

## **BILL ANALYSIS**

Senate Research Center  
87R18041 CLG-F

H.B. 3394  
By: Metcalf (Creighton)  
Jurisprudence  
5/10/2021  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, judges are to remove court-appointed guardians who are incapacitated. However, there is no method set forth in statute to allow the judge to determine if the guardian is incapacitated. H.B. 3394 would allow judges to investigate, through a court investigator or an ad litem, whether probable cause exists to believe a guardian, or proposed guardian, has become incapacitated and to allow for an independent medical examination (IME) to establish capacity/incapacity to continue as guardian.

H.B. 3394 amends current law relating to determining the incapacity of a guardian.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1203.052, Estates Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the court, subject to Subsection (c), to remove a guardian as provided by Subsection (a-1) (relating to the authority of the court to remove a guardian if sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state any of the property entrusted to the guardian's care) if:

(1) - (4) makes no changes to these subdivisions;

(5) the guardian:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of property performing the duties of the guardian's trust;

(6) makes nonsubstantive changes to this subdivision;

(7) - (11) makes no changes to these subdivisions.

(c) Authorizes a court, if there is probable cause to believe that a guardian is an incapacitated person, on the court's own motion or on complaint of an interested person, to appoint an attorney ad litem to represent the ward's interests as provided by Section 1054.007 (Attorneys Ad Litem) and a court investigator or guardian ad litem to investigate whether the guardian should be removed under Subsection (a)(5)(A). Authorizes the court, if the court determines it is necessary, to appoint the necessary physicians to examine the guardian to determine whether the guardian is an incapacitated person for purposes of Subsection (a)(5)(A).

SECTION 2. 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 3. Effective date: September 1, 2021.