

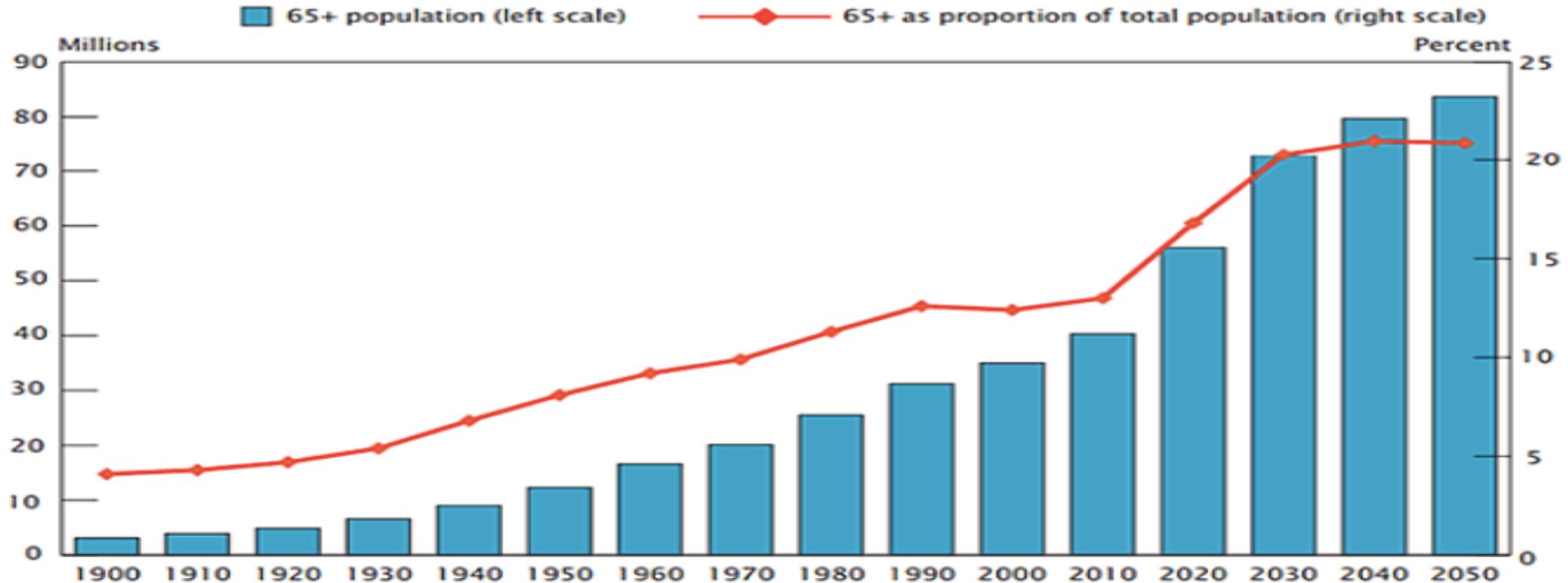
STATE OF THE PROBATE DIVISION



17th Judicial
Circuit Court
of Florida

America's Growing Elderly Population

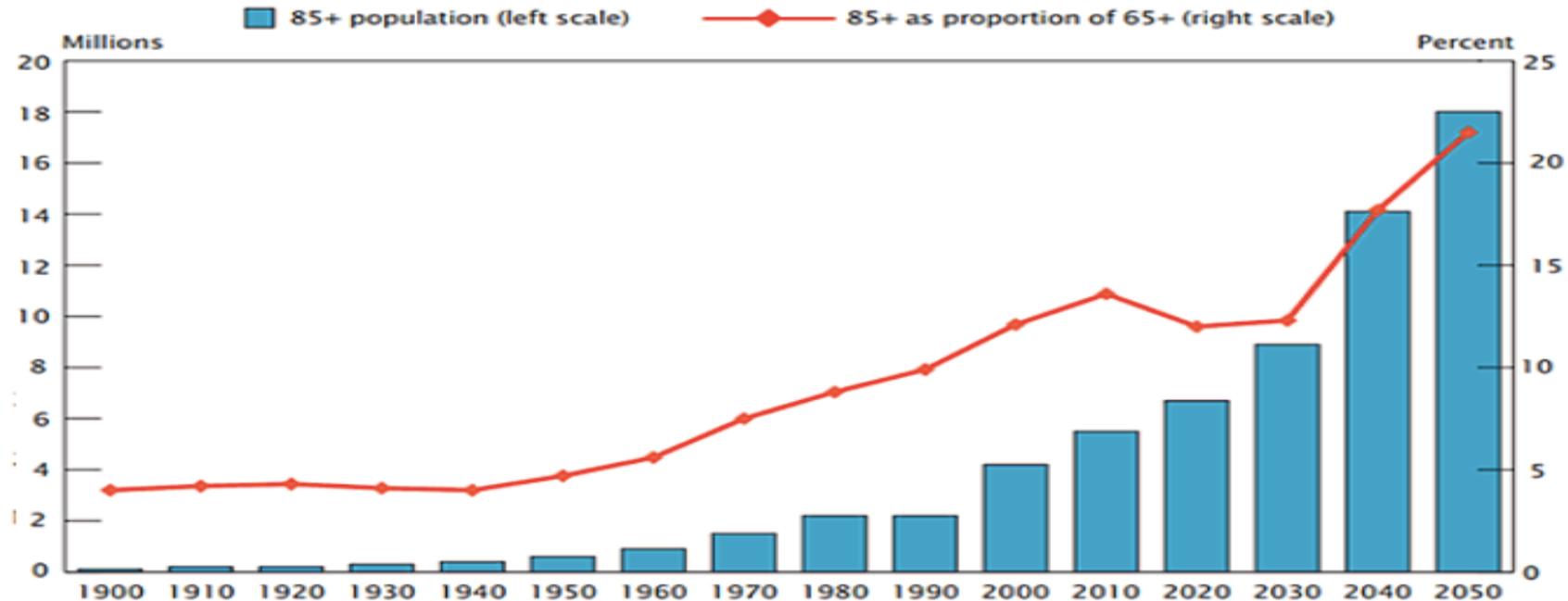
Population Aged 65 and Over: 1900 to 2050



