

Texas Guardianship Compliance

Protecting Our Most Vulnerable Citizens and Their Assets



FISCAL YEAR 2021



Guardianship Abuse, Fraud and Exploitation
Deterrence Program Annual Report



Contents

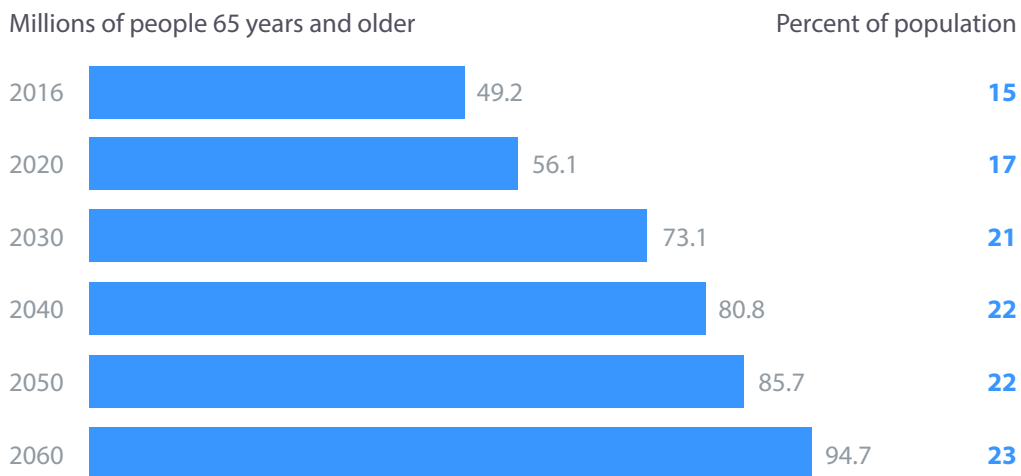
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Introduction and Background

November 1, 2015, at the direction of the Texas Judicial Council, and funded by the Texas Legislature, the Office of Court Administration (OCA) launched the Guardianship Compliance Project (GCP) to audit guardianships in multiple counties to determine the effectiveness of existing safeguards providing protection for the elderly and incapacitated. The project revealed serious failings in monitoring and managing guardianships as well as lack of personnel and resources to provide adequate oversight protections for our state’s most vulnerable citizens.

The project’s initiative was largely based then on the knowledge of the state’s rapidly growing elderly population which has since been projected to be nearly one in four Americans over 65 years old by 2060 according to the U.S. Census Bureau.

Figure 1.
Projections of the Older Adult Population: 2020 to 2060
By 2060, nearly one in four Americans is projected to be an older adult.



Source: U.S. Census Bureau, 2017 National Population Projections.

The GCP was but one of the Legislature’s ongoing guardianship reform efforts to address the current and impending need to dedicate adequate resources and oversight and establish enduring reforms for positive outcomes for the state’s elderly and incapacitated population.

