

By: Allison, Spiller, Hull

H.B. No. 653

A BILL TO BE ENTITLED

AN ACT

1
2 relating to guardianships of the person of wards with profound
3 intellectual disabilities who are minors or were minors when their
4 guardianship proceedings commenced.

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

6 SECTION 1. This Act may be cited as Caleb's Law.

7 SECTION 2. Section 1054.001, Estates Code, is amended to
8 read as follows:

9 Sec. 1054.001. APPOINTMENT OF ATTORNEY AD LITEM IN
10 PROCEEDING FOR APPOINTMENT OF GUARDIAN. In a proceeding under this
11 title for the appointment of a guardian and except as provided by
12 Section 1103A.001, the court shall appoint an attorney ad litem to
13 represent the proposed ward's interests.

14 SECTION 3. Section 1054.151, Estates Code, is amended to
15 read as follows:

16 Sec. 1054.151. INVESTIGATION OF GUARDIANSHIP APPLICATION.
17 On the filing of an application for guardianship under Section
18 1101.001 and except as provided by Section 1103A.001, a court
19 investigator shall investigate the circumstances alleged in the
20 application to determine whether a less restrictive alternative to
21 guardianship is appropriate.

22 SECTION 4. Subtitle D, Title 3, Estates Code, is amended by
23 adding Chapter 1103A to read as follows:

24 CHAPTER 1103A. PROCEDURE TO APPOINT CAREGIVER PARENT AS INDEPENDENT

1 GUARDIAN OF THE PERSON FOR CERTAIN MINORS REQUIRING GUARDIANSHIPS

2 AS ADULTS

3 Sec. 1103A.001. PROCEDURE FOR APPOINTMENT OF CAREGIVER
4 PARENT AS INDEPENDENT GUARDIAN OF THE PERSON OF CERTAIN MINORS WITH
5 PROFOUND INTELLECTUAL DISABILITIES. (a) This section applies only
6 to a proceeding for the appointment of a guardian of the person of a
7 proposed ward under Section 1101.001 or 1103.001 in which the:

8 (1) proposed ward is a minor who:

9 (A) has a profound intellectual disability, as
10 diagnosed by a physician licensed to practice in this state or as
11 determined, following an examination, by a psychologist licensed in
12 this state or certified by the Health and Human Services Commission
13 to perform the examination, in accordance with rules adopted by the
14 executive commissioner of the commission governing examinations of
15 that kind; and

16 (B) because of the incapacity described by
17 Paragraph (A) will require a guardianship of the person after the
18 proposed ward is no longer a minor; and

19 (2) proposed guardian of the person is a parent and
20 primary caregiver of the proposed ward.

21 (b) Notwithstanding any other law, if the applicant who
22 files an application for appointment as guardian of the person of a
23 proposed ward under Section 1101.001 or 1103.001 is the parent and
24 primary caregiver of the proposed ward, the applicant may present
25 to the court:

26 (1) an affidavit sworn to by the applicant that states
27 that the applicant is a parent of a proposed ward described by

1 Subsection (a)(1) and:

2 (A) is and has been the primary caregiver of the
3 proposed ward throughout all or most of the proposed ward's
4 childhood;

5 (B) has never been the subject of a substantiated
6 allegation, complaint, or investigation concerning the abuse,
7 neglect, or exploitation of the proposed ward;

8 (C) seeks to be appointed guardian of the person
9 of the proposed ward; and

10 (D) is not disqualified from serving as guardian
11 under Subchapter H, Chapter 1104;

12 (2) at least one written letter or certificate that
13 meets the requirements of:

14 (A) Sections 1101.103(a) and (b); or

15 (B) Section 1101.104, except that the period
16 prescribed by Section 1101.104(2) would be calculated from the date
17 the application is filed instead of the hearing date; and

18 (3) a written request that:

19 (A) the court make the findings required by
20 Section 1101.101 and appoint the parent as guardian of the person of
21 the proposed ward in accordance with this section without the
22 necessity of an investigation by a court investigator under Section
23 1054.151; and

24 (B) after appointment and qualification of the
25 applicant as guardian of the person of the ward, no other action
26 shall be had in the probate court in relation to the guardianship of
27 the person of the ward other than the review required by Section

1 1201.052(b).

2 (c) If, following a written request under Subsection (b)(3)
3 and on receipt of an affidavit that complies with Subsection (b)(1)
4 and a letter or certificate that complies with Subsection (b)(2),
5 the court is able to make the findings required by Section 1101.101,
6 the court, notwithstanding Subchapter C, Chapter 1104, shall
7 appoint the parent as guardian of the proposed ward's person
8 without appointing a court investigator or the continued
9 appointment of an attorney ad litem unless:

10 (1) the parent is disqualified from serving as
11 guardian under Subchapter H, Chapter 1104;

12 (2) the court has any reason to believe that one or
13 more of the assertions set out in the affidavit are untrue; or

14 (3) the court finds that the appointment is not in the
15 best interest of the proposed ward.

