

Improving Guardianship in Texas

*Assisting the courts in protecting our
most vulnerable citizens and their
assets.*



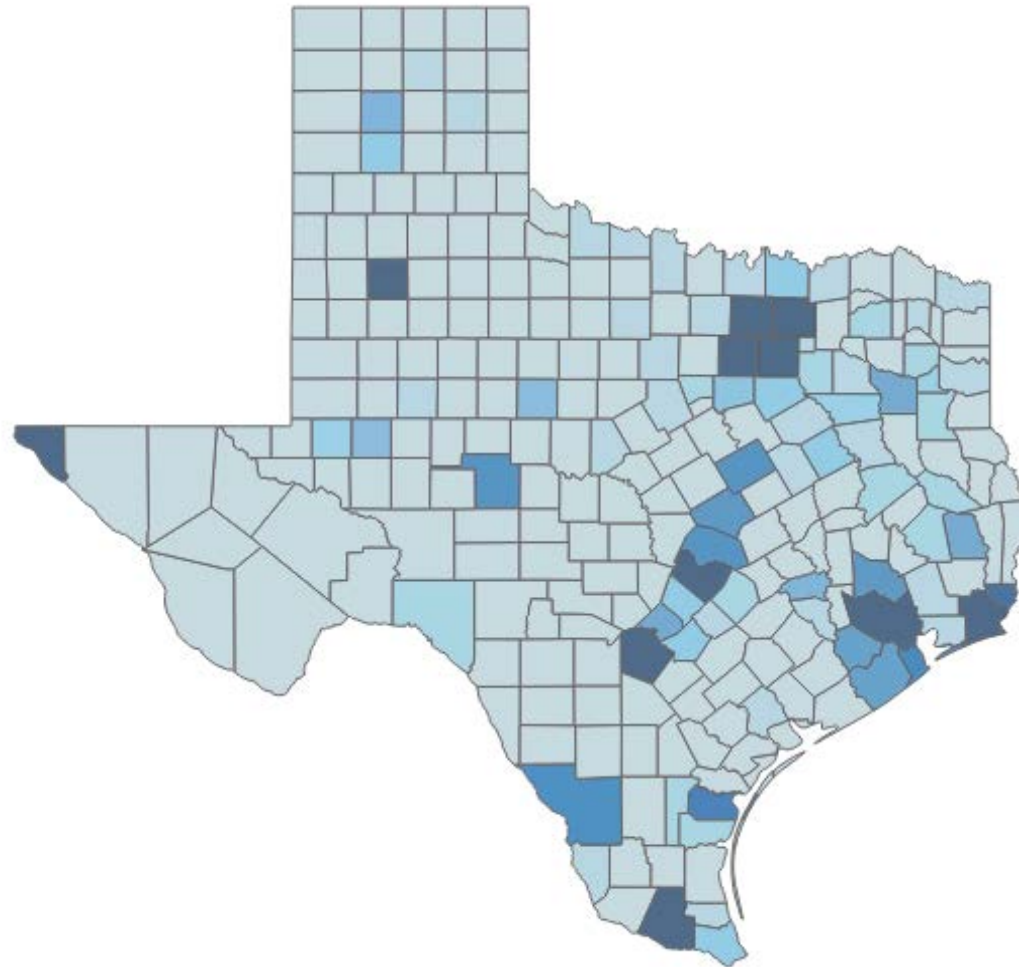
Judicial Branch Certification Commission (JBCC)

➤ JBCC Overview

- Registrations of Guardianships (SB 1096, June 1, 2018)
- Registrations of Guardianship Programs (SB 36, September 1, 2018)
- Texas Certified Guardians: HHSC, Programs, Private Professional Guardians
- Code of Ethics and Minimum Standards adopted by the SCOT
- Education, Experience, and Examination Requirements
- Criminal History Checks
- Complaint Investigation



50,000 (+) Active Guardianships



Total 254 Counties in Texas

- 10 Counties
- 18 Statutory Probate Courts
- Specialized staff, auditors and investigators