There's more than 51.6 million people over the age of 65 living in the U.S., which accounts for 15.8% of the total population. This is the greatest number and proportion of people age 65 and older in our history. This "Boomer Generation" effect will continue for decades which will cause considerable growth in older populations to the point where the year 2050 the population aged 65 and over is projected to be 83.7 million.

America's Growing Elderly Population

Population Aged 85 and Over: 1900 to 2050

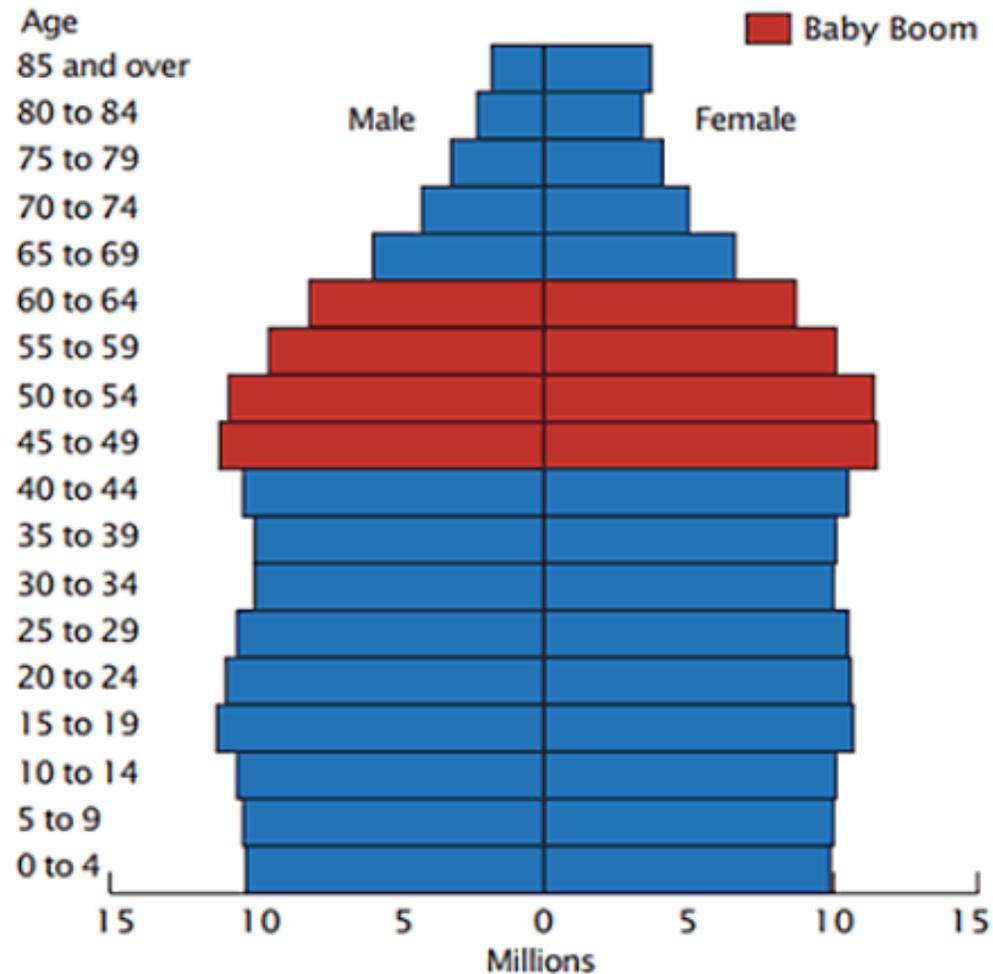


The number of people in the oldest old age group, which refers to those aged 85 and over, is projected to grow from 5.9 million in 2012 to 8.9 million in 2030. In 2050, this group is projected to reach 18 million.

