

TEXAS GUARDIANSHIP COMPLIANCE

PROTECTING OUR MOST VULNERABLE CITIZENS AND THEIR ASSETS



January 2021

GUARDIANSHIP ABUSE, FRAUD AND EXPLOITATION DETERRENCE PROGRAM ANNUAL REPORT



2020 GAFEDP Annual Report

On September 1, 2019, the Office of Court Administration implemented the Guardianship Abuse, Fraud, and Exploitation Deterrence Program (GAFEDP). As we look back on this past year, it is clear that 2020 was challenging for everyone and their families. During the implementation of the GAFEDP, the Office of Court Administration (OCA) managed several crises while ensuring Texas courts remained operational. Through continual communication from our OCA Administrative Director, David Slayton, and the use of “Zoom” video proceedings along with coordination with state and local health authorities, we were able to disseminate information about the COVID-19 Pandemic to ensure court and public health and safety.

In mid-March, the OCA asked all employees to work remotely, away from the office. The new remote environment enabled our team to remain fully operational and provide the same services and resources our customers are accustomed to. During the OCA pandemic response and with our team adjusting to working remotely, the OCA was struck by an unfortunate ransomware attack that crippled our team’s use of computer technology systems for several months. As the OCA Information Services team worked to repair the ransomware attack and systems were brought back online, our team continued to operate towards its mission without the full use of computer hardware and software.

Throughout our first year of the GAFEDP implementation statewide, we have continued to coordinate the ongoing management of the program, conduct training, develop program procedures, develop financial workbooks and audit procedures, and continued data collection, all while working in numerous counties and in various stages. This report outlines Texas guardianship reforms and all aspects of the implementation of the GAFEDP and its mission to “protect our most vulnerable citizens and their assets.”

CONTENTS

| | |
|---|----------|
| Program Overview | 3 |
| Compliance Monitoring and Financial Reviews | 4 |
| Follow-up Compliance Reviews | 4 |
| Team Member Training and Development..... | 4 |
| Guardianship Online Reporting System Development | 5 |
| GAFEDP Data and Findings | 5 |
| GAFEDP Guardianship Services | 8 |

Program Overview

Since November 1, 2015, the OCA began managing the Guardianship Compliance Project (GCP) to provide additional resources to courts handling guardianship cases. On September 1, 2019, the OCA implemented the GAFEDP to provide assistance to the courts relating to guardianship matters pursuant to [SB31](#) & [HB 1286](#) (Zaffirini/Smithee). Our team of guardianship compliance specialists assist in reviewing guardianship cases to identify reporting deficiencies by guardians, auditing annual accountings, reporting their findings back to the judge, and reporting to the courts any concerns of potential abuse, fraud, or financial exploitation being committed against a ward under guardianship.

The program is offered at no expense to counties throughout the state. Courts throughout the state are required to participate in the program if selected and may also request program participation.

Additionally, the OCA director may notify the Judicial Conduct Commission of any concerns involving judges who fail to act upon concerns raised by compliance specialists. To date no judges have been referred to the Judicial Conduct Commission.

Person Under Guardianship




-  **Loses civil rights**
-  **Loses personal decision-making power**
-  **Loses authority to control their own money and assets**
-  **Vulnerable to exploitation**

These rights and powers are entrusted to a guardian to protect the person from exploitation – but this arrangement leaves the person under guardianship vulnerable to exploitation if not properly monitored.

Guardian




Statutorily-required processes have been put in place to protect incapacitated persons who may be placed under guardianship – starting with an assessment of whether guardianship is necessary or whether an alternative to guardianship is a viable option.

-  **Guardians must be bonded**
-  **Guardians must be registered**
-  **Guardians must report yearly to the court on the personal and financial position of persons under their care**
-  **Guardians must obtain permission from the court before making major decisions in the life or financial management of a person in their care**

Compliance Monitoring and Financial Reviews

Guardians’ annual reports of well-being and financial annual accounts will be monitored for compliance for individual counties and reports will be reviewed for compliance and appropriateness and reported back to the court. Qualifying annual accounts will be audited to ensure data submitted is complete and accurate. Monitoring and auditing will serve as a deterrence against theft and fraud.

