

1-1 By: Smithee (Senate Sponsor - Zaffirini) H.B. No. 39
 1-2 (In the Senate - Received from the House April 22, 2015;
 1-3 April 23, 2015, read first time and referred to Committee on State
 1-4 Affairs; May 7, 2015, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; May 7, 2015, sent
 1-6 to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 39 By: Zaffirini

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to guardianships for incapacitated persons and to
 1-22 substitutes for guardianships for certain adults with
 1-23 disabilities.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 1001.001(b), Estates Code, is amended to
 1-26 read as follows:

1-27 (b) In creating a guardianship that gives a guardian limited
 1-28 authority over an incapacitated person, the court shall design the
 1-29 guardianship to encourage the development or maintenance of maximum
 1-30 self-reliance and independence in the incapacitated person,
 1-31 including by presuming that the incapacitated person retains
 1-32 capacity to make personal decisions regarding the person's
 1-33 residence.

1-34 SECTION 2. Chapter 1002, Estates Code, is amended by adding
 1-35 Sections 1002.0015 and 1002.031 to read as follows:

1-36 Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP.
 1-37 "Alternatives to guardianship" includes the:

1-38 (1) execution of a medical power of attorney under
 1-39 Chapter 166, Health and Safety Code;

1-40 (2) appointment of an attorney in fact or agent under a
 1-41 durable power of attorney as provided by Subtitle P, Title 2;

1-42 (3) execution of a declaration for mental health
 1-43 treatment under Chapter 137, Civil Practice and Remedies Code;

1-44 (4) appointment of a representative payee to manage
 1-45 public benefits;

1-46 (5) establishment of a joint bank account;

1-47 (6) creation of a management trust under Chapter 1301;

1-48 (7) creation of a special needs trust;

1-49 (8) designation of a guardian before the need arises
 1-50 under Subchapter E, Chapter 1104; and

1-51 (9) establishment of alternate forms of
 1-52 decision-making based on person-centered planning.

1-53 Sec. 1002.031. SUPPORTS AND SERVICES. "Supports and
 1-54 services" means available formal and informal resources and
 1-55 assistance that enable an individual to:

1-56 (1) meet the individual's needs for food, clothing, or
 1-57 shelter;

1-58 (2) care for the individual's physical or mental
 1-59 health;

1-60 (3) manage the individual's financial affairs; or

2-1 (4) make personal decisions regarding residence,
2-2 voting, operating a motor vehicle, and marriage.

2-3 SECTION 3. Section 1002.015, Estates Code, is amended to
2-4 read as follows:

2-5 Sec. 1002.015. GUARDIANSHIP PROCEEDING. The term
2-6 "guardianship proceeding" means a matter or proceeding related to a
2-7 guardianship or any other matter covered by this title, including:

2-8 (1) the appointment of a guardian of a minor or other
2-9 incapacitated person, including an incapacitated adult for whom
2-10 another court obtained continuing, exclusive jurisdiction in a suit
2-11 affecting the parent-child relationship when the person was a
2-12 child;

2-13 (2) an application, petition, or motion regarding
2-14 guardianship or a substitute for [~~an alternative to~~] guardianship
2-15 under this title;

2-16 (3) a mental health action; and

2-17 (4) an application, petition, or motion regarding a
2-18 trust created under Chapter 1301.

2-19 SECTION 4. Section 1054.004, Estates Code, is amended by
2-20 amending Subsection (a) and adding Subsection (c) to read as
2-21 follows:

2-22 (a) An attorney ad litem appointed under Section 1054.001
2-23 shall interview the proposed ward within a reasonable time before
2-24 the hearing in the proceeding for the appointment of a
2-25 guardian. To the greatest extent possible, the attorney shall
2-26 discuss with the proposed ward:

2-27 (1) the law and facts of the case;

2-28 (2) the proposed ward's legal options regarding
2-29 disposition of the case; [~~and~~]

2-30 (3) the grounds on which guardianship is sought; and

2-31 (4) whether alternatives to guardianship would meet
2-32 the needs of the proposed ward and avoid the need for the
2-33 appointment of a guardian.

2-34 (c) Before the hearing, the attorney ad litem shall discuss
2-35 with the proposed ward the attorney ad litem's opinion regarding:

2-36 (1) whether a guardianship is necessary for the
2-37 proposed ward; and

2-38 (2) if a guardianship is necessary, the specific
2-39 powers or duties of the guardian that should be limited if the
2-40 proposed ward receives supports and services.

