



# Guardianship & Conservatorship Cases in Time of Crisis

Trauma-Responsive Practices for Children, Families and Elders

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Issue Brief 1 of 4

**The purpose of this brief is to help courts manage guardianship cases in a timely and trauma-responsive manner during and after the pandemic.**

## Stressors & Vulnerabilities Occasioned by the Pandemic

For individuals who are under guardianship, the pandemic has caused or exacerbated existing trauma as well as stress, anxiety, and isolation. Individuals living in nursing homes, assisted living facilities, and even private homes have experienced greater isolation and may have been unable to visit with loved ones. Virtual visits may be difficult given vision and hearing loss, cognitive decline, and physical or developmental disabilities. Accordingly, the NCSC, along with the National Guardianship Association and the ABA, has produced a widely distributed [FAQ document for guardians](#). It provides general advice on achieving guardianship goals during the pandemic.

## Caseload Implications Occasioned by the Pandemic

As courts tackle backlogged cases and new filings, often in a virtual environment, there are procedural, operational, and physical changes that can be

implemented to acknowledge party trauma and provide improved safety. For example, courts may consider monitoring cases more closely because societal factors impacted by the pandemic, such as social isolation, unemployment, and food insecurity, may increase the risk of elder abuse and fraud. Because of the inherent vulnerabilities of protected persons, courts must prioritize the hearing of their cases and monitor closely for red flags. Because of the inherent vulnerabilities of protected persons, courts must prioritize the hearing of their cases and monitor closely for red flags. For more case management tips, see [Children, Family and Elders Overview: Addressing Backlog and New Filings](#).

## Trauma-Responsive Case Management

Trauma-responsiveness means to "acknowledge the prevalence and impact of trauma and attempt to create a sense of safety for all participants, whether or not they have a trauma-related diagnosis."<sup>1</sup> In hearings involving guardianships and conservatorships, the Court may assume that one or more participants have experienced trauma.<sup>2</sup>

<sup>1</sup>[https://www.nasmhpd.org/sites/default/files/JudgesEssential\\_5%201%202013finaldraft.pdf](https://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf)

<sup>2</sup> The fact sheet, [Trauma and Its Implication for Justice Systems](#), provides a useful introduction to trauma-informed thinking for the courts as a whole. Also, the [National Traumatic Stress Network's justice resources](#) page contains a wealth of information related to trauma-informed approaches in the courts.

## Case Management Out of Court

In addition to regular reports, ask guardians/conservators to assess clients' circumstances, including the following:

- Current living arrangements
- Stability of living arrangement
- Health risks due to COVID-19 in current living arrangement, including risks to any caregivers
- Plans for a backup guardian in case the current guardian becomes ill or otherwise unable to fill that role
- Current contact information for the guardian or conservator, the protected person, and the backup or stand-by guardian
- Continuing availability of necessary in-home services when applicable

## Communications with the Public

At a minimum, provide this information for guardians and conservators through electronic communications and the court's website:

- How to request an emergency hearing
- How and when court hearings regarding guardianships and conservatorships are being held
- The necessity of maintaining contact with the protected person and submitting well-being reports and periodic accountings
- Whether special reports should be submitted

## Preparing to Hold Trauma-Informed Hearings

The court can take specific actions to lower anxiety and increase trust. Provide clear information and

instructions on how the hearing or court event will proceed and what participants can expect. The respondent should know who will participate, when they will be asked to speak, and what decisions will be made in the hearing. Consider what modality will best serve the parties:

- In-person
- Fully remote/virtual
- Hybrid: some participants are present and others are remote.

### Special Tips for Guardianship

In deciding the format for a guardianship or conservatorship hearing, **the ability of the respondent in the case to understand and actively participate is paramount.**

## Holding Trauma-Informed Hearings

- Schedule time-certain hearings. They lower the anxiety of waiting for a hearing and are respectful of people's time.
- State everyone's name and role in the hearing.
- State clearly the purpose of the hearing and what participants can expect.
- Acknowledge the challenges of the current situation.
- Maintain procedural justice principles - voice, respect, understanding, and neutrality.
- Understand and watch for triggers such as direct eye contact, raised voices, sudden noises, or approaching from behind.

- Allow time and space for a response rather than rushing.
- Check for participants' understanding during the hearing.
- Provide real-time documentation of the outcome and next steps, if any.

### Special Tips for Guardianships

- Respondents in guardianships and conservatorships may prefer being addressed as Mr. or Mrs. Refer to family members by name (Ms. Smith rather than "daughter").
- Consider how a capacity assessment may be impacted by being conducted through telemedicine and how capacity may be affected by stress.

