

BILL ANALYSIS

H.B. 3914
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There has been some concern that no provision in the Estates Code provides due process for a person who is alleged by the court to be incapacitated and that state law only specifies that a court in the county in which an alleged incapacitated person is domiciled or found may appoint a guardian ad litem or court investigator for further investigation into the matter. It has been suggested that an alleged incapacitated person's situation should be subject to a court-initiated investigation and proceeding before the person loses any rights. H.B. 3914 seeks to establish this court-initiated process.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3914 amends the Estates Code to provide for certain actions on the appointment of a guardian ad litem or court investigator, if a court makes such an appointment because the court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person without a guardian in Texas. The bill authorizes the person believed to be incapacitated to petition the court to have the appointment set aside; requires the court's appointment order to include a statement that the person believed to be incapacitated has the right to petition to have the appointment set aside; requires the guardian ad litem or court investigator, as appropriate and by a certain time, to provide a copy of the order to and discuss the contents of the order with the person believed to be incapacitated; and requires the court, within a reasonable time after the court issues the appointment order, to hold a preliminary hearing to determine whether there is a need for further investigation.

H.B. 3914 repeals statutory provisions relating to an information letter a court is authorized to require to establish probable cause that a person is incapacitated and instead requires the court, in order to establish probable cause, and as an alternative to a written letter or certificate from a physician, to require an affidavit submitted by an interested person that alleges facts about the person believed to be incapacitated that, if true, satisfy the statutory definition of incapacitated person. The bill also requires a court, in order to establish such probable cause, to conduct a preliminary hearing at which any interested person is authorized to offer evidence, including oral or written testimony, regarding the condition and circumstances of the person alleged to be incapacitated and sets out the time frame for holding such a preliminary hearing.

H.B. 3914 repeals Section 1102.003, Estates Code.

EFFECTIVE DATE

January 1, 2016.