

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1783
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Committee Report (Substituted)

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. (Original Author's/Sponsor's Statement of Intent)

C.S.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 7 (Section 155.301, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1023.005, Estates Code, as follows:

Sec. 1023.005. COURT ACTION. (a) Creates this subsection from existing text. Requires a court, on hearing an application or motion under Section 1023.003 (Transfer of Guardianship to Another County), if 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, to enter an order:

(1)–(2) makes nonsubstantive changes to these subdivisions; and

(3) certifying that the guardianship is in compliance with this code at the time of transfer.

(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, on receipt of an order described by Subsection (a), to accept the transfer of the guardianship.

SECTION 2. 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 3. Amends Chapter 1023, Estates Code, by adding Section 1023.011, as follows:

Sec. 1023.011. NO LIABILITY OF JUDGE. (a) 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.

(b) Prohibits a judge of the court to which the guardianship is transferred as described by Subsection (a) 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 4. Amends Subchapter D, Chapter 1055, Estates Code, as follows:

SUBCHAPTER D. MEDIATION

Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP PROCEEDING. (a) Authorizes the court, subject to Subsection (b), on the written agreement of the parties or on the court's own motion, to refer a contested guardianship proceeding to mediation.

(b) Provides that if the court refers to mediation a proceeding under Subsection (a) regarding the appointment of a guardian for a proposed ward:

(1) a determination of incapacity of the proposed ward may be an issue to be mediated, but the applicant for guardianship is required to still prove to the court that the proposed ward is an incapacitated person in accordance with the requirements of Chapter 1101 (General Procedure to Appoint Guardian); and

(2) all parties to the proceeding are required to evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services to guardianship would be feasible to avoid the need for appointment of a guardian.

(c) Requires the cost of mediation to be paid by the parties to the proceeding unless otherwise ordered by the court. Authorizes the court, if the parties are unable to pay the cost of mediation, to refer the parties to a local alternative dispute resolution center providing services as part of a system for resolution of disputes established under Section 152.002 (Defect in Pleading), Civil Practice and Remedies Code, if a system has been established in the county, and the local center is authorized to waive mediation costs as appropriate.

Sec. 1055.152. **MEDIATED SETTLEMENT AGREEMENTS.** (a) Creates this subsection from existing text and makes no further changes.

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

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

SECTION 5. 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 6. 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 WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT GUARDIANSHIP

Sec. 1202.231. **TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING THAT WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT GUARDIANSHIP.** Authorizes the court, on application by the guardian of the person of a ward, a court investigator or guardian of the person of a ward, or another person interested in the ward's welfare who has been granted permission by the court to intervene under Section 1055.003 (Intervention by Interested Person), or on the court's own motion, 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. **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; and

(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. 1202.233. 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. 1202.234. NOTICE; APPOINTMENT OF ATTORNEY AD LITEM OR GUARDIAN AD LITEM. Authorizes a court to enter additional orders in the best interest of the ward, including requiring notice to interested parties and appointing an attorney ad litem or guardian ad litem, or both, for the ward.

SECTION 7. Amends Chapter 155, Government Code, by adding Subchapter G, as follows:

SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

Sec. 155.301. TRAINING. Requires the Office of Court Administration (OCA) by rule to establish a training course with at least 24 hours of training for persons facilitating mediations under Title 3, Estates Code, that is authorized to be provided by a mediation training provider approved by OCA. Requires a mediation training provider to adhere to the established curriculum in providing the training course.

(b) Provides that this section does not require a mediator facilitating a mediation under Title 3, Estates Code, to attend or be certified under a training course established under Subsection (a).

SECTION 8. Provides that the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 9. Provides that OCA is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, OCA, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this Act using other appropriations available for that purpose.

SECTION 10. Effective date: September 1, 2019.