

BILL ANALYSIS

Senate Research Center
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S.B. 220
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 220 includes procedural reforms to make it easier for families to navigate the guardianship system, increase guardians' due process protections, and protect wards' assets. Specifically, this bill directs courts to immediately notify guardians upon their removal and give removed guardians 30 days to seek reinstatement; directs courts to give family members notice of guardianship hearings; directs courts to appoint a guardian ad litem and attorney ad litem in certain guardianship removal proceedings and allow one person to serve in both roles unless there is a conflict; authorizes courts to require a party other than the ward to pay the ward's attorney's fees whenever fair and just; authorizes courts to tax court costs as are fair and just; encourages the Department of Aging and Disability Services (DADS) to use volunteers to assist with DADS guardianships; clarifies that DADS volunteers may provide certain services (e.g. life enrichment activities, companionship, transportation) but may not provide guardianship services; clarifies that courts must notify a successor guardian of a hearing to consider reinstating the removed guardian or a determination of who the permanent successor guardian will be; and allows a ward to retain the right to hire an attorney.

As proposed, S.B. 220 amends current law relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 161.109(a) and (b), Human Resources Code, as follows:

(a) Requires the Department of Aging and Disability Services (DADS) to have access to all records and documents concerning an individual who is referred for guardianship services or to whom guardianship services are provided under this subchapter (Guardianship Services) that are necessary to the performance of DADS' duties under this subchapter, including client-identifying information; and medical, psychological, educational, financial, and, rather than or, residential information.

(b) Exempts DADS from the payment of a fee otherwise required or authorized by law to obtain a financial or medical record, including a mental health record, from any source if the request for a record is related to an assessment, rather than from a hospital or health care provider if the request is made in the course of an assessment, for guardianship services conducted by DADS or the provision of guardianship services by DADS.

SECTION 2. Amends Section 161.111, Human Resources Code, by adding Subsections (e) and (f), as follows:

(e) Authorizes DADS on request, to the extent consistent with DADS' policies and procedures, to release confidential information in the record of an individual who is

assessed by DADS or is a former ward of DADS to the individual, the individual's guardian, or the executor or administrator of the individual's estate.

(f) Requires DADS, before releasing confidential information under Subsection (e), to edit the information to protect the identity of the reporter to the Department of Family and Protective Services (DFPS) and to protect any other individual whose life or safety may be endangered by the release. Provides that a release of information under Subsection (e) does not constitute a release for purposes of waiving the confidentiality of the information released.

SECTION 3. Amends Subchapter E, Chapter 161, Human Resources Code, by adding Section 161.114, as follows:

Sec. 161.114. USE OF VOLUNTEERS. (a) Defines "volunteer" in this section.

(b) Requires DADS to encourage the involvement of volunteers in guardianships in which DADS serves as guardian of the person or estate, or both. Requires DADS, to encourage that involvement, to identify issues and tasks with which a volunteer could assist DADS in a guardianship.

SECTION 4. Amends Section 633(d), Texas Probate Code, to require an applicant to mail a copy of the application for guardianship and a notice containing certain required information by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to, in addition to certain other individuals, each person named as another relative within the third degree by consanguinity, rather than named as next of kin, in the application for guardianship as required by Section 682(10) (relating to the proposed ward being a minor known by the applicant) or (12) (relating to the proposed ward being an adult known by the applicant) of this code if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

SECTION 5. Amends Section 665A, Texas Probate Code, as follows:

Sec. 665A. PAYMENT FOR PROFESSIONAL SERVICES. Authorizes the court to allocate amounts taxed as costs under this section among the parties as the court finds is just and equitable. Provides that, if after examining the proposed ward's assets the court determines the proposed ward is unable to pay for costs allocated to the proposed ward under this section, the county is responsible for those costs, rather than to pay for services provided by an attorney, a mental health professional, or an interpreter appointed under this chapter, as applicable, the county is responsible for the cost of those services.

SECTION 6. Amends Section 665B, Texas Probate Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes a court that creates a guardianship or creates a management trust under Section 867 (Creation of Management Trust) of this code for a ward under this chapter, on request of a person who filed an application to be appointed guardian of the proposed ward, an application for the appointment of another suitable person as guardian of the proposed ward, or an application for the creation of the management trust, to authorize compensation of an attorney who represents the person who filed the application at the application hearing, regardless of whether the person is appointed the ward's guardian or whether a management trust is created, from:

(1) subject to Subsection (a-1) of this section, the parties to the guardianship proceeding, allocated as the court finds is just and equitable; or

(2) subject to Subsection (a-1) of this section, available funds of the management trust, if created, rather than the ward's estate or management trust, if created.

(a-1) Creates this subsection from existing text. Authorizes the court to authorize amounts allocated to the ward's estate under Subsection (a)(1) of this section or amounts to be paid from available funds of the management trust as provided by Subsection (a)(2) of this section to be instead paid from the county treasury if:

(1) the ward's estate or management trust is insufficient to pay the amounts; and

(2) funds in the county treasury are budgeted for that purpose.

Makes conforming changes.