2-41 SECTION 5. Section 1054.054, Estates Code, is amended by
2-42 adding Subsections (c) and (d) to read as follows:

2-43 (c) The guardian ad litem shall:

2-44 (1) investigate whether a guardianship is necessary
2-45 for the proposed ward; and

2-46 (2) evaluate alternatives to guardianship and
2-47 supports and services available to the proposed ward that would
2-48 avoid the need for appointment of a guardian.

2-49 (d) The information gathered by the guardian ad litem under
2-50 Subsection (c) is subject to examination by the court.

2-51 SECTION 6. Sections 1054.201(a) and (b), Estates Code, are
2-52 amended to read as follows:

2-53 (a) An attorney for an applicant for guardianship and a [A]
2-54 court-appointed attorney in a guardianship proceeding, including
2-55 an attorney ad litem, must be certified by the State Bar of Texas,
2-56 or a person or other entity designated by the state bar, as having
2-57 successfully completed a course of study in guardianship law and
2-58 procedure sponsored by the state bar or the state bar's designee.

2-59 (b) The State Bar of Texas shall require four [three] hours
2-60 of credit for certification under this subchapter, including one
2-61 hour on alternatives to guardianship and supports and services
2-62 available to proposed wards.

2-63 SECTION 7. Section 1101.001(b), Estates Code, is amended to
2-64 read as follows:

2-65 (b) The application must be sworn to by the applicant and
2-66 state:

2-67 (1) the proposed ward's name, sex, date of birth, and
2-68 address;

2-69 (2) the name, relationship, and address of the person

3-1 the applicant seeks to have appointed as guardian;
 3-2 (3) whether guardianship of the person or estate, or
 3-3 both, is sought;
 3-4 (3-a) whether alternatives to guardianship and
 3-5 available supports and services to avoid guardianship were
 3-6 considered;
 3-7 (3-b) whether any alternatives to guardianship and
 3-8 supports and services available to the proposed ward considered are
 3-9 feasible and would avoid the need for a guardianship;
 3-10 (4) the nature and degree of the alleged incapacity,
 3-11 the specific areas of protection and assistance requested, and the
 3-12 limitation or termination of rights requested to be included in the
 3-13 court's order of appointment, including a termination of:
 3-14 (A) the right of a proposed ward who is 18 years
 3-15 of age or older to vote in a public election; ~~and~~
 3-16 (B) the proposed ward's eligibility to hold or
 3-17 obtain a license to operate a motor vehicle under Chapter 521,
 3-18 Transportation Code; and
 3-19 (C) the right of a proposed ward to make personal
 3-20 decisions regarding residence;
 3-21 (5) the facts requiring the appointment of a guardian;
 3-22 (6) the interest of the applicant in the appointment
 3-23 of a guardian;
 3-24 (7) the nature and description of any kind of
 3-25 guardianship existing for the proposed ward in any other state;
 3-26 (8) the name and address of any person or institution
 3-27 having the care and custody of the proposed ward;
 3-28 (9) the approximate value and description of the
 3-29 proposed ward's property, including any compensation, pension,
 3-30 insurance, or allowance to which the proposed ward may be entitled;
 3-31 (10) the name and address of any person whom the
 3-32 applicant knows to hold a power of attorney signed by the proposed
 3-33 ward and a description of the type of power of attorney;
 3-34 (11) for a proposed ward who is a minor, the following
 3-35 information if known by the applicant:
 3-36 (A) the name of each of the proposed ward's
 3-37 parents and either the parent's address or that the parent is
 3-38 deceased;
 3-39 (B) the name and age of each of the proposed
 3-40 ward's siblings, if any, and either the sibling's address or that
 3-41 the sibling is deceased; and
 3-42 (C) if each of the proposed ward's parents and
 3-43 adult siblings are deceased, the names and addresses of the
 3-44 proposed ward's other living relatives who are related to the
 3-45 proposed ward within the third degree by consanguinity and who are
 3-46 adults;
 3-47 (12) for a proposed ward who is a minor, whether the
 3-48 minor was the subject of a legal or conservatorship proceeding in
 3-49 the preceding two years and, if so:
 3-50 (A) the court involved;
 3-51 (B) the nature of the proceeding; and
 3-52 (C) any final disposition of the proceeding;
 3-53 (13) for a proposed ward who is an adult, the following
 3-54 information if known by the applicant:
 3-55 (A) the name of the proposed ward's spouse, if
 3-56 any, and either the spouse's address or that the spouse is deceased;
 3-57 (B) the name of each of the proposed ward's
 3-58 parents and either the parent's address or that the parent is
 3-59 deceased;
 3-60 (C) the name and age of each of the proposed
 3-61 ward's siblings, if any, and either the sibling's address or that
 3-62 the sibling is deceased;
 3-63 (D) the name and age of each of the proposed
 3-64 ward's children, if any, and either the child's address or that the
 3-65 child is deceased; and
 3-66 (E) if there is no living spouse, parent, adult
 3-67 sibling, or adult child of the proposed ward, the names and
 3-68 addresses of the proposed ward's other living relatives who are
 3-69 related to the proposed ward within the third degree by

