



FEASIBILITY OF A GUARDIANSHIP REGISTRY

As directed by
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Office of Court Administration

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING
(512) 463-1625 • FAX (512) 463-1648
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

ADMINISTRATIVE DIRECTOR: DAVID SLAYTON

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Feasibility of a Texas Guardianship Registry

Background

When a missing, incapacitated adult is found by law enforcement it can be difficult to determine the person's identity, the identity of the person's guardian, and/or the contact information of the guardian. One possible solution is the creation of a database to enhance the ability of law enforcement to timely determine the person's identity or the identity of the person's guardian in order to assess and address the needs of the incapacitated individual.

House Bill 3424, 84th Regular Legislative Session, instructed the Office of Court Administration (OCA) to conduct a study on:

(1) the feasibility of developing, implementing, and maintaining a computerized central database that contains:

(A) the names of incapacitated persons; and

(B) for each incapacitated person, the name of the guardian appointed for that person and contact information for the guardian; and

(2) best practices for protecting the privacy of incapacitated persons and the confidentiality of information included in the database.

The results of the study are to be provided to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the senate and house of representatives no later than December 1, 2016.

Guardianship Basics¹

An **incapacitated person** (referred to as the “ward” or “protected person”) is an adult who, because of physical or mental conditioning, is substantially unable to feed, clothe or shelter himself/herself, to care for their physical health, or to manage their financial affairs. **Guardianship** is a legal process designed to protect an incapacitated person from abuse, neglect (including self-neglect), and exploitation. Guardianship provides for the person's care and/or management of their money while preserving, to the largest extent possible, that person's independence and right to make decisions affecting their life.

A **guardian** is a person who is appointed by the court to protect an individual and/or property of an individual who does not have the capacity to protect their own interests. There are two types of guardianships: guardianship of the person and guardianship of the estate. In a guardianship of the person, a guardian is appointed to take care of the physical well-being of the incapacitated

¹ Guardianship basic definitions adapted from [Texas Guardianship Association](#).

person. In a guardianship of the estate, a guardian is appointed to care for a incapacitated person's finances and property.

Under current law, private professional guardians, guardians who work for guardianship programs, and Health and Human Services Commission (formerly the Department of Aging and Disability Services - DADS) guardians are required to be certified by the Judicial Branch Certification Commission. The approximately 460 certified guardians are appointed in less than 5,000 of the approximately 54,000 active guardianships in the state. The remaining guardianships are handled by individuals who are not required to be certified, namely family members, friends and attorneys.

The Judicial Branch Certification Commission (JBCC) is administratively attached to OCA. The JBCC oversees Court Reporters and Court Reporting Firms, Certified Guardians, Process Servers and Licensed Court Interpreters. In addition to meeting eligibility requirements to be a certified guardian, which include successfully passing a Commission approved exam and a criminal history background check, certified guardians must complete continuing education requirements. Currently, attorneys and family-member guardians are not required to comply with these certification requirements.

[Review of an Existing Online Guardianship Registry](#)

As part of the study, OCA reviewed existing registries in two states, Indiana and Minnesota. Indiana's Online Guardianship Registry was of particular interest, as its purpose most closely aligns with the kind of registry likely to be of use in Texas. Indiana's registry provides non-confidential information to the public, including: the name of the incapacitated person, the name of the appointed guardian, the incapacitated person's year of birth, when the letters of guardianship were issued, whether the guardianship case is active or expired, the county issuing the guardianship, and the guardianship court case number.

Indiana's registry was created to:

- provide easily accessible, relevant, and timely information to the public on the current status of guardianships throughout the state;
- provide vital contact information for hospitals, banks, law enforcement, mental health facilities, government agencies, and other service providers who encounter individuals under guardianship, sometimes in emergency situations; and
- serve as a management tool for courts, allowing them to track the number and types of guardianships filed in each jurisdiction.

Indiana's registry contains information on both adult and minor guardianships. The registry allows the public to search by name of guardian, name of incapacitated person, incapacitated person date of birth, county, type of guardianship and active or expired guardianships. The registry is currently a voluntary program. Thirty-three percent of the state's counties participate in the program. The registry was created for multiple purposes, but its main use is for public verification of guardianships by banks and hospitals. While law enforcement agencies have access to look up a incapacitated person in the registry and determine the name and contact information of the guardian, there has been no reported use of the registry in that manner.

Minnesota's Guardian and Conservator Registry, established in 2013, is a searchable statewide registration system for court guardians and conservators appointed under Minnesota law. The registry, which is online and accessible to the public, lists inactive and active cases for each individual (or company) guardian and conservator. Search options include name, case number, county, judicial district and active or inactive cases.

[Outreach to Stakeholder Groups](#)

As part of the study, OCA met with representatives from several groups with an interest and general experience in such projects. These meetings yielded important information about how best to structure a registry. The concerns raised and discussion of those concerns are as follows:

[Privacy Concerns & Confidentiality of Information](#)

OCA met with representatives from Disability Rights Texas, a federally-designated legal protection and advocacy agency for people with disabilities, to discuss privacy concerns and best practices to ensure that the privacy interests of persons under guardianship are protected in the development and implementation of a guardianship registry. Several best practices were identified:

- The registry should be accessible only to law enforcement personnel with approved access to the Department of Public Safety's Texas Law Enforcement Telecommunications System (TLETS) who have undergone the required training on its proper use.
- The registry should be exempt from disclosure under Chapter 552, Texas Government Code (Texas Public Information Act).
- Because the purpose of the registry is to provide information to identify an incapacitated individual and his or her guardians in the event of an emergency, the registry should be limited to individuals with a guardianship of the person.
- A disclaimer about the purpose of the registry, such as the following draft language, should be displayed when the registry is accessed.