244 Counties

- County Judge
- County Court at Law Judges
- Lack personnel and resources
- Types: Family Members, Friends, Attorneys, Certified Guardians



Guardianship Compliance Project (GCP)

- Service to provide Guardianship Compliance Specialists to assist courts and clerks handling guardianship cases.
 - Review all guardianship cases to identify compliance issues and reporting deficiencies by the guardian.
 - Review annual accountings and report findings back to the court.
 - Provides accurate list of active and closed cases.
 - Prepare report for courts on findings.
 - Develop best practices in managing guardianship cases.
 - Prepare and send notices for the missing reports.
 - Assist with compliance dockets.



Project Findings

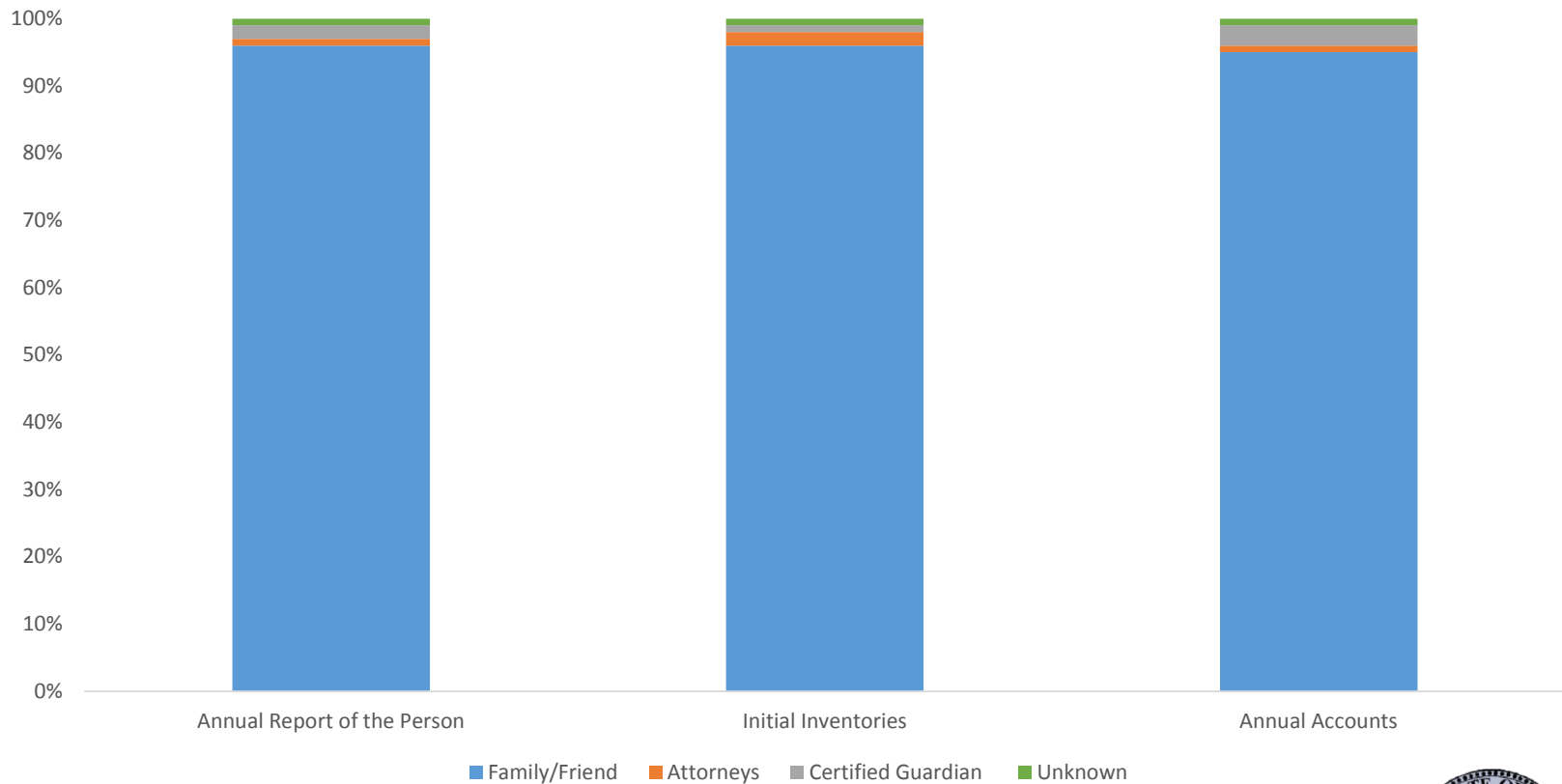
- Since the project began in November 2015, Guardianship Compliance members have worked with 41 courts in 27 counties.
 - 25,746 guardianship cases reviewed
 - 16,881 guardianship cases recommended for closure
 - 3,053 deceased persons under guardianship
 - 8,865 active guardianship cases were identified
 - 1,955 guardianship cases were found to be out of compliance
 - 32 percent of cases were found to be missing reports of the person
 - 41 percent of cases were found to be missing initial inventories
 - 44 percent of cases were found to be missing annual accountings