4-1 consanguinity and who are adults;
 4-2 (14) facts showing that the court has venue of the
 4-3 proceeding; and
 4-4 (15) if applicable, that the person whom the applicant
 4-5 seeks to have appointed as a guardian is a private professional
 4-6 guardian who is certified under Subchapter C, Chapter 155,
 4-7 Government Code, and has complied with the requirements of
 4-8 Subchapter G, Chapter 1104.

4-9 SECTION 8. Section 1101.101, Estates Code, is amended by
 4-10 amending Subsection (a) and adding Subsection (c) to read as
 4-11 follows:

4-12 (a) Before appointing a guardian for a proposed ward, the
 4-13 court must:

4-14 (1) find by clear and convincing evidence that:
 4-15 (A) the proposed ward is an incapacitated person;
 4-16 (B) it is in the proposed ward's best interest to
 4-17 have the court appoint a person as the proposed ward's guardian;
 4-18 [~~and~~]

4-19 (C) the proposed ward's rights or property will
 4-20 be protected by the appointment of a guardian;

4-21 (D) alternatives to guardianship that would
 4-22 avoid the need for the appointment of a guardian have been
 4-23 considered and determined not to be feasible; and

4-24 (E) supports and services available to the
 4-25 proposed ward that would avoid the need for the appointment of a
 4-26 guardian have been considered and determined not to be feasible;
 4-27 and

4-28 (2) find by a preponderance of the evidence that:

4-29 (A) the court has venue of the case;

4-30 (B) the person to be appointed guardian is
 4-31 eligible to act as guardian and is entitled to appointment, or, if
 4-32 no eligible person entitled to appointment applies, the person
 4-33 appointed is a proper person to act as guardian;

4-34 (C) if a guardian is appointed for a minor, the
 4-35 guardianship is not created for the primary purpose of enabling the
 4-36 minor to establish residency for enrollment in a school or school
 4-37 district for which the minor is not otherwise eligible for
 4-38 enrollment; and

4-39 (D) the proposed ward:

4-40 (i) is totally without capacity as provided
 4-41 by this title to care for himself or herself and to manage his or her
 4-42 property; or

4-43 (ii) lacks the capacity to do some, but not
 4-44 all, of the tasks necessary to care for himself or herself or to
 4-45 manage his or her property.

4-46 (c) A finding under Subsection (a)(2)(D)(ii) must
 4-47 specifically state whether the proposed ward lacks the capacity, or
 4-48 lacks sufficient capacity with supports and services, to make
 4-49 personal decisions regarding residence, voting, operating a motor
 4-50 vehicle, and marriage.

4-51 SECTION 9. Section 1101.103(b), Estates Code, is amended to
 4-52 read as follows:

4-53 (b) The letter or certificate must:

4-54 (1) describe the nature, degree, and severity of the
 4-55 proposed ward's incapacity, including any functional deficits
 4-56 regarding the proposed ward's ability to:

4-57 (A) handle business and managerial matters;

4-58 (B) manage financial matters;

4-59 (C) operate a motor vehicle;

4-60 (D) make personal decisions regarding residence,

4-61 voting, and marriage; and

4-62 (E) consent to medical, dental, psychological,

4-63 or psychiatric treatment;

4-64 (2) in providing a description under Subdivision (1)
 4-65 regarding the proposed ward's ability to operate a motor vehicle
 4-66 and make personal decisions regarding voting, state whether in the
 4-67 physician's opinion the proposed ward:

