

By: Hughes

H.B. No. 3656

A BILL TO BE ENTITLED

AN ACT

relating to court authorization of elective surgery for certain persons with disabilities.

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

SECTION 1. Subtitle E, Title 7, Health and Safety Code, is amended by adding Chapter 618 to read as follows:

CHAPTER 618. ELECTIVE MEDICAL PROCEDURES FOR INCAPACITATED INDIVIDUALS WITH DEVELOPMENTAL OR INTELLECTUAL DISABILITIES

Sec. 618.001. DEFINITIONS. In this chapter:

(1) "Elective medical procedure" means a medical procedure that does not prevent or treat an illness or disease and is solely based on the presence of a disability. The term includes sterilization and growth attenuation.

(2) "Incapacitated individual with a disability" means an individual who has a developmental or intellectual disability and who is an incapacitated person because of age or mental condition.

(3) "Incapacitated person" has the meaning assigned by Section 601, Texas Probate Code.

Sec. 618.002. COURT ORDER AUTHORIZING ELECTIVE MEDICAL PROCEDURE. (a) An elective medical procedure may not be performed on an incapacitated individual with a disability unless a court issues an order authorizing the procedure.

(b) There is a rebuttable presumption that the elective

1 medical procedure is not in the best interest of the incapacitated
2 individual with a disability.

3 (c) A court may issue an order authorizing the elective
4 medical procedure only if the court finds that:

5 (1) there are no medically preferable alternatives to
6 the procedure;

7 (2) the risks of the procedure and the long-term risks
8 to the individual are minimal;

9 (3) the individual will not likely suffer
10 psychological harm; and

11 (4) the procedure will promote the individual's best
12 interests.

13 Sec. 618.003. PETITION FOR COURT ORDER. The parent,
14 guardian, or managing conservator of an incapacitated individual
15 with a disability may petition a district court with probate
16 jurisdiction for an order authorizing an elective medical procedure
17 for the individual.

18 Sec. 618.004. COURT HEARING. (a) The court shall hold a
19 hearing on the petition filed under Section 618.003.

20 (b) A party to the proceeding is entitled on request to a
21 preferential setting for the hearing.

22 (c) The court shall appoint an attorney ad litem and a
23 guardian ad litem to represent the interests of the incapacitated
24 individual with a disability in the manner provided by Chapter 107,
25 Family Code, or Section 645, Texas Probate Code, as appropriate, or
26 may appoint an attorney to serve in the dual role.

27 (d) The hearing must be adversary in order to secure a

1 complete record, and the attorney ad litem shall advocate the best
2 interests of the incapacitated individual with a disability.

3 Sec. 618.005. ACCESS TO INCAPACITATED INDIVIDUAL WITH A
4 DISABILITY AND INFORMATION RELATING TO INDIVIDUAL. (a) In
5 conjunction with an appointment under this chapter, the court shall
6 issue an order authorizing the attorney ad litem and guardian ad
7 litem for the incapacitated individual with a disability, and any
8 amicus attorney, to have immediate access to the individual and any
9 information relating to the individual.

10 (b) If the attorney ad litem or guardian ad litem considers
11 it necessary, the court shall order the performance of a
12 determination under Section 593.005 to help the ad litem evaluate
13 the capacity of the incapacitated individual with a disability.

14 (c) Without requiring a further order or release, the
15 custodian of any relevant records relating to the incapacitated
16 individual with a disability, including records regarding social
17 services, law enforcement records, school records, and records of a
18 probate or court proceeding, shall provide access to a person
19 authorized to access the records under Subsection (a).

20 (d) Without requiring a further order or release, the
21 custodian of a medical, mental health, or drug or alcohol treatment
22 record of an incapacitated individual with a disability that is
23 privileged or confidential under other law shall release the record
24 to a person authorized to access the record under Subsection (a),
25 except that an individual's drug or alcohol treatment record that
26 is confidential under 42 U.S.C. Section 290dd-2 may be released
27 only as provided under applicable federal regulations.

1 (e) The disclosure of a confidential record under this
2 section does not affect the confidentiality of the record, and the
3 person provided access to the record may not disclose the record
4 further except as provided by court order or other law.

5 (f) Notwithstanding the provisions of this section, the
6 provisions of Section 159.008, Occupations Code, apply to
7 information obtained under this section.

8 (g) Records obtained under this section shall be destroyed
9 on termination of the appointment.

10 Sec. 618.006. SUBSTITUTED JUDGMENT OF ATTORNEY AD LITEM FOR
11 INCAPACITATED INDIVIDUAL WITH A DISABILITY. (a) An attorney ad
12 litem appointed to represent an incapacitated individual with a
13 disability may determine that the individual does not have the
14 capacity to meaningfully formulate the individual's objectives of
15 representation in the case.

16 (b) An attorney ad litem or an attorney appointed in the
17 dual role who determines that the individual does not have the
18 capacity to meaningfully formulate the individual's objectives of
19 representation may present to the court a position that the
20 attorney determines will serve the best interests of the
21 individual. An attorney ad litem who is not appointed in the dual
22 role shall consult with the guardian ad litem and, without being
23 bound by the guardian ad litem's opinion or recommendation, ensure
24 that the guardian ad litem's opinion and basis for any
25 recommendation regarding the best interests of the individual are
26 presented to the court.

27 Sec. 618.007. INTERVIEW AND EVALUATION ORDER BY COURT. (a)

1 If there is reason to believe that the incapacitated individual
2 with a disability may have the capacity to understand the nature and
3 consequences of the elective medical procedure, the court shall
4 interview the individual before the eighth day after the date of the
5 hearing to determine if the individual assents to the elective
6 medical procedure. The interview shall be conducted in chambers
7 and out of the presence of the parent, guardian, or managing
8 conservator of the individual.

9 (b) If the court considers it necessary, the court may order
10 the performance of a determination under Section 593.005 to help
11 the court evaluate the individual's capacity.

12 SECTION 2. This Act applies to an elective medical
13 procedure that is performed on or after the effective date of this
14 Act, regardless of the date on which it was originally scheduled.

15 SECTION 3. This Act takes effect September 1, 2013.