

Proposed Guardianship- Conservatorship Legislative Reform—Chapter 475, RSMo

***Missouri Working
Interdisciplinary Network of
Guardianship Stakeholders
“MO-WINGS”***

Process & Product

- **Who is proposing change?**
- **Why change is proposed?**
- **How would Chapter 475 be organized?**
- **What terminology has changed?**
- **How has appointment process changed?**
- **What has changed in guardianship?**
 - **Any new rights for Wards?**
- **What has changed in conservatorship?**
- **Any changes in restoration/termination?**

Who Proposing Change?

- **MO-WINGS**

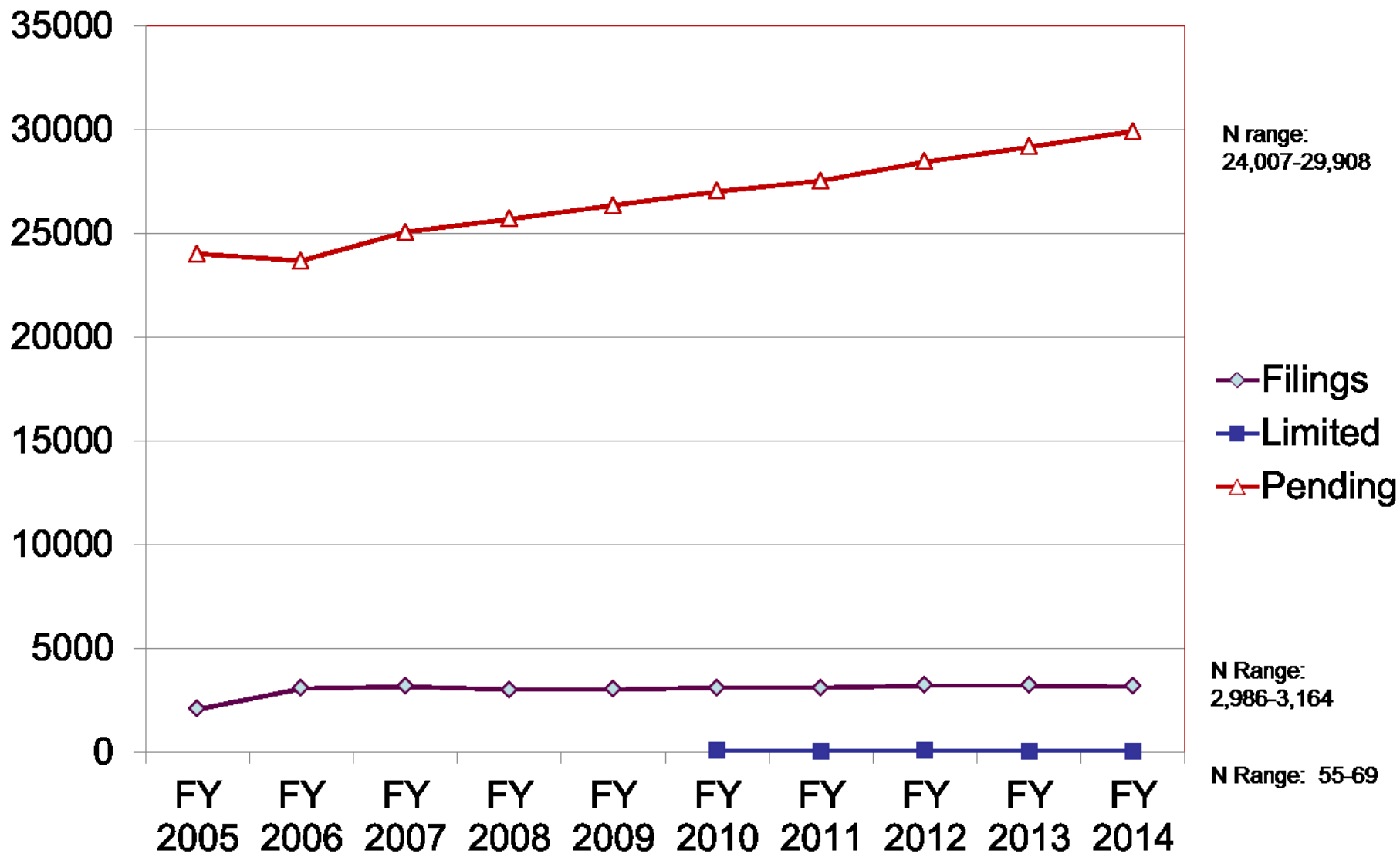
- based upon Recommendation # 5.2 of 3rd National Guardianship Summit, October 2011