16 (d) A guardianship created under this section is considered
17 an independent guardianship of the person of a ward, and a guardian
18 appointed under this section is considered an independent guardian
19 of the person of a ward.

20 Sec. 1103A.002. SEALING OF CERTAIN RECORDS. (a) The court
21 shall seal a written letter or certificate submitted under Section
22 1103A.001(b) and any other medical record or document examined by
23 the court for purposes of this section unless the court finds good
24 cause not to seal the document.

25 (b) The court's records sealed under this section are not
26 open for inspection by any person except:

27 (1) on further order of the court after notice to the

1 guardian of the person of the ward whose information is sealed and a
2 finding of good cause; or

3 (2) in connection with a criminal or civil proceeding
4 as otherwise provided by law.

5 Sec. 1103A.003. PETITION FOR CONVERSION OF GUARDIANSHIP OF
6 THE PERSON TO INDEPENDENT GUARDIANSHIP OF THE PERSON. (a) This
7 section applies only to a guardianship of the person of a ward
8 created before September 1, 2023, if on the date the application for
9 guardianship was filed under Section 1101.001 or 1103.001:

10 (1) the ward met the description of a proposed ward
11 under Section 1103A.001(a)(1); and

12 (2) the guardian was the parent and primary caregiver
13 of the ward.

14 (b) The guardian in a guardianship to which this section
15 applies may petition the court with jurisdiction over the
16 guardianship to authorize that the guardianship of the person be
17 treated on a prospective basis as if the guardianship was created
18 and, if applicable, the guardian of the person appointed, under
19 Section 1103A.001.

20 SECTION 5. Section 1105.101(c), Estates Code, is amended to
21 read as follows:

22 (c) The court shall issue letters of guardianship of the
23 person to a person without the requirement of a bond if:

24 (1) the person is:

25 (A) a parent of the ward appointed under Section
26 1103A.001 who is not also appointed as guardian of the estate of the
27 ward; or

1 (B) named to be appointed guardian in a will made
2 by a surviving parent that is probated by a court in this state, or
3 in a written declaration made by a surviving parent, and the will or
4 declaration directs that the guardian serve without a bond; and

5 (2) the court finds that the guardian is qualified.

6 SECTION 6. Section 1106.002, Estates Code, is amended to
7 read as follows:

8 Sec. 1106.002. EXPIRATION OF LETTERS OF GUARDIANSHIP. (a)
9 Except as provided by Subsection (b), letters [~~Letters~~] of
10 guardianship expire one year and four months after the date the
11 letters are issued, unless renewed.

12 (b) Unless the court finds that it is not in the best
13 interest of the ward, letters of guardianship issued to a guardian
14 of the person of a ward appointed under Section 1103A.001 do not
15 expire unless the guardian is removed or would otherwise be
16 ineligible to serve as guardian.

17 SECTION 7. Section 1163.101, Estates Code, is amended by
18 amending Subsection (a) and adding Subsection (a-1) to read as
19 follows:

20 (a) Except as provided by Subsection (a-1), once [~~Once~~] each
21 year for the duration of the guardianship, a guardian of the person
22 shall file with the court a report that contains the information
23 required by this section.

24 (a-1) Unless the court finds that it is not in the best
25 interest of the ward, a guardian of the person of a ward appointed
26 under Section 1103A.001 is not required to file an annual report
27 under this section.

1 SECTION 8. The heading to Subchapter B, Chapter 1201,
2 Estates Code, is amended to read as follows:

3 SUBCHAPTER B. [~~ANNUAL~~] DETERMINATION TO CONTINUE, MODIFY, OR
4 TERMINATE GUARDIANSHIP

5 SECTION 9. Section 1201.052, Estates Code, is amended to
6 read as follows:

7 Sec. 1201.052. ANNUAL OR OTHER DETERMINATION. (a) To
8 determine whether a guardianship should be continued, modified, or
9 terminated, the court in which the guardianship proceeding is
10 pending:

11 (1) shall, except as provided by Subsection (b),
12 review annually each guardianship in which the application to
13 create the guardianship was filed after September 1, 1993; and

14 (2) may review annually any other guardianship.

15 (b) To determine whether a guardianship of the person of a
16 ward created under Section 1103A.001 should be continued, modified,
17 or terminated, the court in which the guardianship proceeding is
18 pending shall review the guardianship of the person at the
19 discretion of the court but not more frequently than once every five
20 years unless the guardian of the person of the ward is also the
21 guardian of the estate of the ward.

22 (c) Notwithstanding Subsection (b), on receipt of a claim
23 that the guardianship is no longer in the best interest of the ward,
24 the court may review the matter and take any action the court
25 determines necessary.

26 SECTION 10. The changes in law made by this Act apply to a
27 guardianship proceeding that is pending or commenced on or after

1 the effective date of this Act.

2 SECTION 11. This Act takes effect immediately if it
3 receives a vote of two-thirds of all the members elected to each
4 house, as provided by Section 39, Article III, Texas Constitution.
5 If this Act does not receive the vote necessary for immediate
6 effect, this Act takes effect September 1, 2023.