

By: Rodriguez

S.B. No. 528

A BILL TO BE ENTITLED

AN ACT

relating to examination requirements for wards and proposed wards in certain guardianship matters.

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

SECTION 1. Section 1101.103, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: PHYSICIAN OR PSYCHOLOGIST EXAMINATION. (a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician or psychologist licensed in this state that is:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician or psychologist performed not earlier than the 120th day before the date the application is filed.

(b) The letter or certificate must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

- 1 (A) handle business and managerial matters;
2 (B) manage financial matters;
3 (C) operate a motor vehicle;
4 (D) make personal decisions regarding residence,
5 voting, and marriage; and

6 (E) consent to medical, dental, psychological,
7 or psychiatric treatment;

8 (2) in providing a description under Subdivision (1)
9 regarding the proposed ward's ability to operate a motor vehicle
10 and make personal decisions regarding voting, state whether in the
11 physician's or psychologist's opinion the proposed ward:

12 (A) has the mental capacity to vote in a public
13 election; and

14 (B) has the ability to safely operate a motor
15 vehicle;

16 (3) provide:

17 (A) if a physician performs the examination, an
18 evaluation of the proposed ward's physical condition and mental
19 function and summarize the proposed ward's medical history if
20 reasonably available; or

21 (B) if a psychologist performs the examination,
22 an evaluation of the proposed ward's mental function and summarize
23 the proposed ward's psychological history, if applicable;

24 (4) state how or in what manner the proposed ward's
25 ability to make or communicate responsible decisions concerning
26 himself or herself is affected by the proposed ward's physical or
27 mental health, including the proposed ward's ability to:

- 1 (A) understand or communicate;
- 2 (B) recognize familiar objects and individuals;
- 3 (C) perform simple calculations;
- 4 (D) reason logically; and
- 5 (E) administer to daily life activities;
- 6 (5) state whether any current medication affects the
- 7 proposed ward's demeanor or the proposed ward's ability to
- 8 participate fully in a court proceeding;
- 9 (6) describe the precise physical or ~~and~~ mental
- 10 conditions underlying a diagnosis of a mental disability, and state
- 11 whether the proposed ward would benefit from supports and services
- 12 that would allow the individual to live in the least restrictive
- 13 setting; and
- 14 (7) include any other information required by the
- 15 court.

16 (c) If the court determines it is necessary, the court may

17 appoint a physician or psychologist ~~[the necessary physicians]~~ to

18 examine the proposed ward. The court must make its determination

19 with respect to the necessity for a physician's or psychologist's

20 examination of the proposed ward at a hearing held for that

21 purpose. Not later than the fourth day before the date of the

22 hearing, the applicant shall give to the proposed ward and the

23 proposed ward's attorney ad litem written notice specifying the

24 purpose and the date and time of the hearing.

25 (d) A physician or psychologist who examines the proposed

26 ward, other than a physician or psychologist who examines the

27 proposed ward under Section 1101.104(2), shall make available for

1 inspection by the attorney ad litem appointed to represent the
2 proposed ward a written letter or certificate from the physician or
3 psychologist that complies with the requirements of Subsections (a)
4 and (b).

5 SECTION 2. Section 1202.152, Estates Code, as effective
6 January 1, 2014, is amended to read as follows:

7 Sec. 1202.152. PHYSICIAN'S OR PSYCHOLOGIST'S LETTER OR
8 CERTIFICATE REQUIRED. (a) The court may not grant an order
9 completely restoring a ward's capacity or modifying a ward's
10 guardianship under an application filed under Section 1202.051
11 unless the applicant presents to the court a written letter or
12 certificate from a physician or psychologist licensed in this state
13 that is dated:

14 (1) not earlier than the 120th day before the date the
15 application was filed; or

16 (2) after the date the application was filed but
17 before the date of the hearing.

18 (b) A letter or certificate presented under Subsection (a)
19 must:

20 (1) describe the nature and degree of incapacity,
21 including, as appropriate, the medical or psychological history if
22 reasonably available, or state that, in the physician's or
23 psychologist's opinion, the ward has the capacity to:

24 (A) provide food, clothing, and shelter for
25 himself or herself;

26 (B) care for the ward's own physical health; and

27 (C) manage the ward's financial affairs;

1 (2) provide:

2 (A) if the letter or certificate is from a
3 physician, a medical prognosis specifying the estimated severity of
4 any incapacity; or

5 (B) if the letter or certificate is from a
6 psychologist, a psychological prognosis specifying the estimated
7 severity of any mental incapacity;

8 (3) state how or in what manner the ward's ability to
9 make or communicate responsible decisions concerning himself or
10 herself is affected by the ward's physical or mental health;

11 (4) state whether any current medication affects the
12 ward's demeanor or the ward's ability to participate fully in a
13 court proceeding;

14 (5) describe the precise physical or ~~and~~ mental
15 conditions underlying a diagnosis of senility, if applicable; and

16 (6) include any other information required by the
17 court.

18 (c) If the court determines it is necessary, the court may
19 appoint a physician or psychologist ~~[the necessary physicians]~~ to
20 examine the ward in the same manner and to the same extent as a ward
21 is examined by a physician or psychologist under Section 1101.103
22 or 1101.104.

23 SECTION 3. (a) The changes in law made by this Act to
24 Section 1101.103, Estates Code, apply only to an application for
25 the creation of a guardianship filed on or after the effective date
26 of this Act. An application for the creation of a guardianship
27 filed before the effective date of this Act is governed by the law

1 in effect on the date the application was filed, and the former law
2 is continued in effect for that purpose.

3 (b) The changes in law made by this Act to Section 1202.152,
4 Estates Code, apply only to an application for the complete
5 restoration of a ward's capacity or modification of a guardianship
6 filed on or after the effective date of this Act. An application
7 for the complete restoration of a ward's capacity or modification
8 of a guardianship filed before the effective date of this Act is
9 governed by the law in effect on the date the application was filed,
10 and the former law is continued in effect for that purpose.

11 SECTION 4. This Act takes effect January 1, 2014.