### Considerations for Remote Hearings

Remote hearings can remove barriers to attendance, such as transportation and access to the courthouse. Courts are continuing to improve remote hearing practices. NCSC has produced a [Bench Guide for Judges](#) on meeting the core elements of procedural fairness in a remote-hearing context.

Considerations of procedural fairness overlap considerably with elements of trauma-informed hearings. Practices to consider specific to remote hearings include the following:

- Use the "waiting room" function of many virtual platforms to give participants time to log in.

- Explain how the remote hearing will work ahead of the hearing in plain language in writing and with a video on the court's website. Repeat the explanation at the beginning of the hearing.
- Know that respondents who may have experienced abuse or exploitation may be susceptible to coaching or pressure by someone in the room with them.
- Check in periodically to make sure people are still connected, especially participants who are connected by phone or only by audio. Do not assume that silence is assent.
- Do not treat an [inability to connect as a failure to appear](#).
- Ask everyone in the room with the respondent to identify themselves.
- Ask someone at a remote location to pan the camera around the room to see who is present if it is a video hearing.
- Provide real-time documentation of the outcome and next steps, if any, at the conclusion of the hearing.

### Special Tips for Guardianships

If the respondent is living in a facility, the facility may be able to arrange access to the remote hearing if he or she needs assistance. The court should attempt to ensure the respondent has as much privacy as is practicable. If the respondent is living in the community and lacks internet access, a senior center or library may be able to provide it.

## In-Person Hearings

Social distancing can be a challenge in the courtroom as well as in security, hallways, elevators, and restrooms. See NCSC's pandemic resource paper, [Considerations for Reopening the Courthouse](#). Social distancing requirements, such as space between seats and time-certain hearings are also trauma-responsive practices.

## Hybrid Hearings

In hybrid hearings, some individuals are in the courtroom and others are participating remotely. In addition to tips for remote and face-to-face hearings, these considerations may be particularly useful:

- Everyone in the courtroom should speak into a microphone to be clearly heard by remote participants.
- Some courts are using [“meeting owls”](#) that automatically focus in on the participant speaking in the hearing.
- Judges should check in with remote participants to ensure they can hear. These check-ins should occur at the beginning of the hearing, periodically throughout, and prior to any ruling.

### Special Tips for Guardianships

Many individuals who are respondents in guardianship and conservatorship cases are at high risk due to age or illness. Allowing them to participate via either a remote or hybrid hearing may be a safer alternative to the courthouse without compromising due process considerations.

## Challenges for Virtual Hearings in Conservatorships & Guardianships

A person who has a guardian or conservator may have difficulty communicating through videoconferencing or by phone, particularly if the person has hearing or vision loss, physical impairments, dementia, unfamiliarity with technology, and an unstable Internet connection. In these situations, someone must help the guardian or conservator participate. Yet, including another person may compromise confidentiality and prevent the individual from responding honestly to questions. Additionally, the court must be alert to individuals in the room, who may coach a witness or exert undue influence. For those reasons, it may be helpful to leave the person who is subject to the petition unmuted during a hearing.

Additionally, the court must be alert to individuals in the room, who may coach a witness or exert undue influence. For those reasons, it may be helpful to leave the person who is subject to the petition unmuted during a hearing. The Alzheimer's Association has [tips for communicating](#) with people with dementia.

## Featured Court Practices

**Wayne County (MI)** created a Probate Response Team at the beginning of the crisis. This team developed the [processes and procedures](#) to triage cases, prioritize mental health, and to focus on emergency filings. They eliminated the use of paper documents in most of their workflow and coordinated

judges' schedules to have hearings conducted remotely with staggered docket start times. The court already had a well-developed tickler system by which notices of accountings and reports due were automatically sent to all conservators and guardians prior to the due date and the court was notified if they were missing or late.

The **Minnesota court system** provides excellent [information online](#) to guardians and conservators.

The [Texas Elder Abuse and Mistreatment \(TEAM\) Institute](#) provides remote medical and capacity evaluations statewide.

## Court Staff & Secondary Trauma

No development of a trauma-informed approach should neglect the effects of trauma on court professionals and service providers themselves. This is sometimes termed "secondary trauma." The court environment can be especially challenging in terms of guardianship and conservatorship cases. A 2017 NCSC article, [Secondary or Vicarious Trauma Among and Court Personnel](#), provides a general introduction to the concept, symptoms, and approaches to mitigation.

The NCSC webinar [Addressing Court Workplace Mental Health and Well-being in Tense Times](#) is a useful resource for court staff working with the public.