

BILL ANALYSIS

S.B. 1881
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties note that, while guardianship sometimes may be necessary, a person should not be presumed to need a guardian simply because of advanced age or the presence of a physical, cognitive, or mental disability. The parties further claim that an individual should be given the opportunity to avoid or limit guardianship through available alternatives. S.B. 1881 seeks to provide such an alternative.

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

S.B. 1881 amends the Estates Code to authorize an adult with a disability to voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter, who also is authorized by the bill to exercise the authority granted by the agreement, to do any or all of the following: provide supported decision-making without making those decisions on behalf of the adult with a disability; assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision from any person; assist the adult with a disability in understanding such information; and assist the adult in communicating the adult's decisions to appropriate persons.

S.B. 1881 establishes that the supported decision-making agreement extends until terminated by either party or by the terms of the agreement. The bill establishes that the agreement also is terminated if the Department of Family and Protective Services (DFPS) finds that the adult with a disability has been abused, neglected, or exploited by the supporter or if the supporter is found criminally liable for such conduct.

S.B. 1881 authorizes a supporter to assist the adult with a disability only in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement and, if the supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including certain protected health information or educational records subject to federal law, requires the supporter to ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure. The bill specifies that the existence of an agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

S.B. 1881 requires a supported decision-making agreement to be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of

two or more subscribing witnesses, who must be at least 14 years of age, or a notary public. The bill makes an agreement valid only if it is substantially in the form set out in the bill. The bill requires a person who receives the original or a copy of an agreement to rely on it. The bill establishes that a person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on an agreement. The bill requires a person who receives a copy of or is aware of the existence of an agreement and has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter to report the alleged abuse, neglect, or exploitation to DFPS.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.