

By: Klick

H.B. No. 3914

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain court-initiated guardianship proceedings
3 involving individuals believed to be incapacitated persons
4 including the appointment of a guardian ad litem or court
5 investigator.

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

7 SECTION 1. Section 1102.001, Estates Code, is amended to
8 read as follows:

9 Sec. 1102.001. COURT-INITIATED INVESTIGATION. (a) If a
10 court has probable cause to believe that a person domiciled or found
11 in the county in which the court is located is an incapacitated
12 person, and the person does not have a guardian in this state, the
13 court shall appoint a guardian ad litem or court investigator to
14 investigate the person's conditions and circumstances to determine
15 whether:

16 (1) the person is an incapacitated person; and

17 (2) a guardianship is necessary.

18 (b) If a court appoints a guardian ad litem or court
19 investigator under Subsection (a):

20 (1) the person believed to be incapacitated may
21 petition the court to have the appointment set aside;

22 (2) the court's order appointing a guardian ad litem or
23 court investigator must include a statement that the person
24 believed to be incapacitated has the right to petition the court to

1 have the appointment set aside;

2 (3) not later than the 48th hour after the hour the
3 court issues the order appointing a guardian ad litem or court
4 investigator, the guardian ad litem or court investigator, as
5 appropriate, shall provide a copy of the order to and discuss the
6 contents of the order with the person believed to be incapacitated;
7 and

8 (4) within a reasonable time after the court issues
9 the order appointing a guardian ad litem or court investigator, the
10 court shall hold a preliminary hearing to determine whether there
11 is a need for further investigation.

12 SECTION 2. Section 1102.002, Estates Code, is amended to
13 read as follows:

14 Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR
15 INVESTIGATION. (a) To establish probable cause under Section
16 1102.001, the court shall ~~[may require]~~:

17 (1) require:

18 (A) an affidavit ~~[information letter about the~~
19 ~~person believed to be incapacitated that is]~~ submitted by an
20 interested person that alleges facts about the person believed to
21 be incapacitated that, if true, satisfy a requirement ~~[and~~
22 ~~satisfies the requirements]~~ of Section 1002.017(1) or 1002.017(2),
23 as applicable ~~[1102.003]~~; or

24 (B) ~~[(2)]~~ a written letter or certificate from a
25 physician who has examined the person alleged ~~[believed]~~ to be
26 incapacitated that satisfies the requirements of Section 1101.103,
27 except that the letter must be:

1 (i) [~~(A)~~] dated not earlier than the 120th
2 day before the date of the appointment of a guardian ad litem or
3 court investigator under Section 1102.001; and

4 (ii) [~~(B)~~] based on an examination the
5 physician performed not earlier than the 120th day before that
6 date; and

7 (2) subject to Subsection (b), conduct a preliminary
8 hearing at which any interested person may offer evidence,
9 including oral or written testimony, regarding the condition and
10 circumstances of the person alleged to be incapacitated.

11 (b) A preliminary hearing under Subsection (a)(2) must be
12 held:

13 (1) after the date of the physician's letter or
14 certificate under Subsection (a)(1)(B), if applicable; and

15 (2) not later than the 30th day before the date of the
16 appointment of a guardian ad litem or court investigator under
17 Section 1102.001.

18 SECTION 3. Section 1102.003, Estates Code, is repealed.

19 SECTION 4. The changes in law made by this Act apply to a
20 guardianship proceeding commenced on or after the effective date of
21 this Act. A guardianship proceeding commenced before that date is
22 governed by the law in effect on the date the proceeding was
23 commenced, and the former law is continued in effect for that
24 purpose.

25 SECTION 5. This Act takes effect January 1, 2016.