Sources (for the two charts, above): 1900 to 1940, and 1960 to 1980, U.S. Bureau of the Census, 1983; 1950, U.S. Bureau of the Census, 1953; 1990, U.S. Bureau of the Census, 1992; 2000, U.S. Census Bureau, 2001; 2010, U.S. Census Bureau, 2011; 2020 to 2050, U.S. Census Bureau, 2012a; 1900 to 2010, decennial census; 2020 to 2050, 2012 National Population Projections, Middle series.

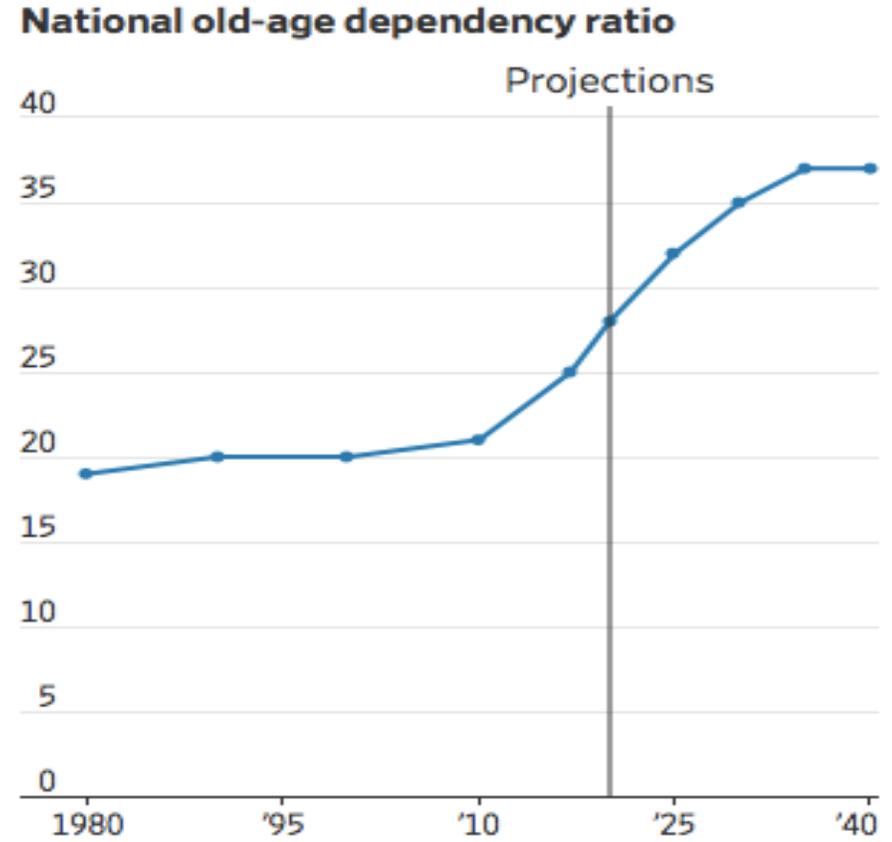
America's Growing Elderly Population

Population by Age and Sex: 2010



Source: <https://ncea.acl.gov/whatwedo/research/statistics.html>

America's Growing Elderly Population



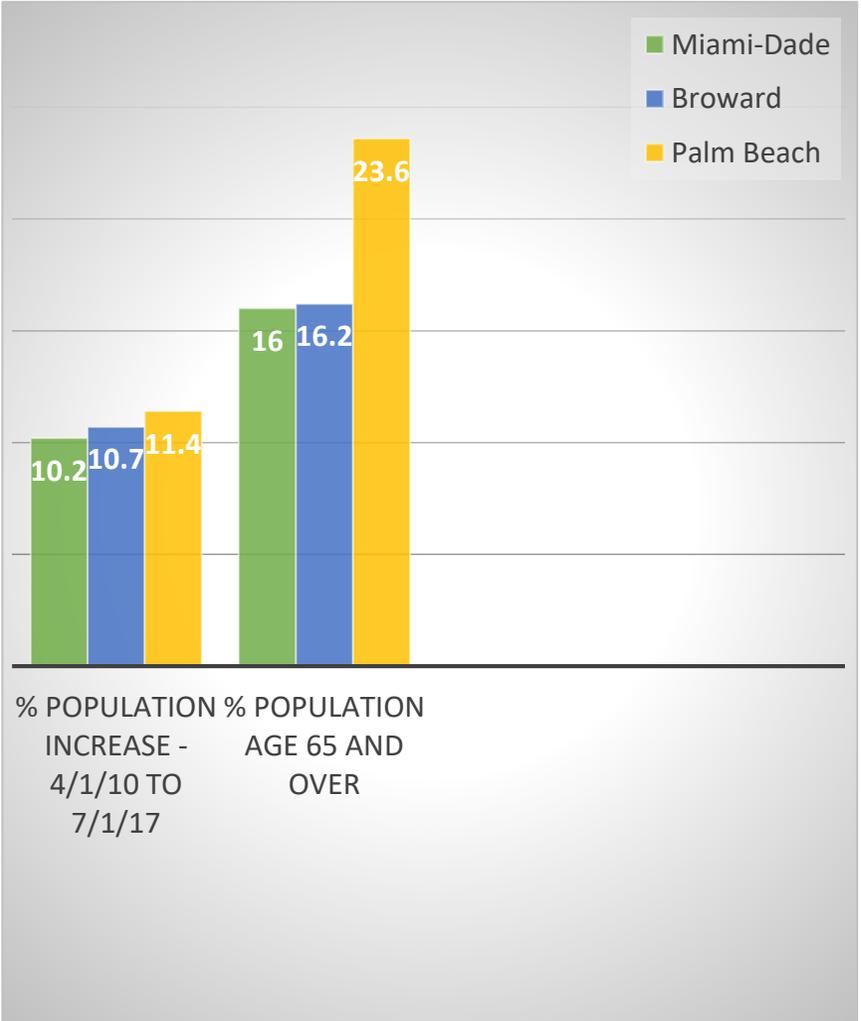
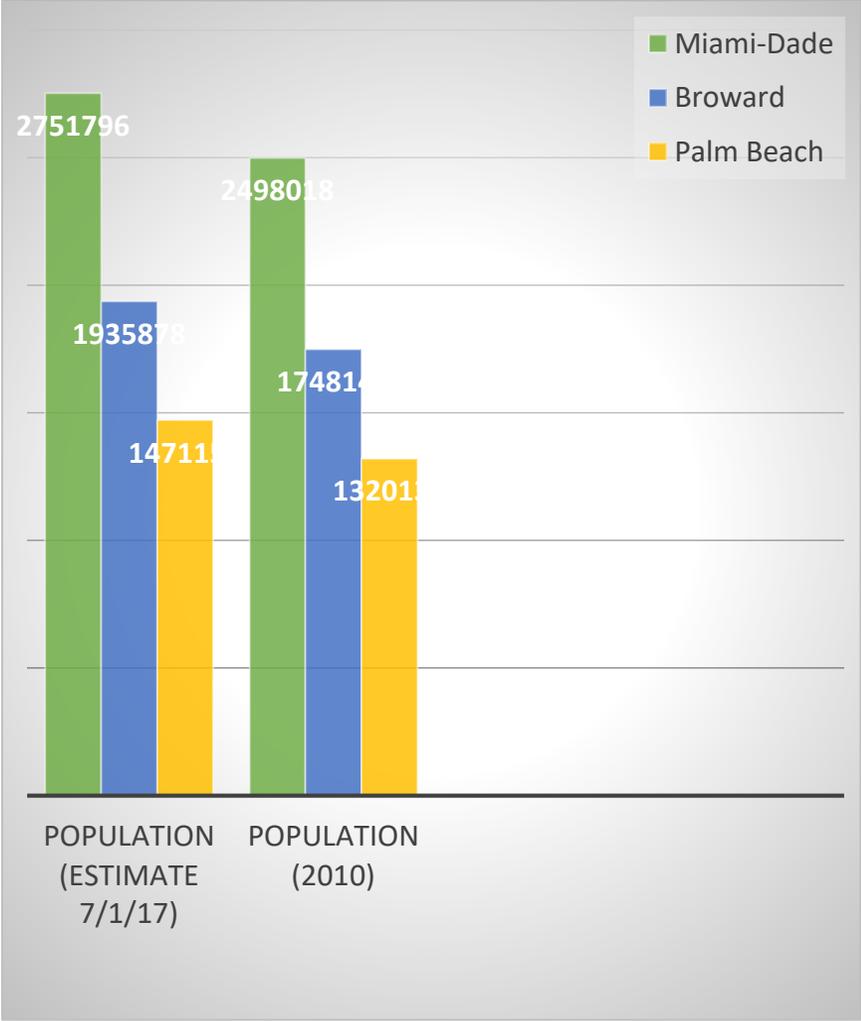
Source: Census Bureau

Broward County Older Population Statistics

- Broward has the **fastest growing 85+ population in the state - projected to grow by 31.9%** - from 47,674 to more than 63,000 by 2030
- Broward's 80 - 84 population will grow by more than 73% in the next 12 years
- The greatest population shift in Broward will occur within the next 5 - 10 years when 236,663 older adults go from ages 55 - 64 to 60 - 74
- 6,500 Broward seniors are on waitlists for elder services
- 12.9% of Broward seniors live below the poverty line

*Source: **Community Foundation of Broward** : "The Silver Tsunami: Is Broward Ready" A Comprehensive Study of Broward's Older Population*

Comparison of South Florida Circuit Court County Population Statistics



Source: U.S. Bureau of the Census

What is Florida Doing ?

