

BILL ANALYSIS

S.B. 1882
By: Zaffirini
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to interested parties, a person under guardianship often retains many legal and civil rights, depending on the court order imposing guardianship. Unfortunately, the parties continue, such a person isn't always informed of those rights, which can lead to a presumption that the person has no rights whatsoever—a presumption that even some guardians share. The parties assert that there are few legal processes more restrictive of citizens in a free society than guardianship, making it important that people under guardianship know the rights they retain. S.B. 1882 seeks to provide for that knowledge by means of a bill of rights for wards under guardianship.

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. 1882 amends the Estates Code to grant a ward, meaning a person for whom a guardian is appointed, all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of Texas and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted. The bill's provisions do not supersede or abrogate other remedies existing in law. The bill establishes that a ward has the following rights, unless limited by a court or otherwise restricted by law:

- to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;
- to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;
- to be treated with respect, consideration, and recognition of the ward's dignity and individuality;
- to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the federal Americans with Disabilities Act;
- to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and

other preferences and opinions;

- to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;
- to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of Texas and the United States;
- to exercise full control of all aspects of life not specifically granted by the court to the guardian;
- to control the ward's personal environment based on the ward's preferences;
- to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under the bill;
- to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;
- to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;
- to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;
- to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;
- to personal privacy and confidentiality in personal matters, subject to state and federal law;
- to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm, and the ward may request a hearing to remove any such restrictions on communication or visitation imposed by the guardian;
- to petition the court and retain certified counsel of the ward's choice to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief, including a transition to a supported decision-making agreement, except as otherwise limited;
- to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;
- to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;
- to be informed of the name, address, phone number, and purpose of Disability Rights Texas and to communicate and meet with representatives of that organization;
- to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

- to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;
- to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and
- to have the guardian, on appointment and on annual renewal of the guardianship, explain these rights in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.

EFFECTIVE DATE

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