

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Elders Committee Recommendations**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the population of Texans over 65 years of age is estimated to more than double in the next 25 years<sup>1</sup>; and

WHEREAS, an increasing number of persons, both young and old, with diminished capacity require the protection of the courts; and

WHEREAS, in June 2013 this Council formed the Elders Committee to “assess the ways in which the Texas courts interact with the elderly, including guardianship, probate, elder abuse and other proceedings, and identify judicial policies or initiatives that could be enacted to protect or improve the quality of life for the elderly in Texas;” and

WHEREAS, the Elders Committee has worked in conjunction with the Texas Working Interdisciplinary Network of Guardianship Stakeholders, composed of judges, advocacy group representatives and state agencies, and has made recommendations for legislative changes that will address some of the issues involved with the protection of our most vulnerable citizens; and

WHEREAS, the Council believes that these legislative changes will result in meaningful change in protecting and improving the quality of life for the elderly and incapacitated;


NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature should:

- 1) Strengthen guardianship alternatives and improve guardianships by:
  - a) recognizing supported decision-making agreements, a less restrictive alternative to guardianship for adults with a disability who need assistance with decisions regarding daily living but who do not wish to delegate authority over those decisions to an agent;
  - b) requiring that a court make a finding that no less restrictive alternatives exist to resolve the need for a guardianship deny the appointment of a guardian is a preexisting guardianship alternative meets the need of an adult who is the subject of

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<sup>1</sup> Population Projections for the State of Texas by Age Group for 2010-2050, Texas State Data Center.

- a guardianship proceeding; and the court shall consider terminating or modifying a guardianship if a guardianship alternative meets the need of the adult;
- c) requiring that the court find by clear and convincing evidence that alternatives to guardianship that would avoid the need for appointment of a guardian have been explored and determined not to be feasible;
  - d) requiring that the applicant or applicant's attorney certify to the court that the guardianship is necessary and alternatives to guardianship have been explored;
  - e) defining supports and services and considering those resources in determining the need for a guardianship and the limits of power or authority of a guardian over an incapacitated person;
  - f) requiring that the physician examination letter or certificate state whether improvement in the proposed ward's condition is possible and, if so, state the period of time after which the individual should be re-evaluated to determine if the guardianship is necessary;
  - g) requiring that the court consider the ward's right to make personal decisions about residence;
  - h) requiring the court to consider the adult's preference of the person to be appointed guardian by the court;
  - i) requiring that the applicant's attorney be certified by the State Bar of Texas as having successfully completed a course of study in guardianship law and procedure and by increasing the certification from three to four hours, with one hour of that training on alternatives to guardianship and supports and services available to proposed wards; and
  - j) requiring court approval before a guardian places a ward in a more restrictive care facility;
- 2) Create a statewide guardian of last resort; and
  - 3) Fund the Office of Court Administration's legislative appropriations request exceptional item entitled "enhance judicial services to the elderly and incapacitated."



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