Guardianship Legislative Update

Some of Florida's Recent Legislative changes

- 2018:
 - §825.1035, Fla. Stat. creates a cause of action for an injunction for protection against exploitation of a vulnerable adult
 - §825.1036, Fla. Stat. penalizes those who violate an injunction for protection against exploitation of vulnerable adult
- 2016:
 - Office of Public and Professional Guardians created to regulate and discipline guardians and providing guardianship services for incapacitated persons when no private guardian is available
 - OPPG has the authority to create guardian standards and education programs, and to regulate and discipline guardians (§744.20041, Fla. Stat.)
- 2015:
 - Office of Criminal Conflict and Civil Regional Counsel can now serve as court monitor for indigent wards
 - for ETGs, 24-hour notice to AIP and their attorney (§744.3031(2), Fla. Stat.)
 - Family/next of kin get a say in preference of guardian when the ward can't express their own opinion (§744.312(3)(d), Fla. Stat.)
 - Professional Guardian Wheel/rotation required and an appointed ETG can't be appointed as guardian unless the court makes specific findings that the ETG has specific skills necessary or prior experience with the ward (§744.312(4)(a)-(b), Fla. Stat.)
 - guardian abuse, neglect, and exploitation must be reported to DCF (§744.359, Fla. Stat.)
 - standard for restoration of capacity: "preponderance of the evidence" (§744.464(3), Fla. Stat.)
 - interested persons have 2 additional grounds to seek judicial review: (1) guardians acting in a contrary manner to their prescribed duties or (2) guardians denying visits with relatives (§744.3715, Fla. Stat.)
- 2014:
 - legislation enacted to create a more stringent screening process for guardians and stricter scrutiny of guardians and their control over a ward's assets (§744.3135(1), Fla. Stat.)
 - requirement for individuals petitioning the court for appointment as guardian to disclose criminal records that were previously expunged or sealed (§§943.0585 and 943.059, Fla. Stat.)
 - clerk's office given authority to conduct in depth review of guardianship assets when further review is necessary (§744.368(5), Fla. Stat.)

A Closer Look: Why Broward County and the State of Florida are Paying Attention to Probate, Guardianship, and Mental Health

- Florida's Working Interdisciplinary Network of Guardianship Stakeholders ("WINGS")
 - working to coordinate efforts of many existing entities addressing guardianship issues, including a work group established by the Chief Justice
 - notes the following with regard to the number of guardianship cases that Florida can expect to see over the coming decades:
 - ❖ over 17% or nearly 3.5 million Floridians are aged 65 and over
 - ❖ the 65 and over age group is forecast to represent 24.5% of Florida's population in 2030
 - ❖ over the next 2 decades, Florida's population over age 60 will account for the majority of Florida's population growth, expected to be over 55% gains
 - ❖ adults and children of any age may become incapacitated and require the appointment of a guardian
- The MetLife Study of Elder Financial Abuse (June 2011 study prepared by The MetLife Mature Market Institute in conjunction with The National Committee for the Prevention of Elder Abuse and the Center for Gerontology at Virginia Polytechnic Institute and State University)
 - annual financial loss by victims of elder financial abuse is estimated to be at least \$2.9 billion in 2011 – a 12% increase from the \$2.6 billion estimate in 2008
 - women are nearly twice as likely to be victims of elder financial abuse as men
 - most victims between the ages of 80 and 89, live alone, and require some level of help with health care or home maintenance
- New Yorker Article (October 2017) by Rachel Aviv – How the Elderly Lose Their Rights (*Last Week Tonight With John Oliver turned this into the main segment of John Oliver's weekly HBO show on June 3, 2018)
 - guardian abuse and exploitation of elderly often unchecked and rampant in various states
 - an estimated 1.5 million adults are under the care of guardians, including family members and professionals
 - nearly 10 million adults age 65 and older receive care at home or settings other than nursing homes
 - an audit of ongoing guardianships in Texas revealed some 3,000 wards were actually deceased
 - end result: after being guardian to over 400 wards during a 12+ year period (often times the professional guardian was appointed by the court), the professional guardian who was the subject of the investigative report, was indicted on more than 200 felony charges, including racketeering, theft, exploitation, and perjury
 - key take-away: often times, persons subject to guardianships have less rights than someone in prison and the state and courts must protect those individuals and their rights