4-68 (A) has the mental capacity to vote in a public
 4-69 election; and

5-1 (B) has the ability to safely operate a motor
5-2 vehicle;
5-3 (3) provide an evaluation of the proposed ward's
5-4 physical condition and mental functioning [~~function~~] and summarize
5-5 the proposed ward's medical history if reasonably available;
5-6 (3-a) in providing an evaluation under Subdivision
5-7 (3), state whether improvement in the proposed ward's physical
5-8 condition and mental functioning is possible and, if so, state the
5-9 period after which the proposed ward should be reevaluated to
5-10 determine whether a guardianship continues to be necessary;
5-11 (4) state how or in what manner the proposed ward's
5-12 ability to make or communicate responsible decisions concerning
5-13 himself or herself is affected by the proposed ward's physical or
5-14 mental health, including the proposed ward's ability to:
5-15 (A) understand or communicate;
5-16 (B) recognize familiar objects and individuals;
5-17 (C) solve problems [~~perform simple~~
5-18 ~~calculations~~];
5-19 (D) reason logically; and
5-20 (E) administer to daily life activities with and
5-21 without supports and services;
5-22 (5) state whether any current medication affects the
5-23 proposed ward's demeanor or the proposed ward's ability to
5-24 participate fully in a court proceeding;
5-25 (6) describe the precise physical and mental
5-26 conditions underlying a diagnosis of a mental disability, and state
5-27 whether the proposed ward would benefit from supports and services
5-28 that would allow the individual to live in the least restrictive
5-29 setting;
5-30 (6-a) state whether a guardianship is necessary for
5-31 the proposed ward and, if so, whether specific powers or duties of
5-32 the guardian should be limited if the proposed ward receives
5-33 supports and services; and
5-34 (7) include any other information required by the
5-35 court.

5-36 SECTION 10. Sections 1101.151(a) and (b), Estates Code, are
5-37 amended to read as follows:

5-38 (a) If it is found that the proposed ward is totally without
5-39 capacity to care for himself or herself, manage his or her property,
5-40 operate a motor vehicle, make personal decisions regarding
5-41 residence, and vote in a public election, the court may appoint a
5-42 guardian of the proposed ward's person or estate, or both, with full
5-43 authority over the incapacitated person except as provided by law.

5-44 (b) An order appointing a guardian under this section must
5-45 contain findings of fact and specify:

5-46 (1) the information required by Section 1101.153(a);
5-47 (2) that the guardian has full authority over the
5-48 incapacitated person;

5-49 (3) if necessary, the amount of funds from the corpus
5-50 of the person's estate the court will allow the guardian to spend
5-51 for the education and maintenance of the person under Subchapter A,
5-52 Chapter 1156;

5-53 (4) whether the person is totally incapacitated
5-54 because of a mental condition;

5-55 (5) that the person does not have the capacity to
5-56 operate a motor vehicle, make personal decisions regarding
5-57 residence, and [~~to~~] vote in a public election; and

5-58 (6) if it is a guardianship of the person of the ward
5-59 or of both the person and the estate of the ward, the rights of the
5-60 guardian with respect to the person as specified in Section
5-61 1151.051(c)(1).

5-62 SECTION 11. Sections 1101.152(a) and (b), Estates Code, are
5-63 amended to read as follows:

5-64 (a) If it is found that the proposed ward lacks the capacity
5-65 to do some, but not all, of the tasks necessary to care for himself
5-66 or herself or to manage his or her property with or without supports
5-67 and services, the court may appoint a guardian with limited powers
5-68 and permit the proposed ward to care for himself or herself,
5-69 including making personal decisions regarding residence, or to

6-1 manage his or her property commensurate with the proposed ward's
6-2 ability.

6-3 (b) An order appointing a guardian under this section must
6-4 contain findings of fact and specify:

6-5 (1) the information required by Section 1101.153(a);

6-6 (2) the specific powers, limitations, or duties of the
6-7 guardian with respect to the person's care or the management of the
6-8 person's property by the guardian;

6-9 (2-a) the specific rights and powers retained by the
6-10 person:

6-11 (A) with the necessity for supports and services;

6-12 and

6-13 (B) without the necessity for supports and
6-14 services;

6-15 (3) if necessary, the amount of funds from the corpus
6-16 of the person's estate the court will allow the guardian to spend
6-17 for the education and maintenance of the person under Subchapter A,
6-18 Chapter 1156; and

6-19 (4) whether the person is incapacitated because of a
6-20 mental condition and, if so, whether the person:

6-21 (A) retains the right to make personal decisions
6-22 regarding residence or vote in a public election; or

6-23 (B) maintains eligibility to hold or obtain a
6-24 license to operate a motor vehicle under Chapter 521,
6-25 Transportation Code.

6-26 SECTION 12. Section 1101.153, Estates Code, is amended by
6-27 adding Subsection (a-1) to read as follows:

6-28 (a-1) If the letter or certificate under Section
6-29 1101.103(b)(3-a) stated that improvement in the ward's physical
6-30 condition or mental functioning is possible and specified a period
6-31 of less than a year after which the ward should be reevaluated to
6-32 determine continued necessity for the guardianship, an order
6-33 appointing a guardian must include the date by which the guardian
6-34 must submit to the court an updated letter or certificate
6-35 containing the requirements of Section 1101.103(b).

