

By: Metcalf

H.B. No. 3901

A BILL TO BE ENTITLED

AN ACT

1
2 relating to parental administrations for certain adults with
3 intellectual disabilities and the prosecution of a related criminal
4 offense.

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

6 SECTION 1. Section 1002.0015, Estates Code, is amended to
7 read as follows:

8 Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP.

9 "Alternatives to guardianship" includes the:

10 (1) execution of a medical power of attorney under
11 Chapter 166, Health and Safety Code;

12 (2) appointment of an attorney in fact or agent under a
13 durable power of attorney as provided by Subtitle P, Title 2;

14 (3) execution of a declaration for mental health
15 treatment under Chapter 137, Civil Practice and Remedies Code;

16 (4) appointment of a representative payee to manage
17 public benefits;

18 (5) establishment of a joint bank account;

19 (6) creation of a management trust under Chapter 1301;

20 (7) creation of a special needs trust;

21 (8) designation of a guardian before the need arises
22 under Subchapter E, Chapter 1104; ~~and~~

23 (9) establishment of alternate forms of
24 decision-making based on person-centered planning; and

1 (10) appointment of a parental administrator under
2 Chapter 1359.

3 SECTION 2. Section 1002.002, Estates Code, is amended to
4 read as follows:

5 Sec. 1002.002. ATTORNEY AD LITEM. "Attorney ad litem"
6 means an attorney appointed by a court to represent and advocate on
7 behalf of:

8 (1) a proposed ward, an incapacitated person, an
9 unborn person, or another person described by Section 1054.007 in a
10 guardianship proceeding; or

11 (2) a proposed incapacitated adult, as defined by
12 Section 1359.001, in a proceeding for a parental administration
13 under Chapter 1359.

14 SECTION 3. Subchapter A, Chapter 1202, Estates Code, is
15 amended by adding Section 1202.004 to read as follows:

16 Sec. 1202.004. TERMINATION OF GUARDIANSHIP OF THE PERSON IF
17 ELIGIBLE FOR PARENTAL ADMINISTRATION. On the application of a
18 parent, as defined by Section 1359.001, a court with jurisdiction
19 over a guardianship of the person may terminate the guardianship on
20 a finding that the ward qualifies as an incapacitated adult under
21 Chapter 1359 and appoint a parental administrator of the
22 incapacitated adult under that chapter.

23 SECTION 4. Subtitle I, Title 3, Estates Code, is amended by
24 adding Chapter 1359 to read as follows:

1 CHAPTER 1359. PARENTAL ADMINISTRATION

2 SUBCHAPTER A. GENERAL PROVISIONS RELATING TO APPOINTMENT OF
3 PARENTAL ADMINISTRATOR

4 Sec. 1359.001. DEFINITIONS. (a) In this chapter:

5 (1) "Incapacitated adult" means a person who is 18
6 years of age or older or will be 18 years of age within 180 days of
7 the date of an application under this chapter who, because of a
8 mental condition, is substantially unable to:

9 (A) provide food, clothing, or shelter for
10 himself or herself;

11 (B) care for the person's own physical health; or

12 (C) manage the person's own financial affairs.

13 (2) "Intellectual disability" has the meaning
14 assigned by Section 591.003, Health and Safety Code.

15 (3) "Parent" has the meaning assigned by Section
16 1002.022, except that the term includes a person who was appointed
17 the conservator of a child under Chapter 153, Family Code.

18 (4) "Proposed incapacitated adult" means a person
19 alleged in a parental administration proceeding under this chapter
20 to be an incapacitated adult.

21 (b) To the extent a definition of a term provided by this
22 chapter conflicts with the definition of that term provided by
23 Chapter 1002, the definition provided by this chapter prevails in
24 this chapter.

25 Sec. 1359.002. APPLICABILITY. This chapter applies only
26 to:

27 (1) an incapacitated adult whose incapacity has

1 existed since the person was a minor; and

2 (2) the parent of an incapacitated adult.

3 SUBCHAPTER B. APPOINTMENT OF PARENTAL ADMINISTRATOR

4 Sec. 1359.051. PARENTAL ADMINISTRATOR. The parent of a
5 proposed incapacitated adult may in accordance with this chapter
6 seek appointment as the parental administrator of that adult with
7 the rights and duties granted under Section 1359.061.

