from all of these meetings are available on the Court's website. In addition to its statutory duties, the Interim Government Finance Committee requested the Task Force's assistance in studying the feasibility of consolidating guardianship programs under one agency and determining appropriate funding levels. Throughout its work, the Task Force identified significant issues in North Dakota's guardianship system. Appendix B (pages five-six) provides a visual aid summarizing key problems, proposed solutions, and contextual explanations. To address the existing issues, the Task Force recommended establishment of four independent entities under the Judicial Branch:

1. The Office of Guardianship and Conservatorship (OGC), which would contract for public guardianship services, process professional guardian and conservator licenses, and provide educational resources and information to assist family guardians.
2. Office of Guardianship and Conservatorship Counsel (Investigation Counsel), which would investigate allegations of guardian misconduct.
3. Guardianship and Conservatorship Review Board (Review Board), which would conduct administrative hearings to resolve concerns about guardian misconduct.
4. Guardianship and Conservatorship Operations Committee (Operations Committee), which would hire the director of the OGC and Investigative Counsel, adopt policies for these four entities, and recommend an operations and personnel budget to the Supreme Court.

The Judicial Branch was chosen by the Task Force as the appropriate placement given that: (1) Chapter 27-27 sought enhancement of the Judicial Branch's Guardianship Monitoring Program; (2) past legislative efforts (House Bill 1354, 2021) unsuccessfully attempted to establish an independent state agency to administer publicly funded guardianship programs; and (3) the inherent conflicts of placement in an existing State agency.

Implementation was envisioned by the Task Force in four phases:

1. Enabling legislation.
2. Court rule development.
3. Policy drafting.
4. Operating procedures, forms, and guides.

Pursuing an enabling statute was determined by the Task Force to be the most appropriate initial step. Relying solely on Chapter 27-27 as a broad enabling statute risked a lack of transparency regarding the source and scope of authority. Further, there was concern that the Legislature could perceive the Court System as overstepping its intended authority under Chapter 27-27. To avoid any misperceptions and to foster legislative trust, the Task Force concluded that drafting a clear and specific enabling statute would best articulate the authority the Legislature was expressly granting to the Court System.

The Task Force completed a proposed bill in May 2024, which passed out of the Task Force without dissent. Upon presentation of the findings and recommendations by the Task Force, Interim Government Finance Committee unanimously endorsed the bill which became SB 2029 during the 69th Legislative session.

69th Legislative Session Outcome: Senate Bill 2029 passed the Senate with the proposed structure remaining within the Judicial Branch. The House, however, amended the bill to create an independent state agency. After conference committee negotiations, the structure was finalized as an independent state agency.

Important Considerations: The Supreme Court should be aware of a few aspects of SB 2029:

1. Two full-time equivalent (FTE) positions will transfer out of the Office of the State Court Administrator.
 - a. A staff attorney (effective July 1, 2025).
 - b. The guardianship monitoring position (by April 1, 2026).
2. By April 1, 2026, the Supreme Court should adopt:
 - a. Rules allowing the Office of Guardianship and Conservatorship (OGC) to share confidential information with district courts. *See* Subdivision 54-68-07(2)(b) (providing that "Confidential information may be disclosed only: ... (b) When authorized or required by administrative rule, court rule, or law.").
 - b. Rules governing case referrals from district courts to OGC. *See* Section 54-68-15 (providing, "A court of this state may refer cases to the office. The court may adopt court rules as necessary to facilitate case management with the district courts, the

office, and the review board.).” This rule may require a provision that authorizes district court to share confidential information with OGC.

3. The statute creating the Task Force, Chapter 27-27, will be repealed effective July 1, 2025.
4. The Chief Justice must appoint:
 - a. Two individuals to the Operations Committee by August 1, 2025.
 - b. One family guardian to the Review Board by January 1, 2026.
5. Based on the disposition of SB2029, the Task Force does not plan to develop and propose court rules to the Supreme Court.

Recommendations:

1. Disbanding the Task Force. Senate Bill 2029 shifts specific guardianship oversight mechanisms outside the Judicial Branch and repeals Chapter 27-27, concluding the Task Force's primary mission. While rule development remains necessary, a separate entity or group would be needed to draft those rules.
2. Assigning Rule Drafting Responsibilities. Task the Office of the State Court Administrator or a small workgroup to:
 - a. Draft a court rule for OGC disclosure of confidential information to district courts.
 - b. Draft a court rule for district court referrals of wellbeing and financial reviews to OGC.
 - c. Submit the proposed rules by January 1, 2026.
3. Appointing personnel to the Operations Committee and Review Board. The Chief Justice should:
 - a. Promptly appoint two individuals to the Operations Committee.
 - b. Appoint a family guardian to the Review Board by January 1, 2026.

Conclusion: The Task Force was established to strengthen accountability, enhance oversight, and improve protections for vulnerable individuals subject to guardianship in North Dakota. While SB 2029 transitions key responsibilities this Task Force proposed to be under the Judicial Branch to an independent state agency, the foundational work for continued improvement has been laid in SB 2029. Therefore, the Task Force respectfully concludes its work and entrusts its recommendations to the Supreme Court for consideration.