The team continues to develop tools and protocols for the completion of financial audits. A financial audit workbook has been developed and expanded to allow for completion of financial audits. The staff has participated in the process of testing and making recommendations for changes. The result is the first financial tool of its kind in Texas to be used for auditing guardians’ annual accountings. Once completed, the program will begin work in creating its financial audit database to assist in compiling relevant data for all audits completed.

| | | | |
|--|--|--|--|
| Auditor Name: Audit Date: County: Cause #: Ward Name: Guardian Name: Relationship to Ward: Attorney Name: Guardian Type: Qualification Date: Review Periods: |  <p>OFFICE OF COURT ADMINISTRATION GUARDIANSHIP ABUSE, FRAUD AND EXPLOITATION DETERRENCE PROGRAM</p> | | |
| Reconciliation (Previous Review Period) | | | |
| Annual Account file date: | | | |
| Balance from Prior Accounting | | | Were commission(s) paid to Guardian during this review period? (Y/N) |
| Property not Previously Reported | | | Fee Calculation (Commission) |
| Changes in Property | -/+ | | Gross Income |
| Receipts | + | | Gross Income x 5% |
| Disbursements | - | | Expenses |
| | = | | Expenses x 5% |
| Property and Cash on Hand | | | Total Calculated Fees |

Follow-up Compliance Reviews

Guardianship Compliance Specialists will, upon completion of initial case file reviews for compliance, complete 90-day follow-up reviews in individual counties to ensure both the guardian and the courts are taking measures to ensure compliance and address guardianships that need immediate attention due to possible well-being, abuse, fraud, or exploitation. Courts with less than desirable outcomes will then be reviewed for referral to the Judicial Conduct Commission.

Team Member Training and Development

The GAFEDP team is currently comprised of sixteen of the total twenty-three members appropriated. There is currently a hiring pause in place for the additional positions due to budget considerations. Soon, we hope to continue hiring our team to fill all vacancies once the pandemic subsides to be able to provide these valuable services to courts throughout the state.

All guardianship auditor team responsibilities have been expanded from the original Guardianship Compliance Project to the GAFEDP and have been formalized. New data-collection strategies have been implemented and the creation of a new financial audit workbook tool is almost complete. The program has developed and continues to expand the only known comprehensive procedures manual for conducting financial audits in the entire state.

The program released its first training series this fall which consisted of six virtual one-hour training sessions with program specific topics. The sessions are interactive and are recorded and made available to the staff for future reference and for future hires. In addition, dozens of in-house recorded training sessions are currently available to staff for their development.

Guardianship Online Reporting System Development

The Texas Guardianship Online Reporting System is being developed for guardians to file automated annual reports, annual accountings and other documents in guardianship cases. The system will provide a method to notify guardians when their reports are due as well as notify courts when required reports are delinquent. The system will also be used to assist the GAFEDP in reviewing annual reports and conducting financial audits of annual accounts.

The system will assist guardians throughout the state immensely by simplifying the process for filing reports by providing a guided process for report completion. It will also integrate with individual courts through eFile Texas. We are currently finalizing the details of a pilot project in both Cameron and Montgomery Counties.

GAFEDP Data and Findings

| FY2020 Data for GAFEDP Completed Counties | |
|---|--------|
| Total Counties | 26 |
| Total Courts | 46 |
| Total Cases Reviewed | 14,274 |
| Total Closure Recommendations | 3,338 |
| Total Actives Identified | 10,908 |
| % Cases Missing Annual Reports | 46% |
| % Cases Missing Annual Accounts | 56% |
| % Cases Missing Inventories | 50% |
| % Cases Out of Compliance | 61% |
| % Cases with waived bonds | 6% |
| Deceased Wards Discovered | 1,072 |