8 Sec. 1359.052. APPLICATION; VENUE. (a) A parent of a
9 proposed incapacitated adult may apply to the court for the
10 appointment of a parental administrator.

11 (b) Subject to Section 1359.053, the application must be
12 under oath and in writing and must include:

13 (1) the proposed incapacitated adult's name, date of
14 birth, and address;

15 (2) the name, relationship, and address of the person
16 the applicant seeks to have appointed as parental administrator;

17 (3) a description of the nature of the proposed
18 incapacitated adult's alleged incapacity and a statement that the
19 incapacity existed during minority;

20 (4) a statement that the proposed incapacitated adult
21 is totally without capacity to care for himself or herself;

22 (5) a statement of the facts requiring the appointment
23 of a parental administrator;

24 (6) a statement of the nature and description of any
25 existing guardianship of the proposed incapacitated adult;

26 (7) a statement as to whether the proposed
27 incapacitated adult was the subject of a conservatorship proceeding

1 and, if so, the name of the conservator;

2 (8) the name of the proposed incapacitated adult's
3 spouse, if any, and the spouse's address or a statement that the
4 spouse is deceased;

5 (9) the names of the proposed incapacitated adult's
6 parents and, for each parent, the parent's address or a statement
7 that the parent is deceased;

8 (10) the name and age of each of the proposed
9 incapacitated adult's siblings, if any, and, for each sibling, the
10 sibling's address or a statement that the sibling is deceased; and

11 (11) a statement of facts showing that the proposed
12 incapacitated adult is a resident of the county in which the
13 proceeding is brought.

14 (c) Venue for a proceeding for the appointment of a parental
15 administrator is the same as venue for a proceeding for the
16 appointment of a guardian.

17 Sec. 1359.053. CONFIDENTIALITY OF CERTAIN ADDRESSES. An
18 application filed under Section 1359.052 may omit the address of a
19 person named in the application if:

20 (1) the application states that the person is
21 protected by a protective order issued under Chapter 85, Family
22 Code;

23 (2) a copy of the protective order is attached to the
24 application as an exhibit;

25 (3) the application states the county in which the
26 person resides;

27 (4) the application indicates the place where notice

1 to or the issuance and service of citation on the person may be made
2 or sent; and

3 (5) the application is accompanied by a request for an
4 order under Section 1051.201 specifying the manner of issuance,
5 service, and return of citation or notice on the person.

6 Sec. 1359.054. APPOINTMENT OF ATTORNEY AD LITEM IN
7 PROCEEDING FOR APPOINTMENT OF PARENTAL ADMINISTRATOR. (a) In a
8 proceeding for the appointment of a parental administrator, the
9 court shall appoint an attorney ad litem to represent the proposed
10 incapacitated adult's interests.

11 (b) The attorney ad litem must have the certification
12 required by Section 1054.201.

13 (c) The provisions of Chapter 1054 applicable to the term of
14 appointment, right to access records, and duties of an attorney ad
15 litem appointed in a guardianship proceeding apply to an attorney
16 ad litem appointed under this section in a proceeding for the
17 appointment of a parental administrator.

18 Sec. 1359.055. DETERMINATION OF INCAPACITY: EXAMINATIONS.

19 (a) The court may not grant an application for the appointment of a
20 parental administrator for a proposed incapacitated adult unless
21 the applicant presents to the court:

22 (1) a written letter or certificate from a physician
23 licensed in this state that:

24 (A) is dated not earlier than the 120th day
25 before the date the application is filed;

26 (B) is based on an examination the physician
27 performed not earlier than the 120th day before the date the

1 application is filed; and

2 (C) complies with Subsection (b); or

3 (2) a written letter or certificate that:

4 (A) shows that not earlier than 24 months before
5 the date of a hearing on the application:

6 (i) the proposed incapacitated adult has
7 been examined by a physician or psychologist licensed in this state
8 or certified by the Health and Human Services Commission to perform
9 the examination, in accordance with rules of the executive
10 commissioner of the Health and Human Services Commission governing
11 examinations of that kind, and the physician's or psychologist's
12 written findings and recommendations include a determination of an
13 intellectual disability; or

14 (ii) a physician or psychologist licensed
15 in this state or certified by the Health and Human Services
16 Commission to perform examinations described by Subparagraph (i)
17 updated or endorsed in writing a prior determination of an
18 intellectual disability for the proposed incapacitated adult made
19 by a physician or psychologist licensed in this state or certified
20 by the commission; and

21 (B) complies with Subsection (b).

