

## **BILL ANALYSIS**

S.B. 1783  
By: Zaffirini  
Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

It has been suggested that, if supports and services or alternatives to guardianship allow a person with an incapacity to live independently, a guardianship may not be necessary and the guardianship should be terminated on a finding that the alternative will meet the person's needs without continued court involvement. S.B. 1783 seeks to address this issue by providing for the termination of guardianship on the finding that the ward's incapacity needs can be managed without guardianship.

### **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 Office of Court Administration of the Texas Judicial System in SECTION 7 of this bill.

### **ANALYSIS**

S.B. 1783 amends the Estates Code to revise provisions under which a court determines whether to transfer guardianship of a ward from one county to another:

- to include among the court's required findings to warrant transfer that the ward has resided in the county to which the guardianship is to be transferred for at least six months as an alternative to a lack of good cause to deny the transfer; and
- if the transfer is determined to be in the best interest of the ward, to include among the orders the court must enter an order certifying that the guardianship is in compliance with the Estates Code at the time of transfer.

The bill authorizes the court, in making a determination that the transfer is in the best interests of a ward, to consider the interests of justice, the convenience of the parties, and, if the ward is 12 years of age or older, the preference of the ward. The bill requires a county, on receipt of a transfer order, to accept the transfer of the guardianship.

S.B. 1783 establishes the following when a guardianship is transferred from one county to another:

- the court to which a guardianship is transferred becomes the court of continuing, exclusive jurisdiction;
- a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;

- a judgment or order entered in the guardianship before the transfer has the same effect and must be enforced as a judgment or order entered by the court to which the guardianship is transferred; and
- the court ordering the transfer does not retain:
  - jurisdiction of the ward who is the subject of the guardianship; and
  - the authority to enforce an order entered for a violation of provisions relating to guardianship and related procedures that occurred before or after the transfer.

S.B. 1783 exempts a judge of the court from which a guardianship is transferred from civil liability for any injury, damage, or loss to the ward or the ward's estate that occurs after the transfer and exempts a judge of the court to which a guardianship is transferred from civil liability for any such loss that occurred before the transfer.

S.B. 1783 establishes the following, if a court refers a contested guardianship proceeding regarding the appointment of a guardian for a proposed ward to mediation:

- a determination of incapacity of the proposed ward may be an issue to be mediated, but the applicant for guardianship must still prove to the court that the proposed ward is an incapacitated person in accordance with the requirements of the general procedure to appoint a guardian; and
- all parties to the proceeding are required to evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and alternatives to guardianship would be feasible to avoid the need for appointment of a guardian.

The bill provides for the payment mediation costs and referral to a local alternative dispute resolution center and waiver of the mediation cost, under certain conditions.

S.B. 1783 requires a guardianship of a person to be settled and closed when the court finds that the ward's incapacity needs can be managed without the necessity for that continued guardianship by an alternative to guardianship or supports and services as provided under the bill's provisions. The bill authorizes a court, on application by a guardian of the person of a ward, a court investigator or guardian ad litem appointed by the court, or another person interested in the ward's welfare who has been granted permission by the court to intervene, or on the court's own motion, to order that the guardianship of the person of the ward terminate and be settled and closed if the court makes the findings required under the bill's provisions. The bill requires the court, before ordering the termination of a guardianship of the person, to find by a preponderance of evidence that:

- the ward remains a partially or completely incapacitated person;
- the current nature and degree of the ward's incapacity and the ward's needs can be managed without the necessity of a continued guardianship of the person by alternatives to guardianship that are available to the ward and that are determined to be feasible or supports and services that are available to the ward and that are determined to be feasible; and
- termination of the guardianship of the person is in the ward's best interest and will encourage the development or maintenance of maximum self-reliance and independence in the ward.

The bill sets out general requirements for a court order that terminates a guardianship. The bill authorizes a court to enter additional orders in the best interest of the ward, including requiring notice to interested persons or appointing an attorney ad litem or guardian ad litem, or both, for the ward.

S.B. 1783 amends the Government Code to require the Office of Court Administration of the Texas Judicial System (OCA) by rule to establish a training course with at least 24 hours of training for persons facilitating mediations relating to guardianship that may be provided by a mediation training provider approved by OCA. The bill requires a mediation training provider to adhere to the established curriculum in providing the training course. These provisions expressly do not require a mediator facilitating a mediation to attend or be certified under such a training course.

S.B. 1783 establishes that OCA is required to implement a provision of the bill only if the legislature appropriates money specifically for that purpose and that, if the legislature does not appropriate money specifically for that purpose, OCA may, but is not required to, implement a provision of the bill using other appropriations available for that purpose.

**EFFECTIVE DATE**

September 1, 2019.