- Note: These statistics are reported for the 23 counties completed. Active guardianships in those counties totaled 4949. 40% (1,955) of cases out of compliance.



Compliance by Guardianship Type

Figure 2: Percentage of Reports Out of Compliance by Guardian Type



Project Observations

- Lack of backup bank statements, receipts, check copies, and invoices for the annual accountings to be audited
- Unauthorized or unexplained ATM withdrawals and transfers
- Unauthorized or unexplained gifts to family members
- Payments to credit card accounts not listed on annual accounting
- Unauthorized or unexplained purchases
- Lack of required criminal background checks
- Accuracy in OCA Reporting
- Training and procedures needed



Best Practice Recommendations

- Monitor all matters relating to guardianship cases.
- Review guardianships annually for continuation, modification or termination.
- Implement procedures to address all reports from APS or law enforcement alleging abuse or exploitation.
- Evaluate the need for a guardianship of the estate in cases where the only income is Supplemental Security Income (SSI).
- Ensure background checks are completed.
- Ensure Annual Reports of the Person are filed
- Ensure Inventory and Annual Accountings are filed
- Send notices before due dates of delinquent reports
- Follow Up on Discrepancies and Compliance Docket



S.B. 1096

- S.B. 1096 implements two recommendations from the Texas Judicial Council (TJC):
 - Prior to Appointment:
 - Requires all guardianships to be registered with the Judicial Branch Certification Commission (JBCC)
 - Directs JBCC to ensure that these guardians obtain proper training and criminal history checks.
 - Makes this database available for query by law enforcement.
 - No fee for the registration or training
 - Rules under development
 - Effective June 1, 2018



Guardianship Registration

- Effective June 1, 2018, each guardianship must be registered with the Commission.
- The clerk of a court provides written notice of the requirement to provide the Commission information to each person who applies for or seeks appointment as a guardian and to each attorney who files an application to create a guardianship or seeks to represent a proposed guardian.
- Each proposed guardian must submit the following information to the Commission:
 - ✓ the proposed guardian's name, and all former names;
 - ✓ the proposed guardian's physical address and mailing address if different, telephone number, email address, and other contact information, if any;
 - ✓ the proposed guardian's attorney's physical address and mailing address if different, telephone number, email address, and other contact information;
 - ✓ the name, sex, and date of birth of the proposed ward;
 - ✓ whether the proposed guardianship is of the person, the estate, or both;
 - ✓ whether the proposed guardianship is based upon incapacity or minority of the proposed ward;
 - ✓ the estimated value of the liquid assets of the proposed ward's estate;
 - ✓ the name of the court with jurisdiction over the guardianship proceeding; and
 - ✓ whether the proposed guardian is a certified guardian, attorney or a corporate fiduciary.