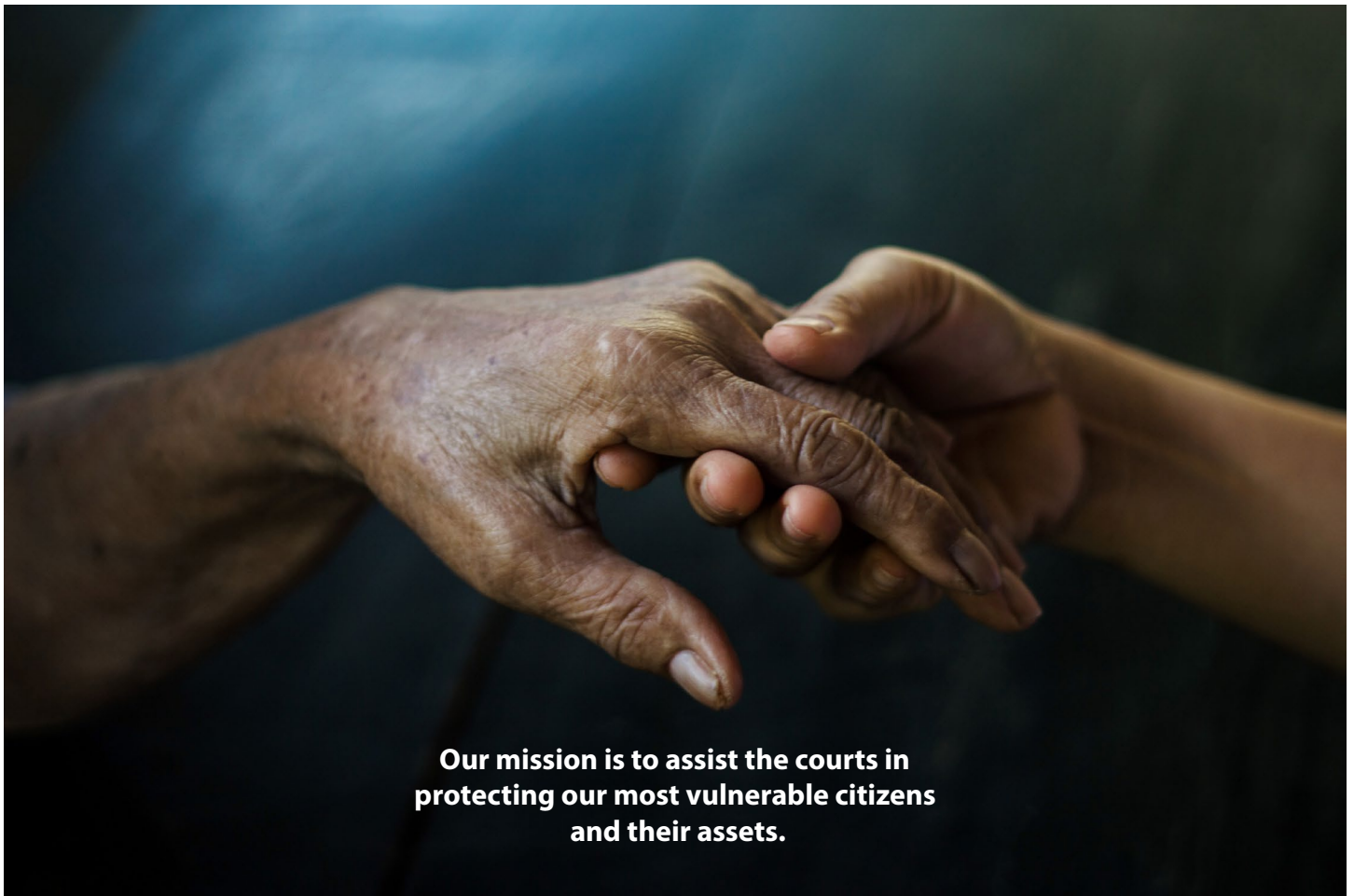
September 1, 2019, pursuant to SB 31 (Zaffirini, Smithee) & HB 1286- 86th R.S., the Guardianship Abuse, Fraud, and Exploitation Deterrence Program (GAFEDP) was established to provide assistance to courts and oversight with their guardianship caseloads. Our team of guardianship compliance auditors review guardianship files for compliance and identify reporting deficiencies by guardians, audit annual accountings, and report any concerns of potential abuse, fraud, or financial exploitation being committed against a person under guardianship to the courts. The auditor team are also required to work with courts to develop best practices in managing guardianship cases. The program is offered at no expense to counties throughout the state and courts are required to participate in the program if selected.

The Legislature also mandated the OCA to develop an electronic database to monitor filings of inventories, guardian of the person reports, and annual accountings and provide the status as to the development of such technology. Additionally, the program director notifies the Judicial Conduct Commission of any concerns involving judges who fail to act upon concerns raised by compliance specialists.

Program Staff and Training

The GAFEDP team consists of eighteen team members- one program manager, a program specialist, two trainers and quality assurance specialists and fourteen guardianship compliance specialists. The program is currently seeking to fill its additional five vacancies previously on hold due to pandemic-related budget considerations. Once fully staffed, our auditor team will be assigned to conduct compliance reviews and financial audits in each of the judicial regions based on their geographic location.

Initial and ongoing team training is prioritized in order, so our auditors become a guardianship compliance resource to all counties and courts they engage. Our team training plans have been expanded. Individualized support training, remedial training, and expanded new hire training have all been developed and successfully implemented.