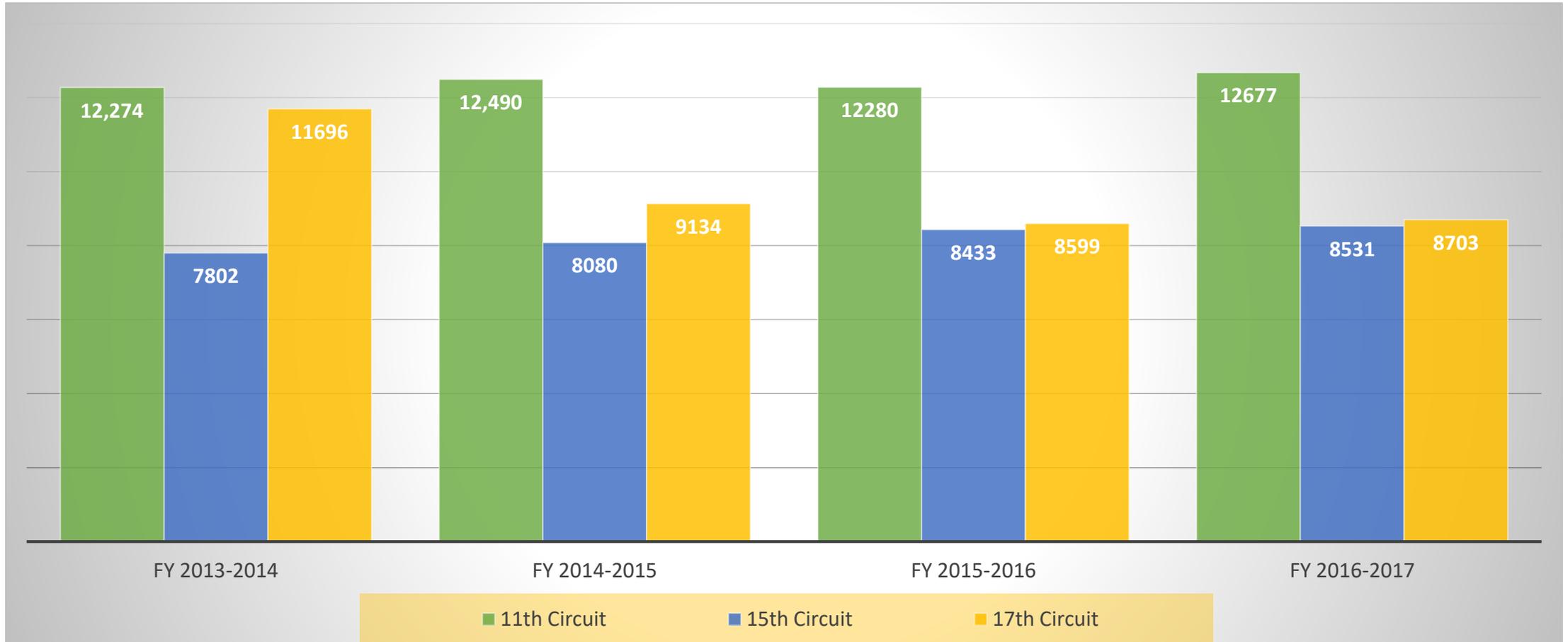
A Closer Look: Why Broward County and the State of Florida are Paying Attention to Probate, Guardianship, and Mental Health

- “Elder Guardianship: A well-oiled machine” (December 2014 Sarasota Herald-Tribune special investigative series)
 - monitoring elders and tapping their assets is a growth business: in 2003, there were 23 registered professional guardians in Florida, according to the Department of Elder Affairs – as of the date of publication in 2014, there were more than 440 registered professional guardians — an increase greater than 1,800 percent in 11 years
 - *****Currently Broward County has 47 registered professional guardians per the Department of Elder Affairs and 550 registered professional guardians throughout the State of Florida, which has caused the 17th Circuit to put an emphasis on making sure professional guardians are acting in a ward’s best interest**
- “Power of Attorney Abuse: What States Can Do About It” (2008 AARP Public Policy Institute investigative report)
 - durable powers of attorney are used to financially exploit the elderly and the best means of reform is to adopt the Uniform Power of Attorney Act
 - led to a complete reform of Florida’s power of attorney statute in 2011 with Florida adopting its own uniform power of attorney act (*See Chapter 709, Fla. Stat.*)
- Courthouse Problems
 - Former Judge Martin Colin and Professional Guardian Betsy Savitt – Judge Martin Colin, a former Palm Beach County Probate & Guardianship Division judge, transferred from the probate and guardianship division because of conflicts of interest resulting from attorneys who represent his wife (a Palm Beach County professional guardian) appearing before him and other judges he works with
 - ❖ led to Palm Beach County guardianship division overhaul, including standardizing billing practices, Judge Colin’s resignation, and Betsy Savitt’s professional guardian registration being revoked
 - Orange County and issues regarding DNR’s and Professional Guardian Rebecca Fierle
- **How the 17th Circuit prevents issues:** eliminate any perceived judicial bias through the use of a professional guardian wheel to appoint guardians which takes decision out of the judge’s hands(unless the court makes findings as to why a specific guardian was appointed in a case – typically special expertise and prior history with the case/ward); use of “court monitors” to review and track all guardians and wards; use of the audit division of the Broward County Clerk’s Office to review all guardianship accountings and plans; implementation of a new administrative order concerning DNR’s and Cremations; updated administrative order concerning court appointed counsel in guardianship/mental health proceedings; and new procedures regarding Broward County guardians

