

SUBJECT: Creating a guardianship abuse, fraud, and exploitation deterrence program

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

WITNESSES: For — Mir Alikhan, American Association of Retired Persons; Dennis Borel, Coalition of Texans with Disabilities; Terry Hammond, Texas Guardianship Association; (*Registered, but did not testify*: Mark Cundall, ADAPT of Texas; Jeff Miller, Disability Rights Texas; Kody Kness, Imagine Art; Linda Litzinger, Texas Parent to Parent; Kyle Piccola, The Arc of Texas; Craig Hopper)

Against — None

On — David Slayton, Office of Court Administration, Texas Judicial Council

BACKGROUND: Estates Code sec. 1163.101 requires a guardian of the estate of a ward to file detailed financial and property reports with the court.

DIGEST: HB 1286 would require the Office of Court Administration (OCA) to establish and maintain a guardianship abuse, fraud, and exploitation deterrence program. The program would provide resources and assistance to courts handling guardianship cases by engaging guardianship compliance specialists and maintaining an electronic database to monitor required filings and annual reports by guardians.

The program's guardianship compliance specialists would be required to:

- review guardianships and identify reporting deficiencies;
- audit required annual filings and report their findings to the appropriate courts;

- work with courts to develop best practices in managing guardianship cases; and
- report to the appropriate courts any concerns of potential abuse, fraud, or exploitation committed against a ward.

Courts selected by the OCA would be required to participate in the program. Courts also could apply to participate. The OCA's administrative director would be authorized to notify the State Commission on Judicial Conduct if the OCA had reason to believe that a judge's actions or failure to act on a guardianship compliance specialist's report of concern constituted judicial misconduct.

The OCA would submit a report on the program's performance to the Legislature by January 1 of each year. The report would have to include:

- the number of courts involved in the program;
- the number of guardianships reviewed;
- the number of guardianship cases found to be out of statutory compliance;
- the number of cases reported to a court concerning potential abuse, fraud, or exploitation committed against a ward; and
- the status of monitoring technology developed for the program.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

HB 1286 would expand the OCA's Guardianship Compliance Project pilot program to assist courts across the state in better protecting the growing population of Texans under guardianship.

Individuals under guardianship are among the most vulnerable in the state. Lacking the ability to care for themselves or to manage their own affairs, they are forced to rely on court-appointed guardians to take care of their most basic needs. Currently, there are about 51,250 active guardianships in Texas with a combined value of around \$5 billion. In recent years, more than 3,500 new guardianships have been created annually, a number that is increasing as the state's population ages.

Although statutes long have required a guardian to submit detailed financial reports to the court overseeing the guardianship estate, many courts lack the resources to ensure that a ward is not being abused, exploited, or defrauded. The OCA's Guardianship Compliance Project pilot program revealed that 41 percent of the almost 30,000 guardianship cases reviewed were not in compliance with statutory reporting requirements and that nearly 21,000 active guardianships were in counties lacking adequate resources to oversee these cases. While the OCA found that recent reforms have improved the guardianship system in Texas, a key component to these reforms' continued success would be the expansion of the pilot program to monitor compliance with statutory reporting requirements and to review cases for abuse, fraud, and exploitation statewide.

By expanding this well-developed program, HB 1286 would allow the OCA to provide resources and assistance to judges across the state in protecting some of the state's most vulnerable citizens in the most cost-effective manner for taxpayers.

OPPONENTS
SAY:

No concerns identified.

NOTES:

The Legislative Budget Board's fiscal note estimates HB 1286 would have a negative impact of \$5,941,638 through the biennium ending August 31, 2021.