22 (b) A letter or certificate under Subsection (a)(1) or (2)
23 must:

24 (1) describe the nature, degree, and severity of the
25 proposed incapacitated adult's incapacity, including any
26 functional deficits regarding the proposed incapacitated adult's
27 ability to consent to medical, dental, psychological, or

1 psychiatric treatment;

2 (2) provide an evaluation of the proposed
3 incapacitated adult's physical condition and mental functioning
4 and summarize the proposed incapacitated adult's medical history if
5 reasonably available, including whether the incapacitated adult's
6 incapacity existed when the incapacitated adult was a minor;

7 (3) state how or in what manner the proposed
8 incapacitated adult's ability to make or communicate responsible
9 decisions concerning himself or herself is affected by the proposed
10 incapacitated adult's physical or mental health, including the
11 proposed incapacitated adult's ability to:

12 (A) understand or communicate;

13 (B) recognize familiar objects and individuals;

14 (C) solve problems;

15 (D) reason logically; and

16 (E) administer to daily life activities with and
17 without supports and services;

18 (4) state whether any current medication affects the
19 proposed incapacitated adult's demeanor or the proposed
20 incapacitated adult's ability to participate fully in a court
21 proceeding;

22 (5) describe the precise physical and mental
23 conditions underlying a diagnosis of an intellectual disability;

24 (6) state whether a parental administration is
25 necessary for the proposed incapacitated adult; and

26 (7) include any other information required by the
27 court.

1 (c) If the court determines it is necessary, the court may
2 appoint a physician to examine the proposed incapacitated adult.
3 The court must make a determination with respect to the necessity
4 for a physician's examination of the proposed incapacitated adult
5 at a hearing held for that purpose. Not later than the fourth day
6 before the date of the hearing, the applicant shall give to the
7 proposed incapacitated adult and the proposed incapacitated
8 adult's attorney ad litem written notice specifying the purpose and
9 the date and time of the hearing.

10 (d) A physician who examines the proposed incapacitated
11 adult for purposes of Subsection (a)(1) shall file with the court
12 and provide to the attorney ad litem appointed to represent the
13 proposed incapacitated adult a written letter or certificate from
14 the physician that complies with the requirements of Subsections
15 (a)(1) and (b).

16 Sec. 1359.056. SERVICE AND NOTICE. (a) The citation and
17 the application filed under this chapter shall be personally served
18 on the proposed incapacitated adult by a sheriff, constable, or
19 other person authorized by law to serve process.

20 (b) Notice shall be given by certified mail, return receipt
21 requested, to:

22 (1) a guardian of the proposed incapacitated adult, if
23 applicable, unless the guardian is the applicant; and

24 (2) each other person named under Section
25 1359.052(b)(8), (9), or (10).

26 (c) The applicant shall file with the court:

27 (1) a copy of any notice required by Subsection (b) and

1 the proof of delivery of the notice; and

2 (2) for each notice, an affidavit sworn to by the
3 applicant or the applicant's attorney stating:

4 (A) that the notice was mailed as required by
5 Subsection (b); and

6 (B) the name of the person to whom the notice was
7 mailed, if the person's name is not shown on the proof of delivery.

8 (d) A person who is entitled to receive notice under
9 Subsection (b) may, by writing filed with the clerk, waive the
10 receipt of notice either in person or through an attorney ad litem.

11 Sec. 1359.057. HEARING. (a) At a hearing for the
12 appointment of a parental administrator, the court shall inquire
13 into:

14 (1) the ability of the proposed incapacitated adult
15 to:

16 (A) feed, clothe, and shelter himself or herself;
17 and

18 (B) care for his or her own physical health;

19 (2) whether the incapacity existed when the proposed
20 incapacitated adult was a minor; and

21 (3) the parental status of the applicant seeking to be
22 appointed parental administrator.

23 (b) A proposed incapacitated adult must be present at the
24 hearing unless the court, on the record or in the order, determines
25 that a personal appearance is not necessary.