SECTION 7. Amends the heading to Section 669, Texas Probate Code, to read as follows:

Sec. 669. COSTS IN GUARDIANSHIP PROCEEDING GENERALLY.

SECTION 8. Amends Section 669(a), Texas Probate Code, as follows:

(a) Requires that the cost of a proceeding, except as provided by Subsection (b) (relating to requiring the applicant to pay the cost of the proceeding) or another provision of this code, in a guardianship matter, including the cost of the guardian ad litem or court visitor, be paid by the parties to the proceeding, including by the ward out of the guardianship estate. Requires the court to allocate the assessed costs among the parties as the court finds is just and equitable. Requires that that amount, if the guardianship estate is insufficient to pay for the cost of the proceeding allocated to the ward, be paid out of the county treasury, and requires that the judgment of the court be issued accordingly. Makes nonsubstantive changes.

SECTION 9. Amends Section 682, Texas Probate Code, to require that an application to commence a proceeding for the appointment of a guardian be sworn to by the applicant and state certain information, including if the proposed ward is a minor and if known by the applicant, the names, ages, and addresses of certain persons, including if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults; and if the proposed ward is an adult and if known by the applicant, certain information regarding certain persons, including if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased, or, if there is no spouse, parent, adult sibling, or adult child, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults. Makes conforming changes.

SECTION 10. Amends Section 694A(d), Texas Probate Code, to require that a citation, when an application is filed under this section, be served on the ward's guardian; the ward, if the ward is not the applicant; and the ward's spouse and each of the ward's parents, adult siblings, and adult children, or if ward's spouse and each of the ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child, each other relative who is related to the ward within the third degree by consanguinity and who is an adult. Makes a nonsubstantive change.

SECTION 11. Amends Sections 695(a) and (b), Texas Probate Code, as follows:

(a) Authorizes the court, on a finding that a necessity for the immediate appointment of a successor guardian exists, to appoint a successor guardian without citation or notice, subject to Section 761(f) of this code, if applicable.

(b) Provides that a successor guardian has the powers and rights and is subject to all of the duties of the preceding guardian, subject to Section 761(f) of this code, as applicable.

SECTION 12. Amends Section 760, Texas Probate Code, by adding Subsection (c-1), as follows:

(c-1) Requires the sheriff or other officer to personally serve the citation issued under Subsection (c) (relating to calling an application to the attention of a judge and issuing a citation) of this section on the ward's spouse, if any, and each of the ward's parents, if living. Requires the clerk to mail a copy of the citation by registered or certified mail, return receipt requested, to each of the ward's adult siblings and adult children, if any; or each other relative who is related to the ward within the third degree of consanguinity and who is an adult if the ward's spouse and each of the ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

SECTION 13. Amends Section 761, Texas Probate Code, by amending Subsections (a), (c), and (f) and adding Subsections (a-1), (b-1), and (c-2), as follows:

(a) Authorizes the court, on its own motion or on motion of any interested person, including the ward, and without notice, to remove any guardian appointed under this chapter, who, in addition to certain other actions, has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002 (Definitions), Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section, rather than who has neglected or cruelly treated a ward.

(a-1) Requires the court, in proceeding to remove a guardian under Section (a)(6) (relating to misapplying, embezzling, or removing property committed to a guardian's care from the state), (7) (relating to abuse, neglect, or exploitation), or (8) (relating to neglecting to educate or maintain a ward as liberally as means and condition permit) of this section, to appoint a guardian ad litem as provided by Section 645 (Guardians Ad Litem) of this code and an attorney ad litem. Provides that the attorney ad litem has the duties prescribed by Section 647 (Appointment of Attorney Ad Litem and Interpreter) of this code. Authorizes the court, in the interest of judicial economy, to appoint the same person as guardian ad litem and attorney ad litem unless a conflict exists between the interests to be represented by the guardian ad litem and attorney ad litem.

(b-1) Requires the court clerk to issue notice of an order rendered by the court removing a guardian under Subsection (a)(1) (relating to neglecting to qualify in the required manner and time), (2) (relating to failing to return within 30 days after qualification), (3) (relating to failing to give a new bond within the prescribed time), (4) (relating to absenting or removing oneself from the state without court permission), (5) (relating to being unable to be served with notices or other processes), (6), (7), or (8) of this section. Requires that the notice state the names of the ward and the removed guardian, state the date the court signed the order of removal, and be personally served on the removed guardian.

(c) Authorizes the court to remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when certain circumstances exist, including that the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section. Makes a conforming change.

(c-2) Requires the court clerk, in addition to citing the guardian to appear as required by Subsection (c) or (c-1) (relating to removing a guardian ineligible for appointment) of this section, to issue a notice stating the names of the ward and the guardian proposed to be removed and the date and location of the hearing on the proposed removal. Requires the sheriff or other officer to personally serve the notice on the ward's spouse, if any, and each of the ward's parents, if living. Requires the clerk to mail a copy of the notice by registered or certified mail, return receipt requested, to each of the ward's adult siblings and adult children, if any, or each other relative who is related to the ward within the third degree by consanguinity and who is an adult if the ward's spouse and each of the ward's parents, adult siblings, and adult children are deceased, or there is no spouse, parent, adult sibling, or adult child.