- “This registry is for the limited purpose of determining whether an individual has a guardian of the person and, if so, provides the guardian’s contact information. A court order determines the scope of a guardian’s authority. A guardian should therefore not be presumed to have the authority to act on behalf of the individual until such authority is verified by the court order appointing the guardian.”

Law Enforcement Access to the Guardianship Registry

OCA also met with representatives from the Texas Department of Public Safety (DPS) to discuss the feasibility of providing access to the guardianship registry to law enforcement personnel through the Texas Law Enforcement Telecommunications System (TLETS). The discussion began with a review of DPS’s existing information access model with the Department of State Health Service (DSHS) Continuity of Care system. This system, provides a process for real-time identification of persons in the DSHS client database. DPS created a query that allows authorized individuals at local and county jails real-time access to the DSHS client information. Existing policies and procedures include:

- Data returned from the DSHS database through TLETS may only be used by jails to provide continuity of care services to persons in their custody. The information may not be disseminated or used for any other purpose.
- Continuity of Care Query (CCQ) information is logged centrally at DPS and operators are held accountable for the transactions they transmit.
- Due to the sensitivity of the data involved, access to the query is limited to individuals with TLETS CCQ certification. Operators must pass a test to maintain their certification and are required to pass a retest biannually.

Following the review of the information access model established between DSHS’s Continuity of Care system and TLETS, the applicability of the model to a guardianship registry was discussed with a focus on protecting the privacy of the individual under guardianship and maintaining confidentiality of the data in the registry.

The information access model established between DSHS’s Continuity of Care system and TLETS demonstrates it is feasible to provide law enforcement access to a guardianship registry while protecting the privacy of the individual under guardianship and the confidentiality of the data in the registry.

Texas Judicial Council Guardianship Initiatives

The Texas Judicial Council, the statutorily-created policymaking body of the Texas Judicial Branch, formed an Elders Committee in 2013 to “assess the ways in which 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 the quality of life” for the elderly and individuals with intellectual disabilities.

One of the recommendations to the 84th Legislature was the implementation of the OCA’s Guardianship Compliance Pilot Project to assist courts which do not have the resources of a statutory probate court to protect individuals under guardianship and their assets. The project provides three guardianship compliance specialists to review adult guardianship cases to identify guardian reporting issues, audit annual accountings, report findings back to the court, and work with courts to develop best practices in managing guardianship cases.

An additional component of the Guardianship Compliance Pilot Project is the development of an online guardianship reporting application for guardians to submit electronically required reports on inventories, annual accountings, and annual reports of the well-being of the person. The Texas Judicial Council has requested that the 85th Legislature expand the Guardianship Compliance Pilot Project statewide.

Another Judicial Council recommendation to the 85th Legislature is that non-professional guardians be required by law to register with the Judicial Branch Certification Commission (JBCC). Part of the registration process would include an online training component to educate potential guardians about their responsibilities as guardians. In addition, the JBCC would perform the required background checks on guardians and prospective guardians and report the results of each background check to the appropriate court.

In addition, the Judicial Council recommended that the Legislature authorize the creation of a statewide guardianship registry that is available for query by law enforcement and a limited group of other individuals, as appropriate. Included in the recommendation is that the information from the registry provide protection for the privacy of guardians and individuals under guardianship to the greatest extent possible to accomplish the purposes of the registry.

Feasibility

To protect the privacy of individuals under guardianship of the person and to provide timely access to information to law enforcement, OCA concludes that a guardianship registry with the following features would to be feasible in Texas:

1. A guardianship registry can be included as part of the Judicial Branch Certification Commission’s Licensing and Compliance System, which is currently being developed, with minimal additional cost.

2. A registry record would be initiated through multiple methods.
 - a. The registration could be initiated during the e-filing process, which is a process by which a person or entity files a court document with a court or court clerk's office by means of an online computer transmission of the document through a portal operated by an electronic filing manager designated by OCA; or
 - b. The registration could be submitted by the County Clerk in the county in which the guardianship is established.
3. The registry would maintain information such as the individual under guardianship's name, sex, and date of birth for the purpose of aiding in identifying the individual. The guardian's name and contact information would be included in the registry and would be provided to law enforcement when a query identified an individual as being under guardianship.
4. Internal OCA access to the registry would be limited to trained JBCC staff. The registry would have a login with needs-based permissions and an audit trail.
5. The registry would interface with the Department of Public Safety's Texas Law Enforcement Telecommunications System (TLETS). This interface would allow law enforcement to search an individual's name and other identifiers and, if the individual is under guardianship of the person, would return the guardian's name and contact information.

Conclusion

The creation of a guardianship registry is feasible, and the creation of one is consistent with the broad guardianship-related activities and interests of the Judicial Council.

Working with DPS and ensuring that the privacy of individuals under guardianship are protected, a guardianship registry could provide law enforcement with information that could be used to identify an individual under guardianship for the purpose of connecting the incapacitated person with their guardian to assess and address the needs of the protected individual.