

By: Zaffirini

S.B. No. 963

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a guardianship court pilot program.

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

SECTION 1. Subtitle J, Title 2, Government Code, is amended by adding Chapter 111 to read as follows:

CHAPTER 111. GUARDIANSHIP COURT PILOT PROGRAM

Sec. 111.001. ESTABLISHMENT OF PILOT PROGRAM. (a) The supreme court shall establish in at least one administrative judicial region selected by the supreme court a guardianship court pilot program to facilitate the adjudication of guardianship matters in the region.

(b) In selecting an administrative judicial region to participate in the guardianship court pilot program, the supreme court shall consider regions where appointment of an associate judge for guardianship proceedings would reduce the guardianship caseload of the courts in the region.

Sec. 111.002. SELECTION OF COURTS; APPOINTMENT OF ASSOCIATE JUDGES. (a) The presiding judge of an administrative judicial region that is selected by the supreme court for the guardianship court pilot program, after conferring with the judges of courts in the region with jurisdiction over guardianship proceedings as defined by Section 1002.015, Estates Code, shall determine which courts require the appointment of a full-time or part-time

1 associate judge to complete the courts' guardianship proceedings.

2 (b) The presiding judge of the administrative judicial
3 region shall appoint each associate judge from a list of the
4 qualified applicants who have submitted an application to the
5 Office of Court Administration of the Texas Judicial System.
6 Before making the appointment, the presiding judge must provide the
7 list to each judge of a court from which guardianship proceedings
8 will be referred to the associate judge. Each judge may recommend
9 to the presiding judge the name of one or more applicants for
10 appointment.

11 (c) An associate judge appointed under this chapter may be
12 appointed to serve more than one court.

13 Sec. 111.003. REFERRAL OF GUARDIANSHIP PROCEEDINGS. (a)
14 If an associate judge is appointed to serve one or more courts in an
15 administrative judicial region, all guardianship proceedings as
16 defined by Section 1002.015, Estates Code, shall be referred to the
17 associate judge by:

18 (1) a general order for each county issued by the judge
19 of the court for which the associate judge is appointed; or

20 (2) in the absence of the general order described by
21 Subdivision (1), a general order issued by the presiding judge of
22 the administrative judicial region who appointed the associate
23 judge.

24 (b) This section does not limit the jurisdiction of a court
25 to issue orders under Title 3, Estates Code.

26 Sec. 111.004. ELIGIBILITY FOR APPOINTMENT. To be eligible
27 for appointment as an associate judge under this chapter, a person

1 must:

2 (1) be a citizen of the United States;

3 (2) have resided in this state for two years preceding
4 the appointment; and

5 (3) either be:

6 (A) eligible for assignment under Section 74.054
7 because the person is named on the list of retired and former judges
8 maintained by the presiding judge of the administrative judicial
9 region under Section 74.055; or

10 (B) licensed to practice law in this state and
11 have been a practicing lawyer in this state, or a judge of a court in
12 this state who is not otherwise eligible under Paragraph (A), for
13 the four years preceding the date of appointment.

14 Sec. 111.005. TERM OF APPOINTMENT. (a) An associate judge
15 appointed under this chapter serves for a term of two years from the
16 date the associate judge is appointed and qualifies unless the
17 appointment order provides otherwise.

18 (b) The appointment of an associate judge for a term does
19 not affect the at-will employment status of the associate judge.

20 Sec. 111.006. DESIGNATION AND RESPONSIBILITIES OF HOST
21 COUNTY AND PARTICIPATING COUNTIES. (a) Subject to the approval of
22 the commissioners court of the proposed host county, the presiding
23 judge of the administrative judicial region shall determine the
24 host county of an associate judge appointed under this chapter.

25 (b) The host county shall provide an adequate courtroom and
26 quarters, including furniture, necessary utilities, and telephone
27 equipment and service, for the associate judge and other personnel

1 assisting the associate judge.

2 (c) If the courts in more than one county in an
3 administrative judicial region refer guardianship proceedings to
4 an associate judge appointed under this chapter, the costs for the
5 associate judge shall be divided proportionately among the counties
6 served by the associate judge.

7 (d) The presiding judge of the administrative judicial
8 region may appoint additional personnel as necessary to implement
9 and administer this chapter, subject to the approval of the
10 commissioners court of the host county and any other county
11 responsible for the costs of the associate judge.

12 (e) An associate judge is not required to reside in the host
13 county.

14 Sec. 111.007. COMPENSATION OF ASSOCIATE JUDGE. (a) An
15 associate judge appointed under this chapter is entitled to a
16 salary as determined by the presiding judge of the administrative
17 judicial region, on approval of the supreme court and the
18 commissioners court of each county served by the associate judge.
19 The salary may not exceed 90 percent of the salary paid to a
20 district judge as set by the General Appropriations Act.