6-36 SECTION 13. Section 1104.002, Estates Code, is amended to
6-37 read as follows:

6-38 Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before
6-39 appointing a guardian, the court shall make a reasonable effort to
6-40 consider the incapacitated person's preference of the person to be
6-41 appointed guardian and, to the extent consistent with other
6-42 provisions of this title, shall give due consideration to the
6-43 preference indicated by the incapacitated person, regardless of
6-44 whether the person has designated by declaration a guardian before
6-45 the need arises under Subchapter E.

6-46 SECTION 14. Section 1151.051, Estates Code, is amended by
6-47 adding Subsection (e) to read as follows:

6-48 (e) Notwithstanding Subsection (c)(1) and except in cases
6-49 of emergency, a guardian of the person of a ward may only place the
6-50 ward in a more restrictive care facility if the guardian provides
6-51 notice of the proposed placement to the court, the ward, and any
6-52 person who has requested notice and after:

6-53 (1) the court orders the placement at a hearing on the
6-54 matter, if the ward or another person objects to the proposed
6-55 placement before the eighth business day after the person's receipt
6-56 of the notice; or

6-57 (2) the seventh business day after the court's receipt
6-58 of the notice, if the court does not schedule a hearing, on its own
6-59 motion, on the proposed placement before that day.

6-60 SECTION 15. Sections 1202.001(b) and (c), Estates Code, are
6-61 amended to read as follows:

6-62 (b) A guardianship shall be settled and closed when the
6-63 ward:

6-64 (1) dies and, if the ward was married, the ward's
6-65 spouse qualifies as survivor in community;

6-66 (2) is found by the court to have full capacity, or
6-67 sufficient capacity with supports and services, to care for himself
6-68 or herself and to manage the ward's property;

6-69 (3) is no longer a minor; or

7-1 (4) no longer must have a guardian appointed to
7-2 receive funds due the ward from any governmental source.

7-3 (c) Except for an order issued under Section 1101.153(a-1),
7-4 an [An] order appointing a guardian or a successor guardian may
7-5 specify a period of not more than one year during which a petition
7-6 for adjudication that the ward no longer requires the guardianship
7-7 may not be filed without special leave.

7-8 SECTION 16. Section 1202.051, Estates Code, is amended to
7-9 read as follows:

7-10 Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any
7-11 person interested in the ward's welfare may file a written
7-12 application with the court for an order:

7-13 (1) finding that the ward is no longer an
7-14 incapacitated person and ordering the settlement and closing of the
7-15 guardianship;

7-16 (2) finding that the ward lacks the capacity, or lacks
7-17 sufficient capacity with supports and services, to do some or all of
7-18 the tasks necessary to provide food, clothing, or shelter for
7-19 himself or herself, to care for the ward's own physical health, or
7-20 to manage the ward's own financial affairs and granting additional
7-21 powers or duties to the guardian; or

7-22 (3) finding that the ward has the capacity, or
7-23 sufficient capacity with supports and services, to do some, but not
7-24 all, of the tasks necessary to provide food, clothing, or shelter
7-25 for himself or herself, to care for the ward's own physical health,
7-26 or to manage the ward's own financial affairs and:

7-27 (A) limiting the guardian's powers or duties; and

7-28 (B) permitting the ward to care for himself or
7-29 herself, make personal decisions regarding residence, or [~~to~~]
7-30 manage the ward's own financial affairs commensurate with the
7-31 ward's ability, with or without supports and services.

7-32 SECTION 17. Section 1202.151(a), Estates Code, is amended
7-33 to read as follows:

7-34 (a) Except as provided by Section 1202.201, at a hearing on
7-35 an application filed under Section 1202.051, the court shall
7-36 consider only evidence regarding the ward's mental or physical
7-37 capacity at the time of the hearing that is relevant to the complete
7-38 restoration of the ward's capacity or modification of the ward's
7-39 guardianship, including whether:

7-40 (1) the guardianship is necessary; and

7-41 (2) specific powers or duties of the guardian should
7-42 be limited if the ward receives supports and services.