- See Nack, Julia R.; Dessin, Carolyn L.; & Swift, Judge Thomas, “Creating and Sustaining Interdisciplinary Guardianship Committees,” 2012 UTAH LAW REVIEW, No. 3, pp. 1667-1690.

- **Stakeholders include representatives of**

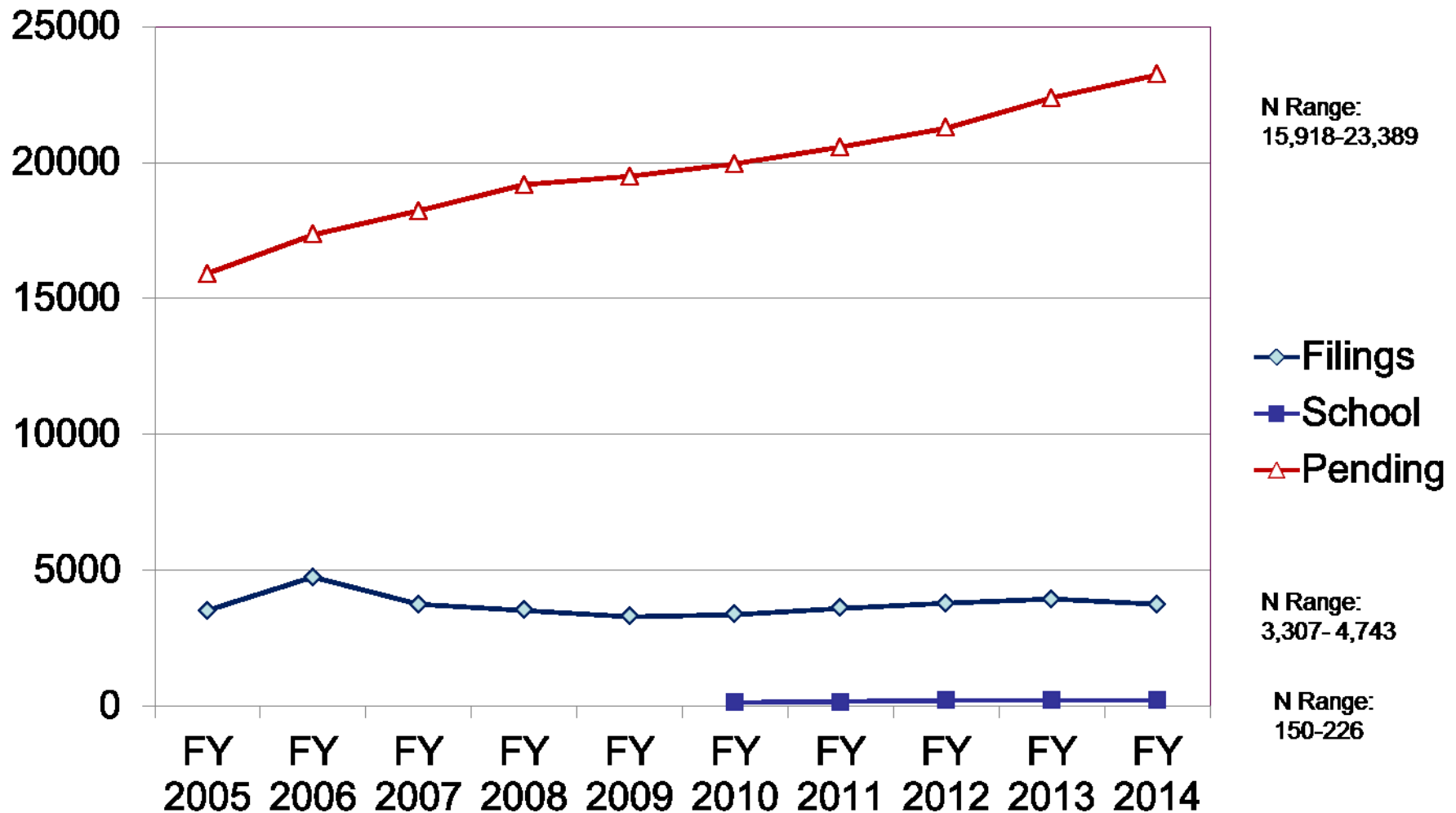
- Consumers, persons with disabilities, parents, family members, service providers, AARP, NAMI, Alzheimer’s Association, MO Planning Council on Developmental Disabilities, MO Bar Probate & Trust and Elder Law Committees, Public Administrators, social workers, nurses, psychologists, lay guardians, other advocacy groups, long-term care ombudsmen, Departments of Mental Health and Health & Senior Services, Area Agencies on Aging
- With input from judges and national experts

