BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas courts have 51,000 open guardianship cases involving $5 billion, and those numbers will increase as the population ages: by 2030, the number of Texans 65 or older will double to at least six million. These substantial assets and the potential for more guardianship needs in the future make it imperative that Texas take steps to ensure courts have sufficient support and resources to monitor these cases.

Courts supervise legal guardians who are entrusted the physical and financial well-being of persons who lack capacity to look after their own affairs. Guardians are required by law to file with the court a bond to cover one year of revenue to the estate, plus the value of the person with a guardian's personal property; an initial inventory detailing the assets in the estate; an annual report of the person with a guardian's well-being; and an annual accounting detailing financial transactions. Unlike most types of cases, guardianships remain in the courts for many years—sometimes decades—until the person under guardianship's rights are restored or he or she passes away. These cases also are resource intensive as the reports require specialized auditing and court visits are sometimes warranted to ensure the person's well-being.

Data show that many Texas courts, especially in rural areas, lack necessary resources to effectively oversee guardianships. Specifically, a review of nearly 30,000 guardianship files by the Office of Court Administration (OCA) found that 41 percent of audited cases were out of compliance with statutory requirements. In one particularly egregious case, the whereabouts of a person needing help were unknown for years. In another, no reports or accounts were ever filed for a $4 million estate. And in thousands of other cases, records of deceased persons have remained under the control of the courts.

S.B. 31 would codify and expand statewide the OCA Guardianship Fraud, Abuse, and Exploitation Deterrence Program to provide courts with resources, including a tracking database and auditors, not only to examine existing and new guardianships, but also to assist courts in getting guardians back in compliance. The Senate State Affairs Interim Committee Report to the 85th Legislature and the Texas Judicial Council's 2016 and 2018 legislative resolutions have recommended that the legislature expand this program statewide. (Original Author's/Sponsor's Statement of Intent)

S.B. 31 amends current law relating to establishing a guardianship abuse, fraud, and exploitation deterrence program.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 72, Government Code, by adding Subchapter G, as follows:

SUBCHAPTER G. GUARDIANSHIP ABUSE, FRAUD, AND EXPLOITATION DETERRENCE PROGRAM

Sec. 72.121. DEFINITIONS. Defines "guardianship proceeding" and "program."

Sec. 72.122. ESTABLISHMENT OF PROGRAM. (a) Requires the Office of Court Administration (OCA) to establish and maintain a guardianship abuse, fraud, and exploitation deterrence program (program) designed to provide additional resources and assistance to courts that have jurisdiction over guardianship proceedings by:

(1) engaging guardianship compliance specialists who are required to:

(A) review the guardianship of wards and identify reporting deficiencies by guardians;

(B) audit annual accounts required to be filed by guardians under Chapter 1163 (Annual Account and Other Exhibits and Reports), Estates Code, or other law and report their findings to the appropriate courts;

(C) work with courts to develop best practices in managing guardianship cases; and

(D) report to the appropriate courts any concerns of potential abuse, fraud, or exploitation, including financial exploitation, committed against a ward and discovered as a result of the specialists' work under this section; and

(2) maintaining an electronic database to monitor filings of:

(A) inventories, appraisements, and lists of claims required under Chapter 1154 (Inventory, Appraisement, and List of Claims), Estates Code, or Section 1203.203 (Successor Guardian to Return Inventory, Appraisement, and List of Claims), Estates Code;

(B) annual reports required under Section 1163.101 (Annual Report Required), Estates Code; and

(C) any other reports and accounts required of guardians under Chapter 1163, Estates Code, or other law.

(b) Provides that a court is required to participate in the program, including allowing guardianship compliance specialists to conduct reviews and audits under the program, if the court is selected by OCA to participate in the program.

(c) Authorizes a court to apply to OCA in the manner and form prescribed by OCA for participation in the program.

Sec. 72.123. NOTIFICATION OF STATE COMMISSION ON JUDICIAL CONDUCT. Authorizes the administrative director of the courts to notify the State Commission on Judicial Conduct in writing if OCA has reason to believe that a judge's actions or failure to act with respect to a report received from a guardianship compliance specialist indicating a concern described by Section 72.122(a)(1)(D) constitutes judicial misconduct.

Sec. 72.124. ANNUAL REPORT. Requires OCA to submit a report to the legislature regarding the performance of the program not later than January 1 of each year. Requires the report to include:

(1) the number of courts involved in the program;

(2) the number of guardianships reviewed by guardianship compliance specialists;

(3) the number of reviewed guardianship cases found to be out of compliance with statutory reporting requirements;

(4) the number of cases reported to a court concerning potential abuse, fraud, or exploitation, including financial exploitation, committed against a ward; and

(5) the status of any technology developed to monitor guardianship cases for purposes of the program.

SECTION 2. Effective date: September 1, 2019.