

BILL ANALYSIS

Senate Research Center
87R21501 CAE-F

C.S.H.B. 79
By: Murr (Zaffirini)
Jurisprudence
5/21/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, depending on the county, guardianship cases are heard by a statutory probate court, constitutional county court, or statutory court-at-law. Statutory probate courts have probate judges, who are specialists on the Estates Code; court investigators, who review guardianship filings for potential exploitation or neglect; and court visitors, who visit persons under guardianship. Statutory probate courts, however, are located in only 10 of the state's 15 largest metropolitan counties. In Texas's remaining 244 counties, guardianship cases are handled either by a county court-at-law judge or the county judge. These judges are mostly generalists and may lack relevant legal experience. What's more, these courts also handle other resource-intensive civil and criminal cases and cannot afford to hire staff dedicated to guardianship cases. In 2019, more than 18,000 of approximately 51,000 active guardianships were located in these counties without resources to monitor guardianships closely and efficiently.

One of the most successful innovations in the state's court system has been the development of specialized child protection courts (CPC). These 24 courts, serving 130 counties, focus on the needs of children in the child protection system. A court that specializes in a particular case-type can focus its efforts on and devote added attention to the relevant legal area. These specialized CPCs have had better outcomes than courts that handle child protection cases as part of a regular docket.

H.B. 79 would establish a system of regional specialized guardianship courts, similar to CPCs, with associate judges and adequate court staff. This would improve the guardianship system in Texas greatly by providing a venue in which judges and staff with expertise in guardianship can assist under-resourced counties in handling these cases. This additional oversight would ensure these cases receive the attention necessary to protect the interests of the many vulnerable Texans who have a guardian.

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

C.S.H.B. 79 amends current law relating to associate judges for guardianship proceedings and protective services proceedings in certain courts.

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 Chapter 54A, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. ASSOCIATE JUDGE FOR GUARDIANSHIP PROCEEDINGS AND PROTECTIVE SERVICES PROCEEDINGS IN CERTAIN COURTS

Sec. 54A.301. DEFINITIONS. Defines "guardianship proceeding," "office of court administration," "protective services proceeding," and "ward."

Sec. 54A.302. APPLICABILITY. Provides that this subchapter applies only with respect to:

(1) a county court with jurisdiction over guardianship proceedings or protective services proceedings; and

(2) a statutory county court with jurisdiction over guardianship proceedings, other than a court created by statute and designated as a statutory probate court under Chapter 25 (Statutory County Courts) or over protective services proceedings.

Sec. 54A.303. APPLICABILITY OF OTHER LAW; CONSTRUCTION OF SUBCHAPTER. (a) Provides that Subchapter C (Statutory Probate Court Associate Judges) applies to an associate judge appointed under this subchapter except to the extent of a conflict with this subchapter.

(b) Provides that nothing in this subchapter limits the authority of a court to which this subchapter applies to issue an order under Title 3 (Guardianship and Related Procedures), Estates Code, or Chapter 48 (Investigations and Protective Services for Elderly Persons and Persons with Disabilities), Human Resources Code.

Sec. 54A.304. APPOINTMENT. (a) Requires the presiding judge of each administrative judicial region, after conferring with the judges of courts to which this subchapter applies in the region, to determine whether those courts require the appointment of a full-time or part-time associate judge to assist the courts with conducting guardianship proceedings, including with conducting annual reviews of guardianships, or protective services proceedings.

(b) Requires the presiding judge, if the presiding judge of an administrative judicial region determines the courts described by Subsection (a) require the appointment of an associate judge, to appoint an associate judge from a list of applicants who submit an application to the Office of Court Administration of the Texas Judicial System (OCA) and meet the qualifications prescribed by Section 54A.305. Requires the presiding judge, before making the appointment, to provide the list to each judge of a court from which guardianship proceedings or protective services proceedings will be referred to the associate judge. Authorizes each of those judges and the presiding judge of the statutory probate courts to recommend to the presiding judge of the administrative judicial region one or more of the listed applicants for appointment.