Adult Guardianship Trends



Tables 16 (Filings & Pending) & 43 (Limited), Statistical Summaries for FY 2005-FY 2014, www.courts.mo.gov (Statistics Link), Supplement for each fiscal year.

Minor Guardianship Trends



Tables 16 (Filings & Pending) & 43 (Limited), Statistical Summaries for FY 2005-FY 2014, www.courts.mo.gov (Statistics Link), Supplement for each fiscal year

Process Chosen

- First, improve law
 - Reorganize & improve Chapter 475, RSMo.
 - Incorporate recommendations of National Guardianship Summits
 - Consider alternatives to guardian/conservator appt
 - Emphasize person-centered services
- Second, develop policy guidance & best practices
- Third, educate, train, evaluate, address need for further changes

Why Change Law

- Current law enacted in 1983—32 years old
- Since 1983,
 - Durable Power of Attorney Act, 1989
 - Health Care Durable Power of Attorney, 1991
 - Various alternatives to conservatorship created
 - Midwest Special Needs Trust
 - Special Needs Trusts
 - Custodianships, MO Transfer to Minors Law
 - Various alternatives to guardianship
 - Adaptive technologies
 - More emphasis on supports to avoid guardianship
 - Estate planning much different

Why Change (continued)

- More persons diagnosed with dementia
 - Progressively needing more support
- Seldom used limited guardians/conservators
 - Although on books
- Overuse of public administrators
 - Intended to be last resort
 - Resulting in large caseloads & inadequate staffing
- Little guidance for guardians
 - Many rules for conservators
 - Emphasis in administering income/assets

Why Change (continued)

- Some terminology out of date
- Confusion re assets if protectee married
 - “Division of assets” not recognized
 - Because not in law until 1988
 - Clarification needed as to support of both persons
- Confusion about estate planning
 - Joint assets
 - Non-probate transfers
 - Coordinating with support trusts
- Finally, current chapter not well organized

Standards of 3 National Summits

- MO law met some but not all standards of
 - Wingspread—1st National Guardianship Summit
 - Wingspan—2nd National Guardianship Summit
 - 3rd National Guardianship Summit
- Gaps in Chapter 475 identified, particularly
 - No rights of ward
 - “Best interests” rather than substituted judgment
 - Little person-centered planning required
 - Most emphasis on managing \$ & property

Reorganization of Chapter 475

- Definitions & General Provisions (0-099)
- Appointment & Procedures for Minors (100's)
- Appointment & Procedures for Adults (200's)
- Administration of Minor Guardianship (300's)
- Administration of Adult Guardianship (400's)
- Administration of Adult & Minor Conservatorship (500's)
- Restoration, Termination, & Other Changes in Appointment (600's)
- Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act & Other Interstate Provisions for Guardians and Minors (700's)

Major Terminology Changes

- “Financially incapacitated” replaces “disabled”
 - B/c people with disabilities often do not need conservators to handle their money & property
 - People with disabilities
 - Have rights under Americans with Disabilities Act (ADA)
 - Receive worker’s comp benefits for on-the-job injuries
 - Receive Social Security disability insurance benefits
 - Receive Supplemental Security Income (SSI)
 - Receive private disability insurance benefits
 - Are not to be discriminated against under Rehabilitation Act or ADA
 - But do not have conservators unless financially incapacitated

