

SUBJECT: Amending the proceedings for certain guardianships of the person

COMMITTEE: Judiciary & Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Julie Johnson, Flores, Moody, Murr, Schofield, Slawson, Vasut
0 nays
1 absent — Davis

WITNESSES: For — Debra Wallace, PART, ICF Advocates for Choice, National Council on Severe Autism; and six individuals (*Registered, but did not testify*: David Anderson; Christina Drewry; Michelle Evans; Blaire Parker; Chris Drewry)

Against — Dennis Borel, Coalition of Texans with Disabilities; Jeff Miller, Disability Rights Texas; Jerry Simoneaux, Statutory Probate Judges; Elizabeth Hart, Tarrant County Probate Court 2; Terry Hammond, Texas Guardianship Association; Lauren Hunt, TREP; Dyann McCully, TREP; and six individuals (*Registered, but did not testify*: Belinda Carlton, Guardianship Reform and Supported Decision-making Workgroup; Guy Herman, Presiding Judge of the Statutory Probate Courts of Texas; Linda Litzinger, Texas Parent to Parent; Craig Hopper, Texas Real Estate Probate Institute; Ashley Ford, The Arc of Texas; Susan Burek)

On — Rebecca Galinsky, Protect TX Fragile Kids; Lauren Gerken, Texas Council for Developmental Disabilities; Drue Farmer (*Registered, but did not testify*: Rebecca Japko, Parents & Allies for Remarkable Texans)

BACKGROUND: Concerns have been raised that guardianship proceedings can be too complicated or time consuming and that current proceedings do not adequately protect the identity and security of individuals with profound intellectual disabilities.

DIGEST: CSHB 653 would apply only to a proceeding for the appointment of a guardian of the person of a proposed ward in which the proposed ward was a minor who had a diagnosed profound intellectual disability, would require a guardianship after the proposed ward became an adult, and the proposed guardian of the person was a parent and primary caregiver of the proposed ward.

If the applicant was the parent and primary caregiver of the proposed ward, the applicant could present a sworn affidavit to the court that stated the applicant was the parent of a proposed ward and:

- was and had been the primary caregiver of the proposed ward throughout all or most of the proposed ward's childhood;
- had never been the subject of a substantiated allegation, complaint, or investigation concerning the abuse, neglect, or exploitation of the proposed ward;
- sought to be the appointed guardian of the person of the proposed ward; and
- was not disqualified from serving as guardian.

The applicant also would present to the court:

- at least one written letter or certificate that met certain requirements relating to determinations of intellectual disability or incapacity;
- a written request that the court make certain required findings and appoint the parent as guardian without needing an investigation by a court reporter; and
- a written request that no other action be had in probate court regarding the guardianship after appointment and qualification of the applicant as guardian, other than certain required reviews.

If the applicant submitted the necessary documents, and the court was able to make the required findings, the court would be required to appoint the parent as guardian without appointing a court investigator or the continued appointment of an attorney ad litem unless the parent was disqualified

from serving as guardian, the court had any reason to believe that one or more assertions in the affidavit were untrue, or the court found that the appointment was not in the best interest of the proposed ward. A guardianship created under these provisions would be considered an independent guardianship of the person of a ward, and a guardian would be considered an independent guardian of the person of a ward.

The court would be required to seal a written letter or certificate submitted under the provisions of the bill and any other medical record or document the court examined unless the court found good cause not to seal the document. The court's sealed records would not be open for inspection by any person except on further order of the court after notifying the guardian and a finding of good cause or in connection with a criminal or civil proceeding, as otherwise allowed by law.

If a guardianship was created before September 1, 2023, a guardian could petition the court to authorize that the guardianship be treated on a prospective basis as if the guardianship was created and the guardian was appointed under the provisions of the bill, if applicable.

To determine whether a guardianship should be continued, modified, or terminated, the court in which the guardianship proceeding was pending would review the guardianship of the person at the court's discretion but not more frequently than once every five years unless the guardian of the person was also the guardian of the estate of the ward. If the court received a claim that the guardianship was no longer in the best interest of the ward, the court could review the matter and take any necessary action.

Courts would be required to issue letters of guardianship without the requirement of a bond if the person was the parent of the ward and not appointed the guardian of the estate of the ward. Letters of guardianship issued to a guardian of the person of the ward would not expire unless the guardian was removed, would otherwise be ineligible to serve as guardian, or the court found it was not in the best interest of the ward. Unless the court found it was not in the best interest of the ward, a guardian would not be required to file an annual report.

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, 2023.