Comparison of South Florida Circuit Court Probate/Guardianship Division STAFFING

| | 17 TH CIRCUIT | 11 TH CIRCUIT | 15 TH CIRCUIT |
|---------------------|--|---|--|
| JUDGES | <ul style="list-style-type: none"> • 3 PROBATE/GUARDIANSHIP | <ul style="list-style-type: none"> • 5 FULL TIME (CONSIDERING ADDING A 6TH JUDGE) | <ul style="list-style-type: none"> • 9 PROBATE/FAMILY DIVISION (50/50 SPLIT IN CASE ASSIGNMENT - 9 JUDGES AVAILABLE FOR COVERAGE AND ROUTINE PAPERWORK) |
| GENERAL MAGISTRATES | <ul style="list-style-type: none"> • 2 MENTAL HEALTH (MHC) | <ul style="list-style-type: none"> • 1 PROBATE (OVERSEES NON-EMERGENCY CONTESTED MENTAL HEALTH CASES (MHC) 2 DAYS/WEEK) | <ul style="list-style-type: none"> • 6 PROBATE / MENTAL HEALTH / FAMILY / JUVENILE |
| CASE MANAGERS | <ul style="list-style-type: none"> • 0 | <ul style="list-style-type: none"> • 5 ATTORNEYS (ROLE IS TO REVIEW EX PARTE HEARING REQUESTS, REVIEW "SOME" NON-HEARING EX PARTES, AND E-COURTESY SIGNED EX PARTE ORDERS) | <ul style="list-style-type: none"> • 4 CASE MANAGERS (NON-ATTORNEYS) (ROLE IS TO ASSIST JUDICIARY WITH CASE MANAGEMENT, REVIEW FILES, PREPARE STANDARD FORM ORDERS AND CHECKLIST FOR JUDICIARY, AND ATTEND EX PARTE HEARINGS) |
| STAFF ATTORNEYS | <ul style="list-style-type: none"> • 2 ASSIGNED STAFF ATTORNEYS (ROLE IS TO ASSIST IN NON-HEARING EX PARTES, REVIEW OF FILED PETITIONS, DRAFTING OF ORDERS, LEGAL RESEARCH, AND ATTENDANCE AT HEARINGS AS REQUIRED) | <ul style="list-style-type: none"> • NO DIVISION SPECIFIC STAFF ATTORNEYS STAFF ATTORNEYS (ASSISTANT GENERAL COUNSELS) ASSIGNED ORDERS AND RESEARCH ON A ROTATING BASIS | <ul style="list-style-type: none"> • NO DIVISION SPECIFIC STAFF ATTORNEYS (LAW CLERKS) – STAFF ATTORNEYS SHARE ASSIGNED ORDERS AND RESEARCH ON A ROTATING BASIS |
| MANAGEMENT | <ul style="list-style-type: none"> • 1 PROBATE COUNSEL (DOUBLES AS STAFF ATTORNEY FOR PROBATE DIVISION) | <ul style="list-style-type: none"> • 1 DIRECTOR OF PROBATE | <ul style="list-style-type: none"> • 1 PROBATE DIVISION MANAGER |

Comparison of South Florida Circuit Court Probate/Guardianship Division FILINGS



Source: Florida Office of State Courts Administrator

17th Circuit* Probate Division Case Filing Statistics

| CASE TYPE | 2013** | 2015 | 2016 | 2017 | 2018 (BASED ON FILINGS 01/01/2018 – 12/31/2018) | % CASE FILING FROM 01/01/2013 THRU 12/31/2018 | # OF CASES WITH ACTIVE STATUS (Through 10/01/2019) |
|---|--------------|--------------|--------------|--------------|---|---|--|
| Mental Health | 2,171 | 2,942 | 2,842 | 3,378 | 3,643 | Increase of 68% | 1,365 |
| Probate | 5,255 | 5,146 | 5,120 | 5,369 | 5,504 | Increase of 5% | 9,221 |
| Guardianship | 421 | 440 | 479 | 505 | 646 | Increase of 53.4% | 2,600 |
| Developmentally Disabled Adult (Guardian Advocacy) | 48 | 56 | 73 | 48 | 141 | Increase of 193% | 600 |
| TOTAL | 7,847 | 8,584 | 8,514 | 9,300 | 9,934 | Increase of 26.6% | 13,786 |

*17th Circuit is considered by OSCA to be a “**Very Large Circuit**” (along with the 11th Circuit)

**Yearly totals calculated January through December (not fiscal year basis)

Review of 17th Circuit Probate and Guardianship Workload and Orders Entered

-An average guardianship case results in an approximately **16 to 20 petitions/motions per year**

-Non-routine guardianship cases can sometimes result in over 80 orders in one year