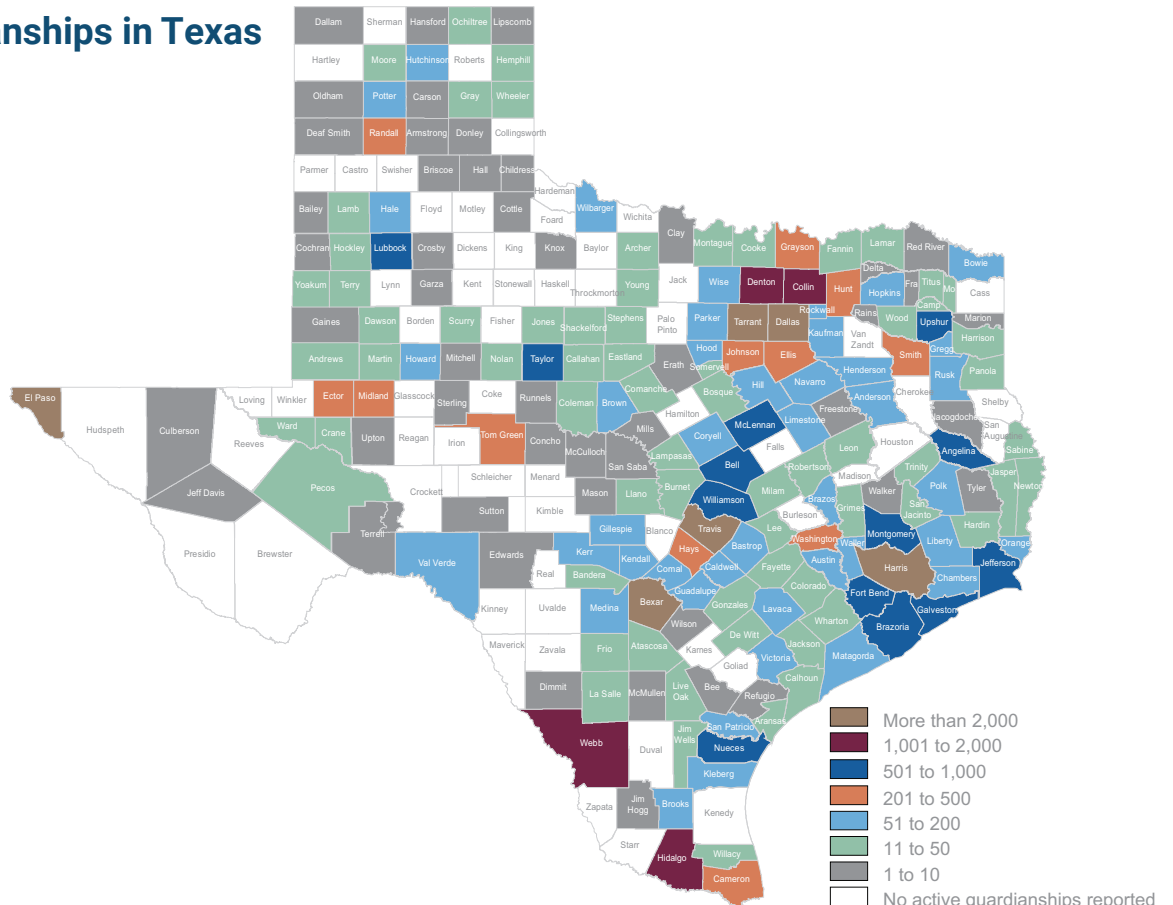
| Overall Data to Date - GCP to GAFEDP Data as of December 10, 2020 | |
|--|--------|
| Total Counties | 70 |
| Total Courts | 104 |
| Total Cases Reviewed | 46,803 |
| Total Closure Recommendations | 22,346 |
| Total Actives Identified | 24,457 |
| % Cases Missing Annual Reports | 34% |
| % Cases Missing Annual Accounts | 47% |
| % Cases Missing Inventories | 40% |
| % Cases Out of Compliance | 41% |
| % Cases with waived bonds | 8% |
| Deceased Wards Discovered | 4,601 |

The GAFEDP team is also finalizing initial case file reviews in the following counties:

- Bastrop
- Brazoria
- Cochran
- Falls
- Grayson
- Gregg
- Harris
- Hockley
- Johnson
- Midland
- Nueces
- Scurry
- Taylor
- Upshur (Follow Up Review)



Active Guardianships in Texas FY 2020





Examples of Case Summaries Reported to the Courts



Per Adult Protective Service report, Ward passed away after multiple seizures due to improper medical care from the guardian. Co-Guardian currently under investigation for Ward's death and another unrelated offense.



Guardian is allowing Ward to live with previous guardian after Order removed guardian in 2006. Court records indicate previous guardian has criminal convictions including but not limited to possession of controlled substance.



Guardian's annual reports indicate she has not visited Ward in 15 years while living at a State Supported Living Center. The Court is approving the reports.



Ward married while under guardianship despite not having right to marry. The current guardian is the ward's spouse, and they have 6 children.



Ward expressed being emotionally abused and in need of dental work on several occasions in the past several court visits. Unable to contact guardian. No additional action has been taken by the court.



Guardianship of Estate closed without appointment of Ad Litem for the Ward. Estate valued at **\$1,977,915.23** in mostly liquid assets 04/29/2020. The estate was inappropriately closed due to a previously executed Power of Atty- which became void at establishment of the guardianship.



Guardian withdrawing funds and writing checks from guardianship account for personal expenses.



Required Certificate of Medical Exam not signed by a licensed physician.



Ward has increasing medical concerns and guardian is refusing to obtain medical care opting for "home remedies" instead.



Ward currently in the care of previously removed guardian despite guardian's removal due to neglect and exploitation. (Ward's Sister) Current program guardian has failed to remove the Ward from her care.

GAFEDP Guardianship Services



01 GUARDIAN COMPLIANCE MONITORING

- o Case review, active closures, compliance, well-being concerns, registration, training, and criminal history



02 AUDIT ANNUAL ACCOUNTING

- o Collect and review court documents, audit annual accountings, collect back up data (statements, invoices, and receipts)
- o Type of Audits: New first-time accounting audit, routine-periodic, risk based, referral
- o Assigned county
- o Quality assurance, Report to the court, collect data on compliance, abuse, fraud and exploitation concerns, restorations, APS reports, registration, criminal history, and training



03 SERVICE

- o Training, Questions, Compliance Dockets



Guardianship Abuse, Fraud and Exploitation Deterrence Program Annual Report FY20