(c) Requires a presiding judge of an administrative judicial region, before reappointing an associate judge appointed under Subsection (b), to notify each judge of a court from which guardianship proceedings or protective services proceedings will be referred to the associate judge of the presiding judge's intent to reappoint the associate judge for another term. Authorizes each of those judges and the presiding judge of the statutory probate courts to submit to the presiding judge of the administrative judicial region a recommendation on whether the associate judge should be reappointed.

(d) Provides that an associate judge appointed under this subchapter serves the courts to which this subchapter applies in the administrative judicial region that are specified by the appointing presiding judge. Authorizes two or more presiding judges of administrative judicial regions to jointly appoint one or more associate judges under this subchapter to serve specified courts to which this subchapter applies in the presiding judges' regions.

Sec. 54A.305. QUALIFICATIONS. (a) Sets forth certain requirements for a person to be eligible for appointment as an associate judge under this subchapter.

(b) Requires an associate judge appointed under this subchapter to serve in one administrative judicial region, during the term of appointment, to reside in that

region or in a county adjacent to that region. Authorizes an associate judge appointed to serve in two or more administrative judicial regions to reside anywhere in the regions.

Sec. 54A.306. TERM OF APPOINTMENT; TERMINATION. (a) Provides that an associate judge appointed under this subchapter serves for a term of four years from the date the associate judge is appointed and qualifies for office.

(b) Provides that the appointment of an associate judge for a term does not affect the at-will employment status of the associate judge. Authorizes an appointing presiding judge of an administrative judicial region or the successor presiding judge of the region to terminate the associate judge's appointment at any time.

Sec. 54A.307. COMPENSATION OF ASSOCIATE JUDGE. (a) Entitles an associate judge appointed under this subchapter to a salary in an amount equal to 90 percent of the salary paid to a district judge as set by the General Appropriations Act.

(b) Requires that the associate judge's salary be paid from:

(1) money available from federal government;

(2) county money available for payment of officers' salaries, subject to the approval of the commissioners courts of the counties in which the associate judge serves; or

(3) a combination of money specified by Subdivisions (1) and (2).

Sec. 54A.308. DESIGNATION AND RESPONSIBILITIES OF HOST COUNTY. (a) Requires the appointing presiding judge or judges of the administrative judicial region or regions, subject to the approval of the commissioners court of the proposed host county, to determine the host county of an associate judge appointed to serve in one administrative judicial region, and to by majority vote determine the host county of an associate judge appointed to serve in more than one administrative judicial region.

(b) Requires the host county to provide an adequate courtroom and quarters, including furniture, necessary utilities, and telephone equipment and service, for the associate judge and other personnel assisting the associate judge.

(c) Provides that, except as provided by Section 54A.305(b), an associate judge is not required to reside in the host county.

Sec. 54A.309. METHODS OF REFERRAL. (a) Requires that guardianship proceedings or protective services proceedings be referred to an associate judge appointed under this subchapter by a general order issued by the judge of each court the associate judge is appointed to serve.

(b) Authorizes a general order issued under this section to be amended or withdrawn at any time by the judge of the court issuing the order.

(c) Authorizes the judge of a court the associate judge is appointed to serve by order, in lieu of a general order, to refer a specific guardianship proceeding or a specific protective services proceeding to the associate judge.

Sec. 54A.310. GENERAL POWERS OF ASSOCIATE JUDGE. (a) Authorizes an associate judge, on the motion of a party or the associate judge, to return a complex guardianship proceeding to the referring court for final disposition after recommending temporary orders for the protection of a ward.

(b) Authorizes an associate judge to render and sign any pretrial order and to recommend to the referring court any order after a trial on the merits.

Sec. 54A.311. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Provides that if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge for the guardianship proceeding or protective services proceeding becomes the order or judgment of the referring court by operation of law without ratification by the referring court.

Sec. 54A.312. PERSONNEL. (a) Authorizes the appointing presiding judge of an administrative judicial region or appointing presiding judges of the administrative judicial regions, by majority vote, as applicable, to appoint the personnel needed to assist an associate judge in implementing and administering this subchapter.