7-43 SECTION 18. Section 1202.152(b), Estates Code, is amended
7-44 to read as follows:

7-45 (b) A letter or certificate presented under Subsection (a)
7-46 must:

7-47 (1) describe the nature and degree of incapacity,
7-48 including the medical history if reasonably available, or state
7-49 that, in the physician's opinion, the ward has the capacity, or
7-50 sufficient capacity with supports and services, to:

7-51 (A) provide food, clothing, and shelter for
7-52 himself or herself;

7-53 (B) care for the ward's own physical health; and

7-54 (C) manage the ward's financial affairs;

7-55 (2) provide a medical prognosis specifying the
7-56 estimated severity of any incapacity;

7-57 (3) state how or in what manner the ward's ability to
7-58 make or communicate responsible decisions concerning himself or
7-59 herself is affected by the ward's physical or mental health;

7-60 (4) state whether any current medication affects the
7-61 ward's demeanor or the ward's ability to participate fully in a
7-62 court proceeding;

7-63 (5) describe the precise physical and mental
7-64 conditions underlying a diagnosis of senility, if applicable; and

7-65 (6) include any other information required by the
7-66 court.

7-67 SECTION 19. Section 1202.153(c), Estates Code, is amended
7-68 to read as follows:

7-69 (c) Before limiting the powers granted to or duties required

8-1 to be performed by the guardian under an application filed under
8-2 Section 1202.051, the court must find by a preponderance of the
8-3 evidence that the current nature and degree of the ward's
8-4 incapacity, with or without supports and services, warrants a
8-5 modification of the guardianship and that some of the ward's rights
8-6 need to be restored, with or without supports and services.

8-7 SECTION 20. Section 1202.154(a), Estates Code, is amended
8-8 to read as follows:

8-9 (a) A court order entered with respect to an application
8-10 filed under Section 1202.051 to completely restore a ward's
8-11 capacity or modify a ward's guardianship must state:

- 8-12 (1) the guardian's name;
- 8-13 (2) the ward's name; [~~and~~]
- 8-14 (3) whether the type of guardianship being addressed
8-15 at the proceeding is a:
 - 8-16 (A) guardianship of the person;
 - 8-17 (B) guardianship of the estate; or
 - 8-18 (C) guardianship of both the person and the
8-19 estate; and
 - 8-20 (4) if applicable, any necessary supports and services
8-21 for the restoration of the ward's capacity or modification of the
8-22 guardianship.

8-23 SECTION 21. Section 1202.156, Estates Code, is amended to
8-24 read as follows:

8-25 Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING
8-26 GUARDIANSHIP. If the court finds that a guardian's powers or
8-27 duties should be expanded or limited, the order modifying the
8-28 guardianship must contain findings of fact and specify, in addition
8-29 to the information required by Section 1202.154:

- 8-30 (1) the specific powers, limitations, or duties of the
8-31 guardian with respect to the care of the ward or the management of
8-32 the ward's property, as appropriate;
- 8-33 (2) the specific areas of protection and assistance to
8-34 be provided to the ward;
- 8-35 (3) any limitation of the ward's rights;
- 8-36 (4) if the ward's incapacity resulted from a mental
8-37 condition, whether the ward retains the right to vote and make
8-38 personal decisions regarding residence; and
- 8-39 (5) that the clerk shall modify the letters of
8-40 guardianship to the extent applicable to conform to the order.

8-41 SECTION 22. The heading to Subtitle I, Title 3, Estates
8-42 Code, is amended to read as follows:

8-43 SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR
8-44 [ALTERNATIVES TO] GUARDIANSHIP

8-45 SECTION 23. Subtitle I, Title 3, Estates Code, is amended by
8-46 adding Chapter 1357 to read as follows:

8-47 CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT
8-48 SUBCHAPTER A. GENERAL PROVISIONS

8-49 Sec. 1357.001. SHORT TITLE. This chapter may be cited as
8-50 the Supported Decision-Making Agreement Act.

8-51 Sec. 1357.002. DEFINITIONS. In this chapter:

- 8-52 (1) "Adult" means an individual 18 years of age or
8-53 older or an individual under 18 years of age who has had the
8-54 disabilities of minority removed.
- 8-55 (2) "Disability" means, with respect to an individual,
8-56 a physical or mental impairment that substantially limits one or
8-57 more major life activities.
- 8-58 (3) "Supported decision-making" means a process of
8-59 supporting and accommodating an adult with a disability to enable
8-60 the adult to make life decisions, including decisions related to
8-61 where the adult wants to live, the services, supports, and medical
8-62 care the adult wants to receive, whom the adult wants to live with,
8-63 and where the adult wants to work, without impeding the
8-64 self-determination of the adult.
- 8-65 (4) "Supported decision-making agreement" is an
8-66 agreement between an adult with a disability and a supporter
8-67 entered into under this chapter.
- 8-68 (5) "Supporter" means an adult who has entered into a
8-69 supported decision-making agreement with an adult with a

9-1 disability.

