

1-1 By: Metcalf (Senate Sponsor - Creighton) H.B. No. 3394
1-2 (In the Senate - Received from the House May 3, 2021;
1-3 May 4, 2021, read first time and referred to Committee on
1-4 Jurisprudence; May 14, 2021, reported favorably by the following
1-5 vote: Yeas 4, Nays 0; May 14, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10			X	
1-11	X			
1-12	X			

1-13 A BILL TO BE ENTITLED
1-14 AN ACT

1-15 relating to determining the incapacity of a guardian.
1-16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-17 SECTION 1. Section [1203.052](#), Estates Code, is amended by
1-18 amending Subsection (a) and adding Subsection (c) to read as
1-19 follows:
1-20 (a) Subject to Subsection (c), the ~~The~~ court may remove a
1-21 guardian as provided by Subsection (a-1) if:
1-22 (1) sufficient grounds appear to support a belief that
1-23 the guardian has misapplied, embezzled, or removed from the state,
1-24 or is about to misapply, embezzle, or remove from the state, any of
1-25 the property entrusted to the guardian's care;
1-26 (2) the guardian fails to return any account or report
1-27 that is required by law to be made;
1-28 (3) the guardian fails to obey a proper order of the
1-29 court that has jurisdiction with respect to the performance of the
1-30 guardian's duties;
1-31 (4) the guardian is proved to have been guilty of gross
1-32 misconduct or mismanagement in the performance of the guardian's
1-33 duties;
1-34 (5) the guardian:
1-35 (A) becomes incapacitated;
1-36 (B) is sentenced to the penitentiary; or
1-37 (C) from any other cause, becomes incapable of
1-38 properly performing the duties of the guardian's trust;
1-39 (6) the guardian has engaged in conduct with respect
1-40 to the ward that would be considered to be abuse, neglect, or
1-41 exploitation, as those terms are defined by Section [48.002](#), Human
1-42 Resources Code, if engaged in with respect to an elderly person or
1-43 ~~disabled~~ person with a disability, as defined by that section;
1-44 (7) the guardian neglects to educate or maintain the
1-45 ward as liberally as the means of the ward's estate and the ward's
1-46 ability or condition permit;
1-47 (8) the guardian interferes with the ward's progress
1-48 or participation in programs in the community;
1-49 (9) the guardian fails to comply with the requirements
1-50 of Subchapter [G](#), Chapter [1104](#);
1-51 (10) the court determines that, because of the
1-52 dissolution of the joint guardians' marriage, the termination of
1-53 the guardians' joint appointment and the continuation of only one
1-54 of the joint guardians as the sole guardian is in the best interest
1-55 of the ward; or
1-56 (11) the guardian would be ineligible for appointment
1-57 as a guardian under Subchapter [H](#), Chapter [1104](#).
1-58 (c) If there is probable cause to believe that a guardian is
1-59 an incapacitated person, a court may, on the court's own motion or
1-60 on complaint of an interested person, appoint an attorney ad litem
1-61 to represent the ward's interests as provided by Section [1054.007](#)

2-1 and a court investigator or guardian ad litem to investigate
2-2 whether the guardian should be removed under Subsection (a)(5)(A).
2-3 If the court determines it is necessary, the court may appoint the
2-4 necessary physicians to examine the guardian to determine whether
2-5 the guardian is an incapacitated person for purposes of Subsection
2-6 (a)(5)(A).

2-7 SECTION 2. The changes in law made by this Act apply to a
2-8 guardianship created before, on, or after the effective date of
2-9 this Act.

2-10 SECTION 3. This Act takes effect September 1, 2021.

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