SUBJECT: Requiring acceptance of certain guardianship transfers; altering mediation

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Estates Code sec. 1023.003 requires a guardian or any other person desiring to transfer the transaction of the business of a guardianship from one county to another to file a written application in the court in which the guardianship was pending stating the reason for the transfer.

Sec. 1023.005 requires the court, if it appears that transfer of the guardianship is in the best interests of the ward, to enter an order authorizing the transfer on payment on behalf of the estate of all accrued costs and requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed.

DIGEST: SB 1129 would require the acceptance of certain guardianship transfers by courts, specify jurisdiction in guardianship transfers, specify judge liability in the transferring and recipient courts, modify mediation proceeding requirements, and require the establishment of a guardianship mediation training course by the Office of Court Administration (OCA), among other provisions.

Guardianship transfer. The bill would specify that on hearing an application or motion to transfer a guardianship to another county, if either the ward had resided in the county to which the guardianship was to

be transferred for at least six months or good cause was not otherwise shown to deny the transfer, a court would have to enter an order certifying that the guardianship was in compliance with the Estates Code at the time of transfer, in addition to other requirements under existing law.

In making the determination that the transfer was in the best interests of the ward, a court could consider the interests of justice, the convenience of the parties, and the preference of the ward, if the ward was aged 12 years or older. A county would have to accept a transfer of guardianship on receipt of a court order.

The bill would specify that when a guardianship was transferred from one county to another:

- the court to which the guardianship was transferred would become the court of continuing, exclusive jurisdiction;
- a proceeding relating to the guardianship that was commenced in the court ordering the transfer would continue in the court to which the guardianship was transferred as if the proceeding commenced in the receiving court;
- a judgment or order entered in the guardianship before the transfer would have the same effect and would have to be enforced as a judgment or order entered by the court to which the guardianship was transferred; and
- the court ordering the transfer would not retain jurisdiction of the ward who was the subject of the guardianship or the authority to enforce an order entered for a violation of guardianship statutes that occurred before or after the transfer.

Judge liability. When a guardianship was transferred from one county to another, a judge of the court from which the guardianship was transferred could not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurred after the transfer.

A judge of the court to which a guardianship was transferred could not be held civilly liable for any injury, damage, or loss to the ward or the ward's

estate that occurred before the transfer.

Mediation proceedings. If a court referred to mediation a contested guardianship proceeding regarding the appointment of a guardian for a proposed ward, a determination of incapacity of the proposed ward could be an issue to be mediated, but the applicant for guardianship would still have to prove to the court that the proposed ward was an incapacitated person in accordance with existing law.

All parties to the proceeding would have to evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and alternatives to guardianship would be feasible to avoid the need for a guardian to be appointed.

The cost of mediation would be paid by the parties to the proceeding unless otherwise ordered by the court. If the parties were unable to pay the cost of mediation, the court could refer the parties to a local alternative dispute resolution center providing services as part of a system for resolution of disputes established under the Civil Practice and Remedies Code if a system had been established in the county. The local center could waive mediation costs as appropriate.

Guardianship mediation training. The bill would require OCA by rule to establish a training course with at least 24 hours of training for persons facilitating mediations under guardianship statutes in the Estates Code that could be provided by an approved mediation training provider. A training provider would have to adhere to the established curriculum in providing the training course. The bill would not require a mediator facilitating a mediation to attend or be certified under a training course.

Implementation. OCA only would be required to implement a provision of the bill if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money, OCA could, but would not be required to, implement a provision of the bill using other appropriations available for that purpose.

The bill would take effect September 1, 2021, and would apply to a guardianship created before, on, or after that date.

SUPPORTERS SAY:

SB 1129 would improve the guardianship process in Texas for both guardians and wards by streamlining the process of transferring cases between counties and adding requirements for the mediation process in contested guardianships.

Currently, statute does not explicitly require courts to accept the transfer of a guardianship case to the county of the court's jurisdiction due to a guardian and ward moving to the county. This can create immense challenges for guardians and wards by requiring the guardianship to be administered in a county potentially far away from where the relevant parties reside. The bill would remedy this problem by explicitly requiring a court to, if certain conditions were met and the transfer would be in the best interests of the ward, accept the transfer.

The bill would enhance the mediation process for contested guardianships of incapacitated wards by setting clearer guidelines for such proceedings and providing for consideration of alternatives to guardianship when appropriate. Requiring the Office of Court Administration to develop a 24-hour training course for contested guardianship mediation facilitators would better equip mediators to conduct these proceedings to the benefit of the ward and all parties to a guardianship.

The bill would not burden courts in smaller counties because those courts also would benefit from having cases transferred from those jurisdictions to the court of a county in which a ward or guardian resided. Removing the distance barrier would make it easier for guardians and other parties to appear in court and for oversight of a guardianship to be conducted.

The bill appropriately would be limited to guardianship transfers and mediation proceedings, and proposals for the ability to terminate guardianships in certain cases could be addressed in other legislation.

CRITICS SAY:

SB 1129 could place an administrative burden on small counties with limited resources by compelling courts in these counties to accept the transfer of guardianship cases.

OTHER CRITICS SAY:

SB 1129 should include provisions to facilitate the end of guardianships in cases where it is determined that a guardianship is no longer needed and appropriate alternatives and supports are available to a ward. Wards lose many of their civil rights and control over their assets in guardianships, so it is critical for the state to closely supervise guardians and allow for an off ramp to guardianship if alternatives and supports are available.

NOTES:

The House companion bill, HB 3318 by Neave, was considered by the House Judiciary and Civil Jurisprudence Committee in a public hearing on April 21 and was left pending.