Legislation Details (With Text)

File #:	Res 0561-2024	**Version:**	*	**Name:**	Create a statewide public guardianship system to address current inequities and deficits and safeguard vulnerable New Yorkers in need of protective arrangements.
Type:	Resolution			**Status:**	Adopted
				In control:	Committee on Aging
On agenda:	9/12/2024				
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Title: Resolution calling upon the New York State Legislature to introduce and pass, and the Governor to sign, legislation to create a statewide public guardianship system to address current inequities and deficits and safeguard vulnerable New Yorkers in need of protective arrangements.

Sponsors:

Indexes:

Attachments: 1. Res. No. 561, 2. September 12, 2024 - Stated Meeting Agenda, 3. Hearing Transcript - Stated Meeting 9-12-24, 4. Minutes of the Stated Meeting - September 12, 2024, 5. Committee Report 10/30/24, 6. Hearing Testimony 10/30/24, 7. Hearing Transcript 10/30/24, 8. Committee Report 2/27/25, 9. Hearing Transcript 2/27/25, 10. Committee Report - Stated Meeting, 11. February 27, 2025 - Stated Meeting Agenda, 12. Hearing Transcript - Stated Meeting 2-27-25

Date	Ver.	Action By	Action	Result
9/12/2024	*	City Council	Introduced by Council	
9/12/2024	*	City Council	Referred to Comm by Council	
9/30/2024	*	City Council	Referred to Comm by Council	
10/30/2024	*	Committee on Aging	Hearing Held by Committee	
10/30/2024	*	Committee on Aging	Laid Over by Committee	
10/30/2024	*	Committee on Public Safety	Hearing Held by Committee	
10/30/2024	*	Committee on Public Safety	Laid Over by Committee	
2/27/2025	*	Committee on Aging	Hearing Held by Committee	
2/27/2025	*	Committee on Aging	Approved by Committee	Pass
2/27/2025	*	City Council	Approved, by Council	Pass

Res. No. 561

Resolution calling upon the New York State Legislature to introduce and pass, and the Governor to sign, legislation to create a statewide public guardianship system to address current inequities and deficits and safeguard vulnerable New Yorkers in need of protective arrangements.

By Council Members Hudson, Narcisse, Joseph, Cabán, Williams, Zhuang, Ayala, Brewer, Rivera, Krishnan, Schulman, De La Rosa, Hanif, Farías, Brooks-Powers, Won, Banks, Louis and Mealy

Whereas, Named after Article 81 of New York's Mental Hygiene Law, Article 81 guardianship

appointments for incapacitated adults are made by the New York State Courts, who assign a person or organization to make certain determinations for individuals who have been found incapable of reasonable decision-making, and are at risk of harm because they do not recognize the need for help; and

Whereas, The three types of guardianship in New York State include Article 81 Guardianship, which awards limited powers to manage specific needs of an individual; Article 17-A Guardianship, which is designed to have the guardian make all decisions on behalf of another person; and Guardianship of a Child, which is granted by the courts when one or both parents are unable to care for a minor; and

Whereas, In New York, judges seek to appoint private attorneys or community social service organizations to be guardians for individuals found to be incapable of managing their personal affairs; and

Whereas, Where a New York City resident living in the community is eligible for services from the New York Office of Children and Family Services Adult Protective Services (APS), which due to eligibility criteria means they have no one else available to assist them responsibly, and APS may, after an investigation, petition the court for the appointment of a guardian, nominating one of three agencies with which they contract; and

Whereas, A September 2023 National Criminal Justice Reference Services in the Office of the Department of Justice Programs (NCJRS) report found systemic guardianship abuse concerns to be prevalent nationwide, often exacerbated by guardianship caseloads that more often than not amounted to more than the suggested 1:20 person ratio of guardians-to-individuals for oversight and service provision; and

Whereas, According to the NCJRS report, problematic actions and inactions included the appointment of guardians without sufficient vetting and due process; and