-Guardianship cases can last more than a decade (for example, an active guardianship established in 1993 has generated over 200 orders and resulted in over 60 hearings)

-A survey of guardianship cases pulled at random from each of the 3 Probate Divisions shows the following:

- Guardianship 1: minor guardianship initiated in February of 2015 resulted in 21 hearings and 65 orders through August of 2018 (minor guardianship did not include a related mental health case)
- Guardianship 2: guardianship with related mental health case initiated in May of 2004 resulted in 3 hearings and 7 orders in the mental health case (which included a suggestion of capacity) and 31 hearings and 212 orders in the guardianship case (up until August of 2018, when an estate proceeding was opened as the Ward was deceased, which has resulted in 2 hearings and 4 orders to date)
- Guardianship 3: guardianship with related mental health case initiated in November of 2012 resulted in 1 hearing and 2 orders in the mental health case and 29 hearings and 117 orders through August of 2018 in the guardianship case (this case also had a related adult protective services case which resulted in 3 hearings and 4 orders between October 1, 2012 and January 10, 2013)
- Guardianship 4: guardianship with related mental health case initiated in May of 2018 resulted in 1 hearing and 3 orders in the mental health case and 1 hearing and 6 orders through August of 2018 in the guardianship case
- Guardianship 5: guardianship with related mental health case initiated in September 2016 resulted in 2 hearings and 3 orders in the mental health case and 9 hearings and 51 orders through August of 2018 in the guardianship case
- Guardianship 6: voluntary guardianship initiated in October of 2008 resulted in 7 hearings and 65 orders through June of 2018 (voluntary guardianship does not include a related mental health case)
- Guardianship 7: minor guardianship initiated in April of 2012 resulted in 6 hearings and 17 orders through August of 2018 (minor guardianship did not include a related mental health case)
- Guardianship 8: guardianship with related mental health case initiated in October of 2014 resulted in 1 hearing and 5 orders in the mental health case and 16 hearings and 45 orders through August of 2018 in the guardianship case
- Guardianship 9: guardianship with related mental health case initiated in January of 2018 resulted in 1 hearing and 4 orders in the mental health case and 2 hearings and 19 orders through August of 2018 in the guardianship case

-The number of Formal Administration estate proceedings significantly outnumbers the number of Summary Administration estate proceedings

-A Summary Administration proceeding typically generates an **average of 3-5 orders**

-A Formal Administration proceeding typically generates an **average of 8-10 orders**

17th Circuit Probate Division - Number of 2018 Orders*

| FILING TYPE (with average # of orders per year/case) | 2018 FILINGS (01/01/2018 – 12/31/18) | ACTIVE STATUS CASES (Through 10/01/19) | AVERAGE 2018 ORDERS (01/01/2018 – 12/31/18) |
|--|---|---|--|
| Estate | 5,504 | 8,886 | |
| -Formal Administration and Ancillary Administration (8 to 10 Orders) | 2,655 | | 21,240 – 26,550 |
| -Summary Administration (less than and over \$1,000) (3 to 5 Orders) | 1,457 | | 4,371 – 7,285 |
| -Dispositions (1 to 2 Orders) | 146 | | 250 |
| -Adversary Proceedings/ Trust Actions/ Prolonged or Litigious Administration / Miscellaneous PRC (10 to 20 Orders) | 1,246 | Approx. 335 | 12,460 – 24,920 |
| Guardianship (16 to 20 Orders) | 646 | | 10,336 – 12,920 |
| -Active Guardianship | | 2,600 | 41,600 – 52,000 |
| Developmentally Disabled Adult/ Guardian Advocacy (5 to 10 Orders) | 141 | | 705 – 1,410 |
| -Active Guardian Advocacy | | 600 | 3,000 |
| Mental Health (3 to 5 Orders) | 3,643 | 1365 | 10,929 – 18,215 |
| TOTAL | 9,934 | 13,786 | 104,891 – 146,550 |

*Based on 2018 filing statistics and average number of orders entered

Specific Issues Confronting the Probate Division

- Addition of new statutes creating additional workflow (firearm statutes, Emergency Temporary Injunction for Protection of Vulnerable Adult, etc.)
- Amount of expedite files that need immediate attention: Baker Act (3 to 4 times per day), Marchman Act, certain staff attorney reviewed petitions, Emergency Temporary Guardianships, Emergency Temporary Injunction for Protection of Vulnerable Adult, ratification of General Magistrate Report & Recommendations
- General emergency filings: Petition to Sell Real Property, Court Monitor Appointment and Review of Report of Court Monitor, etc.
- Extended hearings: involuntary placement hearings, proceedings where referral to general magistrate has been objected to, guardian fee petitions and guardian's attorney's fee petitions (also requires lengthy review prior to hearing), Trust actions, adversarial proceedings
- No way to eliminate staff attorney file review through use of entirely electronic files
- Electronic filing and orders will not reduce amount of judicial labor, but may reduce amount of time for attorneys/parties to receive signed orders