21 (b) The associate judge's salary shall be paid from county
22 funds available for payment of officers' salaries subject to the
23 approval of each county commissioners court or from funds available
24 from this state.

25 Sec. 111.008. GENERAL POWERS OF ASSOCIATE JUDGE. (a)
26 Except as limited by an order of referral, an associate judge
27 appointed under this chapter may:

- 1 (1) conduct a hearing;
- 2 (2) hear evidence;
- 3 (3) compel production of relevant evidence;
- 4 (4) rule on the admissibility of evidence;
- 5 (5) issue a summons for the appearance of witnesses;
- 6 (6) examine a witness;
- 7 (7) swear a witness for a hearing;
- 8 (8) make findings of fact on evidence;
- 9 (9) formulate conclusions of law;
- 10 (10) recommend an order to be rendered in a case;
- 11 (11) regulate all proceedings in a hearing;
- 12 (12) render and sign a pretrial order;
- 13 (13) order the attachment of a witness or party who
14 fails to obey a subpoena;
- 15 (14) order the detention of a witness or party found
16 guilty of contempt, pending approval by the referring court; and
- 17 (15) take action as necessary and proper for efficient
18 performance of the associate judge's duties.

19 (b) On the motion of a party or of the associate judge, an
20 associate judge may refer a complex matter back to the referring
21 court for final disposition.

22 (c) An associate judge may recommend to the referring court
23 any order after a trial on the merits.

24 Sec. 111.009. SUPERVISION OF ASSOCIATE JUDGES. The Office
25 of Court Administration of the Texas Judicial System shall assist
26 the presiding judge of an administrative judicial region selected
27 for the guardianship court pilot program in:

1 (1) monitoring the associate judges' compliance with
2 job performance standards and state laws and policies;

3 (2) addressing the training needs and resource
4 requirements of the associate judges; and

5 (3) receiving, investigating, and resolving
6 complaints about a particular associate judge under this chapter
7 based on uniform standards adopted by the supreme court.

8 Sec. 111.010. ATTENDANCE OF BAILIFF. A bailiff may attend a
9 guardianship proceeding conducted by an associate judge under this
10 chapter if directed by the referring court.

11 Sec. 111.011. WITNESS. A witness appearing before an
12 associate judge conducting a guardianship proceeding under this
13 chapter is subject to the penalties for perjury provided by law.

14 Sec. 111.012. COURT REPORTER; RECORD. (a) A court reporter
15 may be provided during a guardianship proceeding conducted by an
16 associate judge under this chapter.

17 (b) A party, an associate judge, or the referring court may
18 provide for a court reporter during the guardianship proceeding if
19 one is not otherwise provided.

20 (c) In the absence of a court reporter or an agreement of the
21 parties, the record may be preserved by any means approved by the
22 associate judge.

23 (d) The referring court or associate judge may assess the
24 expense of preserving the record as costs.

25 Sec. 111.013. REPORT. (a) The associate judge's report may
26 contain the associate judge's findings, conclusions, or
27 recommendations and may be in the form of a proposed order. The

1 associate judge's report must be in writing in the form directed by
2 the referring court.

3 (b) After a hearing, the associate judge shall provide the
4 parties participating in the hearing notice of the substance of the
5 associate judge's report, including any proposed order.

6 (c) Notice may be given to the parties:

7 (1) in open court, by an oral statement or a copy of
8 the associate judge's written report, including any proposed order;

9 (2) by certified mail, return receipt requested; or

10 (3) by facsimile transmission.

11 (d) There is a rebuttable presumption that notice is
12 received on the date stated on:

13 (1) the signed return receipt, if notice was provided
14 by certified mail; or

15 (2) the confirmation page produced by the facsimile
16 machine, if notice was provided by facsimile transmission.

17 (e) After a hearing conducted by an associate judge, the
18 associate judge shall send the associate judge's signed and dated
19 report, including any proposed order, and all other papers relating
20 to the case to the referring court.

21 Sec. 111.014. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE
22 REFERRING COURT. (a) Notice of the right to a de novo hearing
23 before the referring court shall be given to all parties.

24 (b) The notice may be given:

25 (1) by oral statement in open court;

26 (2) by posting inside or outside the courtroom of the
27 referring court; or

1 (3) as otherwise directed by the referring court.

2 Sec. 111.015. ORDER OF COURT. (a) Pending a de novo
3 hearing before the referring court, a proposed order or judgment of
4 the associate judge is in full force and effect and is enforceable
5 as an order or judgment of the referring court, except for an order
6 providing for the appointment of a receiver.

7 (b) If a request for a de novo hearing before the referring
8 court is not timely filed or the right to a de novo hearing before
9 the referring court is waived, the proposed order or judgment of the
10 associate judge becomes the order or judgment of the referring
11 court only on the referring court's signing the proposed order or
12 judgment.