Whereas, The NCJRS found that some guardianship orders by judges were overbroad and not tailored to the specific needs of the person, and had instead made use of pre-existing guardianship “pipelines,” with appointments routinely being made without a full review of specific individual needs; and

Whereas, According to a recent ProPublica investigation, multiple problems were uncovered in every stage of the current New York guardianship system; and

Whereas, ProPublica revealed that in New York City, there are approximately one dozen judges assigned to oversee more than 17,411 people in guardianships, which has created a backlog of cases "sitting for years" without oversight; and

Whereas, The ProPublica investigation found the qualification process for becoming a guardian to be minimal, consisting only of watching a 123 minute online video and signing an affirmation of viewing; and

Whereas, Additionally, ProPublica found one company, New York Guardianship Services, which is responsible for guardianship appointments, to have an 83:1 ward-to-staff ratio for oversight and service provision; and Whereas, According to advocates and lawmakers, there are approximately 157 examiners to monitor the care and finances of 17,000+ people in its guardianship system; and

Whereas, ProPublica has published multiple accounts, with graphic evidence, of individuals in guardianship who begged for help to be removed from horrific living conditions that in some cases took over a decade to elicit a response from an entity that could assist them in moving to a safe and healthy environment; and

Whereas, A Times Union investigative report found that the Article 81 Mental Hygiene Law calling upon judges to oversee the system is insufficient to protect the "unbefriended," - a term for individuals with no familial or fiscal resources - who are, at present, reliant on a patchwork system of loosely regulated nonprofits and pro bono attorneys, which is clearly unequipped to meet their needs; and

Whereas, ProPublica found New York's current lack of a unified system to address guardianship has resulted in one court-appointed examiner focused primarily on financial paperwork, one judge who signs off on the examination, and officials who rarely if ever see the incapacitated adult in person for any kind of supervision; and

Whereas, While the role of guardian is to oversee every major decision in the lives of those deemed incapable of looking after themselves, advocates and some lawmakers in New York State have cited the lack of a unified system that can provide oversight for guardianships as having contributed to the extreme gaps in the

provision of services for the vulnerable population the system is entrusted with protecting; and

Whereas, Despite proof of widespread fraud and abuse within New York's current guardianship network, New York State legislators have taken little action to correct ongoing issues; and

Whereas, Advocates and lawmakers have called to strengthen the vetting and examination processes for both individuals and non-profit organizations, while stressing the need to implement a system of oversight to help eliminate increased workforce of court clerks and examiners and at the same time reducing caseload capacities to manageable levels; and

Whereas, In 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; and

Whereas, Advocates and lawmakers also suggest requiring guardians to attend regular trainings and incorporate regularly scheduled face-to-face check-ins with their caseloads to identify and prevent the reported incidences of abuse and neglect; and

Whereas, A network of nonprofit guardians across New York State would be uniquely positioned to deliver high-quality guardianship services, in part because they have expertise and a deep understanding of local issues, resources, cultures, and practices, and also because they can provide 24/7 care 365 days of the year; and

Whereas, Despite their expertise and readiness to deliver high-quality guardianship services, nonprofits are not funded to meet the need in their local communities and some communities do not have a nonprofit guardianship provider at all; and

Whereas, The Legislature should consider an existing proposal for a Statewide Initiative of Nonprofit Guardians (SING), which would build the capacity of high-quality nonprofit guardians to meet the demand for services in their local communities; and

Whereas, As proposed by Guardianship Access New York, whose members include the Center for Elder Law and Justice, EAC Network, Guardianship Corp, Lifespan, Project Guardianship, and the Hon. Arthur M. Diamond, JSC, 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; and

Whereas, Building the capacity of SING in New York State and New York City could address the failures of the current guardianship system; now, therefore, be it

Resolved, That the Council of the City of New York call upon the New York State Legislature to introduce and pass, and the Governor to sign, legislation to create a statewide public guardianship system to address current inequities and deficits and safeguard vulnerable New Yorkers in need of protective arrangements.

LS 16431
8/1/24
CD