9-2 Sec. 1357.003. PURPOSE. The purpose of this chapter is to
9-3 recognize a less restrictive substitute for guardianship for adults
9-4 with disabilities who need assistance with decisions regarding
9-5 daily living but who are not considered incapacitated persons for
9-6 purposes of establishing a guardianship under this title.

9-7 SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

9-8 Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING
9-9 AGREEMENT. An adult with a disability may voluntarily, without
9-10 undue influence or coercion, enter into a supported decision-making
9-11 agreement with a supporter under which the adult with a disability
9-12 authorizes the supporter to do any or all of the following:

9-13 (1) provide supported decision-making, including
9-14 assistance in understanding the options, responsibilities, and
9-15 consequences of the adult's life decisions, without making those
9-16 decisions on behalf of the adult with a disability;

9-17 (2) subject to Section 1357.054, assist the adult in
9-18 accessing, collecting, and obtaining information that is relevant
9-19 to a given life decision, including medical, psychological,
9-20 financial, educational, or treatment records, from any person;

9-21 (3) assist the adult with a disability in
9-22 understanding the information described by Subdivision (2); and

9-23 (4) assist the adult in communicating the adult's
9-24 decisions to appropriate persons.

9-25 Sec. 1357.052. AUTHORITY OF SUPPORTER. A supporter may
9-26 exercise the authority granted to the supporter in the supported
9-27 decision-making agreement.

9-28 Sec. 1357.053. TERM OF AGREEMENT. (a) Except as provided
9-29 by Subsection (b), the supported decision-making agreement extends
9-30 until terminated by either party or by the terms of the agreement.

9-31 (b) The supported decision-making agreement is terminated
9-32 if:

9-33 (1) the Department of Family and Protective Services
9-34 finds that the adult with a disability has been abused, neglected,
9-35 or exploited by the supporter; or

9-36 (2) the supporter is found criminally liable for
9-37 conduct described by Subdivision (1).

9-38 Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) A
9-39 supporter is only authorized to assist the adult with a disability
9-40 in accessing, collecting, or obtaining information that is relevant
9-41 to a decision authorized under the supported decision-making
9-42 agreement.

9-43 (b) If a supporter assists an adult with a disability in
9-44 accessing, collecting, or obtaining personal information,
9-45 including protected health information under the Health Insurance
9-46 Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or
9-47 educational records under the Family Educational Rights and Privacy
9-48 Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure
9-49 the information is kept privileged and confidential, as applicable,
9-50 and is not subject to unauthorized access, use, or disclosure.

9-51 (c) The existence of a supported decision-making agreement
9-52 does not preclude an adult with a disability from seeking personal
9-53 information without the assistance of a supporter.

9-54 Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED
9-55 DECISION-MAKING AGREEMENT. (a) A supported decision-making
9-56 agreement must be signed voluntarily, without coercion or undue
9-57 influence, by the adult with a disability and the supporter in the
9-58 presence of two or more subscribing witnesses or a notary public.

9-59 (b) If signed before two witnesses, the attesting witnesses
9-60 must be at least 14 years of age.

9-61 Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING
9-62 AGREEMENT. (a) Subject to Subsection (b), a supported
9-63 decision-making agreement is valid only if it is in substantially
9-64 the following form:

9-65 SUPPORTED DECISION-MAKING AGREEMENT

9-66 Appointment of Supporter

9-67 I, (insert your name), make this agreement of my own free
9-68 will.

9-69 I agree and designate that: _____

10-1 Name: _____
10-2 Address: _____
10-3 Phone Number: _____
10-4 E-mail Address: _____

10-5 is my supporter. My supporter may help me with making everyday life
10-6 decisions relating to the following:

- 10-7 Y/N obtaining food, clothing, and shelter
- 10-8 Y/N taking care of my physical health
- 10-9 Y/N managing my financial affairs.

10-10 My supporter is not allowed to make decisions for me. To help
10-11 me with my decisions, my supporter may:

10-12 1. Help me access, collect, or obtain information that is
10-13 relevant to a decision, including medical, psychological,
10-14 financial, educational, or treatment records;

10-15 2. Help me understand my options so I can make an informed
10-16 decision; or

10-17 3. Help me communicate my decision to appropriate persons.

10-18 Y/N A release allowing my supporter to see protected
10-19 health information under the Health Insurance Portability and
10-20 Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

10-21 Y/N A release allowing my supporter to see educational
10-22 records under the Family Educational Rights and Privacy Act of 1974
10-23 (20 U.S.C. Section 1232g) is attached.

10-24 Effective Date of Supported Decision-Making Agreement

10-25 This supported decision-making agreement is effective
10-26 immediately and will continue until (insert date) or until the
10-27 agreement is terminated by my supporter or me or by operation of
10-28 law.

