

Guardianship in Texas

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



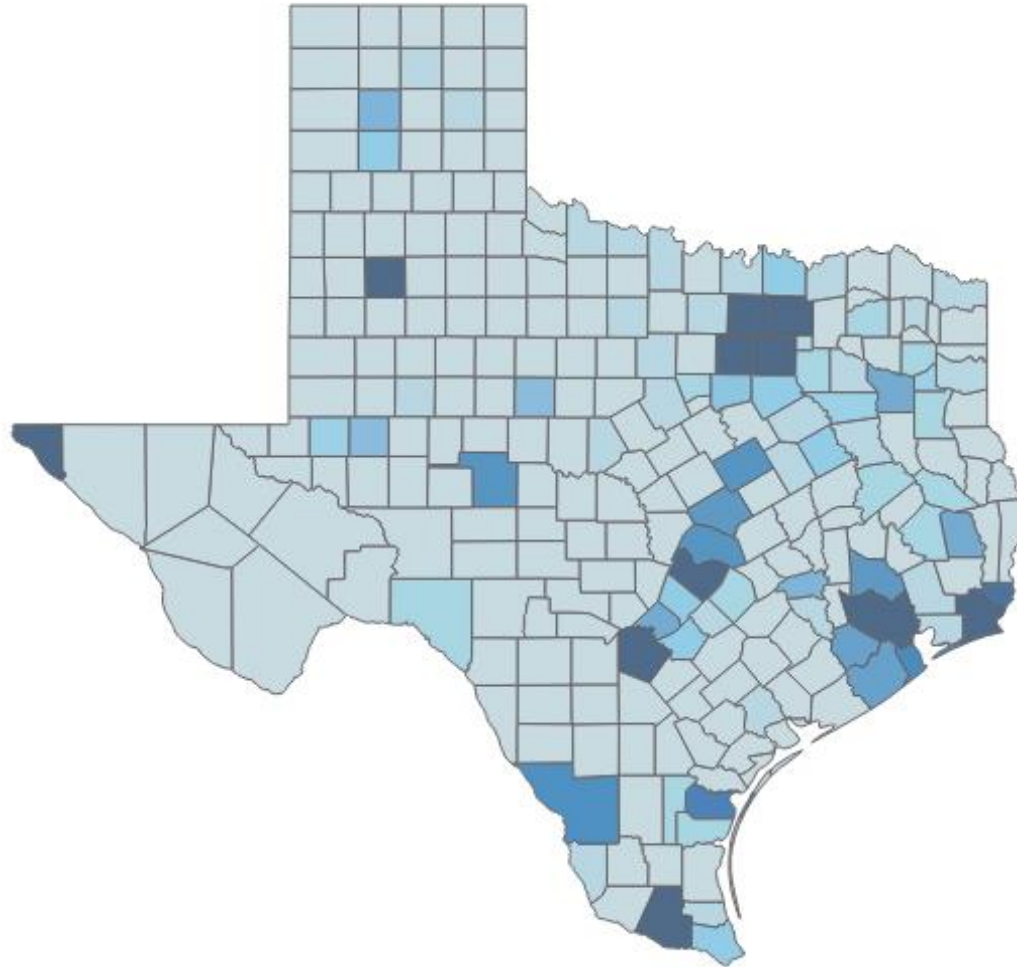
Judicial Branch Certification Commission (JBCC)

➤ 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
- Guardianship Certification Advisory Board
- 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.



GCP Info



41/27

Courts and Counties involved in the guardianship compliance project



27,034

Guardianship cases reviewed by the guardianship compliance project



17,278

Guardianship cases recommended for closure with **3,083** deceased



9,756

Active guardianship cases



1955*

Guardianship cases found to be out of compliance with statutorily required reporting, in 23 completed counties



