

By: Metcalf

H.B. No. 3394

A BILL TO BE ENTITLED

AN ACT

relating to determining the incapacity of a guardian.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

(a) Subject to Subsection (c), the ~~[The]~~ court may remove a guardian as provided by Subsection (a-1) if:

(1) sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey a proper order of the court that has jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the guardian's duties;

(5) the guardian:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of

1 properly performing the duties of the guardian's trust;

2 (6) the guardian has engaged in conduct with respect  
3 to the ward that would be considered to be abuse, neglect, or  
4 exploitation, as those terms are defined by Section 48.002, Human  
5 Resources Code, if engaged in with respect to an elderly person or  
6 ~~[disabled]~~ person with a disability, as defined by that section;

7 (7) the guardian neglects to educate or maintain the  
8 ward as liberally as the means of the ward's estate and the ward's  
9 ability or condition permit;

10 (8) the guardian interferes with the ward's progress  
11 or participation in programs in the community;

12 (9) the guardian fails to comply with the requirements  
13 of Subchapter G, Chapter 1104;

14 (10) the court determines that, because of the  
15 dissolution of the joint guardians' marriage, the termination of  
16 the guardians' joint appointment and the continuation of only one  
17 of the joint guardians as the sole guardian is in the best interest  
18 of the ward; or

19 (11) the guardian would be ineligible for appointment  
20 as a guardian under Subchapter H, Chapter 1104.

21 (c) If there is probable cause to believe that a guardian is  
22 an incapacitated person, a court may, on the court's own motion or  
23 on complaint of an interested person, appoint an attorney ad litem  
24 to represent the ward's interests as provided by Section 1054.007  
25 and a court investigator or guardian ad litem to investigate  
26 whether the guardian should be removed under Subsection (a)(5)(A).  
27 If the court determines it is necessary, the court may appoint the

1 necessary physicians to examine the guardian to determine whether  
2 the guardian is an incapacitated person for purposes of Subsection  
3 (a)(5)(A).

4           SECTION 2. The changes in law made by this Act apply to a  
5 guardianship created before, on, or after the effective date of  
6 this Act.

7           SECTION 3. This Act takes effect September 1, 2021.