13 (c) An order by an associate judge for the temporary
14 detention or incarceration of a witness or party shall be presented
15 to the referring court on the day the witness or party is detained
16 or incarcerated. The referring court, without prejudice to the
17 right to a de novo hearing provided by Section 111.017, may approve
18 the temporary detention or incarceration or may order the release
19 of the party or witness, with or without bond, pending a de novo
20 hearing. If the referring court is not immediately available, the
21 associate judge may order the release of the party or witness, with
22 or without bond, pending a de novo hearing or may continue the
23 person's detention or incarceration for not more than 72 hours.

24 Sec. 111.016. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED
25 ORDER OR JUDGMENT. (a) Unless a party files a written request for a
26 de novo hearing before the referring court, the referring court
27 may:

1 (1) adopt, modify, or reject the associate judge's
2 proposed order or judgment;

3 (2) hear further evidence; or

4 (3) recommit the matter to the associate judge for
5 further proceedings.

6 (b) If a request for a de novo hearing before the referring
7 court is not timely filed or the right to a de novo hearing before
8 the referring court is waived, the proposed order or judgment of the
9 associate judge for the guardianship proceeding becomes the order
10 or judgment of the referring court by operation of law without
11 ratification by the referring court.

12 Sec. 111.017. DE NOVO HEARING BEFORE REFERRING COURT. (a)
13 A party may request a de novo hearing before the referring court by
14 filing with the clerk of the referring court a written request not
15 later than the third working day after the date the party receives
16 notice of the substance of the associate judge's report as provided
17 by Section 111.013.

18 (b) A request for a de novo hearing under this section must
19 specify the issues that will be presented to the referring court.

20 (c) In the de novo hearing before the referring court, the
21 parties may present witnesses on the issues specified in the
22 request for hearing. The referring court may also consider the
23 record from the hearing before the associate judge, including the
24 charge to and verdict returned by a jury.

25 (d) Notice of a request for a de novo hearing before the
26 referring court shall be given to the opposing attorney under Rule
27 21a, Texas Rules of Civil Procedure.

1 (e) If a request for a de novo hearing before the referring
2 court is filed by a party, any other party may file a request for a
3 de novo hearing before the referring court not later than the third
4 working day after the date the initial request was filed.

5 (f) The referring court, after notice to the parties, shall
6 hold a de novo hearing not later than the 30th day after the date on
7 which the initial request for a de novo hearing was filed with the
8 clerk of the referring court.

9 (g) Before the start of a hearing by an associate judge, the
10 parties may waive the right of a de novo hearing before the
11 referring court in writing or on the record.

12 (h) The denial of relief to a party after a de novo hearing
13 under this section or a party's waiver of the right to a de novo
14 hearing before the referring court does not affect the right of a
15 party to file a motion for new trial, motion for judgment
16 notwithstanding the verdict, or other post-trial motion.

17 (i) A party may not demand a second jury in a de novo hearing
18 before the referring court if the associate judge's proposed order
19 or judgment resulted from a jury trial.

20 Sec. 111.018. APPELLATE REVIEW. (a) A party's failure to
21 request a de novo hearing before the referring court or a party's
22 waiver of the right to request a de novo hearing before the
23 referring court does not deprive the party of the right to appeal to
24 or request other relief from a court of appeals or the supreme
25 court.

26 (b) Except as provided by Subsection (c), the date an order
27 or judgment by the referring court is signed is the controlling date

1 for the purposes of appeal to or request for other relief from a
2 court of appeals or the supreme court.

3 (c) The date an agreed order or a default order is signed by
4 an associate judge is the controlling date for the purpose of an
5 appeal to, or a request for other relief relating to the order from,
6 a court of appeals or the supreme court.

7 Sec. 111.019. IMMUNITY. An associate judge appointed under
8 this chapter has the judicial immunity of a district judge. All
9 existing immunity granted an associate judge by law, express or
10 implied, continues in full force and effect.

11 Sec. 111.020. CONCLUSION; REPORT. (a) The guardianship
12 court pilot program established under this chapter concludes
13 December 1, 2019.

14 (b) The Office of Court Administration of the Texas Judicial
15 System and the supreme court shall prepare a report on the
16 guardianship court pilot program conducted under this chapter that
17 includes recommendations on the continuation of the program. The
18 office shall submit the report to the governor, the lieutenant
19 governor, the speaker of the house of representatives, and each
20 member of the legislature not later than December 1, 2019. The
21 office may submit an interim report not later than December 1, 2018.

22 Sec. 111.021. EXPIRATION. This chapter expires September
23 1, 2021.

24 SECTION 2. The Texas Supreme Court shall establish the
25 guardianship court pilot program as required by Chapter 111,
26 Government Code, as added by this Act, not later than October 1,
27 2017.

1 SECTION 3. This Act takes effect September 1, 2017.