10-29 Signed this _____ day of _____, 20____

10-30 _____
10-31 Consent of Supporter

10-32 I, (name of supporter), consent to act as a supporter under
10-33 this agreement.

10-34 _____
10-35 (signature of supporter) (printed name of supporter)

10-36 _____
10-37 Signature

10-38 _____
10-39 (my signature) (my printed name)

10-40 _____
10-41 (witness 1 signature) (printed name of witness 1)

10-42 _____
10-43 (witness 2 signature) (printed name of witness 2)

10-44 State of _____

10-45 County of _____

10-46 This document was acknowledged before me
10-47 on _____ (date)

10-48 by _____ and _____
10-49 (name of adult with a disability) (name of supporter)

10-50 _____
10-51 (signature of notarial officer)

10-52 (Seal, if any, of notary) _____
10-53 (printed name)

10-54 My commission expires: _____

10-55 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

10-56 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE
10-57 OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE
10-58 ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY
10-59 THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT,
10-60 OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
10-61 BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT
10-62 WWW.TXABUSEHOTLINE.ORG.

10-63 (b) A supported decision-making agreement may be in any form
10-64 not inconsistent with Subsection (a) and the other requirements of
10-65 this chapter.

10-66 SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

10-67 Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF
10-68 LIABILITY. (a) A person who receives the original or a copy of a
10-69 supported decision-making agreement shall rely on the agreement.

10-70 (b) A person is not subject to criminal or civil liability
10-71 and has not engaged in professional misconduct for an act or

11-1 omission if the act or omission is done in good faith and in
11-2 reliance on a supported decision-making agreement.

11-3 Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR
11-4 EXPLOITATION. If a person who receives a copy of a supported
11-5 decision-making agreement or is aware of the existence of a
11-6 supported decision-making agreement has cause to believe that the
11-7 adult with a disability is being abused, neglected, or exploited by
11-8 the supporter, the person shall report the alleged abuse, neglect,
11-9 or exploitation to the Department of Family and Protective Services
11-10 in accordance with Section 48.051, Human Resources Code.

11-11 SECTION 24. (a) Except as otherwise provided by this
11-12 section, the changes in law made by this Act apply to:

11-13 (1) a guardianship created before, on, or after the
11-14 effective date of this Act; and

11-15 (2) an application for a guardianship pending on, or
11-16 filed on or after, the effective date of this Act.

11-17 (b) Sections 1054.004 and 1054.054, Estates Code, as
11-18 amended by this Act, apply only to a guardianship proceeding for
11-19 which a court has appointed a guardian ad litem or attorney ad litem
11-20 to represent the interests of a proposed ward on or after the
11-21 effective date of this Act.

11-22 (c) Sections 1054.201, 1101.101, 1101.103, 1101.151,
11-23 1101.152, and 1101.153, Estates Code, as amended by this Act, apply
11-24 only to a guardianship proceeding filed on or after the effective
11-25 date of this Act. A guardianship proceeding filed before the
11-26 effective date of this Act is governed by the law in effect on the
11-27 date the proceeding was filed, and the former law is continued in
11-28 effect for that purpose.

11-29 (d) Section 1101.001, Estates Code, as amended by this Act,
11-30 applies only to an application for the appointment of a guardian
11-31 filed on or after the effective date of this Act. An application
11-32 for the appointment of a guardian filed before the effective date of
11-33 this Act is governed by the law in effect on the date the
11-34 application was filed, and the former law is continued in effect for
11-35 that purpose.

11-36 (e) Section 1202.051, Estates Code, as amended by this Act,
11-37 applies only to an application for the restoration of a ward's
11-38 capacity or the modification of a ward's guardianship that is filed
11-39 on or after the effective date of this Act. An application for the
11-40 restoration of a ward's capacity or the modification of a ward's
11-41 guardianship that is filed before the effective date of this Act is
11-42 governed by the law in effect on the date the application was filed,
11-43 and the former law is continued in effect for that purpose.

11-44 (f) Sections 1202.151, 1202.152, 1202.153, 1202.154, and
11-45 1202.156, Estates Code, as amended by this Act, apply only to a
11-46 proceeding for the restoration of a ward's capacity or the
11-47 modification of a ward's guardianship that is filed on or after the
11-48 effective date of this Act. An application for the restoration of a
11-49 ward's capacity or the modification of a ward's guardianship that is
11-50 filed before the effective date of this Act is governed by the law
11-51 in effect on the date the application was filed, and the former law
11-52 is continued in effect for that purpose.

11-53 SECTION 25. This Act takes effect September 1, 2015.

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