

BILL ANALYSIS

C.S.H.B. 230
By: Hartnett
Judiciary
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Section 761, Texas Probate Code, provides for the conditions under which a court may remove a guardian appointed under this chapter. Subsection (a) of this section pertains to conditions under which a court may remove a guardian without notice to the guardian. Similarly, Subsection (c) provides the conditions under which a court must give notice to the guardian prior to seeking his or her removal.

It is possible for a guardian to neglect a ward without necessarily mistreating the ward. A guardian has a duty to take care of and protect the ward. For example, a ward in a nursing home might not have an estate. If the guardian does not fill out the Medicaid forms or has not paid for the ward's care, the nursing home will discharge the ward due to the guardian's neglect. However arguably the guardian has not "cruelly treated" the ward.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 230 adds the concept of neglect to Sections 761(a)(7) and (c)(6) to provide that a guardian can be removed without notice for the guardian's neglect of the ward.

The bill is prospective in effect.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute places the words "neglected or" before "cruelly treated" in (a)(7), which the original placed after, and, for greater clarity, adds a new (a)(8) to contain the concept of a guardian neglecting the education or maintenance of a ward, which the original leaves as part of (a)(7). Similar changes in word order and numbering are made in subsection (a)(6) and (a)(6-a). In addition, the substitute removes the words "as guardian of the person" from Section 761 (c)(6).