32%*

Percentage of cases with missing reports of the person



42%*

Percentage of cases with missing initial inventories



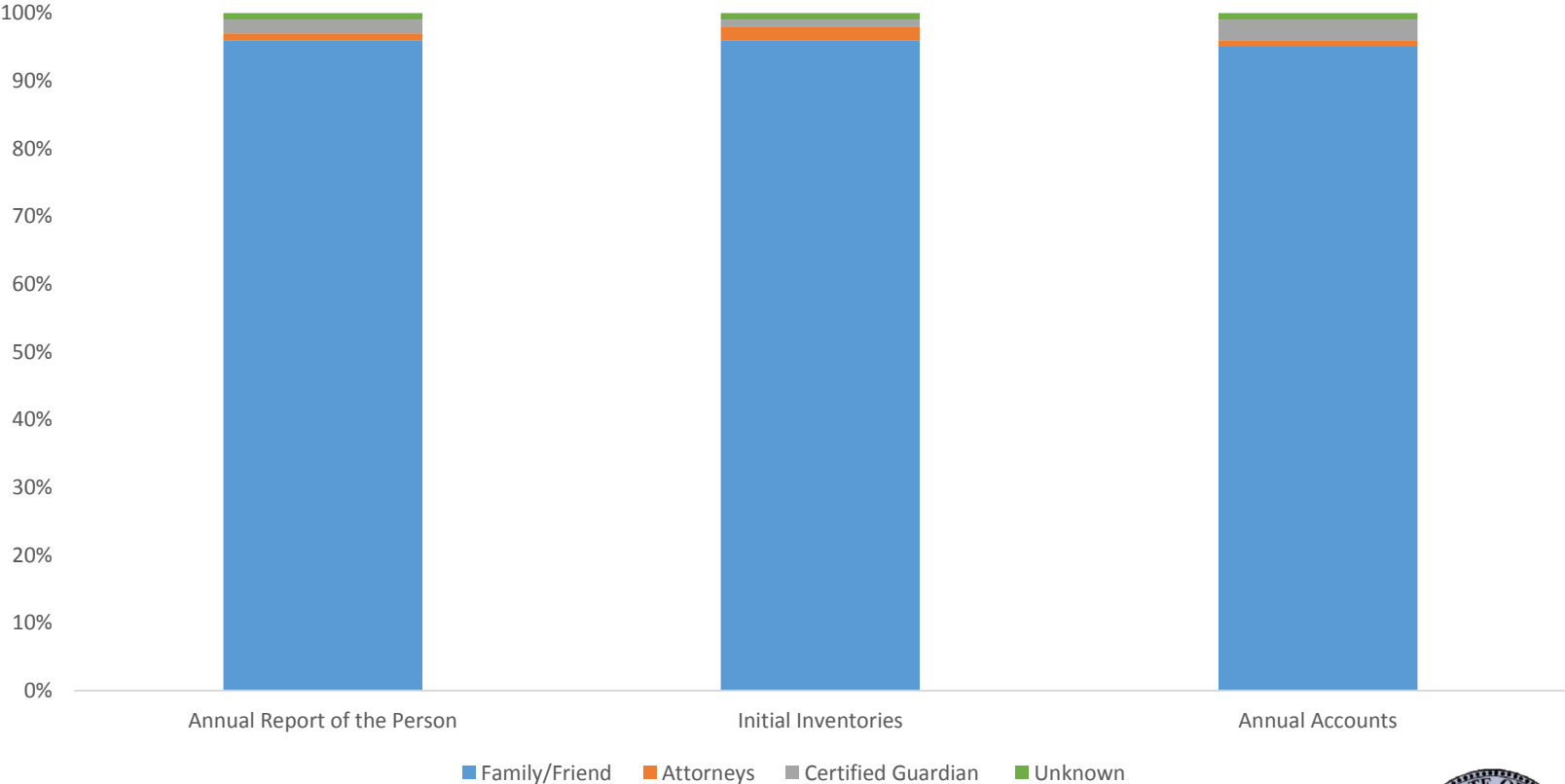
42%*

Percentage of cases with missing annual accountings



Compliance by Guardianship Type

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



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
 - SCOT Rules under development
 - Effective June 1, 2018



Guardianship Registration

- Effective June 1, 2018, each guardianship must be registered with the JBCC.
- 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 JBCC will notify the court and the proposed guardian of receipt of the required information.
- The JBCC 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 JBCC until the JBCC 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

- The JBCC 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;
 - ✓ Restoration;
 - ✓ the ward's bill of rights;
 - ✓ notification on health and residence to certain qualified relatives requesting information.

- Upon completion of the training, each proposed guardian will receive a certificate.

- The JBCC must notify the court when a proposed guardian has successfully completed the training requirement.

- A proposed guardian may not be appointed guardian unless the proposed guardian completes the training provided on the JBCC'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- Criminal History

- Effective June 1, 2018, the JBCC 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 JBCC must provide the criminal history background information regarding a proposed guardian to the clerk.
- 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 notifies the JBCC 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 JBCC.
- The clerk of a court which removes a guardian or terminates a guardianship must send notice of the removal or termination to the JBCC within 10 days. The JBCC 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 JBCC within 10 days of receipt of confirmation that the receiving court has accepted the guardianship.
- The JBCC 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 JBCC by filing the information and by providing the guardian's qualification date.
- A court that has probate jurisdiction must provide to each guardian written notice of the requirement to register the guardianship with the JBCC.
- No later than the date upon which the next annual report or annual accounting is filed with the court.
- 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

- Guardianship Application filed
- JBCC email filer
- Clerk notify filer of registration requirements
- Guardian provide information in JBCC system
- JBCC runs Criminal History and provide to Clerk
- JBCC provide notification of training completion to Clerk
- Clerk notify JBCC of Qualification and date (email)
- Clerk notify JBCC of transfer, removal, closure or successor
- Effective June 1,2018



Guardianship Compliance Project

jbccguardianregistration@txcourts.gov

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

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