“Least restrictive alternative”

- Replaces “LR environment” standard
- “Course of action or alternative that allows incapacitated person
 - to live, learn and work with minimum restrictions”
- “It means choosing decision or approach which:
 - (1) places the least possible restriction on person’s personal liberty and exercise of rights, and that promotes greatest possible inclusion of person into community; and
 - (2) is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, neglect and financial exploitation”

Appointment Changes

- Huge § 475.075 divided into several sections
- Respondent's attorney duties clarified
 - Resolving court-appointed v. private attorneys
 - Attorney to meet Resp. 7 days before hearing
 - Respondent's attorney to be advocate not GAL
- Professionals other than physicians with experience or training in impairment accepted
- Notice required to known
 - Family members
 - Fiduciaries

More Appointment Changes

- Before appointing guardian or conservator
 - Court must rule out any available alternatives
 - Agents under durable powers of attorneys
 - Trustees of trusts
 - Adaptive technology
 - Support of family and friends
 - Rep payees of income benefits—SS & Vets
 - Appoint limited guardian or limited conservator if appropriate
- Court appoints
 - Full guardian/conservator only as last resort

Administration of Guardianship

- Standards of “best interest” & “substituted judgment” combined overall
 - Act in best interest considering preferences
- Required decision making process
 1. Guardian shall asks ward what wants,
 2. If ward has difficulty expressing what wants, guardian shall do everything possible to help person express them
 3. If the ward, with assistance, cannot express wants, guardian shall seek input from others familiar with person to determine what wanted

More Administration

- Plan required by 90 days of appt. & annually
 - Description of how would meet ward's needs
 - Could include service plan
- Good faith effort to cooperate with fiduciaries
 - E.g., trustees, representative payees
- Substituted judgment for health care decisions
 - Maximize ward's participation & understanding
 - Encourage ward's direction if able
 - If not able, decide based upon individualized information of person's values

New section on rights of ward

- Guardian acting in ward's best interest;
- Guardian reasonably accessible to ward;
- Communicate freely & privately with family, friends, & others besides guardian
 - Unless limited for safety or therapeutic reasons
- Least restrictive form of guardianship assistance
 - Considering functional limits, needs, & preferences;
- Be restored to capacity as early as possible; &
- Receive information from court re rights & how to petition for modifications or more rights

Changes in Conservatorship

- Standard for conservator financial decisions
 - Maximize dignity, autonomy, self determination
 - Consider protectee's needs & preferences
 - Before weighing costs & benefits to estate
- Delegation permitted
- Estate plans to be accommodated if possible
- Gifting permitted
 - Per previously established patterns
 - For division of assets purposes
- Coordination of marital assets clarified

Restoration & Termination Changes

- Petition to increase/decrease G/C powers
 - Capacity of person to care for self
 - Capacity of person to manage finances & property
- Termination of Guardianship/Conservatorship
 - Death, restoration, disappearance
- Restoration—full or partial
 - Easy if guardian & ward agree, no court hearing
 - Hearing necessary if guardian disagrees
- Streamlined Processes if ward/protectee dies

Next Steps



Dissemination of discussion draft

- Posting on website
- Emailing it upon request
- Presenting it



Website operational by 7/1

- To receive comments
- To post responses
- To post calendar



Presentations to stakeholder groups

- July through October
- Enlisting support



Meet in November to finalize draft



Submit to Legislative Process

- Finding lead senate & house sponsors
 - Requesting cosponsors
- Goal to have pre-filed by December 1, 2015
- Seeking support of groups
- Explaining draft legislation
- Working through opposition
- Amending as necessary
- Pass in 2016 Session



Questions & Feedback, Please



Can you Support this effort?

If so, how?

If not, why?

Send Comments

- To Dolores Sparks at dsparks@moddcouncil.org
- To Reg Turnbull at Ribull@aol.com
– 573-230-9259 (c)
- To David English at EnglishDa@missouri.edu