

BILL ANALYSIS

S.B. 1426
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Concerns have been raised regarding a lack of provision in state law for a guardian of last resort in cases where persons who are unable to reasonably care for themselves or their property do not have a family member or friend who is willing and able to serve as a guardian and do not have the resources to pay for appropriate professional services. S.B. 1426 seeks to address these concerns and implement a related Texas Judicial Council recommendation by providing a clear legal framework for counties interested in establishing an office of public guardian or contracting with a nonprofit or private professional guardianship program to be the guardian of last resort.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTIONS 3 and 21 of this bill.

ANALYSIS

S.B. 1426 amends the Estates Code to authorize the commissioners court of a county by order to create an office of public guardian to provide guardianship services to incapacitated persons or to enter into an agreement with a person operating a nonprofit or private professional guardianship program located in the county or in an adjacent county to act as a public guardian by providing guardianship services to incapacitated persons. The bill requires a commissioners court that creates an office of public guardian to appoint an individual as public guardian to administer the office, establishes a five-year term of service for such an individual, and sets out qualifications for appointment. The bill authorizes the commissioners court to employ, or authorize the public guardian to employ, personnel necessary to perform the duties of the office, including personnel who will represent the interests of a ward as a guardian on behalf of the office if approved by the commissioners court.

S.B. 1426 authorizes a commissioners court to enter into an agreement with an individual to act as a public guardian on a part-time basis with appropriate compensation under certain conditions. The bill authorizes the commissioners courts of two or more counties to collectively enter into an agreement to create and fund an office of public guardian and to appoint the same individual as public guardian to that office or to collectively enter into an agreement with a person operating a nonprofit or private professional guardianship program to serve as a public guardian.

S.B. 1426 requires an office or public guardian to be independent from providers of services to wards and proposed wards and prohibits an office or public guardian from directly providing housing, medical, legal, or other direct, non-surrogate decision-making services to a ward or proposed ward unless approved by the court, except that an office or public guardian may provide money management services under a certain grant program or provide other representative payee services. The bill provides for a public guardian's compensation and bond requirement and provides for the filling of a vacancy.

S.B. 1426 requires an office or public guardian to evaluate the financial status of a proposed ward to determine whether the proposed ward is eligible to have the office or public guardian appointed guardian of the ward based on a lack of sufficient resources to pay a private professional guardian, if applicable, and to serve as guardian of the person or of the estate of a ward, or both, on appointment by a court. The bill authorizes a court with jurisdiction over a guardianship proceeding to order the release of public and private records, including otherwise confidential records, to an office or public guardian in connection with a financial evaluation of a proposed ward and on request of the office or public guardian. The bill prohibits a state agency from charging an office or public guardian for the provision of a copy of public information requested from the agency by the office or public guardian.

S.B. 1426 sets out the conditions under which a court may appoint an office or public guardian to serve as guardian of the person or of the estate of a ward, or both, including conditions relating to a ward's ability to pay a private professional guardian and the basis on which a determination of such ability is made. The bill limits the number of guardianship appointments of an office to 35 wards for each guardian representing the interests of wards on behalf of the office and requires the office, if each guardian reaches that limitation, to immediately give notice to the courts.

S.B. 1426 provides for the confidentiality of certain information used or developed by an office or public guardian and limits the circumstances under which such information may be disclosed. The bill requires the Office of Court Administration of the Texas Judicial System (OCA) to establish policies and procedures for the exchange of information between offices, public guardians, and other appropriate governmental entities as necessary for the proper execution of their respective duties and responsibilities relating to guardianship services or other needed services for a ward and establishes that such an exchange of information does not constitute a release for purposes of waiving the confidentiality of the information exchanged. The bill provides for the release on request of confidential information in the record of a former ward to the individual, the individual's guardian, or an executor or administrator of the individual's estate.

S.B. 1426 establishes that the administrative costs of guardianship services provided to a ward for whom an office or public guardian is appointed guardian of the person or of the estate, or both, may not be charged to the ward's estate unless the court determines that the ward is financially able to pay all or part of the costs, as measured by whether the ward has sufficient assets or other resources to pay a private professional guardian.

S.B. 1426 requires OCA, not later than December 1 of each even-numbered year, to submit a report to the governor and legislature that contains an evaluation of public guardians. The bill sets out the required contents of the report and authorizes OCA, if cost-effective and feasible, to contract with an appropriate research or public policy entity with specified expertise to conduct a certain analysis for purposes of the report.

S.B. 1426 requires the Texas Supreme Court, not later than January 1, 2020, and in consultation with OCA and the presiding judge of the statutory probate courts, to adopt rules necessary to implement applicable bill provisions governing public guardians, including rules governing the transfer of a guardianship of the person or of the estate of a ward, or both, if appropriate, to an

office of public guardian established under those provisions or a public guardian contracted under those provisions.

S.B. 1426 requires an individual who is a public guardian or who will represent the interests of a ward as a guardian on behalf of a public guardian to be certified by the Judicial Branch Certification Commission (JBCC) to provide guardianship services in Texas. The bill requires the clerk of the county having venue of the proceeding for the appointment of a guardian to obtain certain criminal history record information relating to the following persons:

- a public guardian;
- each person who represents or plans to represent the interests of a ward as a guardian on behalf of an office of public guardian; and
- each person employed by an office of public guardian who will have personal contact with a ward or proposed ward, exercise control over and manage a ward's estate, or perform any duties with respect to the management of a ward's estate.

S.B. 1426 amends the Local Government Code to revise provisions relating to the supplemental court-initiated guardianship fee by doing the following:

- changing the name of the fee and the associated fund to the supplemental public guardianship and related services fee or fund, as applicable;
- changing the purpose of the fee to the support of guardianship services provided by public guardians or guardianship and other less restrictive alternative services provided to indigent incapacitated persons who do not have family members suitable and willing to serve as guardians or provide such alternative services; and
- removing the specification that the fees are used to supplement other available county funds used to pay the compensation of certain court-appointed guardians ad litem or attorneys ad litem and fund certain local guardianship programs.

S.B. 1426 amends the Government Code to require OCA to monitor counties to ensure money is appropriately deposited into the public guardianship and related services funds established by counties and is being used in compliance with applicable statutory provisions. The bill requires OCA, not later than December 1 of each year, to submit a report to the legislature detailing how money in those funds is being used by counties across Texas.

S.B. 1426 requires the JBCC to adopt minimum standards for the provision of guardianship services by offices of public guardians. The bill requires each office of public guardian, not later than January 31 of each year, to provide to the JBCC a report that contains, for the preceding year, the number of wards served by the office and specified information regarding money received from the state and other public sources.

S.B. 1426 amends the Human Resources Code to authorize a contract made by the Health and Human Services Commission for the provision of guardianship services to allow for the provision of those services by an office of public guardian.

S.B. 1426 applies only to the appointment of a guardian of the person or estate of a ward, or both, made on or after July 1, 2020. The bill authorizes a person who, immediately before that date, is serving as such a guardian and would be eligible under the bill's applicable provisions for appointment of an office of public guardian as the ward's guardian to continue to serve as guardian of the person or estate of that ward, or both, unless otherwise removed as provided by law.

EFFECTIVE DATE

September 1, 2019.