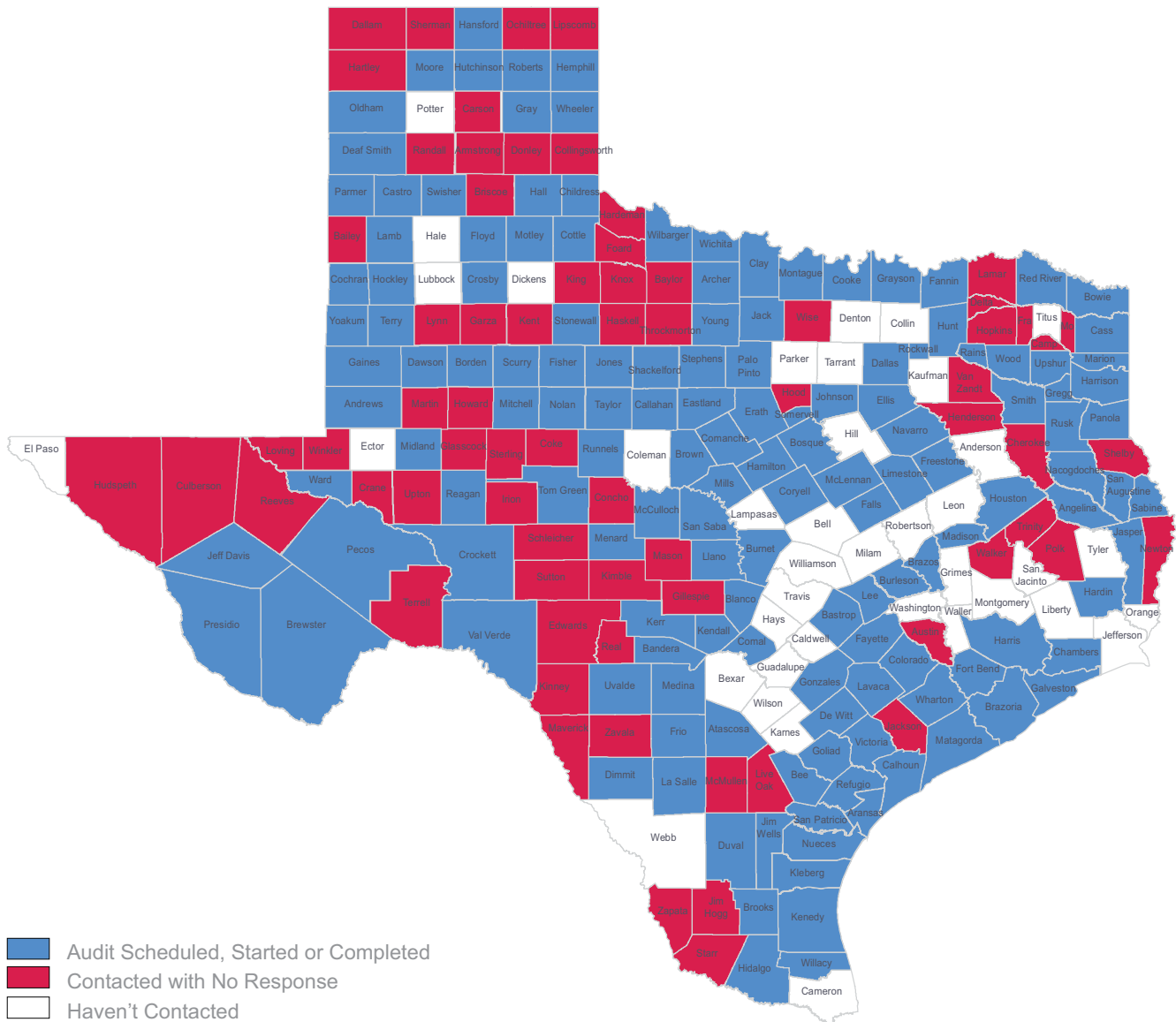


Program Implementation

The program continues compliance monitoring of guardian's annual reports, inventories and annual accounts for courts throughout the state through its expanded guardianship case file review procedures and was able to review files and conduct audits unhindered by the pandemic, exceeding the projected number of files targeted for review for the fiscal year.

File reviews and data collection strategies have been improved by the program's newly implemented internal quality assurance program. Data integrity continues to be a program goal and focus.

The GAFEDP has also implemented its scheduling processes to ensure all 254 Texas counties are selected to participate in a systematic manner. A total of 216 counties have been selected to participate since the program began in 2019, 146 have responded and resulted in the review of their guardianships or the scheduling of the review as of December 1, 2021.



Initial Compliance Review Statistics

FY 2021 Compliance Review County Courts and Courts at Law*

Total Counties	78
Total Courts	100
Total Cases Reviewed	14,159
Total Closure Recommendations	5,217
Total Active Cases Identified	8,942
% Cases Missing Annual Reports*	27%
% Cases Missing Annual Accounts*	41%
% Cases Missing Inventories*	42%
% Cases Out of Compliance*	39%
% Cases with Waived Bonds*	11%
Total # of guardianships out of compliance	2,982
Deceased Wards Discovered	1,042

* Percentages reflected for solely participating county courts. County courts are not statutorily required to employ support staff and frequently rely on existing county clerk staff to assist in monitoring and administering their guardianship caseloads.

FY 2021 Compliance Review Statutory Probate Courts**

% Cases Missing Annual Reports	12%
% Cases Missing Annual Accounts	19%
% Cases Missing Inventories	10%
% Cases Out of Compliance	13%
% Cases with Waived Bonds	12%

** Statutory Probate Courts are required to employ support staff (court coordinator, administrative assistant, auditor, and investigator) per Gov't. Code §§ 25.0024 - 25.0025 to assist in the monitoring and administration of their guardianship caseloads.