(f) Provides that, subject to an order of the court, a successor guardian has the rights and powers of the removed guardian, except that a successor guardianship created under this subsection following the removal of a guardian under Subsection (a) of this section is considered temporary and remains in effect only for the period until the court renders an order under Section 762A of this code, which is prohibited from exceeding the period prescribed for a temporary guardianship under Section 875(h) (relating to the maximum number of days a temporary guardianship may remain in effect) of this code. Makes a nonsubstantive change.

SECTION 14. Amends Section 762, Texas Probate Code, as follows:

Sec. 762. New heading: REINSTATEMENT AFTER REMOVAL UNDER CERTAIN CIRCUMSTANCES. (a) Authorizes a guardian who is removed under Section 761(a)(6) (relating to misapplying, embezzling, or removing from the state all or any part of the property committed to a guardian's care) or (7) (relating to engaging in conduct with respect to the ward that would be considered abuse, neglect, or exploitation) of this code, rather than a personal representative who is removed under Subsection (a)(6) or Section 761 of this code, to file an application with the court for a hearing to determine whether the guardian should be reinstated, not later than the 30th day, rather than 10th day, after the court signs the order of removal. Makes a conforming change.

(b) Deletes existing text requiring the court clerk to issue a notice stating that the application for reinstatement was filed to the applicant, ward, a person interested in the welfare of the ward or the ward's estate, and, if applicable, a person who has control of the care and custody of the ward.

(b-1) Requires the sheriff or other officer to personally serve the citation issued under Subsection (b) of this section on the ward's spouse, if any, and each of the ward's parents, if living. Requires the court clerk to mail a copy of the citation by registered or certified mail, return receipt requested, to each of the ward's adult siblings and adult children, if any; or each other relative who is related to the ward within the third degree by consanguinity and who is an adult if the ward's spouse and each of the ward's parents, adult siblings, and adult children are deceased, or there is no spouse, parent, adult sibling, or adult child.

(c) Requires the court to hold a hearing on an application for reinstatement under this section as soon as practicable after the application is filed, but not later than the 60th day after the date the court signed the order of removal. Makes conforming and nonsubstantive changes.

(d) Makes conforming changes.

SECTION 15. Amends Subpart D, Part 4, Chapter XIII, Texas Probate Code, by adding Section 762A, as follows:

Sec. 762A. PERMANENT SUCCESSOR GUARDIAN FOLLOWING REMOVAL. (a) Requires the court to set a date and location for a hearing regarding the temporary successor guardian appointed under Section 761(f) of this code. Requires that the hearing be set for a date that is on or before the expiration of the period prescribed for a temporary guardianship under Section 875(h) of this code. Requires that the hearings required by this section and Section 762 (Reinstatement After Removal), if the guardian who was removed under Section 761 of this code files an application for reinstatement under Section 762 of this code, be conducted jointly.

(b) Requires the court clerk to issue a citation stating the date and location of the hearing set under Subsection (a) of this section. Requires the sheriff or other officer to personally serve the citation on the ward's spouse, if any, and each of the ward's parents, if living. Requires the court clerk to mail a copy of the citation by registered or certified mail, return receipt requested, to each of the ward's adult siblings and adult children, if any, or each other relative who is related to the ward

within the third degree by consanguinity and who is an adult if the ward's spouse and each of the ward's parents, adult siblings, and adult children are deceased, or there is no spouse, parent, adult sibling, or adult child.

(c) Requires the court that removed the guardian and appointed a temporary successor guardian, at the hearing to:

(1) if the hearing is conducted jointly with the hearing under Section 762 of this code, render an order under Section 762(c) (relating to entering an reinstatement order) reinstating the removed guardian and setting aside the order appointing the successor guardian if the court makes the findings required by that section;

(2) convert the temporary successor guardianship to a permanent successor guardianship; or

(3) appoint another person as the permanent successor guardian for the ward.

SECTION 16. Requires DADS and the adult protective services division of DFPS to identify and implement modifications to investigations of abuse, neglect, and exploitation conducted under Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code, and the provision of protective and guardianship services under Chapters 48 and 161 (Department of Aging and Disabilities Services), Human Resources Code, to ensure that the agencies prevent any unnecessary duplication of efforts in performing their respective responsibilities under those chapters.

SECTION 17. (a) Provides that this Act, except as otherwise provided by this section, applies to a guardianship created before, on, or after the effective date of this Act.

(b) Makes application of Sections 633(d) and 682, Texas Probate Code, as amended by this Act, to an application for guardianship, prospective.

(c) Makes application of Section 694A(d), Texas Probate Code, as amended by this Act, to an application for the complete restoration of a ward's capacity or modification of a guardianship, prospective.

(d) Makes application of Section 760(c-1), Texas Probate Code, as added by this Act, with respect to a guardian's resignation, prospective.

(e) Makes application of Sections 695, 761, and 762, Texas Probate Code, as amended by this Act, and Section 762A, Texas Probate Code, as added by this Act, to a removal of a guardian ordered by a court, prospective.

SECTION 18. Effective date: September 1, 2011.