26 (c) The court may close the hearing at the request of the
27 proposed incapacitated adult.

1 (d) A proposed incapacitated adult is entitled to a jury
2 trial on timely request.

3 Sec. 1359.058. USE OF RECORDS. Current medical,
4 psychological, and intellectual testing records are a sufficient
5 basis for an appointment of a parental administrator, but the
6 findings and recommendations contained in those records are not
7 binding on the court.

8 Sec. 1359.059. FINDINGS AND PROOF REQUIRED. Before
9 appointing a parental administrator for a proposed incapacitated
10 adult, the court must find by a preponderance of the evidence that:

11 (1) the proposed incapacitated adult is an
12 incapacitated adult;

13 (2) the incapacitated adult's incapacity existed when
14 the incapacitated adult was a minor; and

15 (3) the person to be appointed parental administrator
16 is suitable to act as parental administrator.

17 Sec. 1359.060. APPOINTMENT OF PARENTAL ADMINISTRATOR.
18 After making the findings required by Section 1359.059, the court
19 may appoint a parent of the person found to be an incapacitated
20 adult as parental administrator.

21 Sec. 1359.061. RIGHTS AND DUTIES OF PARENTAL ADMINISTRATOR.

22 (a) A parental administrator has the following rights and duties:

23 (1) the right to have physical possession of the
24 incapacitated adult and to establish the incapacitated adult's
25 legal domicile;

26 (2) the duty to provide care, supervision, and
27 protection for the incapacitated adult;

1 (3) the duty to provide the incapacitated adult with
2 clothing, food, medical care, and shelter;

3 (4) the power to consent to medical, psychiatric, and
4 surgical treatment of the incapacitated adult;

5 (5) the power to establish a trust in accordance with
6 42 U.S.C. Section 1396p(d)(4)(B) and direct that the income of the
7 incapacitated adult as defined by that section be paid directly to
8 the trust, solely for the purpose of the incapacitated adult's
9 eligibility for medical assistance under Chapter 32, Human
10 Resources Code; and

11 (6) the power to sign documents necessary or
12 appropriate to facilitate employment of the incapacitated adult.

13 (b) With respect to the rights and duties described under
14 Subsection (a), a parental administrator has the same authority as
15 a guardian of the person under law.

16 SUBCHAPTER C. REPORTING

17 Sec. 1359.101. REPORT OF PARENTAL ADMINISTRATOR. At any
18 time after a parental administrator is appointed, the court, on its
19 own motion or on the motion of a person interested in the welfare of
20 the incapacitated adult and for good cause shown, may order the
21 parental administrator to submit to the court a report on the
22 condition of the incapacitated adult. The parental administrator
23 must include in the report a statement regarding:

24 (1) whether the incapacitated adult is receiving
25 residential care in a public or private residential care facility;
26 and

27 (2) if the incapacitated adult is receiving care in a

1 residential care facility, the necessity for continued care in the
2 facility.

3 SUBCHAPTER D. INVESTIGATION OF ALLEGED ABUSE, NEGLECT, OR

4 EXPLOITATION CONCERNING INCAPACITATED ADULT

5 Sec. 1359.151. INTERFERENCE WITH INVESTIGATION OR SERVICES
6 PROHIBITED. A parental administrator may not interfere with:

7 (1) an investigation by the Department of Family and
8 Protective Services, another state agency, or a law enforcement
9 agency of alleged abuse, neglect, or exploitation of the
10 incapacitated adult; or

11 (2) the provision of protective services by the
12 Department of Family and Protective Services or another state
13 agency to the incapacitated adult.

14 Sec. 1359.152. REPORT TO COURT OF INVESTIGATION OF ALLEGED
15 ABUSE, NEGLECT, OR EXPLOITATION. Subject to rules adopted under
16 Section 48.101, Human Resources Code, the Department of Family and
17 Protective Services or another state agency that conducts an
18 investigation of alleged abuse, neglect, or exploitation of an
19 incapacitated adult for whom a parental administrator is appointed
20 shall report the results of the investigation to the court with
21 jurisdiction of the parental administration.

