

By: Hartnett

H.B. No. 3112

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the referral of an elderly or disabled person to the  
3 Department of Aging and Disability Services and the determination  
4 by that agency of the need for a guardianship for that person.

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

6 SECTION 1. Section 161.101, Human Resources Code, is  
7 amended by amending Subsections (b) and (c) and adding Subsections  
8 (c-1) and (c-2) to read as follows:

9 (b) The department shall conduct a thorough assessment of  
10 the conditions and circumstances of an elderly or disabled person  
11 referred to the department under Section 48.209(a)(2) for  
12 guardianship services to determine whether a guardianship is  
13 appropriate for the individual or whether a less restrictive  
14 alternative is available for the individual. In determining  
15 whether a guardianship is appropriate, the department may consider  
16 the resources and funds available to meet the needs of the elderly  
17 or disabled person. The executive commissioner shall adopt rules  
18 for the administration of this subsection.

19 (c) Subject to Subsection (c-1), if [~~if~~] after conducting an  
20 assessment of an elderly or disabled person under Subsection (b)  
21 the department determines that:

22 (1) [~~a~~] guardianship is appropriate for the elderly or  
23 disabled person, the department shall:

24 (A) file an application under Section 682 or 875,

1 Texas Probate Code, to be appointed guardian of the person or  
2 estate, or both, of the individual; or

3 (B) if the department determines that an  
4 alternative person or program described by Section 161.102 is  
5 available to serve as guardian, refer the individual to that person  
6 or program as provided by that section; or

7 (2) [~~. If after conducting the assessment the~~  
8 ~~department determines that]~~ a less restrictive alternative to  
9 guardianship is available for the elderly or disabled person, the  
10 department shall pursue the less restrictive alternative instead of  
11 taking an action described by Subdivision (1) [~~applying for~~  
12 ~~appointment as the person's guardian].~~

13 (c-1) Not later than the 70th day after the date the  
14 department receives a referral under Section 48.209(a)(2) for  
15 guardianship services, the department shall make the determination  
16 required by Subsection (c) and, if the department determines that  
17 guardianship is appropriate and that the department should serve as  
18 guardian, file the application to be appointed guardian under  
19 Section 682 or 875, Texas Probate Code. If the department  
20 determines that an alternative person or program described by  
21 Section 161.102 is available to serve as guardian, the department  
22 shall refer the elderly or disabled person to that person or program  
23 in a manner that would allow the person or program sufficient time  
24 to file, not later than the 70th day after the date the department  
25 received the referral, an application to be appointed guardian.

26 (c-2) With the approval of the Department of Family and  
27 Protective Services, the department may extend, by not more than 30

1 days, a period prescribed by Subsection (c-1) if the extension is:

2 (1) made in good faith, including any extension for a  
3 person or program described by Section 161.102 that intends to file  
4 an application to be appointed guardian; and

5 (2) in the best interest of the elderly or disabled  
6 person.

7 SECTION 2. The changes in law made by this Act apply to a  
8 referral of a person by the Department of Family and Protective  
9 Services to the Department of Aging and Disability Services for a  
10 determination of the need for a guardianship that is made on or  
11 after the effective date of this Act.

12 SECTION 3. This Act takes effect September 1, 2009.