

SUBJECT: Allowing children to seek access to parents under guardianship

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

0 nays

WITNESSES: For — Sherry Johnston; Debby Valdez, GRADE; Lisa Caprelli, Kasem Cares Foundation; Kerri Kasem, Kasem Cares Foundation; Guy Herman, Statutory Probate Judges of Texas; Donna Defrancesco; (*Registered, but did not testify*: Terry Hammond; Chris Masey, Coalition of Texans with Disabilities; Gyl Switzer, Mental Health America of Texas)

Against — Laura Upchurch

On — Kristi Hood

BACKGROUND: Title 3 of the Estates Code provides the procedures for appointing guardians for incapacitated persons. Guardians have broad authority over their wards and can sometimes use that authority to prevent family members from visiting the ward.

DIGEST: CSHB 2665 would allow a child of a ward under guardianship to file an application with the court requesting access to the ward. The court would schedule a hearing on the application within 60 days, unless the application stated that the ward's health was in significant decline, in which case the hearing would be conducted within 10 days.

A guardian would be served personally at least 21 days before the hearing, except when the ward's health was alleged to be in significant decline, in which case service would occur as soon as practicable.

After a hearing, the court would issue an order that could:

- prohibit the guardian from preventing access to the ward if the applicant demonstrated that the guardian's past acts had prevented access and that the ward desired contact; and
- specify the frequency, time, place, location and other terms of access.

The court before deciding whether to issue or modify an order would consider any prior protective orders issued against the applicant to protect the ward and could consider whether visitation should be supervised or whether it should be suspended or denied. The court also could award the prevailing party court costs and attorney's fees.

This bill also would require a guardian to inform a ward's spouse, parents, siblings, and children if the ward:

- died, in which case the guardian would inform the ward's relatives of any funeral arrangements and the location of the ward's final resting place;
- was admitted to a hospital for acute care for three or more days;
- changed residence; or
- was staying at a location other than the ward's residence for more than a week.

The ward's relatives could elect not to receive notifications through written notice to the guardian, and the guardian would not be required to provide notice to any relatives that the guardian was unable to locate after making reasonable efforts.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015. The bill would apply to guardianships created before, on, or after the effective date.