

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1129
By: Zaffirini
Jurisprudence
4/7/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1129 would implement recommendations from the Texas Guardianship Association to address two issues. First, mediation is underutilized in guardianship proceedings, despite its potential to resolve family disputes; minimize costs and conflict; and help the court identify feasible guardianship alternatives and supports and services. Accordingly, C.S.S.B. 1129 would direct the Office of Court Administration to establish a 24-hour guardianship mediation training course and require guardianship mediations to examine whether there are feasible alternatives and supports and services.

Second, in 2017 the legislature passed S.B. 39, which allowed courts with guardianship jurisdiction to transfer a case to a court in another county if the person under guardianship is moved to that county. This allows a court that is closer to the person with a guardian to monitor his or her care. Current law, however, does not explicitly require the recipient court to accept the transfer. To address this issue, C.S.S.B. 1129 would require a court located in the county in which the person under guardianship lives to accept the transfer of the guardianship proceeding if it is in the best interest of that person.

C.S.S.B. 1129 amends current law relating to guardianships, alternatives to guardianship, and supports and services for incapacitated persons.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Office of Court Administration of the Texas Judicial System in SECTION 5 (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, to enter certain orders, including an order certifying that the guardianship is in compliance with this code at the time of transfer. Makes nonsubstantive changes.

(b) Authorizes the court, in making a determination that the transfer is in the best interests of the ward under Subsection (a), to consider the interests of justice, the convenience of the parties, and 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 Chapter 1023 (Venue):

(1) creates this subdivision from existing text and makes nonsubstantive changes;

(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 jurisdiction of the ward who is the subject of the guardianship, and does not retain the authority to enforce an order entered for a violation of Title 3 (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 from being held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurs after the transfer when a guardianship is transferred from one county to another in accordance with this chapter.

(b) Prohibits a judge of the court to which a 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 before 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 a 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. Makes a nonsubstantive change.

(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 is authorized to 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 and alternatives to guardianship would be feasible to avoid the need for appointment of a guardian.

(c) Requires that the cost of mediation 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 (Establishment), Civil Practice and Remedies Code, if a system has been established in the county, and authorizes the local center 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 text and makes a nonsubstantive change.

(c) Creates this subsection from existing text and makes conforming changes.

SECTION 5. Amends Chapter 155, Government Code, by adding Subchapter G, as follows:

SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

Sec. 155.301. TRAINING. (a) Requires the Office of Court Administration of the Texas Judicial System (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 are 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 6. 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 7. Provides that OCA is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Provides that, if the legislature does not appropriate money specifically for that purpose, OCA is authorized to, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 8. Effective date: September 1, 2021.