Financial Audits of Annual Accountings

June 2020, the program attempted an audit on a multi-million-dollar estate unsuccessfully due to lack of records submitted by a guardian but were able to track and identify over \$1,300,000.00 in loans made from a ward's estate without court approval and over \$20,000.00 in unauthorized charitable donations. That guardianship was referred for assignment to a statutory probate court judge for proper administration in accordance with Gov't Code § 25.0022 and a statutory probate court judge was subsequently assigned.

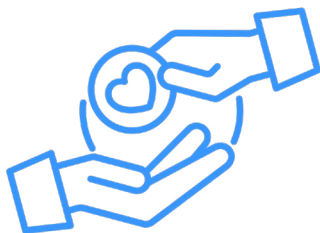
October 2020, guardianship specialists completed a complex financial audit determining egregious mishandling of a protected person's funds involving cash withdrawals in excess of \$10,000.00 and additional infractions by a certified guardian. The audit was completed in collaboration with the Judicial Branch Certification Commission and resulted in the revocation of the guardian's license and criminal prosecution.

The GAFEDP team continues to develop tools and protocols for the completion of additional financial audits. The program's access to financial records for auditing oversight was expanded due to SB 692 (Zaffirini) 87th R.S. effective May 2021. The program is developing detailed procedures for obtaining such records. A financial audit workbook has been developed as well as accompanying training materials. The first round of team financial audit training has been slated for January 2022. Once fully staffed, the auditor team will be assigned to conduct continual financial audits in each of the judicial regions based on their geographic location. The program will also begin work on creating its financial audit database to assist in compiling relevant data for all audits completed.

201 Guardianships were also reported to different courts for well-being concerns

Example Case Findings

In fiscal year 2021, the GAFEDP reported 36 cases to different courts regarding potential abuse, fraud, and exploitation.



\$20,000.00 in charitable donations made in one year without court approval



\$1,300,000.00+ in loans made from the Protected Person's estate without court approval



Estate valued at \$17,844,849.52 and bond set at only \$120,000.00



Guardian is writing checks to himself for \$2,300 monthly allowance distribution, which is 80% of Protected Person's structured settlement income



Emergency Temporary Guardianship granted due to approximately \$140,000.00 sent by Ward to unknown person internationally



Guardian took \$3,700 from the Ward's trust fund to install a whirlpool tub in his own residence in Oklahoma



Ward withdrew \$40,000.00 and gave to internet friends while under guardianship



Guardianship account is being utilized for personal expenses of individuals other than the ward



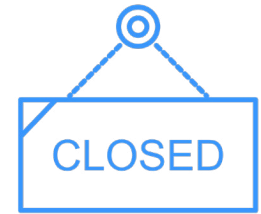
\$16,725.96 in CashApp transfers without justification in one review period



Texas Certified Guardian's license revoked by the Judicial Branch Certification Commission after a financial audit revealed a total of \$10,101.55 in cash withdrawals without corroboration of expenditure, Ward's funds used to pay for another ward's rent and utilities and caregiver fees and questionable purchases



Guardian failed to pay \$25,440.00 to nursing home facility. Protected Person was threatened to be discharged



Guardianship of estate improperly closed with a balance of \$1,977,915.23 in mostly liquid assets citing a previous durable power of attorney as reason for closure



Guardian is charging ward's estate for food, utilities, and other items. The disbursements are between \$8,000-\$10,000 a year. Ward's only income is Social Security Income



Ward wrote letter to Judge requesting restoration of rights in 2017 with no court follow-thru



\$90,150.54 total in transfers without justification in one review period

Texas Guardianship Online Reporting System

The Texas Guardianship Online Reporting System- the OCA statewide electronic database for filing annual reports, annual accounts and other documents in guardianship cases, was successfully pilot tested in the Spring of 2021 for annual report functionality in Cameron and Montgomery Counties. The annual report module will be deployed in Spring 2022 for use beginning in Montgomery County and will continue to be rolled out throughout the state via voluntary participation. The annual report function of the system simplifies the completion of annual reports for guardians and standardizes responses to create uniformity and complete estate code compliance for all annual reports filed.

Development of inventory and annual account functionality is underway and also promises to simplify the process of creating required reports for all guardians who use it. Once fully developed, the system may be used to monitor filing of required reports and will ultimately allow guardians paperless filing with individual courts via the e-file system.



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GUARDIANSHIP ABUSE, FRAUD AND EXPLOITATION DETERRENCE PROGRAM ANNUAL REPORT FY 2021



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www.txcourts.gov/programs-services/guardianship-abuse-fraud-and-exploitation-deterrence-program-gafedp/