Guardianship Registration

- The Commission will notify the court and the proposed guardian of receipt of the required information. The Commission may request clarification, correction, or completion of the information
- Submission of information does not constitute registration of the guardianship.
- A guardianship is not registered with the Commission until the Commission receives notice from the clerk of the court that the guardian has been appointed by the court and the date of qualification.



Guardianship Registration- Training

- A proposed guardian may not be appointed guardian unless the proposed guardian completes the training provided on the Commission's website
- The proposed guardian must complete the training no later than 10 days before the court's hearing to consider the proposed guardian's appointment.



Guardianship Registration- Training

- The Commission must include the following subjects in the training:
 - ✓ guardian's fiduciary duty to the ward;
 - ✓ laws relating to the practice of guardians, including actions guardians may take without court approval and actions requiring court approval;
 - ✓ requirement to file and maintain an adequate bond to protect the ward and the ward's estate;
 - ✓ content and information to include in inventories, annual accounts, annual reports of the person, final reports of the person, final accounts, and other filings with the court;
 - ✓ content and information to include in the annual report to the Commission;
 - ✓ alternatives to guardianship;
 - ✓ support and services available to wards; and
 - ✓ the ward's bill of rights.

- Upon completion of the training, each proposed guardian will receive a certificate. The Commission must notify the court when a proposed guardian has successfully completed the training requirement.



Guardianship Registration- Criminal History

- Effective June 1, 2018, the Commission must have a search conducted of a proposed guardian's criminal history records upon receipt of information regarding the proposed guardian unless the proposed guardian is a certified guardian, a provisionally certified guardian, an attorney, or a corporate fiduciary.
- A proposed guardian may not be appointed guardian, or temporary guardian, unless:
 - ✓ the criminal history records for the proposed guardian are obtained from DPS via name and DOB search if the value of the estimated liquid assets in the estate of the proposed ward is \$50,000 or less; or
 - ✓ the criminal history records for the proposed guardian are obtained from DPS and FBI, via fingerprint search, if the value of the liquid assets of the proposed ward's estate exceed \$50,000.
- The Commission must provide the criminal history background information regarding a proposed guardian to the clerk of the court. The clerk must provide the information to the court for the exclusive use of the judge.
- The clerk must not file the criminal history background information in the court file.
- A hearing to appoint a proposed guardian may occur no earlier than 10 days after receipt of the criminal history background information.



Guardianship Registration-Notice to JBCC

- The clerk of the court notifies the Commission of the date of the guardian's qualification.
- Upon receipt of notice from a clerk of the court of the qualification of a guardian, the Commission must register information regarding the guardianship in the guardianship database maintained by the Commission.
- The clerk of a court which removes a guardian or terminates a guardianship must send notice of the removal or termination to the Commission within 10 days. The Commission must update the registration of the guardianship in the database.
- The clerk of the court which transfers a guardianship to another venue or jurisdiction must notify the Commission within 10 days of receipt of confirmation that the receiving court has accepted the guardianship.
- The Commission must update the registration of the guardianship in the database.



Guardianship Registration- Pre-existing Guardianships

- Each guardian of a guardianship which existed on or before June 1, 2018, must register with the Commission by filing the information and by providing the guardian's qualification date no later than the date upon which the next annual report or annual accounting is filed with the court.
- For purposes of registering a guardianship which existed on or before June 1, 2018, a guardian need not obtain training or undergo a criminal history background check, unless ordered to do so by the court.



Registration Process Summary

- Prior to Appointment and Qualification:
 - All guardianships to be registered with the Judicial Branch Certification Commission (JBCC)
 - Guardianship Application filed, JBCC email filer, Clerk notify filer of registration requirements
 - Guardian provide information in JBCC system
 - JBCC Criminal History and provide to Clerk
 - JBCC provide notification of training completion to Clerk
 - Clerk notify JBCC of Qualification and date (email)
 - Upon transfer, removal or closure, Clerk notify JBCC
- Effective June 1,2018



Guardianship Compliance Project

jbccguardianshipregistration@txcourts.gov

<https://jbcctexas.txcourts.gov/DefaultTexas.aspx>

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