(b) Requires that the salaries of the personnel be paid from:

- (1) money available from the federal government;
- (2) county money available for payment of officers' salaries, subject to the approval of the commissioners courts of the counties in which the associate judge serves; or
- (3) a combination of money specified by Subdivisions (1) and (2).

Sec. 54A.313. SUPERVISION, TRAINING, AND EVALUATION OF ASSOCIATE JUDGES. (a) Requires OCA to assist the presiding judges of the administrative judicial regions in:

- (1) monitoring associate judges' compliance with job performance standards, uniform practices adopted by the presiding judges, and federal and state laws and policies;
- (2) addressing the training needs and resource requirements of associate judges;
- (3) conducting annual performance evaluations for associate judges and other personnel appointed under this subchapter based on written personnel performance standards adopted by the presiding judges and performance information solicited from the referring courts and other relevant persons; and
- (4) receiving, investigating, and resolving complaints about an individual associate judge or the associate judge program under this subchapter based on a uniform process adopted by the presiding judges.

(b) Requires OCA to develop procedures and a written evaluation form to be used by the presiding judges in conducting the annual performance evaluations under Subsection (a)(3).

(c) Requires OCA to develop caseload standards for associate judges to ensure adequate staffing.

(d) Authorizes each judge of a court that refers guardianship proceedings or protective services proceedings to an associate judge under this subchapter to submit to the appropriate presiding judges or OCA information on the associate judge's performance during the preceding year based on a uniform process adopted by the presiding judges.

Sec. 54A.314. FUNDING AND PERSONNEL. (a) Authorizes OCA to contract for available county and federal money from any available source, and to employ personnel,

including investigators, auditors, court coordinators, and other judicial staff, necessary to implement and administer this subchapter.

(b) Authorizes the presiding judges of the administrative judicial regions and counties to contract for federal money available from any source to reimburse the costs and salaries of the associate judges and personnel appointed under this subchapter and to also use public or private grants.

(c) Requires the presiding judges of the administrative judicial regions and OCA in cooperation with other agencies to take action necessary to maximize the amount of federal money available to fund the use of associate judges under this subchapter.

Sec. 54A.315. ASSIGNMENT OF JUDGES AND APPOINTMENT OF VISITING ASSOCIATE JUDGES. (a) Provides that this subchapter does not limit the authority of a presiding judge of an administrative judicial region to assign a judge eligible for assignment under Chapter 74 (Court Administration Act) to assist in processing guardianship proceedings or protective services proceedings in a reasonable time.

(b) Provides that if an associate judge appointed under this subchapter is temporarily unable to perform the associate judge's official duties because of absence resulting from family circumstances, illness, injury, disability, or military service, or if a vacancy occurs in the position of associate judge, the presiding judge of the administrative judicial region, or the presiding judges of the administrative judicial regions by majority vote, as applicable, in which the associate judge serves or the vacancy occurs are authorized to appoint a visiting associate judge to perform the duties of the associate judge during the period the associate judge is unable to perform the associate judge's duties or until another associate judge is appointed to fill the vacancy.

(c) Provides that a person is not eligible for appointment under this section unless the person has served for at least two years before the date of appointment as an associate judge under this subchapter, a district judge, a statutory county court judge, or a statutory probate judge.

(d) Provides that a visiting associate judge appointed under this section is subject to each provision of this subchapter that applies to an associate judge appointed under this subchapter, is entitled to compensation in the amount determined by a majority vote of the presiding judges of the administrative judicial regions using money available under this subchapter, and is not considered a state employee for any purpose.

(e) Provides that Section 2252.901 (Contracts With Former or Retired Agency Employees) does not apply to the appointment of a visiting associate judge under this section.

Sec. 54A.316. LIMITATION ON LAW PRACTICE. Prohibits an associate judge appointed under this subchapter from engaging in the private practice of law.

Sec. 54A.317. IMMUNITY. Provides that an associate judge appointed under this subchapter has the judicial immunity of a district judge. Provides that all existing immunity granted an associate judge by law, express or implied, continues in full force and effect.

SECTION 2. Effective date: September 1, 2021.