22 SUBCHAPTER E. REMOVAL OR TERMINATION OF POWERS OF PARENTAL

23 ADMINISTRATOR

24 Sec. 1359.201. GROUNDS FOR REMOVAL OF PARENTAL
25 ADMINISTRATOR. A court may remove a parental administrator if the
26 parental administrator:

27 (1) fails to comply with a court order for a report

1 under Section 1359.101;

2 (2) is proven to have been guilty of gross misconduct
3 or gross mismanagement in the performance of duties as parental
4 administrator;

5 (3) becomes an incapacitated person;

6 (4) is convicted of an offense and subsequently
7 confined or imprisoned; or

8 (5) for any other reason becomes unable to properly
9 perform the parental administrator's duties.

10 Sec. 1359.202. TERMINATION OF PARENTAL ADMINISTRATOR'S
11 RIGHTS AND POWERS ON CONVERSION TO GUARDIANSHIP. The rights and
12 powers of a parental administrator terminate when a court orders
13 the parental administration converted into a guardianship of the
14 person.

15 Sec. 1359.203. PROCEDURE FOR REMOVAL OF PARENTAL
16 ADMINISTRATOR OR CONVERSION OF PARENTAL ADMINISTRATION TO
17 GUARDIANSHIP. (a) The court on the court's own motion or on the
18 application of any person may initiate a proceeding to:

19 (1) subject to Subsection (b), remove a parental
20 administrator on proof of a ground for removal described by Section
21 1359.201; or

22 (2) subject to Subsection (c), convert a parental
23 administration for an incapacitated adult to a guardianship of the
24 person for the incapacitated adult.

25 (b) In a proceeding for the removal of a parental
26 administrator initiated under Subsection (a)(1), the court shall
27 have the parental administrator cited by personal service to appear

1 before the court. The citation must state:

2 (1) the time and place of a hearing on the matter at
3 which the parental administrator is to appear; and

4 (2) the alleged ground for removal of the parental
5 administrator.

6 (c) Notice of a proceeding to convert a parental
7 administration and appoint a guardian of the person initiated under
8 Subsection (a)(2) must be provided in the manner required by
9 Chapter 1051.

10 (d) Notwithstanding the requirements of Section 1101.104,
11 an application for the conversion of a parental administration and
12 the appointment of a guardian of the person does not require a
13 written letter or certificate from a physician licensed in this
14 state.

15 SECTION 5. The heading to Section 25.10, Penal Code, is
16 amended to read as follows:

17 Sec. 25.10. INTERFERENCE WITH CERTAIN POSSESSORY RIGHTS [~~OF~~
18 ~~GUARDIAN OF THE PERSON~~].

19 SECTION 6. Sections 25.10(a) and (b), Penal Code, are
20 amended to read as follows:

21 (a) In this section:

22 (1) "Incapacitated adult" has the meaning assigned by
23 Section 1359.001, Estates Code.

24 (1-a) "Possessory right" means:

25 (A) the right of a guardian of the person to have
26 physical possession of a ward and to establish the ward's legal
27 domicile, as provided by Section 1151.051 [767(1)], Estates [Texas

1 ~~Probate]~~ Code; or

2 (B) the right of a parental administrator to have
3 physical possession of an incapacitated adult and to establish the
4 incapacitated adult's legal domicile, as provided by Section
5 1359.061, Estates Code.

6 (2) "Ward" has the meaning assigned by Section
7 1002.030 ~~[601]~~, Estates ~~[Texas-Probate]~~ Code.

8 (b) A person commits an offense if the person takes,
9 retains, or conceals a ward or incapacitated adult when the person
10 knows that the person's taking, retention, or concealment
11 interferes with a possessory right with respect to the ward or
12 incapacitated adult.

13 SECTION 7. To the extent of any conflict, this Act prevails
14 over another Act of the 85th Legislature, Regular Session, 2017,
15 relating to nonsubstantive additions to and corrections in enacted
16 codes.

17 SECTION 8. The changes in law made by this Act to Section
18 [25.10](#), Penal Code, apply only to an offense committed on or after
19 the effective date of this Act. An offense committed before the
20 effective date of this Act is governed by the law in effect on the
21 date the offense was committed, and the former law is continued in
22 effect for that purpose. For purposes of this section, an offense
23 was committed before the effective date of this Act if any element
24 of the offense occurred before that date.

25 SECTION 9. This Act takes effect September 1, 2017.