

BILL ANALYSIS

Senate Research Center

S.B. 1783
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

If supports and services or alternatives to guardianship allow a person with an incapacity to live independently, a guardianship may not be necessary. When these options become available after a guardianship is established, full restoration of rights or modification of the guardianship may not be appropriate as the person's capacity has not changed. Instead, the guardianship should be terminated on a finding that the alternative will meet the person's needs without continued court involvement. S.B. 1783 would provide this statutory pathway. S.B. 1783 would also require courts to promote guardianship mediation to resolve family disputes, to avoid or minimize costs and conflict, and to explore less restrictive alternatives to guardianship and supports and services in the community.

What's more, courts with guardianship jurisdiction may transfer a case to a court in another county if the person under guardianship is moved to that county. This allows courts closer to the person with a guardian to monitor their care. Current law, however, does not explicitly require the recipient court to accept the transfer, and there is no clear appeal process. Accordingly, S.B. 1783 would provide this appeal process and outline factors to determine the best interests of the person with a guardian when determining which court should handle the case.

As proposed, S.B. 1783 amends current law relating to guardianships, alternatives to guardianship, and supports and services for incapacitated persons.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Office of Court Administration in SECTION 12 (Section 155.301, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1023.001, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Makes a nonsubstantive change to this subsection.

(a-1) Creates this subsection from existing text and authorizes a proceeding for the appointment of a guardian for the estate of an incapacitated person to be brought in the county in which the principal estate of the proposed ward is located. Deletes existing requiring a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person to be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

SECTION 2. Amends Section 1023.005, Estates Code, as follows:

Sec. 1023.005. COURT ACTION. (a) Creates this subsection from existing text. Requires the court to enter an order with certain authorization and requirements if, on hearing an application or motion under Section 1023.003 (Transfer of Guardianship to Another County), it appears that transfer of the guardianship is in the best interests of the ward and either the ward has resided in the county to which the guardianship is to be

transferred for at least six months or good cause is not otherwise shown to deny the transfer, rather than if good cause is not shown to deny the transfer and it appears that transfer of the guardianship is in the best interests of the ward.

(b) Authorizes the court, in making a determination that the transfer is in the best interests of the ward under Subsection (a), to consider:

- (1) the interests of justice;
- (2) the convenience of the parties; and
- (3) the preference of the ward, if the ward is 12 years of age or older.

(c) Requires the county, if the ward resides in the county to which a guardianship is transferred under Subsection (a), to accept the transfer of the guardianship.

SECTION 3. Amends Section 1023.008, Estates Code, as follows:

Sec. 1023.008. CONTINUATION OF GUARDIANSHIP. (a) Creates this subsection from existing text. Provides that when a guardianship is transferred from one county to another in accordance with this chapter (Venue):

- (1) creates this subdivision from existing text and makes a nonsubstantive change;
- (2) the court to which the guardianship is transferred becomes the court of continuing, exclusive jurisdiction;
- (3) a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;
- (4) a judgment or order entered in the guardianship before the transfer has the same effect and is required to be enforced as a judgment or order entered by the court to which the guardianship is transferred; and
- (5) the court ordering the transfer does not retain:
 - (A) jurisdiction of the ward who is the subject of the guardianship; and
 - (B) the authority to enforce an order entered for a violation of this title (Guardianship and Related Procedures) that occurred before or after the transfer.

(b) Creates this subsection from existing text and makes no further changes.

SECTION 4. Amends Chapter 1023, Estates Code, is amended by adding Section 1023.011, as follows:

Sec. 1023.011. NO LIABILITY OF JUDGE. Requires a judge who transfers a guardianship to another county to certify in the transfer order that the guardianship is in compliance with the Texas Estates Code at the time of transfer. Prohibits a judge of the court from which the guardianship is transferred, when a guardianship is transferred from one county to another in accordance with this chapter, from being held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurs after the transfer. Prohibits a judge of the court to which the guardianship is transferred from being held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurred prior to the transfer.