Appendix A: Task Force on Guardianship Monitoring Composition

Name	Organization	Title
Cynthia Feland, Chair	South Central Judicial District	Presiding Judge
Jon Alm	Department of Health and Human Services	Chief Legal Officer
Cheryl Bergian	Cheryl Bergian Law Office	Owner; Attorney
Scott Bernstein	Guardian & Protective Services	Executive Director
Reid Brady	East Central Judicial District	Judge
Donna Byzewski	Catholic Charities North Dakota	Director of the Guardianship Division/Intellectual Disabilities
James Carkuff	Bureau of Criminal Investigation	Agent, Medicaid Fraud Control Unit
Megan Carmichael	Office of the Attorney General (former)	Assistant Attorney General (former)
Paul Emerson	Cass County State's Attorney's Office	Assistant State's Attorney
Jeremy Ensrud	Office of the Attorney General	Assistant Attorney General
Michelle Gayette	Assistant Director (former)	Adult & Aging Services (former)
Sally Holewa	North Dakota Court System	State Court Administrator
Thomas Jackson	Jackson, Welder & Arthurs, Inc	Partner; Attorney
Tracy Laaveg	LS Law Group, PC	Partner; Attorney
Ariah Magness	Sanford South Clinic	Care Manager; Licensed Baccalaureate Social Worker
Rose Nichols	North Dakota Court System	Guardianship Monitoring Program, Program Manager
Micah Olson	Protection & Advocacy Project	Attorney
Dean Rummel	Legislative Assembly	Senator (37th Legislative District)
Charles Stroup (deceased)	Retired	Nonprofessional guardian/conservator; banking consultant

Appendix B: Problems, Solutions & Explanations

1	Problem: State-wide removal of professional guardians following serious misconduct.
	Solution: Implement licensing requirements for guardians and conservators and establish a review board.
	Explanation: A professional guardianship entity exploited its wards' estates, necessitating individual petitions and separate proceedings for removal in each case. Licensing professional guardians and conservators would create an efficient, streamlined process for mass removal, saving time and resources for both the wards and the court system.
2	Problem: Preventing reappointment of family guardians with a history of misconduct.
	Solution: Establish disqualification rosters.
	Explanation: Currently, there is no mechanism to prevent family guardians removed for misconduct from being reappointed in future proceedings. The disqualification rosters in Sections 2 and 3 of the bill empower district courts to place individuals on a roster if they were removed for cause. The courts will develop rules governing the roster procedures. This measure is specific to family guardians, as licensed guardians will continue to be subject to the license revocation process.
3	Problem: Investigating alleged misconduct.
	Solution: Establish an investigative counsel.
	Explanation: Law enforcement agencies and various investigative bodies within the Department of Health and Human Services often decline to investigate allegations of guardian misconduct, even in cases of abuse, exploitation, or neglect of vulnerable adults. An investigative counsel would ensure that valid complaints are thoroughly examined. Investigations would be confidential and aimed at gathering facts for potential disciplinary actions.
4	Problem: Addressing both intentional and unintentional misconduct by guardians.
	Solution: Establish an investigative counsel, a review board, and expand the current monitoring program.
	Explanation: Despite investigations, victims of guardian misconduct often lack civil or criminal recourse. The creation of a Review Board would provide a structured forum to address complaints. The investigative counsel would negotiate corrective actions with the guardian. If no resolution is reached, an administrative-style hearing would be held, with limited adversarial proceedings and would not apply the Rule of Evidence. Sanctions may include license revocation, probation, restitution, administrative fees, or letters of reprimand. Probation conditions might include additional education or mentorship. The expanded monitoring program would oversee guardians on probation. The Review Board would focus solely on administrative sanctions and would not have authority to initiate civil or criminal lawsuits.

5	Problem: Providing educational resources and assistance to family guardians.
	Solution: Expand the Monitoring Program and introduce Advisory Opinions.
	Explanation: Family guardians often lack the necessary knowledge and resources, leading to unintentional misconduct. Expanding the monitoring program into an educational and monitoring program would allow monitors to provide direct assistance and resources. Additionally, guardians could request ethical advisory opinions from the investigative counsel for guidance.
6	Problem: Streamlining funding for guardianship programs across multiple entities.
	Solution: Centralize all public guardianship services under the Office of Guardianship and Conservatorship.
	Explanation: Guardianship programs are currently managed by multiple entities, making financial tracking challenging. Consolidating funding under a single office would improve efficiency and oversight of state-funded guardianship programs.
7	Problem: Difficulty in locating successor guardians.
	Solution: Establish the Office of Guardianship and Conservatorship.
	Explanation: The inability to find successor guardians leads to delays in court proceedings and prolonged hospital stays for individuals requiring guardianship, incurring significant costs to the State. The new office would be tasked with locating potential family or professional guardians, thereby expediting the discharge process and reducing financial burdens on the State.
8	Problem: Long waiting lists for guardians.
	Solution: Properly fund the Office of Guardianship and Conservatorship.
	Explanation: The current corporate guardian contract with Catholic Charities lacks sufficient funding to address its waiting list of 142 individuals. Increased funding for developmental disability (DD) guardianship services could significantly reduce the backlog.
9	Problem: Ensuring ethical standards for guardians.
	Solution: Establish enforceable ethical standards for guardians and conservators.
	Explanation: Currently, the National Guardianship Association sets standards, with noncompliance addressed by the Center for Guardianship Certification. Establishing state-specific ethical standards would provide clear, centralized expectations for both family and professional guardians. The Review Board would oversee compliance and enforcement.
10	Problem: Auditing the PASS Program funds.
	Solution: Transfer the PASS program under the Office of Guardianship and Conservatorship.
	Explanation: The PASS program, currently administered by the Association of Counties, is not subject to state auditing. Moving it under the Judicial Branch would ensure proper financial oversight and accountability.