SECTION 5. Amends Subchapter D, Chapter 1055, Estates Code, as follows:

SUBCHAPTER D. MEDIATION

Sec. 1055.151. New heading: MEDIATION OF GUARDIANSHIP PROCEEDING. (a) Deletes existing text relating to a written agreement before referral of a contested guardianship proceeding to mediation. Authorizes a court upon its own motion to refer a matter to mediation at any time after the filing of an application for guardianship before a final hearing or jury trial. Requires the court to refer the matter to mediation if such request is made by certain individuals.

Authorizes a court to also require named individuals: ward, guardian, attorney ad litem, guardian ad litem, family, and others to participate in an annual mediation to assist the court in determining the need for continuing a guardianship, or use of lesser restrictive alternatives.

(b) Prohibits capacity of the proposed ward from being an issue to be mediated and requires that it still be proved to the court in accordance with Texas Estates Code Chapter 1101 (General Procedure to Appoint Guardian). Requires all parties to evaluate available alternatives to guardianship and supports and services at the mediation in accordance with Texas Estates Code Sections 1101.010(a)(1)(D) through (a)(1)(E) and whether the supports and services and alternatives to guardianship would be feasible to avoid the need for a guardianship.

(c) Requires all mediations under this section to be conducted by individuals who:

(1) have been approved by the court; and

(2) have completed a specialized 24-hour guardianship mediation training course conducted by an alternative dispute resolution system or an organization approved by the Office of Court Administration (OCA), in addition to addition to satisfying the requirements set forth in Chapter 154.052 (Qualifications of Impartial Third Party), Texas Civil Practice and Remedies Code.

(d) Requires the cost of mediation to be paid by the parties unless otherwise ordered by the court. Requires the cost of mediation, if the parties are unable to pay the cost of mediation, to be borne by the ADR fund established under Section 152.004 (Financing) or Section 152.006 (Fee For Alternative Dispute Resolution Centers) of the Texas Civil Practice and Remedies Code.

Sec. 1055.152. MEDIATED SETTLEMENT AGREEMENTS. (a) Creates this subsection from existing text. Provides that a mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type, in capital letters, or underlined, that the agreement is not subject to revocation by the parties and that the parties agree the settlement agreement is in the best interest of the Ward, rather than that the agreement is not subject to revocation by the parties;

(2)–(3) makes no changes to these subdivisions.

(b) Redesignates existing Subsection (c) as this subsection and makes no further changes.

(c) Redesignates existing Subsection (d) as this section. Authorizes a court to decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward's or proposed ward's best interests, notwithstanding Subsections (a) and (b), rather than Subsections (b) and (c).

Sec. 1055.153. MEDIATION PROJECT. (a) Provides that for the purposes of this section, a probate court is considered a mental health court under Chapter 125 (Mental Health Court Programs), Government Code.

(b) Authorizes a probate court to:

- (1) apply for a public or private grant to fund a mediation project in connection with a guardianship proceeding; or
- (2) participate in a national or state mediation project to study the effects of mediation on promoting the least restrictive alternatives to guardianship for incapacitated persons.

(c) Provides that this section expires September 1, 2021.

SECTION 6. Amends Section 1101.001(b), Estates Code, to include a statement of whether mediation was considered or encouraged to avoid the need for guardianship among a list of required statements for the application sworn to by the applicant.

SECTION 7. Amends the heading to Subchapter B, Chapter 1101, Estates Code, to read as follows:

SUBCHAPTER B. HEARING; JURY TRIAL; MEDIATION

SECTION 8. Amends Section 1101.052, Estates Code, as follows:

Sec. 1101.052. New heading: JURY TRIAL AND MEDIATION. Authorizes the court, at any time after the filing of an application for guardianship but before the date of the final hearing or jury trial for the appointment of a guardian, to refer a matter to mediation in accordance with Section 1055.151 (Mediation of Contested Guardianship Proceeding).

SECTION 9. Amends Section 1201.053, Estates Code, by adding Subsection (c), as follows:

(c) Authorizes a court, in reviewing a guardianship under Section 1201.052 (Annual Determination) to require the following persons to participate in a mediation in connection with the guardianship matter:

- (1) the ward;
- (2) the ward's guardian;
- (3) an attorney ad litem appointed to represent the ward or the ward's interests;
- (4) a guardian ad litem appointed to represent the ward or the ward's interests;
- (5) a family member of the ward; or
- (6) any other person interested in the ward's welfare.

SECTION 10. Amends Section 1202.001, Estates Code, by adding Subsection (b-1) to require a guardianship of the person to be settled and closed when the court finds that the ward's incapacity needs can be managed without the necessity for that continued guardianship by an alternative to guardianship or with supports and services as provided by Subchapter F.

SECTION 11. Amends Chapter 1202, Estates Code, by adding Subchapter F, to read as follows:

SUBCHAPTER F. TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING THAT THE PERSON'S NEEDS CAN BE MANAGED WITHOUT GUARDIANSHIP

Sec. 1202.231. TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING THAT WARD'S NEEDS CAN BE MANAGED WITHOUT GUARDIANSHIP. Authorizes the court, on application by the guardian of the person of a ward or another person interested in the ward's welfare, or on the court's own motion and subject to Section 1202.232, to order that the guardianship of the person of the ward terminate and be settled and closed if the court makes the findings required under Section 1202.233.

Sec. 1202.232. PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED. (a) Prohibits the court from granting an order terminating a guardianship of the person under Section 1202.231 unless the applicant presents to the court or the court secures a written letter or certificate from a physician licensed in this state that is dated:

(1) not earlier than the 120th day before the date the application was filed or the date the court enters the court's motion; or

(2) any time after the date the application was filed or the date the court's motion was entered but before the date of the hearing.

(b) Requires a letter or certificate presented under Subsection (a) to provide certain information relating to the ward's care.

(c) Authorizes the court, if the court determines it is necessary, to appoint the necessary physicians to examine the ward.

Sec. 1202.233. FINDINGS REQUIRED. Requires the court, before ordering the termination of a guardianship of the person under Section 1202.231, to find by a preponderance of the evidence that:

(1) the ward remains a partially or completely incapacitated person;

(2) the current nature and degree of the ward's incapacity and the ward's needs can be managed without the necessity of a continued guardianship of the person by:

(A) alternatives to guardianship that are available to the ward and that are determined to be feasible; or

(B) supports and services that are available to the ward and that are determined to be feasible; and

(3) termination of the guardianship of the person:

(A) is in the ward's best interest; and

(B) will encourage the development or maintenance of maximum self-reliance and independence in the ward.

Sec. 1202.234. GENERAL REQUIREMENTS FOR ORDER. Requires a court order that terminates a guardianship of the person under this subchapter to state and specify certain information.

Sec. 1202.235. NOTICE; APPOINTMENT OF ATTORNEY AD LITEM OR GUARDIAN AD LITEM. Authorizes a court to, in its discretion, enter additional orders in the best interest of the ward, including but not limited to requiring notice to interested parties and to appoint an attorney ad litem and/or guardian ad litem.

SECTION 12. Amends Chapter 155, Government Code, by adding Subchapter G, as follows:

SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

Sec. 155.301. TRAINING. Requires OCA by rule to establish a 24-hour training course for use by approved dispute resolution training providers for those persons appointed to facilitate mediations under Title 3, Estates Code. Requires providers of mediation training to adhere to the approved curriculum.

SECTION 13. (a) Provides that, except as otherwise provided by this section, the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

(b) Makes application of Section 1023.001, Estates Code, as amended by this Act, prospective.

(c) Makes application of Section 1101.001(b), Estates Code, as amended by this Act, prospective.

SECTION 14. Effective date: September 1, 2019.